

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 623
Committee Substitute Favorable 5/5/89

Short Title: ESC Conforming Amendments.

(Public)

Sponsors:

Referred to:

March 15, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CONFORMING AMENDMENTS TO THE EMPLOYMENT
3 SECURITY LAW.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 96-8(6)k. reads as rewritten:

6 "k. The term 'employment' shall not include:

- 7 1. Prior to January 1, 1978, services performed in the
8 employ of this State, or of any political subdivision
9 thereof, or any instrumentality of this State or its
10 political subdivisions except from and after January 1,
11 1972, services performed for employers as defined in
12 G.S. 96-8(5)j, and 96-11(c)(3), and except as otherwise
13 provided in this Chapter.
- 14 2. Except with respect to service performed for an
15 employer as defined in G.S. 96-8(5)j, service performed
16 prior to January 1, 1978, in the employ of any other
17 state or its political subdivisions, or of the United States
18 Government, or of an instrumentality of any other state
19 or states or their political subdivisions or of the United
20 States and service performed in the employ of the United
21 States Government or an instrumentality of the United
22 States exempt under the Constitution of the United States
23 from the contributions imposed by this Chapter, except

- 1 that to the extent that the Congress of the United States
2 shall permit states to require any instrumentalities of the
3 United States to make payments into an unemployment
4 fund under a state employment security law, all of the
5 provisions of this Chapter shall be applicable to such
6 instrumentalities, and to services performed for such
7 instrumentalities, in the same manner, to the same extent
8 and on the same terms as to all other employers,
9 employing units, individuals and services: Provided, that
10 if this State shall not be certified for any year by the
11 Secretary of Labor under section 3304 of the Federal
12 Internal Revenue Code of 1954, the payments required
13 for such instrumentalities with respect to such year shall
14 be refunded by the Commission from the fund in the
15 same manner and within the same period as is provided
16 in G.S. 96-10(e) with respect to contributions
17 erroneously collected.
- 18 3. Service with respect to which unemployment insurance
19 is payable under an employment security system
20 established by an act of Congress: Provided, that the
21 Commission is hereby authorized and directed to enter
22 into agreements with the proper agencies under such act
23 of Congress, which agreements shall become effective
24 10 days after publication thereof in the manner provided
25 in G.S. 96-4(b) for general rules, to provide potential
26 rights to benefits under this Chapter, acquired rights to
27 unemployment insurance under act of Congress, or who
28 have, after acquiring potential rights to unemployment
29 insurance, under such act of Congress, acquired rights to
30 benefits under this Chapter.
- 31 4. Prior to January 1, 1978, service performed in
32 agricultural labor as defined in G.S. 96-8(6)g.
- 33 5. Prior to January 1, 1978, domestic service in a private
34 home, local college club, or local chapter of a college
35 fraternity or sorority.
- 36 6. Service performed on or in connection with a vessel or
37 aircraft not an American vessel or American aircraft by
38 an individual if the individual is performing services on
39 and in connection with such vessel or aircraft when
40 outside the United States; or, service performed by an
41 individual in (or as an officer or member of the crew of a
42 vessel while it is engaged in) the catching, taking,
43 harvesting, cultivating, or farming of any kind of fish,
44 shell fish, crustacea, sponges, seaweeds, or other aquatic

- 1 forms of animal and vegetable life (including service
2 performed by such individual as an ordinary incident to
3 any such activity), except (i) service performed in
4 connection with the catching or taking of salmon or
5 halibut, for commercial purposes, and (ii) service
6 performed on or in connection with a vessel of more than
7 10 net tons (determined in the manner provided for
8 determining the registered tonnage of merchant vessels
9 under the laws of the United States).
- 10 7. Services performed by an individual in the employ of a
11 son, daughter, or spouse; services performed by a child
12 under the age of 21 in the employ of his father or mother
13 or of a partnership consisting only of parents of the child.
- 14 8. Service performed by an individual during any calendar
15 quarter for any employing unit or an employer as an
16 insurance agent or as an insurance solicitor, or as a
17 securities salesman if all such service performed during
18 such calendar quarter by such individual for such
19 employing unit or employer is performed for
20 remuneration solely by way of commission; service
21 performed by an individual for an employing unit as a
22 real estate agent or a real estate salesman as defined in
23 G.S. 93A-2, provided, that such real estate agent or
24 salesman is compensated solely by way of commission
25 and is authorized to exercise independent judgment and
26 control over the performance of his work.
- 27 9. Services performed in employment as a newsboy or
28 newsgirl selling or distributing newspapers or magazines
29 on the street or from house to house.
- 30 10. Except as provided in G.S. 96-8(6)f5(a), service covered
31 by an election duly approved by the agency charged with
32 the administration of any other state or federal
33 employment security law in accordance with an
34 arrangement pursuant to subdivision (l) of G.S. 96-4
35 during the effective period of such election.
- 36 11. Casual labor not in the course of the employing unit's
37 trade or business.
- 38 12. Service in any calendar quarter in the employ of any
39 organization exempt from income tax under the
40 provisions of section 501(a) of the Internal Revenue
41 Code of 1954 (other than an organization described in
42 section 401(a) of said Internal Revenue Code of 1954) or
43 under section 521 of the Internal Revenue Code of 1954,

- 1 if the remuneration for such service is less than fifty
2 dollars (\$50.00).
- 3 13. Service in the employ of a school, college, or university,
4 if such service is performed (i) by a student who is
5 enrolled and is regularly attending classes at such school,
6 college, or university, or (ii) by the spouse of such a
7 student, if such spouse is advised, at the time such
8 spouse commences to perform such service, that (I) the
9 employment of such spouse to perform such service is
10 provided under a program to provide financial assistance
11 to such student by such school, college, or university,
12 and (II) such employment will not be covered by any
13 program of unemployment insurance.
- 14 14. Service performed by an individual who is enrolled at a
15 nonprofit or public educational institution which
16 normally maintains a regular faculty and curriculum and
17 normally has a regularly organized body of students in
18 attendance at the place where its educational activities
19 are carried on as a student in a full-time program, taken
20 for credit at such institution, which combines academic
21 instruction with work experience, if such service is an
22 integral part of such program, and such institution has so
23 certified to the employer, except that this subparagraph
24 shall not apply to service performed in a program
25 established for or on behalf of an employer or group of
26 employers.
- 27 15. Services performed (i) in the employ of a church or
28 convention or association of churches, or an organization
29 which is operated primarily for religious purposes and
30 which is operated, supervised, controlled or principally
31 supported by a church or convention or association of
32 churches; or (ii) by a duly ordained, commissioned, or
33 licensed minister of a church in the exercise of his
34 ministry or by a member of a religious order in the
35 exercise of duties required by such order; or (iii) in a
36 facility conducted for the purpose of carrying out a
37 program of rehabilitation for individuals whose earning
38 capacity is impaired by age or physical or mental
39 deficiency or injury or providing remunerative work for
40 individuals who because of their impaired physical or
41 mental capacity cannot be readily absorbed in the
42 competitive labor market by an individual receiving such
43 rehabilitation or remunerative work; or (iv) as a part of
44 an unemployment work-relief or work-training program

1 assisted or financed in whole or in part by any federal
2 agency or an agency of a state or political subdivision
3 thereof, by an individual receiving such work relief or
4 work training, unless a federal law, rule or regulation
5 mandates unemployment insurance coverage to
6 individuals in a particular work-relief or work-training
7 program; (v) after December 31, 1971, by an inmate for
8 a hospital in a State prison or other State correctional
9 institution or by a patient in any other State-operated
10 hospital, and services performed by patients in a hospital
11 operated by a nonprofit organization shall be exempt;
12 (vi) after December 31, 1971, in the employ of a
13 hospital, if such service is performed by a patient of such
14 hospital; (vii) after December 31, 1971, by an inmate of
15 a custodial or penal institution.

16 16. Notwithstanding the provisions of G.S. 96-8(6)f3 and
17 96-8(6)k6, service performed by an individual on a boat
18 engaged in catching fish or other forms of aquatic animal
19 life under the arrangement with the owner or operator of
20 such boat pursuant to which:

21 (A) Such individual does not receive any cash
22 remuneration (other than as provided in
23 subparagraph ~~(b)~~ (B)),

24 (B) Such individual receives a share of the boat's (or
25 the boats' in the case of a fishing operation
26 involving more than one boat) catch of fish or
27 other forms of aquatic animal life or a share of
28 the proceeds from the sale of such catch, and

29 (C) The amount of such individual's share depends on
30 the amount of the boat's (or the boats' in the case
31 of a fishing operation involving more than one
32 boat) catch of fish or other forms of aquatic
33 animal life,

34 but only if the operating crew of such boat (or each boat
35 from which the individual receives a share in the case of
36 a fishing operation involving more than one boat) is
37 normally made up of fewer than 10 individuals. In order
38 to preserve the State's right to collect State
39 unemployment taxes for which a credit against federal
40 unemployment taxes may be taken for contributions paid
41 into a State unemployment insurance fund, this
42 paragraph 16 shall not apply, with respect to any
43 individual, to service during any period for which an
44 assessment for federal unemployment taxes is made by

1 the Internal Revenue Service pursuant to the Federal
2 Unemployment Tax Act which assessment becomes a
3 final determination (as defined by section 1313 of the
4 Internal Revenue Code of 1954 as amended).

5 17. Services performed by an inmate of the North Carolina
6 prison system on work release.

7 18. Service performed by a full-time student in the employ
8 of an organized camp

9 (A) If such camp:

10 (I) Did not operate for more than
11 seven months in the calendar year
12 and did not operate for more than
13 seven months in the preceding
14 calendar year; or

15 (II) Had average gross receipts for
16 any six months in the preceding
17 calendar year which were not
18 more than thirty-three and one-
19 third percent (33 1/3%) of its
20 average gross receipts for the
21 other six months in the preceding
22 calendar year; and

23 (B) If the full-time student performed
24 services in the employ of such camp for
25 less than 13 calendar weeks in the
26 calendar year.

27 As used in this sub-subdivision, an individual shall be
28 treated as a full-time student for any period:

29 (A) During which the individual is enrolled
30 as a full-time student at an educational
31 institution; or

32 (B) Which is between academic years or
33 terms if:

34 (I) The individual was enrolled as a
35 full-time student at an educational
36 institution for the immediately
37 preceding academic year or term;
38 and

39 (II) There is a reasonable assurance
40 that the individual will be so
41 enrolled for the immediately
42 succeeding academic year or term
43 after the period described in sub-

1 subparagraph (I) of this
2 subparagraph."

3 Sec. 2. This act is effective upon ratification.