

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 451

Short Title: ESC Benefits Changes/AB.

(Public)

Sponsors: Representatives Redwine; Baddour, Jeffus, Luebke, and Miller.

Referred to: Commerce.

March 10, 1997

A BILL TO BE ENTITLED

1 AN ACT RELATING TO ELIGIBILITY FOR UNEMPLOYMENT BENEFITS IN THE
2 EVENT OF SPOUSAL ABUSE OR A SPOUSAL RELOCATION, TO THE
3 DEFINITION OF EMPLOYMENT AS TO AGRICULTURAL LABOR, AND TO
4 FOOD STAMP OVERISSUANCES.
5

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 95-14(1D) reads as rewritten:

8 "(1D) For the purposes of this Chapter, any claimant leaving work to
9 accompany the claimant's legally recognized spouse to a new place
10 of residence where that spouse has secured work in a location that is
11 too far removed for the claimant reasonably to continue his or her
12 work shall ~~serve a time certain disqualification for benefits for a period of~~
13 ~~five weeks beginning the first day of the first week after the disqualifying~~
14 ~~act occurs with respect to which week an individual files a claim for~~
15 ~~benefits.~~ constitute good cause for leaving work. Benefits paid on
16 the basis of this section shall be noncharged."

17 Section 2. G.S. 95-14 is amended by adding a new subdivision to read:

18 "(1F) For the purposes of this Chapter, any claimant's leaving work, or
19 discharge, if the claimant has been adjudged an aggrieved party as
20 set forth by Chapter 50B of the General Statutes as the result of

1 domestic violence committed upon the claimant or upon a minor
2 child with or in the custody of the claimant by a person who has or
3 who has had a familial relationship with the claimant or minor child,
4 shall constitute good cause for leaving work. Benefits paid on the
5 basis of this section shall be noncharged."

6 Section 3. G.S. 96-8(6) reads as rewritten:

7 "(6) a. 'Employment' means service performed including service in
8 interstate commerce, except employment as defined in the Railroad
9 Retirement Act and the Railroad Unemployment Insurance Act,
10 performed for wage or under any contract of hire, written or oral,
11 express or implied, in which the relationship of the individual
12 performing such service and the employing unit for which such service
13 is rendered is, as to such service, the legal relationship of employer and
14 employee. Provided, however, the term 'employee' includes an officer
15 of a corporation, but such term does not include (i) any individual who,
16 under the usual common-law rules applicable in determining the
17 employer-employee relationship, has the status of an independent
18 contractor or (ii) any individual (except an officer of a corporation) who
19 is not an employee under such common-law rules. An employee who is
20 on paid vacation or is on paid leave of absence due to illness or other
21 reason shall be deemed to be in employment irrespective of the failure
22 of such individual to perform services for the employing unit during
23 such period.

24 b. The term 'employment' shall include an individual's entire
25 service, performed within or both within and without this State if:

- 26 1. The service is localized in this State; or
- 27 2. The service is not localized in any state but some of the
28 service is performed in this State, and (i) the base of
29 operations, or, if there is no base of operations, then the
30 place from which such service is directed or controlled, is
31 in this State; or (ii) the base of operations or place from
32 which such service is directed or controlled is not in any
33 state in which some part of the service is performed, but
34 the individual's residence is in this State.
- 35 3. The service, wherever performed, is within the United
36 States, or Canada; such service is not covered under the
37 unemployment compensation law of any other state or
38 Canada; and the place from which the service is directed
39 or controlled is in this State.

40 c. Services performed within this State but not covered under
41 paragraph b of this subdivision shall be deemed to be
42 employment subject to this Chapter, if contributions are not
43 required and paid with respect to such services under an

- 1 employment security law of any other state or of the federal
2 government.
- 3 d. Services not covered under paragraph b of this subdivision, and
4 performed entirely without this State, with respect to no part of
5 which contributions are required and paid under an employment
6 security law of any other state or of the federal government, shall
7 be deemed to be employment subject to this Chapter if the
8 individual performing such service is a resident of this State and
9 the Commission approves the election of the employing unit for
10 whom such services are performed that the entire service of such
11 individual shall be deemed to be employment subject to this
12 Chapter, and services covered by an election duly approved by
13 the Commission in accordance with an arrangement pursuant to
14 subsection (l) of G.S. 96-4 shall be deemed to be employment
15 during the effective period of such election.
- 16 e. Service shall be deemed to be localized within a state if:
- 17 1. The service is performed entirely within such state; or
 - 18 2. The service is performed both within and without such
19 state, but the service performed without such state is
20 incidental to the individual's service within the State, for
21 example, is temporary or transitory in nature or consists of
22 isolated transactions.
- 23 f. The term 'employment' shall include:
- 24 1. Services covered by an election pursuant to G.S. 96-11,
25 subsection (c), of this Chapter; and
 - 26 2. Services covered by an election duly approved by the
27 Commission in accordance with an arrangement pursuant
28 to G.S. 96-4, subsection (l), of this Chapter during the
29 effective period of such election.
 - 30 3. Any service of whatever nature performed by an
31 individual for an employing unit on or in connection with
32 an American vessel under a contract of service which is
33 entered into within the United States or during the
34 performance of which the vessel touches at a port in the
35 United States, if such individual is employed on and in
36 connection with such vessel when outside the United
37 States: Provided, such service is performed on or in
38 connection with the operations of an American vessel
39 operating on navigable waters within or within and
40 without the United States and such operations are
41 ordinarily and regularly supervised, managed, directed,
42 and controlled from an operating office maintained by the
43 employing unit in this State: Provided further, that this

1 subparagraph shall not be applicable to those services
2 excluded in subdivision (6), paragraph k, subparagraph 6
3 of this section.

4 4. Any service of whatever nature performed by an
5 individual for an employing unit on or in connection with
6 an American aircraft under a contract of service which is
7 entered into within the United States or during the
8 performance of which and while the employee is
9 employed on the aircraft it touches at a port in the United
10 States, if such individual is employed on and in
11 connection with such aircraft when outside the United
12 States; provided such service is performed on or in
13 connection with the operations of an American aircraft
14 and such operations are ordinarily and regularly
15 supervised, managed, directed, and controlled from an
16 operating office maintained by the employing unit in this
17 State.

18 5. Notwithstanding any other provision of this Chapter,
19 'employment' shall include any individual who performs
20 services irrespective of whether the master-servant
21 relationship exists, for remuneration for any employing
22 unit:

23 (a) As an agent-driver or commission-driver engaged
24 in distributing meat products, vegetable products,
25 fruit products, bakery products, beverages (other
26 than milk) or laundry or dry-cleaning services, for
27 his principal;

28 (b) As a traveling or city salesman, other than as an
29 agent-driver or commission-driver, engaged upon a
30 full-time basis in the solicitation on behalf of, and
31 the transmission to, his principal (except for side-
32 line sales activities on behalf of some person) of
33 orders from wholesalers, retailers, contractors, or
34 operators of hotels, restaurants, or other similar
35 establishments for merchandise for resale or
36 supplies for use in their business operations if the
37 contract of services contemplates that substantially
38 all of such services are to be performed personally
39 by such individual; except that an individual shall
40 not be included in the term 'employment' under the
41 provisions of this subsection if such individual has
42 a substantial investment in facilities used in
43 connection with the performance of such services

(other than in facilities for transportation), or if the services are in the nature of a single transaction not part of a continuing relationship with the employing unit for whom the services are performed.

6. Service of an individual who is a citizen of the United States, performed outside of the United States (except in Canada), in the employ of an American employer (other than service which is deemed "employment" under the provisions of paragraph b or e of this subsection or the parallel provisions of another state's law), if:

(i) The employer's principal place of business in the United States is located in this State; or

(ii) The employer has no place of business in the United States, but

(I) The employer is an individual who is a resident of this State; or

(II) The employer is a corporation which is organized under the laws of this State; or

(III) The employer is a partnership or a trust and the number of the partners or trustees who are residents of this State is greater than the number who are residents of any other state; or

(iii) None of the criteria of divisions (i) and (ii) of this subparagraph is met but the employer has elected coverage in this State, or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this State.

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

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

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

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

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

(V) For the purposes of this subparagraph, United States includes all the states, the

District of Columbia, and the
Commonwealth of Puerto Rico.

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

g. On and after January 1, 1978, the term 'employment' includes services performed in agricultural labor when a person or employing unit (a) during any calendar quarter in the current calendar year or the preceding calendar year pays wages of twenty thousand dollars (\$20,000) or more for agricultural labor, or (b) on each of some 20 days during the preceding calendar year, each day being in a different calendar week, employs at least 10 individuals in employment in agricultural labor for some portion of the day. For purposes of this Chapter, the term 'agricultural labor' includes all services performed: (1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife; (2) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm; (3) in connection with the production or harvesting of crude gum (oleoresin) from a living tree, and the following products if processed by the original producer of crude gum from which derived; gum spirits of turpentine and gum resin, or in connection with the ginning of cotton or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes; or (4)(A) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, but only if such operator produced more than one half of the commodity with

1 respect to which such service is performed; (B) in the employ of
2 a group of operators of farms (or a cooperative organization of
3 which such operators are members) in performance of service
4 described in subparagraph (A), but only if such operators
5 produced more than one half of the commodity with respect to
6 which such service is performed. (C) The provisions of
7 subparagraphs (A) and (B) shall not be deemed to be applicable
8 with respect to service performed in connection with commercial
9 canning or commercial freezing or in connection with any
10 agricultural or horticultural commodity after its delivery to a
11 terminal market for distribution for consumption; (D) on a farm
12 operated for profit if such service is not in the course of the
13 employer's trade or business. As used in this subsection, the term
14 'farm' includes stock, dairy, poultry, fruit, fur-bearing animal,
15 and truck farms, plantations, ranches, nurseries, ranges,
16 greenhouses or other similar structures used primarily for the
17 raising of agricultural or horticultural commodities, and orchards.
18 Provided, such labor is not agricultural labor performed ~~before~~
19 ~~January 1, 1995,~~ by an individual who is an alien admitted to the
20 United States to perform agricultural labor pursuant to sections
21 214(c) and 101(a)(15)(H) of the Immigration and Nationality
22 Act.

23 h. On and after January 1, 1978, the term 'employment' includes
24 domestic service in a private home, local college club or local
25 chapter of a college fraternity or sorority performed for a person
26 who pays cash remuneration of one thousand dollars (\$1,000) or
27 more on or after January 1, 1978, in any calendar quarter in the
28 current calendar year or the preceding calendar year to
29 individuals employed in such domestic service.

30 i. On and after January 1, 1978, the term 'employment' includes
31 service performed for any State and local governmental
32 employing unit. Provided, however, that employment shall not
33 include service performed (a) as an elected official; (b) as a
34 member of a legislative body or a member of the judiciary, of a
35 State or political subdivision thereof; (c) as a member of the State
36 National Guard or Air National Guard; (d) as an employee
37 serving on a temporary basis in case of fire, storm, snow,
38 earthquake, flood, or similar emergency; or (e) a policymaking or
39 advisory position the performance of the duties of which
40 ordinarily does not require more than eight hours per week. The
41 services to which clause (d) of the preceding sentence applies
42 include but are not limited to temporary emergency services
43 compensated solely by a fixed payment for each emergency call

- 1 answered whether or not provided for by prior agreement and
2 training in preparation for such temporary emergency service
3 whether or not compensated.
- 4 j. On and after January 1, 1978, the term 'employment' includes
5 services performed in any calendar year by employees of
6 nonprofit elementary and secondary schools.
- 7 k. The term 'employment' shall not include:
- 8 1, 2. Repealed by Session Laws 1993 (Reg. Sess., 1994), c.
9 680, s. 7.
- 10 3. Service with respect to which unemployment insurance is
11 payable under an employment security system established
12 by an act of Congress: Provided, that the Commission is
13 hereby authorized and directed to enter into agreements
14 with the proper agencies under such act of Congress,
15 which agreements shall become effective 10 days after
16 publication thereof in the manner provided in G.S. 96-4(b)
17 for general rules, to provide potential rights to benefits
18 under this Chapter, acquired rights to unemployment
19 insurance under act of Congress, or who have, after
20 acquiring potential rights to unemployment insurance,
21 under such act of Congress, acquired rights to benefits
22 under this Chapter.
- 23 4, 5. Repealed by Session Laws 1993 (Reg. Sess., 1994), c.
24 680, s. 7.
- 25 6. Service performed on or in connection with a vessel or
26 aircraft not an American vessel or American aircraft by an
27 individual if the individual is performing services on and
28 in connection with such vessel or aircraft when outside the
29 United States; or, service performed by an individual in
30 (or as an officer or member of the crew of a vessel while it
31 is engaged in) the catching, taking, harvesting, cultivating,
32 or farming of any kind of fish, shellfish, crustacea,
33 sponges, seaweeds, or other aquatic forms of animal and
34 vegetable life (including service performed by such
35 individual as an ordinary incident to any such activity),
36 except (i) service performed in connection with the
37 catching or taking of salmon or halibut, for commercial
38 purposes, and (ii) service performed on or in connection
39 with a vessel of more than 10 net tons (determined in the
40 manner provided for determining the registered tonnage of
41 merchant vessels under the laws of the United States).
- 42 7. Services performed by an individual in the employ of a
43 son, daughter, or spouse; services performed by a child

- 1 under the age of 21 in the employ of his father or mother
2 or of a partnership consisting only of parents of the child.
- 3 8. Service performed by an individual during any calendar
4 quarter for any employing unit or an employer as an
5 insurance agent or as an insurance solicitor, or as a
6 securities salesman if all such service performed during
7 such calendar quarter by such individual for such
8 employing unit or employer is performed for remuneration
9 solely by way of commission; service performed by an
10 individual for an employing unit as a real estate agent or a
11 real estate salesman as defined in G.S. 93A-2, provided,
12 that such real estate agent or salesman is compensated
13 solely by way of commission and is authorized to exercise
14 independent judgment and control over the performance
15 of his work.
- 16 9. Services performed in employment as a newsboy or
17 newsgirl selling or distributing newspapers or magazines
18 on the street or from house to house.
- 19 10. Except as provided in G.S. 96-8(6)f5(a), service covered
20 by an election duly approved by the agency charged with
21 the administration of any other state or federal
22 employment security law in accordance with an
23 arrangement pursuant to subdivision (l) of G.S. 96-4
24 during the effective period of such election.
- 25 11. Casual labor not in the course of the employing unit's
26 trade or business.
- 27 12. Service in any calendar quarter in the employ of any
28 organization exempt from income tax under the provisions
29 of section 501(a) of the Internal Revenue Code of 1954
30 (other than an organization described in section 401(a) of
31 said Internal Revenue Code of 1954) or under section 521
32 of the Internal Revenue Code of 1954, if the remuneration
33 for such service is less than fifty dollars (\$50.00).
- 34 13. Service in the employ of a school, college, or university, if
35 such service is performed (i) by a student who is enrolled
36 and is regularly attending classes at such school, college,
37 or university, or (ii) by the spouse of such a student, if
38 such spouse is advised, at the time such spouse
39 commences to perform such service, that (I) the
40 employment of such spouse to perform such service is
41 provided under a program to provide financial assistance
42 to such student by such school, college, or university, and

- 1 (II) such employment will not be covered by any program
2 of unemployment insurance.
- 3 14. Service performed by an individual who is enrolled at a
4 nonprofit or public educational institution which normally
5 maintains a regular faculty and curriculum and normally
6 has a regularly organized body of students in attendance at
7 the place where its educational activities are carried on as
8 a student in a full-time program, taken for credit at such
9 institution, which combines academic instruction with
10 work experience, if such service is an integral part of such
11 program, and such institution has so certified to the
12 employer, except that this subparagraph shall not apply to
13 service performed in a program established for or on
14 behalf of an employer or group of employers.
- 15 15. Services performed (i) in the employ of a church or
16 convention or association of churches, or an organization
17 which is operated primarily for religious purposes and
18 which is operated, supervised, controlled or principally
19 supported by a church or convention or association of
20 churches; or (ii) by a duly ordained, commissioned, or
21 licensed minister of a church in the exercise of his
22 ministry or by a member of a religious order in the
23 exercise of duties required by such order; or (iii) in a
24 facility conducted for the purpose of carrying out a
25 program of rehabilitation for individuals whose earning
26 capacity is impaired by age or physical or mental
27 deficiency or injury or providing remunerative work for
28 individuals who because of their impaired physical or
29 mental capacity cannot be readily absorbed in the
30 competitive labor market by an individual receiving such
31 rehabilitation or remunerative work; or (iv) as a part of an
32 unemployment work-relief or work-training program
33 assisted or financed in whole or in part by any federal
34 agency or an agency of a state or political subdivision
35 thereof, by an individual receiving such work relief or
36 work training, unless a federal law, rule or regulation
37 mandates unemployment insurance coverage to
38 individuals in a particular work-relief or work-training
39 program; (v) after December 31, 1971, by an inmate for a
40 hospital in a State prison or other State correctional
41 institution or by a patient in any other State-operated
42 hospital, and services performed by patients in a hospital
43 operated by a nonprofit organization shall be exempt; (vi)

1 after December 31, 1971, in the employ of a hospital, if
2 such service is performed by a patient of such hospital;
3 (vii) after December 31, 1971, by an inmate of a custodial
4 or penal institution.

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

10 (A) Such individual does not receive any cash
11 remuneration (other than as provided in
12 subparagraph (B)),

13 (B) Such individual receives a share of the boat's (or
14 the boats' in the case of a fishing operation
15 involving more than one boat) catch of fish or other
16 forms of aquatic animal life or a share of the
17 proceeds from the sale of such catch, and

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

22 but only if the operating crew of such boat (or each boat from
23 which the individual receives a share in the case of a fishing
24 operation involving more than one boat) is normally made up of
25 fewer than 10 individuals. In order to preserve the State's right to
26 collect State unemployment taxes for which a credit against
27 federal unemployment taxes may be taken for contributions paid
28 into a State unemployment insurance fund, this paragraph 16
29 shall not apply, with respect to any individual, to service during
30 any period for which an assessment for federal unemployment
31 taxes is made by the Internal Revenue Service pursuant to the
32 Federal Unemployment Tax Act which assessment becomes a
33 final determination (as defined by section 1313 of the Internal
34 Revenue Code of 1954 as amended).

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

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

39 (A) If such camp:

40 (I) Did not operate for more than seven
41 months in the calendar year and did not
42 operate for more than seven months in the
43 preceding calendar year; or

1 (II) Had average gross receipts for any six
2 months in the preceding calendar year
3 which were not more than thirty-three and
4 one-third percent (33 1/3%) of its average
5 gross receipts for the other six months in
6 the preceding calendar year; and

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

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

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

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

15 (I) The individual was enrolled as a full-time
16 student at an educational institution for the
17 immediately preceding academic year or
18 term; and

19 (II) There is a reasonable assurance that the
20 individual will be so enrolled for the
21 immediately succeeding academic year or
22 term after the period described in sub-
23 subparagraph (I) of this subparagraph."

24 Section 4. Any refunds of contributions, interest, or penalties made to
25 employers because of the amendment in Section 3 of this act shall be made from the
26 Special Employment Security Administration Fund provided for in G.S. 96-5(c).

27 Section 5. Article 2 of Chapter 96 of the General Statutes is amended by
28 adding a new section to read:

29 **"§ 96-16.1. Food stamps overissuances.**

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

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

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

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

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

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

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

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

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

18 Section 6. This act is effective when it becomes law and Sections 1 and 2
19 apply to new initial claims filed on or after September 1, 1997.