



This Bill Analysis reflects the contents of the bill as it was presented in committee.

# Bill Draft 2015-TMz-1A: Unemployment Insurance Law Change

2013-2014 General Assembly

<b>Committee:</b>	Joint Legislative Oversight Committee on Unemployment Insurance	<b>Date:</b>	December 31, 2014
<b>Introduced by:</b>		<b>Prepared by:</b>	UI Team
<b>Analysis of:</b>	2015-TMz-1A		

**SUMMARY:** *The bill draft would make the following changes to the unemployment insurance (UI) laws:*

- *Authorize the Division of Motor Vehicles (DMV) to disclose social security numbers to Division of Employment Security (DES) for the purpose of verifying employer and claimant identity.*
- *Require UI claimants to contact 5 potential employers per week.*
- *Eliminate the procedure to request reconsideration of DES decisions.*
- *Clarify DES authority to garnish and attach the credit card receipts of delinquent taxpayers.*
- *Require photo identification to receive UI benefits.*
- *Extend the deadline for the adoption of DES rules.*
- *Set the duration of unemployment benefits based only on unemployment rates.*
- *Make other technical changes to modernize language and fix statutory references to DES.*

## BILL ANALYSIS:

Part I would do the following:

- Authorize DMV to disclose social security numbers to DES. The social security numbers are disclosed for the purpose of verifying employer and claimant identity. DMV obtains social security numbers upon an individual's application for an identification card, learners permit, or driver's license. It may only disclose the numbers as permitted by federal and State laws.
- Make a technical change to move the date for the calculation of tax rates for certain employers from July 31 to June 30. The calculation is based on a 12-month period, and June 30 is the end of the calendar quarter. This change would become effective for contributions payable for calendar quarters beginning on or after January 1, 2014
- Modify the work search requirement by increasing the number of job contacts a claimant must make each week from two to five and by eliminating the requirement that the claimant must make those contacts on two different days. To receive UI benefits, a claimant must be actively searching for work. Under current law, a claimant is considered to be actively searching for work if the claimant makes two job contacts with potential employers on two different days during a week. This change would become effective July 1, 2015.
- Eliminate the procedure to request reconsideration of decisions of DES and modernize the language of G.S. 96-15(h). Under current law, a party to any decision of DES may request reconsideration of the decision. The decision is not final until the request for reconsideration has been decided. This change would become effective July 1, 2015.

O. Walker Reagan  
Director



\* 2 0 1 5 - T M Z - 1 A - S M R B - 6 - V 5 \*

Research Division  
(919) 733-2578

# Draft

Page 2

- Correct statutory references to the Division of Employment Security.

**Part II** would clarify the ability of DES to use attachment and garnishment of a delinquent employer's credit card receipts to satisfy a judgment for unpaid employment taxes. DES would receive those funds directly from a credit card company or clearinghouse in discharge of the debt. DES must prevail in a civil action against an employer for unpaid employment taxes before it could use any collection remedy. G.S. 1-359 governs the manner in which debtors of a judgment debtor may satisfy an execution. Attachment and garnishment of credit card receipts is one of the ways that a debt may be satisfied. This Part would become effective when it becomes law.

Part III would add a new, statutory eligibility requirement to receive UI benefits that claimants must present photo identification. Valid photo identification requires the individual's photograph and must be one of the following documents:

- A driver's license, learner's permit, provisional license, or nonoperators identification card issued by North Carolina, another state, the District of Columbia, United States territory, or United States commonwealth.
- A United States passport.
- A United States military identification card.
- A Veterans Identification Card issued by the United States Department of Veterans Affairs.
- A tribal enrollment card issued by a federally recognized tribe.
- Any other document issued by the United States or any state that the Division determines adequately identifies the individual.

DES administratively requires UI claimants to present photo identification before receiving services. DES imposed the photo identification requirement to address fraudulent UI claims and create an audit trail. The photograph is evidence of the individual who committed fraud and aids prosecution of criminal offenses. US DOL supports program integrity measures such as requiring photo identification. US DOL provided a staff opinion that photo identification is a permissible eligibility requirement for UI claimants as part of the requirement to report to DES. This Part would become effective when it becomes law.

**Part IV** would extend the deadline for adoption of DES rules from December 31, 2012, to February 9, 2015. DES has largely been conducting its business in the absence of any rules governing its practices and procedures since December 31, 2012. DES reported that it believed it would be in a position to submit its proposed rules to Office of Administrative Hearings (OAH) by February 9, 2015. After the rules are submitted to OAH, the 60-day public comment period will begin. Given that the rules will codify the current practices the agency, few to no comments are expected. It is anticipated the rules will be placed on the May agenda of the Rules Review Commission and become effective July 1, 2015. This Part would become effective when it becomes law.

In 2011, the General Assembly created the Division of Employment Security within the N.C. Department of Commerce and transferred all of the functions and operations of the former Employment Security Commission to DES, effective November 1, 2011. In addition to the merger and consolidation, S.L. 2011-401 made DES subject to rulemaking under North Carolina's Administrative Procedure Act; the Employment Security Commission had been exempt from rule-making. In recognition of this different policy decision, Section 1.10(c) of S.L. 2011-401 directed DES to "adopt all existing rules and regulations in accordance with Article 2A of Chapter 150B of the General Statutes. Any existing rule

that has not been readopted by December 31, 2012, shall expire,” thereby allowing DES 18 months to adopt rules.<sup>1</sup>

DES did not adopt its existing Commission Regulations as rules by the December 31, 2012, deadline. It also failed to act in 2013 and 2014, with the exception of the adoption of four rules related to confidentiality that became effective May 1, 2013. DES requested an exemption from the rule-making process, but the General Assembly did not enact an exemption. On several occasions during the 2014 legislative session, DES requested a statutory extension of the December 31, 2012, deadline. Although Section 3.10 of House Bill 761 granted an extension of the deadline, the bill failed to be enacted.

**Part V** sets the duration formula for unemployment benefits, which is used to determine the number of weeks of eligibility, based only on unemployment rates. Under current law, the duration formula is based on two factors: the unemployment rate and attachment to workforce. This Part would become effective July 1, 2015, and apply to claims for unemployment benefits filed on or after that date.

In 2013, the General Assembly enacted legislation that bases the number of weeks of unemployment benefits on two factors: a maximum number of possible weeks based upon a sliding scale tied to the unemployment rate<sup>2</sup> and a variable duration formula. The variable duration formula determines the number of weeks for which claimants qualify within the range based on attachment to workforce. Claimants with a more even distribution of wages throughout the base period receive a greater number of weeks than claimants with wages concentrated in less than four quarters. If the formula results in a number less than the range minimum, the claimant receives the minimum. Similarly, if the formula results in a number higher than the range maximum, the claimant receives the maximum.

During the 2013-2014 interim, DES determined that the duration formula did not yield results less than 17 weeks. Therefore, when the maximum number of weeks based on the unemployment rate is 17 or less, claimants receive the maximum because the formula does not yield any results within the range. To address this issue, the Joint Legislative Oversight Committee on Unemployment Insurance recommended that the duration of unemployment benefits be based solely on the unemployment rate. The 2014 General Assembly ratified this solution in House Bill 1069, but the Governor vetoed the bill for reasons unrelated to this change. During the 2014 interim, the Oversight Committee re-considered the duration formula and recommends the same resolution as it did in 2014. While this change may eliminate attachment to workforce as a factor in measuring duration, attachment to the workforce remains a factor in the calculation of the Weekly Benefit Amount (WBA) because the formula for the WBA is based on the wages received in the most recent two quarters.

*UI Team: Cindy Avrette, Janice Paul, and Greg Roney with the Research Division; Phyllis Pickett with the Bill Drafting Division; Rodney Bizzell and Aubrey Incorvaia with the Fiscal Research Division.*

---

<sup>1</sup> The Industrial Commission also became subject to rule-making through legislation enacted in 2011. The Industrial Commission met the December 2012 statutory deadline in November 2012.

<sup>2</sup> If the unemployment rate is 5.5% or less, the number of weeks of eligibility ranges between 5 and 12. For each one-half percent increase in the unemployment rate, the minimum and maximum number of weeks increase by one, up to a range of 13-20 weeks when the unemployment rate is above 9%.