

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

H

1

HOUSE BILL 623

Short Title: ESC Conforming Amendments.

(Public)

Sponsors: Representatives Hasty; R. Thompson, Justus, Colton, Redwine, and Bowman.

Referred to: Commerce.

March 15, 1989

A BILL TO BE ENTITLED

AN ACT TO MAKE CONFORMING AMENDMENTS TO THE EMPLOYMENT SECURITY LAW.

The General Assembly of North Carolina enacts:

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

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

1. Prior to January 1, 1978, services performed in the employ of this State, or of any political subdivision thereof, or any instrumentality of this State or its political subdivisions except from and after January 1, 1972, services performed for employers as defined in G.S. 96-8(5)j, and 96-11(c)(3), and except as otherwise provided in this Chapter.
2. Except with respect to service performed for an employer as defined in G.S. 96-8(5)j, service performed prior to January 1, 1978, in the employ of any other state or its political subdivisions, or of the United States Government, or of an instrumentality of any other state or states or their political subdivisions or of the United States and service performed in the employ of the United States Government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this Chapter, except that to the extent that the Congress of the United States

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

1 shall permit states to require any instrumentalities of the
2 United States to make payments into an unemployment
3 fund under a state employment security law, all of the
4 provisions of this Chapter shall be applicable to such
5 instrumentalities, and to services performed for such
6 instrumentalities, in the same manner, to the same extent
7 and on the same terms as to all other employers,
8 employing units, individuals and services: Provided, that
9 if this State shall not be certified for any year by the
10 Secretary of Labor under section 3304 of the Federal
11 Internal Revenue Code of 1954, the payments required
12 for such instrumentalities with respect to such year shall
13 be refunded by the Commission from the fund in the
14 same manner and within the same period as is provided
15 in G.S. 96-10(e) with respect to contributions
16 erroneously collected.

- 17 3. Service with respect to which unemployment insurance
18 is payable under an employment security system
19 established by an act of Congress: Provided, that the
20 Commission is hereby authorized and directed to enter
21 into agreements with the proper agencies under such act
22 of Congress, which agreements shall become effective
23 10 days after publication thereof in the manner provided
24 in G.S. 96-4(b) for general rules, to provide potential
25 rights to benefits under this Chapter, acquired rights to
26 unemployment insurance under act of Congress, or who
27 have, after acquiring potential rights to unemployment
28 insurance, under such act of Congress, acquired rights to
29 benefits under this Chapter.
- 30 4. Prior to January 1, 1978, service performed in
31 agricultural labor as defined in G.S. 96-8(6)g.
- 32 5. Prior to January 1, 1978, domestic service in a private
33 home, local college club, or local chapter of a college
34 fraternity or sorority.
- 35 6. Service performed on or in connection with a vessel or
36 aircraft not an American vessel or American aircraft by
37 an individual if the individual is performing services on
38 and in connection with such vessel or aircraft when
39 outside the United States; or, service performed by an
40 individual in (or as an officer or member of the crew of a
41 vessel while it is engaged in) the catching, taking,
42 harvesting, cultivating, or farming of any kind of fish,
43 shell fish, crustacea, sponges, seaweeds, or other aquatic
44 forms of animal and vegetable life (including service

- 1 performed by such individual as an ordinary incident to
2 any such activity), except (i) service performed in
3 connection with the catching or taking of salmon or
4 halibut, for commercial purposes, and (ii) service
5 performed on or in connection with a vessel of more than
6 10 net tons (determined in the manner provided for
7 determining the registered tonnage of merchant vessels
8 under the laws of the United States).
- 9 7. Services performed by an individual in the employ of a
10 son, daughter, or spouse; services performed by a child
11 under the age of 21 in the employ of his father or mother
12 or of a partnership consisting only of parents of the child.
- 13 8. Service performed by an individual during any calendar
14 quarter for any employing unit or an employer as an
15 insurance agent or as an insurance solicitor, or as a
16 securities salesman if all such service performed during
17 such calendar quarter by such individual for such
18 employing unit or employer is performed for
19 remuneration solely by way of commission; service
20 performed by an individual for an employing unit as
21 a real estate agent or a real estate salesman as defined in
22 G.S. 93A-2, provided, that such real estate agent or
23 salesman is compensated solely by way of commission
24 and is authorized to exercise independent judgment and
25 control over the performance of his work.
- 26 9. Services performed in employment as a newsboy or
27 newsgirl selling or distributing newspapers or magazines
28 on the street or from house to house.
- 29 10. Except as provided in G.S. 96-8(6)f5(a), service covered
30 by an election duly approved by the agency charged with
31 the administration of any other state or federal
32 employment security law in accordance with an
33 arrangement pursuant to subdivision (l) of G.S. 96-4
34 during the effective period of such election.
- 35 11. Casual labor not in the course of the employing unit's
36 trade or business.
- 37 12. Service in any calendar quarter in the employ of any
38 organization exempt from income tax under the
39 provisions of section 501(a) of the Internal Revenue
40 Code of 1954 (other than an organization described in
41 section 401(a) of said Internal Revenue Code of 1954) or
42 under section 521 of the Internal Revenue Code of 1954,
43 if the remuneration for such service is less than fifty
44 dollars (\$50.00).

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

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

14 16. Notwithstanding the provisions of G.S. 96-8(6)f3 and
15 96-8(6)k6, service performed by an individual on a boat
16 engaged in catching fish or other forms of aquatic animal
17 life under the arrangement with the owner or operator of
18 such boat pursuant to which:

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

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

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

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

- 1 final determination (as defined by section 1313 of the
2 Internal Revenue Code of 1954 as amended).
- 3 17. Services performed by an inmate of the North Carolina
4 prison system on work release.
- 5 18. Service performed by a full-time student in the employ
6 of an organized camp described in section 3306(c)(20) of
7 the Internal Revenue Code of 1986 as amended:
- 8 (A) If such camp:
- 9 (I) Did not operate for more than seven
10 months in the calendar year and did not
11 operate for more than seven months in
12 the preceding calendar year; or
- 13 (II) Had average gross receipts for any six
14 months in the preceding calendar year
15 which were not more than thirty-three
16 and one-third percent (33 1/3%) of its
17 average gross receipts for the other six
18 months in the preceding calendar year;
19 and
- 20 (B) If the full-time student performed services in the
21 employ of such camp for less than 13 calender
22 weeks in the calendar year.
- 23 19. As used in G.S. 96-8(6)k18, an individual shall be
24 treated as a full-time student for any period:
- 25 (A) During which the individual is enrolled as a full-
26 time student at an educational institution; or
- 27 (B) Which is between academic years or terms if:
- 28 (I) The individual was enrolled as a full-
29 time student at an educational institution
30 for the immediately preceding academic
31 year or term; and
- 32 (II) There is a reasonable assurance that the
33 individual will be so enrolled for the
34 immediately succeeding academic year
35 or term after the period described in sub-
36 subparagraph (I) of this subparagraph."

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