GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 743
Committee Substitute Favorable 5/14/13
Senate Finance Committee Substitute Adopted 6/6/13

Short Title: UI Laws Administrative Changes. (Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, ADMINISTRATIVE, AND CLARIFYING CHANGES TO THE UNEMPLOYMENT INSURANCE LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-4(q), as enacted by S.L. 2013-2, reads as rewritten:

"(q) The ~~Division~~ Board of Review after due notice shall have the right and power to hold and conduct hearings for the purpose of determining the rights, status and liabilities of an employer. The Board of Review shall have the power and authority to determine any and all questions and issues of fact or questions of law that may arise under the Employment Security Law that may affect the rights, liabilities and status of an employer including the right to determine the amount of contributions, if any, which may be due the Division by any employer. Hearings may be before the Board of Review and shall be held in the central office of the Board of Review or at any other designated place within the State. They shall be open to the public and shall consist of a review of the evidence taken by a hearing officer designated by the Board of Review and a determination of the law applicable to that evidence. The Board of Review shall provide for the taking of evidence by a hearing officer employed in the capacity of an attorney by the Department. Such hearing officer shall have the same power to issue subpoenas, administer oaths, conduct hearings and take evidence as is possessed by the Board of Review and such hearings shall be recorded, and he shall transmit all testimony and records of such hearings to the Board for its determination. All such hearings conducted by such hearing officer shall be scheduled and held in any county in this State in which the employer resides, maintains a place of business, or conducts business; however, the Board of Review may require additional testimony at any hearings held by it at its office. From all decisions or determinations made by the Board of Review, any party affected thereby shall be entitled to an appeal to the superior court. Before a party shall be allowed to appeal, the party shall within 10 days after notice of such decision or determination, file with the Board of Review exceptions to the decision or the determination, which exceptions will state the grounds of objection to the decision or determination. If any one of the exceptions shall be overruled then the party may appeal from the order overruling the exceptions, and shall, within 10 days after the decision overruling the exceptions, give notice of his appeal. When an exception is made to the facts as found by the Board of Review, the appeal shall be to the superior court in term time but the decision or determination of the Board of Review upon such review in the superior court shall be conclusive and binding as to all questions of fact supported by any competent evidence. When an exception is made to any rulings of law, as determined by the Board of Review, the appeal shall be to the judge of the superior court at chambers. The party appealing shall, within

10 days after the notice of appeal has been served, file with the Board of Review exceptions to the decision or determination overruling the exception which statement shall assign the errors complained of and the grounds of the appeal. Upon the filing of such statement the Board of Review shall, within 30 days, transmit all the papers and evidence considered by it, together with the assignments of errors filed by the appellant to a judge of the superior court holding court or residing in some district in which such appellant either resides, maintains a place of business or conducts business, or, unless the appellant objects after being given reasonable opportunity to object, to a judge of the Superior Court of Wake County: Provided, however, the 30-day period specified herein may be extended by agreement of parties."

SECTION 2. G.S. 96-4(u), as enacted by S.L. 2013-2, reads as rewritten:

"(u) Notices of hearing shall be issued by the ~~Division~~ Board of Review or its authorized representative and sent by registered mail, return receipt requested, to the last known address of employer, employers, persons, or firms involved. The notice shall be sent at least 15 days prior to the hearing date and shall contain notification of the place, date, hour, and purpose of the hearing. Subpoenas for witnesses to appear at any hearing shall be issued by the Division or its authorized representative and shall order the witness to appear at the time, date and place shown thereon. Any bond or other undertaking required to be given in order to suspend or stay any execution shall be given payable to the Department of Commerce. Any such bond or other undertaking may be forfeited or sued upon as are any other undertakings payable to the State."

SECTION 3. G.S. 96-5.1(a), as enacted by S.L. 2013-2, reads as rewritten:

"(a) Fund Established. – The Supplemental Employment Security Administration Fund is created as a special revenue fund. The fund consists of all interest and penalties paid under this Chapter by employers on overdue contributions and any appropriations made to the fund by the General Assembly. Penalties collected on unpaid taxes imposed by this section must be transferred to the Civil Penalty and Forfeiture Fund established in G.S. 115C-457.1."

SECTION 4. G.S. 96-6.1(a), as enacted by S.L. 2013-2, reads as rewritten:

"(a) Establishment and Use. – The Unemployment Insurance Reserve Fund is established as an enterprise fund.~~a special revenue fund.~~ The Fund consists of the revenues derived from the surtax imposed under G.S. 96-9.7. Moneys in the Fund may be used only for the following purposes:

…."

SECTION 5. G.S. 96-9.2(b), as enacted by S.L. 2013-2, reads as rewritten:

"(b) Standard Beginning Rate. – The standard beginning rate applies to an employer until the employer's account has been chargeable with benefits for at least 12 calendar months ending July 31 immediately preceding the computation date. An employer's account has been chargeable with benefits for at least 12 calendar months if the employer has reported wages paid in four completed calendar quarters and ~~these quarters are in~~ its liability extends over all or part of two consecutive calendar years."

SECTION 6. G.S. 96-9.6(e), as enacted by S.L. 2013-2, reads as rewritten:

"(e) Annual Reconciliation. – A reimbursing employer must maintain an account balance equal to one percent (1%) of its taxable wages. The Division must determine the balance of each employer's account on the computation date. If there is a deficit in the account, the Division must bill the employer for the amount necessary to bring its account to one percent (1%) of its taxable wages for the ~~preceding calendar year.~~ immediate four quarters preceding July 1. Any amount in the account in excess of the one percent (1%) of taxable wages will be retained in the employer's account as a credit and will not be refunded to the employer. The Division must send a bill as soon as practical. Payment is due within 30 days from the date a bill is mailed. Amounts unpaid by the due date accrue interest and penalties in the same manner as past-due contributions and are subject to the same collection remedies provided under G.S. 96-10 for past-due contributions."

SECTION 7. G.S. 96-9.6(i), as enacted by S.L. 2013-2, reads as rewritten:

"(i) Transition. – This subsection provides a transitional adjustment period for an employer that elected to be a reimbursing employer prior to January 1, 2013, and was not required to submit an advance payment with its first four quarterly reports equal to one percent (1%) of its reported taxable wages. This subsection expires January 1, 2016.

(1) Governmental entities. – An employer that is a State or local governmental unit must reimburse the Division in the amount required by subsection (c) of this section for benefits paid on its behalf, as determined on the computation date in 2013, but it does not have to reconcile its account balance, as required under subsection (e) of this section, until 2014. If the employer's account balance on the computation date in 2014 does not equal one percent (1%) of its taxable wages reported for the ~~2013 calendar year,~~preceding fiscal year, the Division will bill the employer for the deficiency.

…."

SECTION 8. G.S. 96-9.7(a), as enacted by S.L. 2013-2, reads as rewritten:

"(a) Surtax Imposed. – A surtax is imposed on an employer who is required to make a contribution to the Unemployment Insurance Fund equal to twenty percent (20%) of the contribution due under G.S. 96-9.2. Except as provided in this section, the surtax is collected and administered in the same manner as contributions. Surtaxes collected under this section must be credited to the Unemployment Insurance Reserve Fund established under ~~G.S. 96-6.~~ G.S. 96-6.1. Interest and penalties collected on unpaid surtaxes imposed by this section must be credited to the Supplemental Employment Security Administration Fund. Penalties collected on unpaid surtaxes imposed by this section must be transferred ~~credited~~ to the Civil Penalty and Forfeiture Fund established in G.S. 115C-457.1."

SECTION 9. G.S. 96-10(g) reads as rewritten:

"(g) Upon the motion of the Division, any employer refusing to submit any report required under this Chapter, after 10 days' written notice sent by the Division by registered or certified mail to the employer's last known address, may be enjoined by any court of competent jurisdiction from hiring and continuing in employment any employees until such report is properly submitted. When an execution has been returned to the Division unsatisfied, and the employer, after 10 days' written notice sent by the Division by registered or certified mail to the employer's last known address, refuses to pay the contributions covered by the execution, such employer shall upon the motion of the Division be enjoined by any court of competent jurisdiction from hiring and continuing in employment any employees until such contributions have been paid.

An employer who fails to file a report within the required time shall be assessed a late filing penalty of five percent (5%) of the amount of contributions due with the report for each month or fraction of a month the failure continues. The penalty may not exceed twenty-five percent (25%) of the amount of contributions due. An employer who fails to file a report within the required time but owes no contributions shall not be assessed a penalty unless the employer's failure to file continues for more than 30 days."

SECTION 10. G.S. 96-11.2, as enacted by S.L. 2013-2, reads as rewritten:

"**§ 96-11.2. Allocation of charges to base period employers.**

Benefits paid to an individual are charged to an employer's account when the individual's benefit year has expired. Benefits paid to an individual must be allocated to the account of each base period employer in the proportion that the base period wages paid to the individual in a calendar quarter by each base period employer bears to the total wages paid to the individual in ~~that quarter~~ the base period by all base period employers. The amount allocated to an employer that pays contributions is multiplied by one hundred twenty percent (120%) and charged to that employer's account. The amount allocated to an employer that elects to reimburse the Unemployment Insurance Fund in lieu of paying contributions is the amount of benefits charged to that employer's account."

SECTION 11. G.S. 96-11.4(a), as enacted by S.L. 2013-2, reads as rewritten:

"(a) …

(2) The employer or agent has a pattern of failing to respond timely or adequately to requests from the Division for information relating to claims for unemployment compensation. In determining whether the employer or agent has a pattern of failing to respond timely or adequately, the Division must consider the number of documented instances of that employer's or agent's failures to respond in relation to the total requests made to that employer or agent. An employer or agent may not be determined to have a pattern of failing to respond if the number of failures during the year prior to the request is ~~less~~ fewer than two or less than two percent (2%) of the total requests made to that employer or agent, whichever is greater.~~agent.~~"

SECTION 12. G.S. 96-14.1(e), as enacted by S.L. 2013-2, reads as rewritten:

"(e) Federal Restrictions. – Benefits are not payable for services performed by the following individuals, to the extent prohibited by section 3304 of the Code:

(1) Instructional, research, or principal administrative employees of educational institutions.

(2) Services in any other capacity for an educational institution.

~~(2)~~(3) Professional athletes.

~~(3)~~(4) Aliens."

SECTION 13. G.S. 96-14.3, as enacted by S.L. 2013-2, reads as rewritten:

"**§ 96-14.3. Minimum and maximum duration of benefits.**

The minimum and maximum number of weeks an individual is allowed to receive unemployment benefits depends on the seasonal adjusted statewide unemployment rate that applies to the six-month base period in which the claim is filed. One six-month base period begins on January 1 and one six-month base period begins on July 1. For the base period that begins January 1, the average of the seasonal adjusted unemployment ~~rate~~ rates for the State for the preceding ~~month~~ months of ~~October~~ July, August, and September applies. For the base period that begins July 1, the average of the seasonal adjusted unemployment ~~rate~~ rates for the State for the preceding ~~month~~ months of ~~April~~ January, February, and March applies. The Division must use the most recent seasonal adjusted unemployment rate determined by the U.S. Department of Labor, Bureau of Labor Statistics, and not the rate as revised in the annual benchmark. The number of weeks allowed for an individual is determined in accordance with G.S. 96-14.4.

…."

SECTION 14. G.S. 96-14.9(d), as enacted by S.L. 2013-2, reads as rewritten:

"(d) …

(4) The individual is on disciplinary suspension for ~~more than~~ 30 or fewer days based on acts or omissions that constitute fault on the part of the employee and are connected with the work."

SECTION 15. G.S. 96-14.10, as enacted by S.L. 2013-2, reads as rewritten:

"**§ 96-14.10. Disciplinary suspension.**

The disciplinary suspension of an employee for 30 or fewer consecutive calendar days does not constitute good cause for leaving work. An individual who is on suspension is not available for work and is not eligible for benefits for any week during any part of the disciplinary suspension. If the disciplinary suspension exceeds 30 days, the individual is considered to have been discharged from work because of the acts or omissions that caused the suspension and the issue is whether the discharge was for disqualifying reasons. During the period of suspension of ~~up to~~ 30 or fewer days, the individual is considered to be attached to the employer's payroll, and the issue of separation from work is held in abeyance until a claim is filed for a week to which this section does not apply."

SECTION 16. G.S. 96-15(a1), as enacted by S.L. 2013-2, reads as rewritten:

"(a1) Attached Claims. – An employer may file claims for employees through the use of automation in the case of partial unemployment. An employer may file an attached claim for an employee only once during a ~~calendar year,~~ benefit year, and the period of partial unemployment for which the claim is filed may not exceed six weeks. To file an attached claim, an employer must pay the Division an amount equal to the full cost of unemployment benefits payable to the employee under the attached claim at the time the attached claim is filed. The Division must credit the amounts paid to the Unemployment Insurance Fund.

An employer may file an attached claim under this subsection only if the employer has a positive credit balance in its account as determined under Article 2B of this Chapter. If an employer does not have a positive credit balance in its account, the employer must remit to the Division an amount equal to the amount necessary to bring the employer's negative credit balance to at least zero at the time the employer files the attached claim."

SECTION 17. G.S. 96-15(b), as enacted by S.L. 2013-2, reads as rewritten:

"(b) …

(2) Adjudication. – When a protest is made by the claimant to the initial or monetary determination, or a question or issue is raised or presented as to the eligibility of a claimant, or whether any disqualification should be imposed, or benefits denied or adjusted pursuant to G.S. 96-18, the matter shall be referred to an adjudicator. The adjudicator may consider any matter, document or statement deemed to be pertinent to the issues, including telephone conversations, and after such consideration shall render a conclusion as to the claimant's benefit entitlements. The adjudicator shall notify the claimant and all other interested parties of the conclusion reached. The conclusion of the adjudicator shall be deemed the final decision of the Division unless within 30 days after the date of notification or mailing of the conclusion, whichever is earlier, a written appeal is filed pursuant to rules adopted by the Division. The Division shall be deemed an interested party for such purposes and may remove to itself or transfer to an appeals referee the proceedings involving any claim pending before an adjudicator.

Provided, any interested employer shall be allowed ~~10~~14 days from the mailing or delivery of the notice of the filing of a claim against the employer's account, whichever first occurs, to file with the Division its ~~account to~~ protest of the claim in order to ~~and~~ have the claim referred to an adjudicator for a decision on the question or issue raised. Any protest filed must contain a basis for the protest and supporting statement of facts, and the protest may not be amended after the 14-day period from the mailing or delivery of the notice of filing of a claim has expired. A copy of the notice of the filing shall be sent contemporaneously to the employer by telefacsimile transmission if a fax number is on file. No payment of benefits shall be made by the Division to a claimant until one of the following occurs:

a. The employer has filed a timely protest to the claim.

b. The 14-day period for the filing of a protest by the employer has expired.

c. A determination under this subdivision has been made.

Provided further, no question or issue may be raised or presented by the Division as to the eligibility of a claimant, or whether any disqualification should be imposed, after 45 days from the first day of the first week after the question or issue occurs with respect to which week an individual filed a claim for benefits. None of the provisions of this subsection shall have the

force and effect nor shall the same be construed or interested as repealing any other provisions of G.S. 96-18.

An employer shall receive written notice of the employer's appeal rights and any forms that are required to allow the employer to protest the claim. The forms shall include a section referencing the appropriate rules pertaining to appeals and the instructions on how to appeal."

SECTION 18. G.S. 96-9.15(d), as enacted by S.L. 2013-2, reads as rewritten:

"(d) Form of Report. – An employer must complete the tax form prescribed by the Division. An employer or an agent of an employer that reports wages for at least 25 employees must file the portion of the "Employer's Quarterly Tax and Wage Report" that contains the name, social security number, and gross wages of each employee in ~~a~~ an electronic format prescribed by the Division. For failure of an employer to comply with this subsection, the Division must assess a penalty of twenty-five dollars ($25.00). For failure of an agent of an employer to comply with this subsection, the Division may deny the agent the right to report wages and file reports for that employer for a period of one year following the calendar quarter in which the agent filed the improper report. The Division may reduce or waive a penalty for good cause shown."

SECTION 19. Section 11 of S.L. 2013-2 reads as rewritten:

"**SECTION 11.** This act becomes effective July 1, 2013. Changes made by this act to unemployment benefits apply to claims for benefits filed on or after ~~July 1, 2013.~~ June 30, 2013. The requirements of G.S. 96-15(a1), as enacted by S.L. 2013-2 and amended by Section 14 of this act, apply to any week of an attached claim filed on or after June 30, 2013. Changes made by this act to require an account balance by an employer that is a governmental entity or a nonprofit organization and that elects to finance benefits by making reimbursable payments in lieu of contributions apply to advance payments payable for calendar quarters beginning on or after July 1, 2013. Changes made by this act to the determination and application of the contribution rate apply to contributions payable for calendar quarters beginning on or after January 1, 2014."

SECTION 20.(a) G.S. 96-4(x)(6), as enacted by S.L. 2013-2, reads as rewritten:

"(6) Nothing in this subsection (x)~~(t)~~ shall operate to relieve any claimant or employer from disclosing any information required by this Chapter or by regulations promulgated thereunder."

SECTION 20.(b) G.S. 96-4(x)(7) reads as rewritten:

"(7) Nothing in this subsection (x)~~(t)~~ shall be construed to prevent the Division from allowing any individual or entity to examine and copy any report, return, or any other written communication made by that individual or entity to the Division, its agents, or its employees."

SECTION 20.(c) G.S. 96-9.5(4)(c.), as enacted by S.L. 2013-2, reads as rewritten:

"c. The employer has elected coverage in this State in accordance with ~~G.S. 96-9.9.~~G.S. 96-9.8."

SECTION 20.(d) G.S. 96-10(d) reads as rewritten:

"(d) Collections of Contributions upon Transfer or Cessation of Business. – The contribution or tax imposed by G.S. 96-9.2,~~G.S. 96-9,~~ and subsections thereunder, of this Chapter shall be a lien upon the assets of the business of any employer subject to the provisions hereof who shall lease, transfer or sell out his business, or shall cease to do business and such employer shall be required, by the next reporting date as prescribed by the Division, to file with the Division all reports and pay all contributions due with respect to wages payable for employment up to the date of such lease, transfer, sale or cessation of the business and such employer's successor in business shall be required to withhold sufficient of the purchase money to cover the amount of said contributions due and unpaid until such time as the former owner or employer shall produce a receipt from the Division showing that the contributions have been

paid, or a certificate that no contributions are due. If the purchaser of a business or a successor of such employer shall fail to withhold purchase money or any money due to such employer in consideration of a lease or other transfer and the contributions shall be due and unpaid after the next reporting date, as above set forth, such successor shall be personally liable to the extent of the assets of the business so acquired for the payment of the contributions accrued and unpaid on account of the operation of the business by the former owner or employer."

SECTION 20.(e) G.S. 96-14.11(c)(2), as enacted by S.L. 2013-2, reads as rewritten:

"(2) The individual was recalled in a week in which the work search requirements were satisfied under ~~G.S. 96-14.7(g)~~ G.S. 96-14.9(g) due to job attachment."

SECTION 20.(f) G.S. 96-14.14(c)(2), as recodified by S.L. 2013-2, reads as rewritten:

"(2) The individual has satisfied the requirements of this Chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits. Provided, however, that for purposes of disqualification for extended benefits for weeks of unemployment beginning after March 31, 1981, the term "suitable work" means any work which is within the individual's capabilities to perform if: (i) The gross average weekly remuneration payable for the work exceeds the sum of the individual's weekly extended benefit amount plus the amount, if any, of supplemental unemployment benefits (as defined in section 501(C)(17)(D) of the Internal Revenue Code of 1954) payable to such individual for such week; and (ii) the gross wages payable for the work equal the higher of the minimum wages provided by section 6(a)(1) of the Fair Labor Standards Act of 1938 as amended (without regard to any exemption), or the State minimum wage; and (iii) the work is offered to the individual in writing and is listed with the State employment service; and (iv) the considerations contained in G.S. 96-14.9(f)~~G.S. 96-14(3)~~ for determining whether or not work is suitable are applied to the extent that they are not inconsistent with the specific requirements of this subdivision; and (v) the individual cannot furnish evidence satisfactory to the Division that his prospects for obtaining work in his customary occupation within a reasonably short period of time are good, but if the individual submits evidence which the Division deems satisfactory for this purpose, the determination of whether or not work is suitable with respect to such individual shall be made in accordance with G.S. 96-14.9(f)~~G.S. 96-14(3)~~ without regard to the definition contained in this subdivision. Provided, further, that no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions set forth in this subdivision, but the employment service shall refer any individual claiming extended benefits to any work which is deemed suitable hereunder. Provided, further, that any individual who has been disqualified for voluntarily leaving employment, being discharged for misconduct or substantial fault, or refusing suitable work under G.S. 96-14.11~~G.S. 96-14~~ and who has had the disqualification terminated, shall have such disqualification reinstated when claiming extended benefits unless the termination of the disqualification was based upon employment subsequent to the date of the disqualification."

SECTION 20.(g) G.S. 96-14.14(c)(3), as recodified by S.L. 2013-2, reads as rewritten:

"(3) After March 31, 1981, he has not failed either to apply for or to accept an offer of suitable work, as defined in G.S. 96-14.14(c)(2),~~G.S. 96-12.01(c)(2),~~ to which he was referred by an employment office of the Division, and he has furnished the Division with tangible evidence that he has actively engaged in a systematic and sustained effort to find work. If an individual is found to be ineligible hereunder, he shall be ineligible beginning with the week in which he either failed to apply for or to accept the offer of suitable work or failed to furnish the Division with tangible evidence that he has actively engaged in a systematic and sustained effort to find work and such individual shall continue to be ineligible for extended benefits until he has been employed in each of four subsequent weeks (whether or not consecutive) and has earned remuneration equal to not less than four times his weekly benefit amount."

SECTION 20.(h) G.S. 96-14.14(e)(1), as recodified by S.L. 2013-2, reads as rewritten:

"(1) Total Extended Benefit Amount. – Except as provided in subdivision (2) hereof, the total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

a. Fifty percent (50%) of the total amount of regular benefits which were payable to him under this Chapter in his applicable benefit year; or

b. Thirteen times his weekly benefit amount which was payable to him under this Chapter for a week of total unemployment in the applicable benefit year.

Provided, that during any fiscal year in which federal payments to states under Section 204 of the Federal-State Extended Unemployment Compensation Act of 1970, P.L. 91-373, are reduced under an order issued under Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, P.L. 99-177, the total extended benefit amount payable to an individual with respect to his applicable benefit year shall be reduced by an amount equal to the aggregate of the reductions under G.S. 96-14.14(d)~~G.S. 96-12.01(d)~~ and the weekly amounts paid to the individual."

SECTION 20.(i) G.S. 96-14.14(g), as recodified by S.L. 2013-2, reads as rewritten:

"(g) Prior to January 1, 1978, any extended benefits paid to any claimant under G.S. 96-14.14~~G.S. 96-12.01~~ shall not be charged to the account of the base period employer(s) who pay taxes as required by this Chapter. However, fifty percent (50%) of any such benefits paid shall be allocated as provided in G.S. 96-11.2~~G.S. 96-9(c)(2) a~~ (except that G.S. 96-11.3~~G.S. 96-9(c)(2) b~~ shall not apply), and the applicable amount shall be charged to the account of the appropriate employer paying on a reimbursement basis in lieu of taxes.

On and after January 1, 1978, the federal portion of any extended benefits shall not be charged to the account of any employer who pays taxes as required by this Chapter but the State portion of such extended benefits shall be:

(1) Charged to the account of such employer; or

(2) Not charged to the account of the employer under the provisions of G.S. 96-11.3.~~G.S. 96-9(c)(2).~~

All state portions of the extended benefits paid shall be charged to the account of governmental entities or other employers not liable for FUTA taxes who are the base period employers."

SECTION 20.(j) G.S. 96-14.14(h), as recodified by S.L. 2013-2, reads as rewritten:

"(h) Notwithstanding the provisions of G.S. 96-9.6, G.S. 96-14.14(g),~~G.S. 96-9(d)(1)a, 96-9(d)(2)c, 96-12.01(g),~~ or any other provision of this Chapter, any extended benefits paid which are one hundred percent (100%) federally financed shall not be charged in any percentage to any employer's account."

SECTION 20.(k) G.S. 96-16(a), as enacted by S.L. 2013-2, reads as rewritten:

"(a) A seasonal pursuit is one which, because of seasonal conditions making it impracticable or impossible to do otherwise, customarily carries on production operations only within a regularly recurring active period or periods of less than an aggregate of 36 weeks in a calendar year. No pursuit shall be deemed seasonal unless and until so found by the Division; except that any successor under ~~G.S. 96-11.6~~ G.S. 96-11.7 to a seasonal pursuit shall be deemed seasonal unless such successor shall within 120 days after the acquisition request cancellation of the determination of status of such seasonal pursuit; provided further that this provision shall not be applicable to pending cases nor retroactive in effect."

SECTION 20.(l) G.S. 96-16(d) reads as rewritten:

"(d) A seasonal determination shall become effective unless an interested party files an application for review within 10 days after the beginning date of the first period of production operations to which it applies. Such an application for review shall be deemed to be an application for a determination of status, as provided in G.S. 96-4, subsections (q) through (u) ~~(m) through (q),~~ of this Chapter, and shall be heard and determined in accordance with the provisions thereof."

SECTION 21. G.S. 96-4, as amended by S.L. 2011-145, created a Board of Review to determine appeals policies and procedures and to hear appeals arising from the decisions and determinations of the Division of Employment Security. The Board is comprised of three members appointed by the Governor and confirmed by the General Assembly. The Governor is directed to appoint the members of the Board of Review by September 1, 2013. Notwithstanding G.S. 96-4(b), the initial Board of Review appointments made pursuant to this section do not require confirmation by the General Assembly.

SECTION 22. This act is effective when it becomes law.