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CHAPTER 31.

EMPLOYMENT SECURITY‑‑CONTRIBUTIONS AND PAYMENTS IN LIEU THEREOF

ARTICLE 1.

RATES OF CONTRIBUTIONS

**SECTION 41‑31‑10.** General rate of contribution; adjustment.

(A) Each employer shall pay contributions equal to five and four‑tenths percent of wages paid by him during each year except as may be otherwise provided in Chapters 27 through 41 of this title.

(B) For calendar year 2000 and subsequent years, employers subject to the payment of contributions are subject also to an adjustment over and above their base rate, if required by Section 41‑31‑80(2).

**SECTION 41‑31‑20.** Employers’ accounts.

The Commission shall maintain a separate account for each employer and shall credit the account of each with all the contributions paid on his behalf, but nothing in Chapters 27 through 41 of this Title shall be construed to grant any employer or individual in his service prior claims or rights to the amounts paid by him into the fund either on his behalf or on behalf of such individuals. Benefits paid to an eligible individual shall be charged, in the amounts provided in Chapters 27 through 41 of this Title, against the accounts of his most recent employer. No employer shall be deemed as the most recent employer for the purpose of this section unless the eligible person to whom benefits are paid shall have earned wages in the employ of the employer equal to at least eight times the weekly benefit amount of the eligible claimant.

Any two or more qualified employers in the same or a related trade, occupation, profession, or enterprise, or having a common financial interest may apply to the Commission to establish a joint account or to merge their several individual accounts in a joint account. The Commission shall promulgate regulations for the establishment, maintenance, and dissolution of joint accounts. A joint account shall be maintained as if it constituted a single employer’s account.

The Commission shall by general rules prescribe the manner in which benefits shall be charged against the accounts of several employers for whom an individual performed employment at the same time. Provided, however, in the event benefits paid to an individual are based on wages paid by one or more employers who were liable for payments in lieu of contributions and on wages paid by one or more employers who were liable for payment of contributions, the amount in benefits which shall be charged to the account of the most recent employer shall not exceed the amount of benefits which would have been paid solely by reason of the base period wages paid by employers who were liable for payment of contributions.

Nothing in this article shall be construed to limit benefits payable pursuant to Chapter 35 of this Title.

**SECTION 41‑31‑30.** Classification of employers.

The Commission shall for each calendar year classify employers in accordance with their actual experience in the payment of contributions on their own behalf and with respect to benefits charged against their accounts with a view to fixing such contribution rates as will reflect such experience. The Commission shall determine the contribution rate of each employer in accordance with the requirements of Sections 41‑31‑20 to 41‑31‑80.

**SECTION 41‑31‑40.** Base rate computation periods.

Each employer’s base rate for the twelve months commencing January first of any calendar year is determined in accordance with Section 41‑31‑50 on the basis of his record up to July first of the preceding calendar year, but no employer’s base rate is less than two and sixty‑four hundredths percent until there have been twelve consecutive months of coverage after first becoming liable for contributions under Chapters 27 through 41 of this title. Each employer who completes twelve consecutive calendar months of coverage after first becoming liable for contributions under the chapters during the current calendar year shall have a base rate computed on the basis of his record up through the next occurring June thirtieth, with that base rate being effective for the next calendar year beginning in January.

**SECTION 41‑31‑50.** Determination of base rates; voluntary payments; certain contributions considered as paid.

Each employer eligible for a rate computation shall have his base rate determined in the following manner:

(1) If, on the computation date as of which an employer’s base rate is to be computed, as provided in Section 41‑31‑40, the total of all his contributions paid on his own behalf for all past periods exceeds the total benefits charged to his account for all the periods his contribution base rate for the period specified in Section 41‑31‑40 is, except for the provisions of Section 41‑31‑80, as follows:

(a) With respect to the calendar year 1973:

(i) two and thirty‑five hundredths percent, if the excess equals or exceeds five percent but is less than six percent of his most recent annual payroll;

(ii) two percent, if the excess equals or exceeds six percent but is less than seven percent of his most recent annual payroll;

(iii) one and sixty‑five hundredths percent, if the excess equals or exceeds seven percent but is less than eight percent of his most recent annual payroll;

(iv) one and thirty hundredths percent, if the excess equals or exceeds eight percent but is less than nine percent of his most recent annual payroll;

(v) ninety‑five hundredths of one percent, if the excess equals or exceeds nine percent but is less than ten percent of his most recent annual payroll;

(vi) six‑tenths of one percent, if the excess equals or exceeds ten percent but is less than eleven percent of his most recent annual payroll;

(vii) twenty‑five hundredths of one percent, if the excess equals or exceeds eleven percent of his most recent annual payroll.

(b) With respect to calendar years 1974 through 1985:

(i) two and thirty‑five hundredths percent, if the excess equals or exceeds three percent but is less than four percent of his most recent annual payroll;

(ii) two percent, if the excess equals or exceeds four percent but is less than five percent of his most recent annual payroll;

(iii) one and sixty‑five hundredths percent, if the excess equals or exceeds five percent but is less than six percent of his most recent annual payroll;

(iv) one and thirty hundredths percent, if the excess equals or exceeds six percent but is less than seven percent of his most recent annual payroll;

(v) ninety‑five hundredths of one percent, if the excess equals or exceeds seven percent but is less than eight percent of his most recent annual payroll;

(vi) six‑tenths of one percent, if the excess equals or exceeds eight percent but is less than nine percent of his most recent annual payroll;

(vii) twenty‑five hundredths of one percent, if the excess equals or exceeds nine percent of his most recent annual payroll.

(c) With respect to any calendar year commencing with the calendar year 1986:

(i) two and twenty‑nine hundredths percent, if the excess equals or exceeds three percent but is less than four percent of his most recent annual payroll;

(ii) one and ninety‑four hundredths percent, if the excess equals or exceeds four percent but is less than five percent of his most recent annual payroll;

(iii) one and fifty‑nine hundredths percent, if the excess equals or exceeds five percent but is less than six percent of his most recent annual payroll;

(iv) one and twenty‑four hundredths percent, if the excess equals or exceeds six percent but is less than seven percent of his most recent annual payroll;

(v) eighty‑nine hundredths of one percent, if the excess equals or exceeds seven percent but is less than eight percent of his most recent annual payroll;

(vi) fifty‑four hundredths of one percent if the excess equals or exceeds eight percent but is less than nine percent of his most recent annual payroll;

(vii) nineteen hundredths of one percent, if the excess equals or exceeds nine percent of his most recent annual payroll.

(d) With respect to any calendar year commencing with the calendar year 2000:

(i) two and sixty‑four hundredths percent, if the excess is less than four percent of his most recent annual payroll;

(ii) two and twenty‑nine hundredths percent, if the excess equals or exceeds four percent but is less than five percent of his most recent annual payroll;

(iii) one and ninety‑four hundredths percent, if the excess equals or exceeds five percent but is less than six percent of his most recent annual payroll;

(iv) one and fifty‑nine hundredths percent, if the excess equals or exceeds six percent but is less than seven percent of his most recent annual payroll;

(v) one and twenty‑four hundredths percent, if the excess equals or exceeds seven percent but is less than eight percent of his most recent annual payroll;

(vi) eighty‑nine hundredths percent, if the excess equals or exceeds eight percent but is less than nine percent of his most recent annual payroll;

(vii) fifty‑four hundredths percent, if the excess equals or exceeds nine percent of his most recent annual payroll.

(2) If, on the computation date as of which an employer’s base rate is to be computed, as provided in Section 41‑31‑40, the total of all his contributions paid on his own behalf for all past periods is less than the total benefits charged to his account for all the periods his contribution base rate for the period specified in Section 41‑31‑40 is, except for the provisions of Section 41‑31‑80, as follows:

(a) With respect to any calendar year prior to the calendar year 1985:

(i) three and five hundredths percent, if the deficit equals five percent but is less than ten percent of his most recent annual payroll;

(ii) three and forty hundredths percent, if the deficit equals ten percent but is less than fifteen percent of his most recent annual payroll;

(iii) three and seventy‑five hundredths percent, if the deficit equals fifteen percent but is less than twenty percent of his most recent annual payroll;

(iv) four and ten hundredths percent, if the deficit equals or exceeds twenty percent of his most recent annual payroll.

(b) With respect to the calendar year 1985:

(i) three and five hundredths percent, if the deficit equals five percent but is less than ten percent of his most recent annual payroll;

(ii) three and forty hundredths percent, if the deficit equals ten percent but is less than fifteen percent of his most recent annual payroll;

(iii) three and seventy‑five hundredths percent, if the deficit equals fifteen percent but is less than twenty percent of his most recent annual payroll;

(iv) four and ten hundredths percent, if the deficit equals twenty percent but is less than twenty‑five percent of his most recent annual payroll;

(v) four and forty‑five hundredths percent, if the deficit equals twenty‑five percent but is less than thirty percent of his most recent annual payroll;

(vi) four and eighty hundredths percent, if the deficit equals thirty percent but is less than thirty‑five percent of his most recent annual payroll;

(vii) five and fifteen hundredths percent, if the deficit equals thirty‑five percent but is less than forty percent of his most recent annual payroll;

(viii) five and forty hundredths percent, if the deficit equals or exceeds forty percent of his most recent annual payroll.

(c) With respect to any calendar year commencing with the calendar year 1986:

(i) two and sixty‑four hundredths percent, if the deficit is less than five percent of his most recent annual payroll;

(ii) two and ninety‑nine hundredths percent if the deficit equals or exceeds five percent but is less than ten percent of his most recent annual payroll;

(iii) three and thirty‑four hundredths percent if the deficit equals or exceeds ten percent but is less than fifteen percent of his most recent annual payroll;

(iv) three and sixty‑nine hundredths percent if the deficit equals or exceeds fifteen percent but is less than twenty percent of his most recent annual payroll;

(v) four and four hundredths percent if the deficit equals or exceeds twenty percent but is less than twenty‑five percent of his most recent annual payroll;

(vi) four and thirty‑nine hundredths percent if the deficit equals or exceeds twenty‑five percent but is less than thirty percent of his most recent annual payroll;

(vii) four and seventy‑four hundredths percent if the deficit equals or exceeds thirty percent but is less than thirty‑five percent of his most recent annual payroll;

(viii) five and nine hundredths percent if the deficit equals or exceeds thirty‑five percent but is less than forty percent of his most recent annual payroll;

(ix) five and forty hundredths percent if the deficit equals or exceeds forty percent of his most recent annual payroll.

(3) In determining an employer’s contribution rate, contributions for the quarter immediately preceding the computation date are considered as paid before the computation date if they are paid by the employer on or before the end of the month following the quarter or within any period of grace allowed by the commission for payment of the quarter’s contribution.

(4) For calendar year 1986 and any subsequent calendar year, voluntary payments are not permitted for the purpose of obtaining a lower rate of required contributions.

**SECTION 41‑31‑60.** Base rate where delinquent report received; no reduction in base rate permitted when execution for unpaid tax shall be outstanding.

(1) If on the computation date upon which an employer’s base rate is to be computed as provided in Section 41‑31‑40 there is a delinquent report, a base rate of two and sixty‑four hundredths percent must be assigned for the period to which the computation applies. If the base rate for the prior year or the computed base rate for the computation period is greater than two and sixty‑four hundredths percent, the higher rate must be assigned until the next computation date.

(2) No employer is permitted to pay his unemployment compensation tax at a reduced base rate for any quarter when a tax execution issued in accordance with Section 41‑31‑390 with respect to delinquent unemployment compensation tax for a previous quarter is unpaid and outstanding against the employer. If on the computation date upon which an employer’s base rate is computed as provided in Section 41‑31‑40 there is an outstanding tax execution, a base rate of two and sixty‑four hundredths percent must be assigned for the period to which the computation applies. If the base rate for the prior year or the computed base rate for the computation period is greater than two and sixty‑four hundredths percent, the highest base rate must be assigned until the next computation date or until such time as any outstanding tax execution has been paid.

**SECTION 41‑31‑70.** Account shall not be terminated on account of suspension of business for service in armed forces.

If the Commission finds that an employer ceased to render employment solely due to the closing of the business because of the entrance of one or more of the owners, officers, partners, or the majority stockholders into the armed forces of the United States, or any of its allies, or of the United Nations after January 1, 1951, such employer’s account shall not be terminated; and, if the business is resumed and employment rendered within two years after the discharge or release from active duty in the armed forces of such person or persons, the employer’s experience shall be deemed to have been continuous throughout such period. The reserve ratio of any such employer shall be the total contributions paid by such employer minus all benefits, including benefits paid to any individual during the period such employer was in the armed forces, charged against such employer’s account, divided by his annual payroll for the most recent year during the whole of which such employer has been in business and has rendered employment. This provision shall not be construed to authorize cash refunds and any adjustments required hereunder shall be only by credit certificate.

**SECTION 41‑31‑80.** Statewide reserve ratio; increase in rates when ratio is less than three and one‑half percent.

A statewide reserve ratio must be computed once each year by adding to the total unemployment compensation fund on June thirtieth all contributions and interest received on or before July thirty‑first and dividing the result so obtained by the sum of the total wages reported by contributing employers on their contribution reports received by the commission during the twelve‑month period ending September thirtieth of the current year. Any amount credited to the state’s account under Section 903 of the Social Security Act, as amended, which has been appropriated for expenses of administration, whether or not withdrawn from the trust fund, is excluded from the unemployment fund balance in computing the statewide reserve ratio. Any amount due and payable as a payment in lieu of contributions by a nonprofit organization as provided in Section 41‑31‑630, the State of South Carolina, or the federal government must be added to the total unemployment compensation fund for the purposes of the computations required by this section.

(1) For the base rate computations made for years prior to the calendar year 2000, when the statewide reserve ratio computed during any calendar year equals or exceeds three and one‑half percent, contribution rates applicable to the following calendar year are computed in accordance with Sections 41‑31‑40 and 41‑31‑50. When the statewide reserve ratio computed during any calendar year is less than three and one‑half percent, all contribution rates applicable to the following calendar year are increased over those computed in accordance with Sections 41‑31‑40 and 41‑31‑50 as follows:

(a) thirty‑five hundredths of one percent, if the statewide reserve ratio equals or exceeds three percent but is less than three and one‑half percent;

(b) seven‑tenths of one percent, if the statewide reserve ratio equals or exceeds two and one‑half percent but is less than three percent; and

(c) one and five hundredths percent, if the statewide reserve ratio is less than two and one‑half percent.

This section does not apply to any employer whose contribution rate is more than two and sixty‑four hundredths percent, and no employer’s rate shall exceed two and sixty‑four hundredths percent by reason of the application of this section.

(2) For the base rate computations made for years commencing with calendar year 2000, when the statewide reserve ratio computed during any calendar year is less than two percent, all contribution base rates as computed in accordance with Sections 41‑31‑40 and 41‑31‑50 are adjusted as follows:

(a) one‑tenth percent, if the statewide reserve ratio is less than two percent but not less than one and nine‑tenths percent;

(b) two‑tenths percent, if the statewide reserve ratio is less than one and nine‑tenths percent but not less than one and eight‑tenths percent;

(c) three‑tenths percent, if the statewide reserve ratio is less than one and eight‑tenths percent but not less than one and seven‑tenths percent;

(d) four‑tenths percent, if the statewide reserve ratio is less than one and seven‑tenths percent but not less than one and six‑tenths percent;

(e) five‑tenths percent, if the statewide reserve ratio is less than one and six‑tenths percent but not less than one and five‑tenths percent;

(f) six‑tenths percent, if the statewide reserve ratio is less than one and five‑tenths percent but not less than one and four‑tenths percent;

(g) seven‑tenths percent, if the statewide reserve ratio is less than one and four‑tenths percent.

**SECTION 41‑31‑90.** Effect of change of corporate name.

In the event of a change of name by a corporation, without any change of ownership interest therein, the Commission may provide that the experience rating of the old corporation be continued by the new corporation.

**SECTION 41‑31‑100.** Successor by purchase, merger of the like of entire business as employer; notice.

Any person or other legal entity who acquires by purchase, merger, consolidation, devise, inheritance or other means substantially all of the business of any employer and continues such acquired business shall be deemed to be a successor to the predecessor from whom such business was acquired for the purpose of this article and, if not already an employer prior to such acquisition, shall become an employer on the date of such acquisition and shall succeed to the employment benefit experience record of the predecessor. The Commission shall prescribe by regulation the notice to be given of such acquisition. For the purposes of Chapters 27 through 41 of this Title the term “substantially all” shall be deemed to mean ninety‑five percent or more of the business as determined by the Commission in a particular case.

**SECTION 41‑31‑110.** Computation of base rates applicable to successors.

Whenever any person or other legal entity has in any manner succeeded to or has acquired substantially all or a distinct and severable portion of the business of another, as provided in Sections 41‑31‑100 and 41‑31‑120, the base rates of contributions are computed as follows:

(a) If the successor is not already an employer at the time of the acquisition, the base rate of contributions applicable to the predecessor employer with respect to the period immediately preceding the date of acquisition, if there is only one predecessor employer, shall apply to the successor employer for the remainder of the calendar year.

(b) If the successor is not already an employer at the time of the acquisition and there is more than one transferring employer with a different base rate, the successor employer is assigned the base rate of that transferring employer who has the highest base rate with the base rate being applicable for the remainder of the year.

(c) If the successor is already an employer at the time of the acquisition, the base rate of contributions applicable at the time of the acquisition to the successor employer shall continue to be applicable for the remainder of the year.

For the purposes of items (a), (b), and (c), the base rate as assigned continues in effect for the remainder of the calendar year and until the time the combined employment benefit experience record meets the requirements as provided in Section 41‑31‑40.

**SECTION 41‑31‑120.** Successor by merger, purchase or the like of part of established business.

In the event that any person acquires by purchase, merger, consolidation, devise, inheritance or otherwise, a distinct, severable, identifiable and segregable part of the business of an employer and continues such an acquired part of the business of the predecessor, the successor shall succeed to that portion of the employment benefit experience record of the predecessor which is attributable solely to the portion of the business which was acquired, except that such a succession to the reserve account attributable to an identifiable portion of the business of the predecessor shall not occur unless the successor is an employer at the time of the acquisition or becomes an employer within the quarter in which the succession occurs. Provided, however, no partial transfer of any employment benefit experience record shall be made unless a request is entered therefor by both the predecessor and the successor employer. The Commission shall prescribe by regulation a period within which notification of such acquisition shall be given and the method by which the experience to be transferred shall be computed.

**SECTION 41‑31‑125.** Assignment of employment benefit record upon acquisition or reorganization of existing employment unit.

(A) Notwithstanding the provisions of Sections 41‑31‑100 and 41‑31‑120, an employing unit must be assigned all or a portion of the employment benefit record of an existing employing unit when there is an acquisition or change in the form or organization of an existing business enterprise, or severable portion thereof, and there is a continuity of control of the business enterprise. The employing unit must be assigned the same rate as the predecessor, or the predecessor who has the highest base rate if there is more than one predecessor employing unit with different base rates.

(1) For purposes of this section control of the business enterprise may occur by means of ownership of the organization conducting the business enterprise, ownership of assets necessary to conduct the business enterprise, security arrangements or lease arrangements covering assets necessary to conduct the business enterprise, including workers, or a contract when the ownership, stated arrangements, or contract provide for or allow direction of the internal affairs or conduct of the business enterprise.

(2) For purposes of this section continuity of control exists if one or more persons, entities, or other organizations controlling the business enterprise remain in control of the business enterprise after an acquisition or change in form or there is a transfer to persons within the first degree of kinship to the transferors. Evidence of continuity of control includes, but is not limited to, changes of an individual proprietorship to a corporation, partnership, limited liability company, association, or estate; a partnership to an individual proprietorship, corporation, limited liability company, association, estate, or the addition, deletion, or change of partners; a limited liability company to an individual proprietorship, partnership, corporation, association, estate, or to another limited liability company; a corporation to an individual proprietorship, partnership, limited liability company, association, estate, or to another corporation or from any form to another form.

(B) An employing unit must not be assigned any portion of the employment benefit record of an existing employing unit upon the acquisition of that established business or of an identifiable and segregable part thereof if:

(1) the acquiring person was not otherwise an employer at the time of the acquisition;

(2) the person has no substantial commonality of interest, including ownership or management, in the business acquired; and

(3) the commission finds that the person acquired the business or an identifiable and segregable part thereof solely or primarily for the purpose of obtaining a lower rate of contributions.

(C) If the experience rating account of the predecessor employer contains a debit balance, defined as an excess of total benefits charged over total contributions paid, the experience rating account of the predecessor employer in any event must be transferred to the successor employer in accordance with the provisions of Section 41‑31‑140.

(D) An employing unit that knowingly attempts to violate the provisions of this section must be assessed a penalty in an amount equal to the greater of one thousand dollars or ten percent of the tax determined by the commission to be due for each report that is submitted in violation of this section. For the purposes of this section, the terms “ knowingly” or “knowing” mean having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibition in this section. This penalty may be recovered in the manner provided in Article 3 of this chapter for the collection of other penalties. Officers and directors of the enterprise comprising the employing unit are individually liable for the penalties assessed pursuant to this paragraph.

A contribution tax return preparer who violates this section or provides advice to an employing unit that results in a knowing violation of the provisions of this section is liable to a penalty of not less than one thousand dollars nor more than ten thousand dollars for each report submitted in violation of this section. This penalty may be recovered by the commission in an appropriate civil action in any court of competent jurisdiction.

As used in this section, a “contribution tax return preparer” is a person who prepares for compensation, or who employs one or more persons to prepare for compensation, any contribution and wage report or report of change in the status of an employing unit required by this chapter or any claim for credit for a tax imposed by this chapter. For purposes of this definition, the completion of a substantial portion of a report is treated as the preparation of the entire report. The term does not include a person merely because the person furnishes typing, reproducing, or other mechanical assistance, prepares a report of the employer, or an officer or employee of the employer, by whom the person is regularly and continuously employed, prepares as a fiduciary a report for any person, or represents a taxpayer in a hearing regarding an issue arising under this chapter.

(E) The commission shall establish procedures to identify the transfer or acquisition of a business for purposes of this section.

**SECTION 41‑31‑130.** Refunds not authorized; adjustments made by deductions from future payments.

Nothing in Sections 41‑31‑110 and 41‑31‑120 shall be construed to authorize or require the refund of any sums lawfully paid into the unemployment compensation trust fund or to use otherwise any of such sums except to pay unemployment compensation benefits. But the Commission may make the necessary adjustments in conformity with the provisions of this law by deductions of future contribution payments as though such payments or assessments had been made erroneously by any person coming within the provisions of said sections.

**SECTION 41‑31‑140.** Experience rating account shall not be transferred unless taxes paid or assumed or account contains debit balance.

No transfer of experience rating accounts, in whole or in part, is permitted under the provisions of Sections 41‑31‑100 to 41‑31‑130 unless all unemployment compensation taxes based on wages paid by the transferring employer prior to the date of the transfer are paid by the transferring employer when due or assumed by the acquiring employer within sixty days from the date he is notified by the commission that the transfer cannot be allowed because of unpaid unemployment compensation taxes. If the experience rating account of the predecessor employer contains a debit balance (excess of total benefits charged over total contributions paid), the experience rating account of the predecessor employer in any event must be transferred to the successor employer in accordance with the provisions of Sections 41‑31‑100 and 41‑31‑120.

**SECTION 41‑31‑150.** Treatment of fractions of a cent.

In the payment of any contributions or employment security administrative contingency assessment a fractional part of a cent must be disregarded unless it amounts to one‑half cent or more, in which case it must be increased to one cent.

**SECTION 41‑31‑160.** Contribution reports shall not be required more frequently than quarterly.

The commission shall not require contribution and wage reports more frequently than quarterly. Effective with the quarter ending March 31, 2003, every employer with two hundred fifty or more employees and every individual or organization that, as an agent, reports wages on a total of two hundred fifty or more employees on behalf of one or more subject employers, and effective with the quarter ending March 31, 2005, every employer with one hundred or more employees and every individual or organization that, as an agent, reports wages on a total of one hundred or more employees on behalf of one or more subject employers, shall file that portion of the “Employer Quarterly Contribution and Wage Reports” containing the employee’s social security number, name, and total wages on magnetic tapes, diskettes, or electronically, in a format approved by the commission. The commission may waive the requirement to file using magnetic media if hardship is shown. In determining whether a hardship has been shown, the commission shall take into account, among other relevant factors, the ability of the taxpayer to comply with the filing requirement at a reasonable cost.

**SECTION 41‑31‑170.** Report to employer on status of account; protests.

The Commission shall report annually to any employer the status of his account showing his reserve balance at the beginning of the period, total contributions he has made and total charges against it for benefits paid during the annual period, and his reserve balance at the end of such period. No employer may contest any charge against his account or the status of his account unless he makes protest within thirty days after such report has been mailed by the Commission.

ARTICLE 3.

PAYMENT AND COLLECTION OF CONTRIBUTIONS

**SECTION 41‑31‑310.** Time contributions accrue and become payable; contributions shall not be deducted from wages; limitation on collection actions.

Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to Chapters 27 through 41 of this Title with respect to wages for employment. Such contributions shall become due and be paid by each employer to the Commission for the fund in accordance with such regulations as the Commission may prescribe and shall not be deducted, in whole or in part, from the wages of individuals in such employer’s employ. Provided, however, no determination and assessment of contributions, interest, or penalties shall be made, and no action for the collection of contributions, interest, and penalties shall be instituted more than four years after the last day of the month immediately following the calendar quarter for which such contributions, interest or penalties were payable. Provided, further, that this proviso shall not apply to any employer if the Commission finds that the employer willfully failed to report, when required to do so by the provisions of this law or the rules and regulations of the Commission, or has knowingly made a false statement or has intentionally failed to disclose a material fact.

**SECTION 41‑31‑320.** Examination of reports and computation of contribution; notice of excess due.

As soon as practicable after a contribution report is filed, the Commission shall examine it and compute the contribution due. If the amount so computed shall be greater than the amount theretofore paid the excess shall be paid to the Commission within ten days after notice of the amount shall be mailed by the Commission.

**SECTION 41‑31‑330.** Imposition of penalty.

If the Commission finds that an additional contribution is due, that the report was made in good faith and that the understatement of the contribution is not deliberate, no penalty shall be added because of such understatement, but the amount of the deficiency shall bear interest at the rate of one per cent for each month or fraction thereof that it remains unpaid. If the Commission finds that the understatement is due to negligence on the part of the employer, but without intent to defraud, there shall be added to the amount of the deficiency, in addition to interest, ten per cent thereof. If the Commission finds that the understatement is false or fraudulent, with intent to evade the payment of the contribution due, there shall be added to the amount of the deficiency, in addition to interest, one hundred per cent thereof.

**SECTION 41‑31‑340.** Commission shall determine contributions when employer fails to file proper report.

If any employing unit which has failed to make reports as required under Chapters 27 through 41 of this Title or has filed incorrect or insufficient reports and has been notified by the Commission of its failure and refuses or neglects within fifteen days after such notice has been mailed to it to file a proper report, the Commission shall determine the amount of the wages payable for employment by such employing unit for the period for which the report is required according to its best information and belief and shall thereupon determine the amount of contribution due, if any, computing it at double the rate which would otherwise apply. The Commission in such a case may allow further time, not to exceed fifteen days, for the filing of the report.

**SECTION 41‑31‑350.** Penalty for failure to file report.

If any employer fails to file any report as required of him under Chapters 27 through 41 of this title with respect to wages or contributions within fifteen days from the date upon which the Commission has mailed to him a demand for the report, the Commission shall assess upon the employer a penalty of ten percent of the contributions due but no less than twenty‑five nor more than one thousand dollars which is in addition to the contributions payable with respect to the report.

**SECTION 41‑31‑360.** Adjustments and refunds.

If, not later than four years after the date on which any contributions or interest or employment security administrative contingency assessments became due, an employer who has paid the contributions or interest or employment security administrative contingency assessments shall make application for an adjustment in connection with subsequent contribution or employment security administrative contingency assessments payments or for a refund because the adjustment cannot be made and the commission shall determine that the contributions or interest or employment security administrative contingency assessments or any portion was erroneously collected, the commission shall make an adjustment, without interest, in connection with subsequent contribution or employment security administrative contingency assessments payments by him or, if the adjustment cannot be made, shall refund the amount from the fund. For like cause and within the same period an adjustment or refund may be made on the commission’s own initiative.

A refund or adjustment must be made in any case where the commission finds that contributions or interest or employment security administrative contingency assessments were erroneously paid by an employing unit to this State upon wages earned by individuals in employment in another state. The refund or adjustment must be made upon satisfactory proof to the commission that the payment of the contributions or interest or employment security administrative contingency assessments has been made to the other state.

**SECTION 41‑31‑370.** Interest on unpaid contributions.

(1) Contributions unpaid on the date on which they are due and payable, as prescribed by the Commission, shall bear interest at the rate of one percent for each month or fraction thereof for which they remain unpaid but contributions as have accrued prior to the establishment of an employer’s liability shall bear interest at the rate of one half of one percent a month or fraction thereof, to the date on which liability is established, unless it is found by the Commission that the delay in the establishment of liability resulted from wilful negligence of the employer, and shall bear interest at the rate of one percent a month or fraction thereof for which they remain unpaid thereafter.

(2) If any employer’s amount of contributions which is due and payable, as prescribed by the Commission, is unpaid ten days following the date on which an assessment or debit memorandum has been issued therefor, a penalty of ten percent of the amount of contributions due and payable, not to exceed one thousand dollars, must be paid in addition to any other interest or penalty which may be applicable.

(3) The Commission may, for good cause, extend the time for the filing of reports and the payment of contributions. Any person to whom the extension is granted shall pay in addition to the contribution due, interest thereon at the rate of one percent per month or fraction thereof from the due date of the contribution to the date of payment.

**SECTION 41‑31‑380.** Lien for contributions, interest, penalties and costs.

The contributions, interest, penalties, employment security administrative contingency assessments, and costs prescribed in this chapter are considered taxes owing the State by the persons against whom they are charged, and are a lien upon the real property or chattels of the person by whom the contributions are due, only after the warrant described in Section 41‑31‑390 is indexed as prescribed in Section 41‑31‑400.

**SECTION 41‑31‑390.** Issuance of warrant of execution for collection.

(A) If an employer defaults in any payment of contributions, interest, penalties, or employment security administrative contingency assessments, the commission shall notify the employer of the amount of contributions, interest, penalties, or employment security administrative contingency assessments due. If the amount is not paid within ten days after notice to the employer, the commission shall issue a warrant of execution, directed to its authorized representative, commanding the representative to levy upon and sell the real and personal property of the employer found within that county for the payment of the amount, with interest, the cost of executing the warrant, and any reasonable costs incurred in collecting these amounts, to return the warrant to the commission and to pay it the money collected.

(B) The commission may contract with a collection agency or the Department of Revenue for the purpose of collecting delinquent payments of contributions, interest, penalties, employment security administrative contingency assessments, and any other reasonable costs authorized by subsection (A).

(C) The commission shall promulgate regulations to effectuate the provisions of this section.

**SECTION 41‑31‑400.** Procedure under execution.

(A) The commission or its authorized representative shall file with the clerk of court of the county or counties of the State in which the employer does business a copy of the execution, and thereupon the clerk of court shall enter in his abstract of judgments the name of the employer mentioned in the warrant and in the proper columns the amount of the contributions, interest, penalties, and employment security administrative contingency assessments and costs for which the warrant is issued and the date and hour when the copy is filed and shall index the warrant upon the index of judgments. The commission or its authorized representative shall proceed upon the warrant in all respects and with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record and is entitled to the same fees for service in executing the warrant to be collected in the same manner.

(B) The powers now or hereafter conferred upon the Department of Revenue by Title 12 for the collection of unpaid income taxes are incorporated herein by reference and are conferred upon the commission and its authorized representative for the collection of unpaid contributions, interest, penalties, and employment security administrative assessments and costs, mutatis mutandis.

(C) The commission shall promulgate regulations to effectuate the provisions of this section.

**SECTION 41‑31‑410.** Fees.

Any clerk of court or register of deeds, as the case may be, or county treasurer shall be entitled to the fees provided in Section 14‑19‑100 for filing and enrolling and satisfying a tax warrant or execution issued by the Commission.

**SECTION 41‑31‑420.** Priorities under legal dissolution or distribution.

In the event of any distribution of any employer’s assets pursuant to an order of any court under the laws of this State, including any receivership, assignment for the benefits of creditors, adjudicated insolvency, composition or similar proceeding, contributions then or thereafter due shall be paid in full on the same basis as all other tax claims but on a parity with claims for wages of not more than two hundred fifty dollars to each claimant earned within six months of the commencement of the proceeding. In the event of an employer’s adjudication in bankruptcy or judicially confirmed extension proposal or composition under the Federal Bankruptcy Act, contributions then or thereafter due shall be entitled to such priority as is provided in that act.

ARTICLE 5.

FINANCING BENEFITS PAID TO EMPLOYEES OF NONPROFIT ORGANIZATIONS

**SECTION 41‑31‑610.** Application of article; “nonprofit organization” defined.

Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this article. For the purpose of this section and Section 41‑31‑670, a “nonprofit organization” is an organization (or group of organizations) described in Section 501 (c) (3) of the U.S. Internal Revenue Code which is exempt from income tax under Section 501 (a) of such Code.

**SECTION 41‑31‑620.** Election to make payments in lieu of contributions.

Any nonprofit organization which, pursuant to item (6) of Section 41‑27‑210, is, or becomes, subject to Chapters 27 through 41 of this title after December 31, 1971, shall pay contributions under provisions of Section 41‑31‑10 unless it elects, in accordance with this section, to pay the Commission for the unemployment fund an amount equal to the amount of regular benefits and one‑half the extended benefits paid for any reason, including but not limited to payments made as a result of a determination, or payments erroneously or incorrectly paid, or paid as a result of a determination of eligibility or partial eligibility which is subsequently reversed for any reason, if the payments or any portion of the payments were made as a result of wages earned in the employ of the nonprofit organization. After January 1, 1979, the State or any political subdivision or any instrumentality of the political subdivision as defined in subitem (b) of item (2) of Section 41‑27‑230 is required to reimburse the amount of regular benefits and all extended benefits paid for any reason, including but not limited to payments made as a result of a determination, or payments erroneously or incorrectly paid, or paid as a result of a determination of eligibility or partial eligibility which is subsequently reversed for any reason, if the payments or any portion of the payments were made as a result of wages earned in its employ during the effective period of the elections.

(1) Any nonprofit organization which is, or becomes, subject to Chapters 27 through 41 of this title on January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than two calendar years beginning with January 1, 1972, provided, it files with the Commission a written notice of its election within the thirty‑day period immediately following that date.

(2) Any nonprofit organization which becomes subject to Chapters 27 through 41 of this title after January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than two calendar years beginning with the date on which the subjectivity begins by filing a written notice of its election with the Commission not later than thirty days immediately following the date of the determination of the subjectivity.

(3) Any nonprofit organization which makes an election in accordance with item (1) or item (2) of this section will continue to be liable for payments in lieu of contributions until it files with the Commission a written notice terminating its election not later than thirty days prior to the beginning of the calendar year for which the termination is first effective.

(4) Any nonprofit organization which has been paying contributions under Chapters 27 through 41 of this title for a period subsequent to January 1, 1972, may change to a reimbursable basis by filing with the Commission not later than thirty days prior to the beginning of any calendar year a written notice of election to become liable for payments in lieu of contributions. The election is not terminable by the organization for that and the next calendar year.

(5) The Commission may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after December 31, 1969.

(6) The Commission, in accordance with the regulations as may be prescribed, shall notify each nonprofit organization of any determination made with respect to its status as an employer and of the effective date of any election which it makes and of any termination of the election. The determinations are subject to reconsideration, appeal, and review in accordance with the provisions of item (5) of Section 41‑31‑630.

**SECTION 41‑31‑630.** Method of making payments; appeal from Commission’s determination of amount due; interest and penalties.

Payments in lieu of contributions shall be made in accordance with the provisions of paragraphs (1) and (2) of this section.

(1) At the end of each calendar quarter the Commission shall bill each non‑profit organization (or group of such organizations) which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus one‑half of the amount of extended benefits paid during such quarter, and effective January 1, 1979, with respect to the State or any political subdivision or any instrumentality thereof as defined in Section 41‑27‑230(2)(b) the full amount of regular and extended benefits attributable to services performed in its employ.

(2) Each non‑profit organization that has elected payment of benefits in lieu of contributions shall further elect for the same period to make such payments in accord with one of the following two methods:

(a) Payment of any bill rendered under paragraph (1) of this section in accordance with paragraph (3) of this section; or

(b) Payment of two per cent of the quarterly taxable payroll of the non‑profit organization to the Commission within thirty days after the close of each such calendar quarter. The Commission shall apply such funds to the payment of bills rendered to the non‑profit organization under paragraph (1) of this section. At the end of each calendar year, the Commission shall determine whether the total of payments for such year made by the non‑profit organization is less than, or in excess of, the total amount of regular benefits plus one‑half of the amount of extended benefits paid to individuals during such calendar year, and effective January 1, 1979, with respect to the State or any political subdivision or any instrumentality thereof as defined in Section 41‑27‑230(2)(b) the full amount of all regular and extended benefits paid to individuals during such calendar year based on wages attributable to service in its employment. Each non‑profit organization whose total payments for such year are less than the amount so determined shall be liable for payment of the unpaid balance to the fund in accordance with paragraph (3) of this section. If the total payments exceed the amount so determined for the calendar year, all or a part of the excess may, at the discretion of the Commission, be refunded from the fund or retained in the fund as part of the payments which may be required for the next calendar year.

(3) Payment of any bill rendered under either paragraph (2) (a) or paragraph (2) (b) of this section shall be made not later than thirty days after such bill is mailed to the last known address of the nonprofit organization or is otherwise delivered to it, unless there has been an application for review and redetermination in accordance with paragraph (5) of this section.

(4) Payments made by any nonprofit organization under the provisions of this section shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(5) The amount due specified in any bill from the commission shall be conclusive on the organization unless, not later than fifteen days after the bill was mailed to its last known address or otherwise delivered to it, the organization files an application for redetermination by the commission setting forth the grounds for the application. After affording the organization a reasonable opportunity for a fair hearing consonant with the provisions of Section 41‑35‑720, the commission shall by its decision make findings of fact and conclusion of law and upon the basis thereof affirm, modify, or reverse its original ruling with respect to the amount originally specified in the bill. Within fifteen days after the date upon which the decision is issued the organization may procure judicial review of the decision by commencing an action in the court of common pleas in any county in which the organization has a place of business against the commission for the review of its decision. In such action a petition, which need not be verified, but which shall state the grounds upon which a review is sought, shall be served upon a member of the commission or upon a person as the commission shall designate. With its answer the commission shall certify and file with the court all evidence and a transcript of all testimony taken in the matter together with its findings of fact and decision therein. In any judicial proceeding under this section the decision of the court shall be based upon the evidence introduced and the testimony received at the hearing before the commission. An appeal may be taken from the decision of the court of common pleas in the manner provided by the South Carolina Appellate Court Rules. A petition for judicial review shall act as a supersedeas or stay of any action by the commission directed toward the collection of the amount involved in the controversy or the imposition of any penalty or forfeiture by reason of the nonpayment thereof.

(6) Past due payments of amounts in lieu of contributions shall be subject to the same interest and penalties that, pursuant to Section 41‑31‑370, apply to past due contributions.

(7) All of the provisions of Section 41‑31‑360, applicable to the adjustment or refund of contributions and interest paid or collected, and not inconsistent with the provisions of this section, shall be applicable to payments in lieu of contributions and interest erroneously paid by a nonprofit organization.

(8) All of the remedies, powers and means available to the Commission under the provisions of Sections 41‑31‑380, 41‑31‑390, 41‑31‑400, 41‑31‑410, and 41‑31‑420 to enforce the payment of contributions, interest, penalties and costs are applicable to the enforcement of payments in lieu of contributions and interest due under the provisions of this section, and for the purposes of this item the term “contributions” which appears in any such sections means “payment in lieu of contributions” in all particulars.

(9) In the event any governmental entity which is a covered employer under the terms of this chapter and Article 5 of Chapter 35 becomes delinquent in payments due under this chapter and Article 5 of Chapter 35, upon due notice, and upon certification of the delinquency by the South Carolina Employment Security Commission to the State Treasurer or any other department or agency of the State holding funds that may be payable to the delinquent governmental entity, the amount of such delinquency shall be deducted from any such funds in the hands of the State Treasurer or other department or agency and paid to the South Carolina Employment Security Commission in satisfaction of such delinquency. This remedy shall be in addition to any other collection remedies in this chapter and Article 5 of Chapter 35 or otherwise provided by law.

**SECTION 41‑31‑640.** Security to insure payments.

The Commission in its discretion may adopt regulations requiring any nonprofit organization or group of organizations described in Section 41‑31‑660 (3) which does not possess title to real property and improvements valued in excess of two million dollars to post a surety bond, money deposit, securities, or other security as the Commission may require to insure the payments in lieu of the contributions required under such election.

(1) The amount of the surety bond, money deposit, securities, or other security required by this paragraph shall bear such relationship as the Commission shall determine to the organization’s total wages paid for employment as defined in Section 41‑27‑380 for the four calendar quarters immediately preceding the effective date of the election, the renewal date in the case of a bond, or the biennial anniversary of the effective date of election in the case of a deposit of money, whichever date shall be most recent and applicable. If the nonprofit organization did not pay wages in each of such four calendar quarters, the amount of the surety bond, cash deposit, securities, or other security shall be as determined by the Commission.

(2) Any bond deposited under this paragraph shall be in force for a period of not less than two calendar years and shall be renewed with the approval of the Commission, at such times as the Commission may prescribe, but not less frequently than at two‑year intervals as long as the organization continues to be liable for payments in lieu of contributions. The Commission shall require adjustments to be made in a previously filed bond as it deems appropriate. If the bond is to be increased, the adjusted bond shall be filed by the organization within thirty days of the date notice of the required adjustment was mailed or otherwise delivered to it. Failure by any organization covered by such bond to pay the full amount of payments in lieu of contributions when due, together with any applicable interest and penalties provided for in Section 41‑31‑630 (6), shall render the surety liable on such bond to the extent of the bond, as though the surety was such organization.

(3) Any deposit of money in accordance with this paragraph shall be retained by the Commission in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions as hereinafter provided. The Commission may deduct from the money deposited under this paragraph by a nonprofit organization to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest and penalties provided for in Section 41‑31‑630 (6). The Commission shall require the organization within fifteen days following any deduction from a money deposit under the provisions of this subparagraph to deposit sufficient additional money to make whole the organization’s deposit at the prior level. The Commission may, at any time, review the adequacy of the deposit made by any organization. If, as a result of such review, it determines that an adjustment is necessary, it shall require the organization to make additional deposit within fifteen days of written notice of its determination or shall return to the organization such portion of the deposit as it no longer considers necessary, whichever action is appropriate.

**SECTION 41‑31‑650.** Failure to post security.

If any nonprofit organization fails to file a bond or make a deposit, or to file a bond in an increased amount or to increase or make whole the amount of a previously made deposit, as provided under this section, the Commission may terminate such organization’s election to make payments in lieu of contributions and such termination shall continue for not less than two calendar years beginning with the quarter in which such termination becomes effective; provided, that the Commission may extend for good cause the applicable filing, deposit or adjustment period by not more than thirty days.

**SECTION 41‑31‑660.** Amount of payments; group accounts.

Each employer that is liable for payment in lieu of contributions shall pay the Commission for the fund an amount equal to the amount of regular benefits and one half the extended benefits paid that are attributable to service in the employ of such employer except that after January 1, 1979, the State or any political subdivision or any instrumentality thereof as defined in Section 41‑27‑230(2)(b) shall be required to reimburse the full amount of regular and extended benefits attributable to service in its employment. If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer that is liable for such payments shall be determined in accordance with the provisions of subparagraph (1) or (2).

(1) If the benefits paid to an individual are based both on base period wages paid by one or more employers that are liable for contributions and on base period wages paid by one or more employers that are liable for payments in lieu of contributions, the amount payable by each employer that is liable for payments in lieu of contributions shall bear the same ratio to the sum of the amounts payable by such employers as the total base period wages paid to the individual by each employer that is liable for payments in lieu of contributions bear to the total base period wages paid to the individual by all such employers.

(2) If benefits paid to an individual are based on wages paid by two or more employers that are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to the individual by all of his base period employer.

(3) Two or more employers that have been liable for payments in lieu of contributions, in accordance with the provisions of Section 41‑31‑620 may file a joint application to the Commission for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. Each such application shall identify and authorize a group representative to act as the group’s agent for the purpose of this section. Upon its approval of the application, the Commission shall establish a group account for such employers effective as of the beginning of the calendar quarter in which it receives the application and shall notify the group’s representative of the effective date of the account. Such account shall remain in effect for not less than two calendar years and thereafter until terminated at the discretion of the Commission or upon application by the group. Upon establishment of the account, each member of the group shall be liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in such quarter that are attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by such member in such quarter bear to the total wages paid during such quarter for service performed in the employ of all members of the group. The Commission shall prescribe such regulations as it deems necessary with respect to applications for establishment, maintenance and termination of group accounts that are authorized by this paragraph, for addition of new members to, and withdrawal of active members from such accounts, and for the determination of the amounts that are payable under this paragraph by members of the group and the time and manner of such payments.

**SECTION 41‑31‑670.** Special provisions for organizations that made regular contributions prior to January 1, 1969.

(1) Any nonprofit organization that prior to January 1, 1969, paid contributions required by Section 41‑31‑10 and, pursuant to Section 41‑31‑620, elects within thirty days after January 1, 1972, to make payments in lieu of contributions, is not required to make any such payment on account of any regular or extended benefits paid, on the basis of wages paid by the organization to individuals for weeks of unemployment which begin on or after the effective date of the election until the total amount of the benefits equals the amount of the positive balance in the experience rating account of the organization.

(2) Any nonprofit organization which has elected to become liable for payments in lieu of contributions under the provisions of Sections 41‑31‑620 and 41‑31‑630 and thereafter terminates the election shall become an employer liable for the payments of contributions upon the effective date of the termination but no such employer’s base rate thereafter may be less than two and sixty‑four hundredths percent until there have been twenty‑four consecutive calendar months of coverage after so becoming liable for the payment of contributions. If the employer has been an employer liable for the payment of contributions prior to election to become liable for payments in lieu of contributions, the balance in the experience rating account of the employer as of the termination date of the election to become liable for payments in lieu of contributions is transferred to the new experience rating account then established for the employer.

ARTICLE 7.

FINANCING BENEFITS PAID TO EMPLOYEES OF GOVERNMENTAL ENTITIES

**SECTION 41‑31‑810.** Application of Article 5 of this chapter.

Benefits paid to employees of a governmental entity as provided for by Sections 41‑27‑210(5), 41‑27‑230(2), and 41‑35‑10, shall be financed to the same extent, in similar manner, and by like procedure as is set out in Article 5 of this chapter with respect to the financing of benefits paid to employees of nonprofit organizations, except that the provisions of Section 41‑31‑640 shall not be applicable thereto, and except that for the purposes of Section 41‑31‑670 no governmental entity as defined in Section 41‑27‑230(2) may use any credit balance in its experience rating account for payment, credit, set off, or reduction of reimbursement of any amount of regular or extended benefits attributable to service in its employment.

**SECTION 41‑31‑820.** Deposit and review of premiums collected from state agencies; transfers from general fund to cover claims.

(A) Unemployment Compensation premiums collected from state agencies will be deposited into a separate account and used to pay Unemployment Compensation benefits to eligible employees of the State. Premiums will be based on experience ratings provided by private consultants and the Budget and Control Board. The Unemployment Compensation Funds’ contribution level must be reviewed no less than biennially to ensure that premiums are commensurate with the cost of operating the Unemployment Compensation Fund. All interest earned on this account must be retained by the Unemployment Compensation Fund and used to offset costs.

(B) Notwithstanding the amounts annually appropriated as “Unemployment Compensation Insurance” to cover unemployment benefit claims paid to employees of the State Government who are entitled under federal law, the State Treasurer and the Comptroller General, are hereby authorized and directed to pay from the general fund of the State to the South Carolina Employment Security Commission such funds as are necessary to cover actual benefit claims paid during the current fiscal year which exceed the amounts paid in for this purpose by the various agencies, departments, and institutions subject to unemployment compensation claims. The Employment Security Commission must certify quarterly to the Budget and Control Board the state’s liability for such benefit claims actually paid to claimants who were employees of the State of South Carolina and entitled under federal law. The amount so certified must be remitted to the Employment Security Commission.

ARTICLE 9.

PAYMENT AND COLLECTION OF EMPLOYMENT SECURITY ADMINISTRATIVE CONTINGENCY ASSESSMENTS

**SECTION 41‑31‑910.** General provisions.

Employment security administrative contingency assessments must accrue and become payable by each employer who is subject to the assessments as defined in Section 41‑27‑410 for each calendar year in which he is subject to Chapters 27 through 41 of this title with respect to wages for employment. The assessments are due and payable by each subject employer to the commission for the employment security administrative contingency fund and are not deductible, in whole or in part, from the wages of individuals in the employer’s employ. No determination and assessments may be instituted more than four years after the last day of the month immediately following the calendar quarter for which the assessments were payable. This proviso does not apply to any employer if the commission finds that the employer wilfully failed to report when required to do so by the provisions of this section or the rules of the commission, or has knowingly made a false statement or has intentionally failed to disclose a material fact.

**SECTION 41‑31‑920.** Inclusion of assessments in quarterly contribution report.

Employment security administrative contingency assessments must be reported on the employer’s quarterly contribution report according to the same rules as the commission may prescribe for contributions.

**SECTION 41‑31‑930.** Penalty for late payment.

If any employer’s amount of employment security administrative contingency assessment which is due and payable, as prescribed by the commission, is unpaid ten days following the date on which an assessment or debit memorandum has been issued therefor, a penalty of ten dollars may be assessed.