

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 451  
Committee Substitute Favorable 4/28/97

Short Title: ESC Benefits Changes/AB.

(Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT RELATING TO ELIGIBILITY FOR UNEMPLOYMENT BENEFITS IN THE  
EVENT OF DOMESTIC ABUSE OR A SPOUSAL RELOCATION, TO THE  
DEFINITION OF EMPLOYMENT AS TO AGRICULTURAL LABOR, TO FOOD  
STAMP OVERISSUANCES, AND TO REPORTING REQUIREMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-14(1D) reads as rewritten:

"(1D) For the purposes of this Chapter, any claimant leaving work to  
accompany the claimant's legally recognized spouse to a new place of  
residence where that spouse has secured work in a location that is too  
far removed for the claimant reasonably to continue his or her work  
shall ~~serve a time certain disqualification for benefits for a period of five  
weeks beginning the first day of the first week after the disqualifying act  
occurs with respect to which week an individual files a claim for benefits.~~  
constitute good cause for leaving work. Benefits paid on the basis of  
this section shall be noncharged."

Section 2. G.S. 96-14 is amended by adding a new subdivision to read:

"(1F) For the purposes of this Chapter, any claimant's leaving work, or  
discharge, if the claimant has been adjudged an aggrieved party as set

1           forth by Chapter 50B of the General Statutes as the result of domestic  
2           violence committed upon the claimant or upon a minor child with or in  
3           the custody of the claimant by a person who has or who has had a  
4           familial relationship with the claimant or minor child, shall not  
5           disqualify the claimant for benefits. Benefits paid on the basis of this  
6           section shall be noncharged."

7           Section 3. G.S. 96-9(c) reads as rewritten:

8           "(c) (1) Except as provided in subsection (d) of this section, the Commission  
9           shall maintain a separate account for each employer and shall credit ~~his~~  
10           the employer's account with all voluntary contributions made by ~~him~~the  
11           employer and all other contributions which ~~he~~the employer has paid or  
12           is paid on ~~his~~the employer's behalf, provided the Commission shall  
13           credit the account of each employer in an amount equal to eighty  
14           percent (80%) of all voluntary contributions paid with respect to periods  
15           prior to January 1, 1984, and of all other contributions paid with respect  
16           to periods between July 1, 1965, and December 31, 1983. On the  
17           computation date, beginning first with August 1, 1948, the ratio of the  
18           credit balance in each individual account to the total of all the credit  
19           balances in all employer accounts shall be computed as of such  
20           computation date, and an amount equal to the interest credited to this  
21           State's account in the unemployment trust fund in the treasury of the  
22           United States for the four most recently completed calendar quarters  
23           shall be credited prior to the next computation date on a pro rata basis to  
24           all employers' accounts having a credit balance on the computation date.  
25           Such amount shall be prorated to the individual accounts in the same  
26           ratio that the credit balance in each individual account bears to the total  
27           of the credit balances in all such accounts. In computing the amount to  
28           be credited to the account of an employer as a result of interest earned  
29           by funds on deposit in the unemployment trust fund in the treasury of  
30           the United States to the account of this State, any voluntary  
31           contributions made by an employer after July 31 of any year shall not be  
32           considered a part of the account balance of the employer until the next  
33           computation date occurring after such voluntary contribution was made.  
34           No provision in this section shall in any way be subject to or affected by  
35           any provisions of the Executive Budget Act, as amended. Nothing in  
36           this Act shall be construed to grant any employer or individual in ~~his~~the  
37           employer's service prior claims or rights to the amount paid by ~~him~~the  
38           employer into the fund either on ~~his~~the employer's own behalf or on  
39           behalf of such individuals.

40           (2) Charging of benefit payments. –

41           a. Benefits paid shall be allocated to the account of each base  
42           period employer in the proportion that the base period wages  
43           paid to an eligible individual in any calendar quarter by each

1 such employer bears to the total wages paid by all base period  
2 employers during the base period, except as hereinafter provided  
3 in paragraphs b, c, and d of this subdivision, G.S. 96-9(d)(2)c,  
4 and 96-12(e)G. The amount so allocated shall be multiplied by  
5 one hundred twenty percent (120%) and charged to that  
6 employer's account. Benefits paid shall be charged to employers'  
7 accounts upon the basis of benefits paid to claimants whose  
8 benefit years have expired.

- 9 b. Any benefits paid to any claimant under a claim filed for a period  
10 occurring after the date of such separations as are set forth in this  
11 paragraph and based on wages paid prior to the date of (i) the  
12 leaving of work by the claimant without good cause attributable  
13 to the employer; (ii) the discharge of claimant for misconduct in  
14 connection with ~~his~~ the claimant's work; (iii) the discharge of the  
15 claimant for substantial fault as that term may be defined in G.S.  
16 96-14; (iv) the discharge of the claimant solely for a bona fide  
17 inability to do the work for which ~~he~~ the claimant was hired but  
18 only where the claimant was hired pursuant to a job order placed  
19 with a local office of the Commission for referrals to  
20 probationary employment (with a probationary period no longer  
21 than 100 days), which job order was placed in such  
22 circumstances and which satisfies such conditions as the  
23 Commission may by regulation prescribe and only to the extent  
24 of the wages paid during such probationary employment; (v)  
25 separations made disqualifying under G.S. 96-14(2B) and (6A);  
26 ~~or~~ (vi) separation due to leaving for disability or health condition  
27 condition; or (vii) separation due to spousal relocation or  
28 domestic abuse as provided by G.S. 96-14(1D) and (1F) shall not  
29 be charged to the account of the employer by whom the claimant  
30 was employed at the time of such separation; provided, however,  
31 said employer promptly furnishes the Commission with such  
32 notices regarding any separation of the individual from work as  
33 are or may be required by the regulations of the Commission.

34 No benefit charges shall be made to the account of any  
35 employer who has furnished work to an individual who, because  
36 of the loss of employment with one or more other employers,  
37 becomes eligible for partial benefits while still being furnished  
38 work by such employer on substantially the same basis and  
39 substantially the same amount as had been made available to  
40 such individual during ~~his~~ the individual's base period whether  
41 the employments were simultaneous or successive; provided, that  
42 such employer makes a written request for noncharging of

1 benefits in accordance with Commission regulations and  
2 procedures.

3 No benefit charges shall be made to the account of any  
4 employer for benefit years ending on or before June 30, 1992,  
5 where benefits were paid as a result of a discharge due directly to  
6 the reemployment of a veteran mandated by the Veteran's  
7 Reemployment Rights Law, 38 USCA § 2021, et seq.

8 No benefit charges shall be made to the account of any  
9 employer where benefits are paid as a result of a decision by an  
10 Adjudicator, Appeals Referee or the Commission if such decision  
11 to pay benefits is ultimately reversed; nor shall any such benefits  
12 paid be deemed to constitute an overpayment under G.S. 96-  
13 18(g)(2), the provisions thereof notwithstanding. Provided, an  
14 overpayment of benefits paid shall be established in order to  
15 provide for the waiting period required by G.S. 96-13(c).

16 c. Any benefits paid to any claimant who is attending a vocational  
17 school or training program as provided in G.S. 96-13(a)(3) shall  
18 not be charged to the account of the base period employer(s).

19 d. Any benefits paid to any claimant under the following conditions  
20 shall not be charged to the account of the base period  
21 employer(s):

- 22 1. The benefits are paid for unemployment due directly to a  
23 major natural disaster, and
- 24 2. The President has declared the disaster pursuant to the  
25 Disaster Relief Act of 1970, 42 USCA 4401, et seq., and
- 26 3. The benefits are paid to claimants who would have been  
27 eligible for disaster unemployment assistance under this  
28 Act, if they had not received unemployment insurance  
29 benefits with respect to that unemployment.

30 e. 1. Any benefits paid to any claimant which are based on  
31 previously uncovered employment which are reimbursable  
32 by the federal government shall not be charged to the  
33 experience rating account of any employer.

- 34 2. For purposes of this paragraph previously uncovered  
35 employment for which benefits are reimbursable by the  
36 federal government means services performed before July  
37 1, 1978, in the case of a week of unemployment beginning  
38 before July 1, 1978, or before January 1, 1978, in the case  
39 of a week of unemployment beginning after July 1, 1978,  
40 and to the extent that assistance under Title II of the  
41 Emergency Jobs and Unemployment Assistance Act of  
42 1974 (SUA) was not paid to such individuals on the basis  
43 of such service.

1           (3) As of July 31 of each year, and prior to January 1 of the succeeding  
2 year, the Commission shall determine the balance of each employer's  
3 account and shall furnish ~~him~~the employer with a statement of all  
4 charges and credits thereto. At the same time the Commission shall  
5 notify each employer of ~~his~~the employer's rate of contributions as  
6 determined for the succeeding calendar year pursuant to this section.  
7 Such determination shall become final unless the employer files an  
8 application for review or redetermination prior to May 1 following the  
9 effective date of such rates. The Commission may redetermine on its  
10 own motion within the same period of time.

11           (4) Transfer of account. –

12           a. Whenever any individual, group of individuals, or employing  
13 unit, who or which, in any manner succeeds to or acquires  
14 substantially all or a distinct and severable portion of the  
15 organization, trade, or business of another employing unit as  
16 provided in G.S. 96-8, subdivision (5), paragraph b, the account  
17 or that part of the account of the predecessor which relates to the  
18 acquired portion of the business shall, upon the mutual consent of  
19 the parties concerned and approval of the Commission in  
20 conformity with the regulations as prescribed therefor, be  
21 transferred as of the date of acquisition of the business to the  
22 successor employer for use in the determination of ~~his~~the  
23 successor's rate of contributions, provided application for transfer  
24 is made within 60 days after the Commission notifies the  
25 successor of ~~his~~the successor's right to request such transfer,  
26 otherwise the effective date of the transfer shall be the first day  
27 of the calendar quarter in which such application is filed, and that  
28 after the transfer the successor employing unit continues to  
29 operate the transferred portion of such organization, trade or  
30 business. Provided, however, that the transfer of an account for  
31 the purpose of computation of rates shall be deemed to have been  
32 made prior to the computation date falling within the calendar  
33 year within which the effective date of such transfer occurs and  
34 the account shall thereafter be used in the computation of the rate  
35 of the successor employer for succeeding years, subject,  
36 however, to the provisions of paragraph b of this subdivision.

37           On or after August 1, 1988, whenever any individual, group  
38 of individuals, or employing unit, who or which, in any manner  
39 succeeds to or acquires all of the organization, trade, or business  
40 of another employing unit as provided in G.S. 96-8, subdivision  
41 (5), paragraph b, the account of the predecessor shall be  
42 transferred as of the date of the acquisition of the business to the  
43 successor employer for use in the determination of ~~his~~the

1            successor's rate of contributions. Whenever any individual, group  
2 of individuals, or employing unit, who or which, in any manner  
3 succeeds to or acquires a distinct and severable portion of the  
4 organization, trade, or business of another employing unit as  
5 provided in G.S. 96-8, subdivision (5), paragraph b, that part of  
6 the account of the predecessor which relates to the acquired  
7 portion of the business shall, upon the mutual consent of the  
8 parties concerned and approval of the Commission in conformity  
9 with the regulations as prescribed therefor, be transferred as of  
10 the date of acquisition of the business to the successor employer  
11 for use in the determination of ~~his~~the successor's rate of  
12 contributions, provided application for transfer is made within 60  
13 days after the Commission notifies the successor of ~~his~~the  
14 successor's right to request such transfer, otherwise the effective  
15 date of the transfer shall be the first day of the calendar quarter in  
16 which such application is filed, and that after the transfer the  
17 successor employing unit continues to operate the transferred  
18 portion of such organization, trade or business. Provided,  
19 however, that the transfer of an account for the purpose of  
20 computation of rates shall be deemed to have been made prior to  
21 the computation date falling within the calendar year within  
22 which the effective date of such transfer occurs and the account  
23 shall thereafter be used in the computation of the rate of the  
24 successor employer for succeeding years, subject, however, to  
25 the provisions of paragraph b of this subdivision. No request for  
26 a transfer of the account will be accepted and no transfer of the  
27 account will be made if the request for the transfer of the account  
28 is not received within two years of the date of acquisition or  
29 notification by the Commission of the right to request such  
30 transfer, whichever occurs later. However, in no event will a  
31 request for a transfer be allowed if an account has been  
32 terminated because an employer ceases to be an employer  
33 pursuant to G.S. 96-9(c)(5) and G.S. 96-11(d) regardless of the  
34 date of notification.

- 35            b. Notwithstanding any other provisions of this section, if the  
36 successor employer was an employer subject to this Chapter prior  
37 to the date of acquisition of the business, ~~his~~the successor  
38 employer's rate of contribution for the period from such date to  
39 the end of the then current contribution year shall be the same as  
40 ~~his~~the successor employer's rate in effect on the date of such  
41 acquisition. If the successor was not an employer prior to the date  
42 of the acquisition of the business ~~he~~the successor shall be  
43 assigned a standard rate of contribution set forth in G.S. 96-

1 9(b)(1) for the remainder of the year in which ~~he~~the successor  
2 acquired the business of the predecessor; however, if such  
3 successor makes application for the transfer of the account within  
4 60 days after notification by the Commission of his right to do so  
5 and the account is transferred, or meets the requirements for  
6 mandatory transfer, ~~he~~the successor shall be assigned for the  
7 remainder of such year the rate applicable to the predecessor  
8 employer or employers on the date of acquisition of the business,  
9 provided there was only one predecessor or if more than one and  
10 the predecessors had identical rates. In the event the rates of the  
11 predecessor were not identical, the rate of the successor shall be  
12 the highest rate applicable to any of the predecessor employers  
13 on the date of acquisition of the business.

14 Irrespective of any other provisions of this Chapter, when an  
15 account is transferred in its entirety by an employer to a  
16 successor, the transferring employer shall thereafter pay the  
17 standard rate of contributions of two and seven-tenths percent  
18 (2.7%) and shall continue to pay at such rate until ~~he~~the  
19 transferring employer qualifies for a reduction, reacquires the  
20 account ~~he~~that the transferring employer transferred or acquires  
21 the experience rating account of another employer, or is subject  
22 to an increase in rate under the conditions prescribed in G.S. 96-  
23 9(b)(2) and (3). However, when an account is transferred in its  
24 entirety by an employer to a successor on or after January 1,  
25 1987, the transferring employer shall thereafter pay the standard  
26 beginning rate of contributions of two and twenty-five  
27 hundredths percent (2.25%) and shall continue to pay at such rate  
28 until ~~he~~the transferring employer qualifies for a reduction,  
29 reacquires the account ~~he~~that the transferring employer  
30 transferred or acquires the experience rating account of another  
31 employer, or is subject to an increase in rate under the conditions  
32 prescribed in G.S. 96-9(b)(2) and (3).

33 c. In those cases where the organization, trade, or business of a  
34 deceased person, or insolvent debtor is taken over and operated  
35 by an administrator, administratrix, executor, executrix, receiver,  
36 or trustee in bankruptcy, such employing units shall  
37 automatically succeed to the account and rate of contribution of  
38 such deceased person, or insolvent debtor without the necessity  
39 of the filing of a formal application for the transfer of such  
40 account.

41 (5) In the event any employer subject to this Chapter ceases to be such an  
42 employer, ~~his~~the employer's account shall be closed and the same shall  
43 not be used in any future computation of such employer's rate nor shall

1 any period prior to the effective date of the termination of such  
2 employer during which benefits were chargeable be considered in the  
3 application of G.S. 96-9(b)(2) of this Chapter.

- 4 (6) If the Commission finds that an employer's business is closed solely  
5 because of the entrance of one or more of the owners, officers, partners,  
6 or the majority stockholder into the Armed Forces of the United States,  
7 or of any of its allies, or of the United Nations, such employer's  
8 experience rating account shall not be terminated; and, if the business is  
9 resumed within two years after the discharge or release from active duty  
10 in the Armed Forces of such person or persons, the employer's account  
11 shall be deemed to have been chargeable with benefits throughout more  
12 than 13 consecutive calendar months ending July 31 immediately  
13 preceding the computation date. This subdivision shall apply only to  
14 employers who are liable for contributions under the experience rating  
15 system of financing unemployment benefits. This subdivision shall not  
16 be construed to apply to employers who are liable for payments in lieu  
17 of contributions or to employers using the reimbursable method of  
18 financing benefit payments."

19 Section 4. G.S. 96-8(6) reads as rewritten:

- 20 "(6) a. 'Employment' means service performed including service in  
21 interstate commerce, except employment as defined in the  
22 Railroad Retirement Act and the Railroad Unemployment  
23 Insurance Act, performed for wage or under any contract of hire,  
24 written or oral, express or implied, in which the relationship of  
25 the individual performing such service and the employing unit  
26 for which such service is rendered is, as to such service, the legal  
27 relationship of employer and employee. Provided, however, the  
28 term 'employee' includes an officer of a corporation, but such  
29 term does not include (i) any individual who, under the usual  
30 common-law rules applicable in determining the employer-  
31 employee relationship, has the status of an independent  
32 contractor or (ii) any individual (except an officer of a  
33 corporation) who is not an employee under such common-law  
34 rules. An employee who is on paid vacation or is on paid leave of  
35 absence due to illness or other reason shall be deemed to be in  
36 employment irrespective of the failure of such individual to  
37 perform services for the employing unit during such period.
- 38 b. The term 'employment' shall include an individual's entire  
39 service, performed within or both within and without this State if:
- 40 1. The service is localized in this State; or
  - 41 2. The service is not localized in any state but some of the  
42 service is performed in this State, and (i) the base of  
43 operations, or, if there is no base of operations, then the



1 place from which such service is directed or controlled, is  
2 in this State; or (ii) the base of operations or place from  
3 which such service is directed or controlled is not in any  
4 state in which some part of the service is performed, but  
5 the individual's residence is in this State.

6 3. The service, wherever performed, is within the United  
7 States, or Canada; such service is not covered under the  
8 unemployment compensation law of any other state or  
9 Canada; and the place from which the service is directed  
10 or controlled is in this State.

11 c. Services performed within this State but not covered under  
12 paragraph b of this subdivision shall be deemed to be  
13 employment subject to this Chapter, if contributions are not  
14 required and paid with respect to such services under an  
15 employment security law of any other state or of the federal  
16 government.

17 d. Services not covered under paragraph b of this subdivision, and  
18 performed entirely without this State, with respect to no part of  
19 which contributions are required and paid under an employment  
20 security law of any other state or of the federal government, shall  
21 be deemed to be employment subject to this Chapter if the  
22 individual performing such service is a resident of this State and  
23 the Commission approves the election of the employing unit for  
24 whom such services are performed that the entire service of such  
25 individual shall be deemed to be employment subject to this  
26 Chapter, and services covered by an election duly approved by  
27 the Commission in accordance with an arrangement pursuant to  
28 subsection (l) of G.S. 96-4 shall be deemed to be employment  
29 during the effective period of such election.

30 e. Service shall be deemed to be localized within a state if:

- 31 1. The service is performed entirely within such state; or
- 32 2. The service is performed both within and without such  
33 state, but the service performed without such state is  
34 incidental to the individual's service within the State, for  
35 example, is temporary or transitory in nature or consists of  
36 isolated transactions.

37 f. The term 'employment' shall include:

- 38 1. Services covered by an election pursuant to G.S. 96-11,  
39 subsection (c), of this Chapter; and
- 40 2. Services covered by an election duly approved by the  
41 Commission in accordance with an arrangement pursuant  
42 to G.S. 96-4, subsection (l), of this Chapter during the  
43 effective period of such election.

- 1                   3.    Any service of whatever nature performed by an  
2                   individual for an employing unit on or in connection with  
3                   an American vessel under a contract of service which is  
4                   entered into within the United States or during the  
5                   performance of which the vessel touches at a port in the  
6                   United States, if such individual is employed on and in  
7                   connection with such vessel when outside the United  
8                   States: Provided, such service is performed on or in  
9                   connection with the operations of an American vessel  
10                  operating on navigable waters within or within and  
11                  without the United States and such operations are  
12                  ordinarily and regularly supervised, managed, directed,  
13                  and controlled from an operating office maintained by the  
14                  employing unit in this State: Provided further, that this  
15                  subparagraph shall not be applicable to those services  
16                  excluded in subdivision (6), paragraph k, subparagraph 6  
17                  of this section.
- 18                  4.    Any service of whatever nature performed by an  
19                  individual for an employing unit on or in connection with  
20                  an American aircraft under a contract of service which is  
21                  entered into within the United States or during the  
22                  performance of which and while the employee is  
23                  employed on the aircraft it touches at a port in the United  
24                  States, if such individual is employed on and in  
25                  connection with such aircraft when outside the United  
26                  States; provided such service is performed on or in  
27                  connection with the operations of an American aircraft  
28                  and such operations are ordinarily and regularly  
29                  supervised, managed, directed, and controlled from an  
30                  operating office maintained by the employing unit in this  
31                  State.
- 32                  5.    Notwithstanding any other provision of this Chapter,  
33                  'employment' shall include any individual who performs  
34                  services irrespective of whether the master-servant  
35                  relationship exists, for remuneration for any employing  
36                  unit:
- 37                   (a)   As an agent-driver or commission-driver engaged  
38                   in distributing meat products, vegetable products,  
39                   fruit products, bakery products, beverages (other  
40                   than milk) or laundry or dry-cleaning services, for  
41                   his principal;
- 42                   (b)   As a traveling or city salesman, other than as an  
43                   agent-driver or commission-driver, engaged upon a

1 full-time basis in the solicitation on behalf of, and  
2 the transmission to, his principal (except for side-  
3 line sales activities on behalf of some person) of  
4 orders from wholesalers, retailers, contractors, or  
5 operators of hotels, restaurants, or other similar  
6 establishments for merchandise for resale or  
7 supplies for use in their business operations if the  
8 contract of services contemplates that substantially  
9 all of such services are to be performed personally  
10 by such individual; except that an individual shall  
11 not be included in the term 'employment' under the  
12 provisions of this subsection if such individual has  
13 a substantial investment in facilities used in  
14 connection with the performance of such services  
15 (other than in facilities for transportation), or if the  
16 services are in the nature of a single transaction not  
17 part of a continuing relationship with the  
18 employing unit for whom the services are  
19 performed.

- 20 6. Service of an individual who is a citizen of the United  
21 States, performed outside of the United States (except in  
22 Canada), in the employ of an American employer (other  
23 than service which is deemed "employment" under the  
24 provisions of paragraph b or e of this subsection or the  
25 parallel provisions of another state's law), if:
- 26 (i) The employer's principal place of business in the  
27 United States is located in this State; or
  - 28 (ii) The employer has no place of business in the  
29 United States, but
    - 30 (I) The employer is an individual who is a  
31 resident of this State; or
    - 32 (II) The employer is a corporation which is  
33 organized under the laws of this State; or
    - 34 (III) The employer is a partnership or a trust and  
35 the number of the partners or trustees who  
36 are residents of this State is greater than the  
37 number who are residents of any other state;  
38 or
  - 39 (iii) None of the criteria of divisions (i) and (ii) of this  
40 subparagraph is met but the employer has elected  
41 coverage in this State, or, the employer having  
42 failed to elect coverage in any state, the individual

1 has filed a claim for benefits, based on such  
2 service, under the law of this State.

3 (iv) An 'American employer,' for the purposes of this  
4 paragraph, means a person who is:

5 (I) An individual who is a resident of the  
6 United States; or

7 (II) A partnership if two thirds or more of the  
8 partners are residents of the United States;  
9 or

10 (III) A trust, if all of the trustees are residents of  
11 the United States; or

12 (IV) A corporation organized under the laws of  
13 the United States or of any state;

14 (V) For the purposes of this subparagraph,  
15 United States includes all the states, the  
16 District of Columbia, and the  
17 Commonwealth of Puerto Rico.

18 7. Services with respect to which a tax is required to be paid  
19 under any federal law imposing a tax against which credit  
20 may be taken for contributions required to be paid into a  
21 State unemployment insurance fund, or which as a  
22 condition for full tax credit against the tax imposed by the  
23 Federal Unemployment Tax Act is required to be covered  
24 under this Chapter.

25 g. On and after January 1, 1978, the term 'employment' includes  
26 services performed in agricultural labor when a person or  
27 employing unit (a) during any calendar quarter in the current  
28 calendar year or the preceding calendar year pays wages of  
29 twenty thousand dollars (\$20,000) or more for agricultural labor,  
30 or (b) on each of some 20 days during the preceding calendar  
31 year, each day being in a different calendar week, employs at  
32 least 10 individuals in employment in agricultural labor for some  
33 portion of the day. For purposes of this Chapter, the term  
34 'agricultural labor' includes all services performed: (1) On a farm,  
35 in the employ of any person, in connection with cultivating the  
36 soil, or in connection with raising or harvesting any agricultural  
37 or horticultural commodity, including the raising, shearing,  
38 feeding, caring for, training, and management of livestock, bees,  
39 poultry, and fur-bearing animals and wildlife; (2) in the employ  
40 of the owner or tenant or other operator of a farm, in connection  
41 with the operation, management, conservation, improvement, or  
42 maintenance of such farm and its tools and equipment, or in  
43 salvaging timber or clearing land of brush and other debris left by

1 a hurricane, if the major part of such service is performed on a  
2 farm; (3) in connection with the production or harvesting of  
3 crude gum (oleoresin) from a living tree, and the following  
4 products if processed by the original producer of crude gum from  
5 which derived; gum spirits of turpentine and gum resin, or in  
6 connection with the ginning of cotton or in connection with the  
7 operation or maintenance of ditches, canals, reservoirs, or  
8 waterways, not owned or operated for profit, used exclusively for  
9 supplying and storing water for farming purposes; or (4)(A) in  
10 the employ of the operator of a farm in handling, planting,  
11 drying, packing, packaging, processing, freezing, grading,  
12 storing, or delivering to storage or to market or to a carrier for  
13 transportation to market, in its unmanufactured state, any  
14 agricultural or horticultural commodity, but only if such operator  
15 produced more than one half of the commodity with respect to  
16 which such service is performed; (B) in the employ of a group of  
17 operators of farms (or a cooperative organization of which such  
18 operators are members) in performance of service described in  
19 subparagraph (A), but only if such operators produced more than  
20 one half of the commodity with respect to which such service is  
21 performed. (C) The provisions of subparagraphs (A) and (B)  
22 shall not be deemed to be applicable with respect to service  
23 performed in connection with commercial canning or commercial  
24 freezing or in connection with any agricultural or horticultural  
25 commodity after its delivery to a terminal market for distribution  
26 for consumption; (D) on a farm operated for profit if such service  
27 is not in the course of the employer's trade or business. As used  
28 in this subsection, the term 'farm' includes stock, dairy, poultry,  
29 fruit, fur-bearing animal, and truck farms, plantations, ranches,  
30 nurseries, ranges, greenhouses or other similar structures used  
31 primarily for the raising of agricultural or horticultural  
32 commodities, and orchards. Provided, such labor is not  
33 agricultural labor performed ~~before January 1, 1995,~~ by an  
34 individual who is an alien admitted to the United States to  
35 perform agricultural labor pursuant to sections 214(c) and  
36 101(a)(15)(H) of the Immigration and Nationality Act.

- 37 h. On and after January 1, 1978, the term 'employment' includes  
38 domestic service in a private home, local college club or local  
39 chapter of a college fraternity or sorority performed for a person  
40 who pays cash remuneration of one thousand dollars (\$1,000) or  
41 more on or after January 1, 1978, in any calendar quarter in the  
42 current calendar year or the preceding calendar year to  
43 individuals employed in such domestic service.

- 1                   i.     On and after January 1, 1978, the term 'employment' includes  
2                   service performed for any State and local governmental  
3                   employing unit. Provided, however, that employment shall not  
4                   include service performed (a) as an elected official; (b) as a  
5                   member of a legislative body or a member of the judiciary, of a  
6                   State or political subdivision thereof; (c) as a member of the State  
7                   National Guard or Air National Guard; (d) as an employee  
8                   serving on a temporary basis in case of fire, storm, snow,  
9                   earthquake, flood, or similar emergency; or (e) a policymaking or  
10                  advisory position the performance of the duties of which  
11                  ordinarily does not require more than eight hours per week. The  
12                  services to which clause (d) of the preceding sentence applies  
13                  include but are not limited to temporary emergency services  
14                  compensated solely by a fixed payment for each emergency call  
15                  answered whether or not provided for by prior agreement and  
16                  training in preparation for such temporary emergency service  
17                  whether or not compensated.
- 18                  j.     On and after January 1, 1978, the term 'employment' includes  
19                  services performed in any calendar year by employees of  
20                  nonprofit elementary and secondary schools.
- 21                  k.     The term 'employment' shall not include:
- 22                    1,     2. Repealed by Session Laws 1993 (Reg. Sess., 1994), c.  
23                             680, s. 7.
- 24                    3.     Service with respect to which unemployment insurance is  
25                             payable under an employment security system established  
26                             by an act of Congress: Provided, that the Commission is  
27                             hereby authorized and directed to enter into agreements  
28                             with the proper agencies under such act of Congress,  
29                             which agreements shall become effective 10 days after  
30                             publication thereof in the manner provided in G.S. 96-4(b)  
31                             for general rules, to provide potential rights to benefits  
32                             under this Chapter, acquired rights to unemployment  
33                             insurance under act of Congress, or who have, after  
34                             acquiring potential rights to unemployment insurance,  
35                             under such act of Congress, acquired rights to benefits  
36                             under this Chapter.
- 37                    4,     5. Repealed by Session Laws 1993 (Reg. Sess., 1994), c.  
38                             680, s. 7.
- 39                    6.     Service performed on or in connection with a vessel or  
40                             aircraft not an American vessel or American aircraft by an  
41                             individual if the individual is performing services on and  
42                             in connection with such vessel or aircraft when outside the  
43                             United States; or, service performed by an individual in

1 (or as an officer or member of the crew of a vessel while it  
2 is engaged in) the catching, taking, harvesting, cultivating,  
3 or farming of any kind of fish, shellfish, crustacea,  
4 sponges, seaweeds, or other aquatic forms of animal and  
5 vegetable life (including service performed by such  
6 individual as an ordinary incident to any such activity),  
7 except (i) service performed in connection with the  
8 catching or taking of salmon or halibut, for commercial  
9 purposes, and (ii) service performed on or in connection  
10 with a vessel of more than 10 net tons (determined in the  
11 manner provided for determining the registered tonnage of  
12 merchant vessels under the laws of the United States).

13 7. Services performed by an individual in the employ of a  
14 son, daughter, or spouse; services performed by a child  
15 under the age of 21 in the employ of his father or mother  
16 or of a partnership consisting only of parents of the child.

17 8. Service performed by an individual during any calendar  
18 quarter for any employing unit or an employer as an  
19 insurance agent or as an insurance solicitor, or as a  
20 securities salesman if all such service performed during  
21 such calendar quarter by such individual for such  
22 employing unit or employer is performed for remuneration  
23 solely by way of commission; service performed by an  
24 individual for an employing unit as a real estate agent or a  
25 real estate salesman as defined in G.S. 93A-2, provided,  
26 that such real estate agent or salesman is compensated  
27 solely by way of commission and is authorized to exercise  
28 independent judgment and control over the performance  
29 of his work.

30 9. Services performed in employment as a newsboy or  
31 newsgirl selling or distributing newspapers or magazines  
32 on the street or from house to house.

33 10. Except as provided in G.S. 96-8(6)f5(a), service covered  
34 by an election duly approved by the agency charged with  
35 the administration of any other state or federal  
36 employment security law in accordance with an  
37 arrangement pursuant to subdivision (l) of G.S. 96-4  
38 during the effective period of such election.

39 11. Casual labor not in the course of the employing unit's  
40 trade or business.

41 12. Service in any calendar quarter in the employ of any  
42 organization exempt from income tax under the provisions  
43 of section 501(a) of the Internal Revenue Code of 1954

- 1 (other than an organization described in section 401(a) of  
2 said Internal Revenue Code of 1954) or under section 521  
3 of the Internal Revenue Code of 1954, if the remuneration  
4 for such service is less than fifty dollars (\$50.00).
- 5 13. Service in the employ of a school, college, or university, if  
6 such service is performed (i) by a student who is enrolled  
7 and is regularly attending classes at such school, college,  
8 or university, or (ii) by the spouse of such a student, if  
9 such spouse is advised, at the time such spouse  
10 commences to perform such service, that (I) the  
11 employment of such spouse to perform such service is  
12 provided under a program to provide financial assistance  
13 to such student by such school, college, or university, and  
14 (II) such employment will not be covered by any program  
15 of unemployment insurance.
- 16 14. Service performed by an individual who is enrolled at a  
17 nonprofit or public educational institution which normally  
18 maintains a regular faculty and curriculum and normally  
19 has a regularly organized body of students in attendance at  
20 the place where its educational activities are carried on as  
21 a student in a full-time program, taken for credit at such  
22 institution, which combines academic instruction with  
23 work experience, if such service is an integral part of such  
24 program, and such institution has so certified to the  
25 employer, except that this subparagraph shall not apply to  
26 service performed in a program established for or on  
27 behalf of an employer or group of employers.
- 28 15. Services performed (i) in the employ of a church or  
29 convention or association of churches, or an organization  
30 which is operated primarily for religious purposes and  
31 which is operated, supervised, controlled or principally  
32 supported by a church or convention or association of  
33 churches; or (ii) by a duly ordained, commissioned, or  
34 licensed minister of a church in the exercise of his  
35 ministry or by a member of a religious order in the  
36 exercise of duties required by such order; or (iii) in a  
37 facility conducted for the purpose of carrying out a  
38 program of rehabilitation for individuals whose earning  
39 capacity is impaired by age or physical or mental  
40 deficiency or injury or providing remunerative work for  
41 individuals who because of their impaired physical or  
42 mental capacity cannot be readily absorbed in the  
43 competitive labor market by an individual receiving such



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

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

23 (A) Such individual does not receive any cash  
24 remuneration (other than as provided in  
25 subparagraph (B)),

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

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

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

1 taxes is made by the Internal Revenue Service pursuant to the  
2 Federal Unemployment Tax Act which assessment becomes a  
3 final determination (as defined by section 1313 of the Internal  
4 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 of  
8 an organized camp

9 (A) If such camp:

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

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

20 (B) If the full-time student performed services in the  
21 employ of such camp for less than 13 calendar  
22 weeks in the calendar year.

23 As used in this sub-subdivision, 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-time  
29 student at an educational institution for the  
30 immediately preceding academic year or  
31 term; and

32 (II) There is a reasonable assurance that the  
33 individual will be so enrolled for the  
34 immediately succeeding academic year or  
35 term after the period described in sub-  
36 subparagraph (I) of this subparagraph."

37 Section 5. Any refunds of contributions, interest, or penalties made to  
38 employers because of the amendment in Section 3 of this act shall be made from the  
39 Special Employment Security Administration Fund provided for in G.S. 96-5(c).

40 Section 6. Article 2 of Chapter 96 of the General Statutes is amended by  
41 adding a new section to read:

42 "**§ 96-16.1. Food stamp overissuances.**

1       (a) An individual filing a new claim for unemployment compensation shall, at the  
2 time of the filing of the claim, disclose whether or not the individual owes an uncollected  
3 overissuance (as defined in section 13(c)(1) of the Food Stamp Act of 1977) of food  
4 stamp coupons. The Commission shall notify the State food stamp agency enforcing  
5 such obligation of any individual who discloses that the individual owes child support  
6 obligations and who is determined to be eligible for unemployment compensation.

7       (b) The Commission shall deduct and withhold from any unemployment  
8 compensation payable to an individual who owes an uncollected overissuance:

9           (1) The amount specified by the individual to the Commission to be  
10 deducted and withheld under this subdivision;

11           (2) The amount (if any) determined pursuant to an agreement submitted to  
12 the State food stamp agency under section 13(c)(3)(A) of the Food  
13 Stamp Act of 1977; or

14           (3) Any amount otherwise required to be deducted and withheld from  
15 unemployment compensation pursuant to section 13(c)(3)(B) of the  
16 Food Stamp Act of 1977.

17       (c) Any amount deducted and withheld under this section shall be paid by the  
18 Commission to the appropriate food stamp agency.

19       (d) Any amount deducted and withheld under subsection (b) of this section shall  
20 for all purposes be treated as if it were paid to the individual as unemployment  
21 compensation and paid by such individual to the State food stamp agency as repayment  
22 of the individual's uncollected overissuance.

23       (e) For the purposes of this section, the term 'unemployment compensation' means  
24 any compensation payable under this Chapter including amounts payable by the  
25 Commission pursuant to an agreement under any federal law providing for compensation,  
26 assistance, or allowance with respect to unemployment.

27       (f) This section applies only if arrangements have been made for reimbursement  
28 by the State food stamp agency for the administrative costs incurred by the Commission  
29 under this section which are attributable to the repayment of uncollected overissuances to  
30 the State food stamp agency."

31       Section 7. G.S. 96-13(a) reads as rewritten:

32       "(a) An unemployed individual shall be eligible to receive benefits with respect to  
33 any week only if the Commission finds that –

34           (1) The individual has registered for work at and thereafter has continued to  
35 report at an employment office as directed by the Commission at regular  
36 intervals ~~no more than four~~ of not less than three weeks and not more  
37 than six weeks apart and in accordance with such regulations as the  
38 Commission may prescribe;

39           (2) He has made a claim for benefits in accordance with the provisions of  
40 G.S. 96-15(a);

41           (3) The individual is able to work, and is available for work: Provided that,  
42 unless temporarily excused by Commission regulations, no individual  
43 shall be deemed available for work unless he establishes to the

1 satisfaction of the Commission that he is actively seeking work:  
2 Provided further, that an individual customarily employed in seasonal  
3 employment shall, during the period of nonseasonal operations, show to  
4 the satisfaction of the Commission that such individual is actively  
5 seeking employment which such individual is qualified to perform by  
6 past experience or training during such nonseasonal period: Provided  
7 further, however, that no individual shall be considered available for  
8 work for any week not to exceed two in any calendar year in which the  
9 Commission finds that his unemployment is due to a vacation. In  
10 administering this proviso, benefits shall be paid or denied on a payroll-  
11 week basis as established by the employing unit. A week of  
12 unemployment due to a vacation as provided herein means any payroll  
13 week within which the equivalent of three customary full-time working  
14 days consist of a vacation period. For the purpose of this subdivision,  
15 any unemployment which is caused by a vacation period and which  
16 occurs in the calendar year following that within which the vacation  
17 period begins shall be deemed to have occurred in the calendar year  
18 within which such vacation period begins. For purposes of this  
19 subdivision, no individual shall be deemed available for work during  
20 any week that the individual tests positive for a controlled substance if  
21 (i) the test is a controlled substance examination administered under  
22 Article 20 of Chapter 95 of the General Statutes, (ii) the test is required  
23 as a condition of hire for a job, and (iii) the job would be suitable work  
24 for the claimant. The employer shall report to the Commission, in  
25 accordance with regulations adopted by the Commission, each claimant  
26 that tests positive for a controlled substance under this subdivision. For  
27 the purposes of this subdivision, no individual shall be deemed available  
28 for work during any week in which he is registered at and attending an  
29 established school, or is on vacation during or between successive  
30 quarters or semesters of such school attendance, or on vacation between  
31 yearly terms of such school attendance. Except: (i) Any person who was  
32 engaged in full-time employment concurrent with his school attendance,  
33 who is otherwise eligible, shall not be denied benefits because of school  
34 enrollment and attendance. Except: (ii) Any otherwise qualified  
35 unemployed individual who is attending a vocational school or training  
36 program which has been approved by the Commission for such  
37 individual shall be deemed available for work. However, any  
38 unemployment insurance benefits payable with respect to any week for  
39 which a training allowance is payable pursuant to the provisions of a  
40 federal or State law, shall be reduced by the amount of such allowance  
41 which weekly benefit amount shall be rounded to the nearest lower full  
42 dollar amount (if not a full dollar amount). The Commission may  
43 approve such training course for an individual only if:

- 1                   1.     a.     Reasonable employment opportunities for which the  
2                                 individual is fitted by training and experience do not exist  
3                                 in the locality or are severely curtailed;  
4                                 b.     The training course relates to an occupation or skill for  
5                                 which there are expected to be reasonable opportunities  
6                                 for employment; and  
7                                 c.     The individual, within the judgment of the Commission,  
8                                 has the required qualifications and the aptitude to  
9                                 complete the course successfully; or,  
10                   2.     Such approval is required for the Commission to receive the  
11                                 benefits of federal law.  
12           (4)     No individual shall be deemed able to work under this subsection during  
13                                 any week for which that person is receiving or is applying for benefits  
14                                 under any other State or federal law based on his temporary total or  
15                                 permanent total disability. Provided that if compensation is denied to  
16                                 any individual for any week under the foregoing sentence and such  
17                                 individual is later determined not to be totally disabled, such individual  
18                                 shall be entitled to a retroactive payment of the compensation for each  
19                                 week for which the individual filed a timely claim for compensation and  
20                                 for which the compensation was denied solely by reason of the  
21                                 foregoing sentence.  
22           (5)     The individual has participated in reemployment services, if the  
23                                 Division referred the individual to these services after determining,  
24                                 through use of a worker profiling system, that the individual would  
25                                 likely exhaust regular benefits and would need reemployment services  
26                                 to make a successful transition to new employment, unless the  
27                                 individual establishes justifiable cause for failing to participate in the  
28                                 services."

29                   Section 8. This act is effective when it becomes law, and Sections 1, 2, and 3  
30                   apply to new initial claims filed on or after September 1, 1997.