

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 738

Short Title: Unemployment Benefits/Tax Changes.

(Public)

Sponsors: Senators Hartsell; and Winner.

Referred to: Finance.

April 7, 1997

A BILL TO BE ENTITLED

AN ACT RELATING TO THE REPORTING REQUIREMENT FOR UNEMPLOYMENT BENEFITS ELIGIBILITY, TO THE DEFINITION OF EMPLOYMENT AS TO AGRICULTURAL LABOR, AND TO FOOD STAMP OVERISSUANCES; AND MODIFYING THE CALCULATION AND COLLECTION OF UNEMPLOYMENT INSURANCE TAXES.

The General Assembly of North Carolina enacts:

Section 1. Article 2 of Chapter 96 of the General Statutes is amended by adding a new section to read:

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

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

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

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

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

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

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

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

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

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

21                Section 2. G.S. 96-13(a) reads as rewritten:

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

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

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

31           (3)    The individual is able to work, and is available for work: Provided that,  
32           unless temporarily excused by Commission regulations, no individual  
33           shall be deemed available for work unless he establishes to the  
34           satisfaction of the Commission that he is actively seeking work:  
35           Provided further, that an individual customarily employed in seasonal  
36           employment shall, during the period of nonseasonal operations, show to  
37           the satisfaction of the Commission that such individual is actively  
38           seeking employment which such individual is qualified to perform by  
39           past experience or training during such nonseasonal period: Provided  
40           further, however, that no individual shall be considered available for  
41           work for any week not to exceed two in any calendar year in which the  
42           Commission finds that his unemployment is due to a vacation. In  
43           administering this proviso, benefits shall be paid or denied on a payroll-

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

- 34 1. a. Reasonable employment opportunities for  
35 which the individual is fitted by training and experience  
36 do not exist in the locality or are severely curtailed;
- 37 b. The training course relates to an occupation or skill for  
38 which there are expected to be reasonable opportunities  
39 for employment; and
- 40 c. The individual, within the judgment of the Commission,  
41 has the required qualifications and the aptitude to  
42 complete the course successfully; or,

1           2.       Such approval is required for the Commission to receive the  
2                   benefits of federal law.

3       (4)       No individual shall be deemed able to work under this subsection during  
4           any week for which that person is receiving or is applying for benefits  
5           under any other State or federal law based on his temporary total or  
6           permanent total disability. Provided that if compensation is denied to  
7           any individual for any week under the foregoing sentence and such  
8           individual is later determined not to be totally disabled, such individual  
9           shall be entitled to a retroactive payment of the compensation for each  
10          week for which the individual filed a timely claim for compensation and  
11          for which the compensation was denied solely by reason of the  
12          foregoing sentence.

13       (5)       The individual has participated in reemployment services, if the  
14           Division referred the individual to these services after determining,  
15           through use of a worker profiling system, that the individual would  
16           likely exhaust regular benefits and would need reemployment services  
17           to make a successful transition to new employment, unless the  
18           individual establishes justifiable cause for failing to participate in the  
19           services."

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

21       "(6)   a. 'Employment' means service performed including service in  
22           interstate commerce, except employment as defined in the Railroad  
23           Retirement Act and the Railroad Unemployment Insurance Act,  
24           performed for wage or under any contract of hire, written or oral,  
25           express or implied, in which the relationship of the individual  
26           performing such service and the employing unit for which such service  
27           is rendered is, as to such service, the legal relationship of employer and  
28           employee. Provided, however, the term 'employee' includes an officer of  
29           a corporation, but such term does not include (i) any individual who,  
30           under the usual common-law rules applicable in determining the  
31           employer-employee relationship, has the status of an independent  
32           contractor or (ii) any individual (except an officer of a corporation) who  
33           is not an employee under such common-law rules. An employee who is  
34           on paid vacation or is on paid leave of absence due to illness or other  
35           reason shall be deemed to be in employment irrespective of the failure  
36           of such individual to perform services for the employing unit during  
37           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  
35 trust and the number of the partners  
36 or trustees who are residents of this  
37 State is greater than the number  
38 who are residents of any other  
39 state; or

40 (iii) None of the criteria of divisions (i) and (ii)  
41 of this subparagraph is met but the  
42 employer has elected coverage in this  
43 State, or, the employer having failed to

- 1 elect coverage in any state, the individual  
2 has filed a claim for benefits, based on  
3 such service, under the law of this State.
- 4 (iv) An 'American employer,' for the purposes of this  
5 paragraph, means a person who is:
- 6 (I) An individual who is a resident of the  
7 United States; or  
8 (II) A partnership if two thirds or more of the  
9 partners are residents of the United States;  
10 or  
11 (III) A trust, if all of the trustees are  
12 residents of the United States; or  
13 (IV) A corporation organized under the laws of  
14 the United States or of any state;  
15 (V) For the purposes of this subparagraph,  
16 United States includes all the states, the  
17 District of Columbia, and the  
18 Commonwealth of Puerto Rico.
- 19 7. Services with respect to which a tax is required to be paid  
20 under any federal law imposing a tax against which credit  
21 may be taken for contributions required to be paid into a  
22 State unemployment insurance fund, or which as a  
23 condition for full tax credit against the tax imposed by the  
24 Federal Unemployment Tax Act is required to be covered  
25 under this Chapter.
- 26 g. On and after January 1, 1978, the term 'employment' includes  
27 services performed in agricultural labor when a person or  
28 employing unit (a) during any calendar quarter in the current  
29 calendar year or the preceding calendar year pays wages of  
30 twenty thousand dollars (\$20,000) or more for agricultural labor,  
31 or (b) on each of some 20 days during the preceding calendar  
32 year, each day being in a different calendar week, employs at  
33 least 10 individuals in employment in agricultural labor for some  
34 portion of the day. For purposes of this Chapter, the term  
35 'agricultural labor' includes all services performed: (1) On a farm,  
36 in the employ of any person, in connection with cultivating the  
37 soil, or in connection with raising or harvesting any agricultural  
38 or horticultural commodity, including the raising, shearing,  
39 feeding, caring for, training, and management of livestock, bees,  
40 poultry, and fur-bearing animals and wildlife; (2) in the employ  
41 of the owner or tenant or other operator of a farm, in connection  
42 with the operation, management, conservation, improvement, or  
43 maintenance of such farm and its tools and equipment, or in



1 salvaging timber or clearing land of brush and other debris left by  
2 a hurricane, if the major part of such service is performed on a  
3 farm; (3) in connection with the production or harvesting of  
4 crude gum (oleoresin) from a living tree, and the following  
5 products if processed by the original producer of crude gum from  
6 which derived; gum spirits of turpentine and gum resin, or in  
7 connection with the ginning of cotton or in connection with the  
8 operation or maintenance of ditches, canals, reservoirs, or  
9 waterways, not owned or operated for profit, used exclusively for  
10 supplying and storing water for farming purposes; or (4)(A) in  
11 the employ of the operator of a farm in handling, planting,  
12 drying, packing, packaging, processing, freezing, grading,  
13 storing, or delivering to storage or to market or to a carrier for  
14 transportation to market, in its unmanufactured state, any  
15 agricultural or horticultural commodity, but only if such operator  
16 produced more than one half of the commodity with respect to  
17 which such service is performed; (B) in the employ of a group of  
18 operators of farms (or a cooperative organization of which such  
19 operators are members) in performance of service described in  
20 subparagraph (A), but only if such operators produced more than  
21 one half of the commodity with respect to which such service is  
22 performed. (C) The provisions of subparagraphs (A) and (B)  
23 shall not be deemed to be applicable with respect to service  
24 performed in connection with commercial canning or commercial  
25 freezing or in connection with any agricultural or horticultural  
26 commodity after its delivery to a terminal market for distribution  
27 for consumption; (D) on a farm operated for profit if such service  
28 is not in the course of the employer's trade or business. As used  
29 in this subsection, the term 'farm' includes stock, dairy, poultry,  
30 fruit, fur-bearing animal, and truck farms, plantations, ranches,  
31 nurseries, ranges, greenhouses or other similar structures used  
32 primarily for the raising of agricultural or horticultural  
33 commodities, and orchards. Provided, such labor is not  
34 agricultural labor performed ~~before January 1, 1995,~~ by an  
35 individual who is an alien admitted to the United States to  
36 perform agricultural labor pursuant to sections 214(c) and  
37 101(a)(15)(H) of the Immigration and Nationality Act.

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

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

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

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

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

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

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

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

- 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
12. Service in any calendar quarter in the employ of any organization exempt from income tax under the provisions of section 501(a) of the Internal Revenue Code of 1954 (other than an organization described in section 401(a) of said Internal Revenue Code of 1954) or under section 521 of the Internal Revenue Code of 1954, if the remuneration for such service is less than fifty dollars (\$50.00).
  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

1 individuals who because of their impaired physical or  
2 mental capacity cannot be readily absorbed in the  
3 competitive labor market by an individual receiving such  
4 rehabilitation or remunerative work; or (iv) as a part of an  
5 unemployment work-relief or work-training program  
6 assisted or financed in whole or in part by any federal  
7 agency or an agency of a state or political subdivision  
8 thereof, by an individual receiving such work relief or  
9 work training, unless a federal law, rule or regulation  
10 mandates unemployment insurance coverage to  
11 individuals in a particular work-relief or work-training  
12 program; (v) after December 31, 1971, by an inmate for a  
13 hospital in a State prison or other State correctional  
14 institution or by a patient in any other State-operated  
15 hospital, and services performed by patients in a hospital  
16 operated by a nonprofit organization shall be exempt; (vi)  
17 after December 31, 1971, in the employ of a hospital, if  
18 such service is performed by a patient of such hospital;  
19 (vii) after December 31, 1971, by an inmate of a custodial  
20 or penal institution.

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

26 (A) Such individual does not receive any cash  
27 remuneration (other than as provided in  
28 subparagraph (B)),

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

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

38 but only if the operating crew of such boat (or each boat from  
39 which the individual receives a share in the case of a fishing  
40 operation involving more than one boat) is normally made up of  
41 fewer than 10 individuals. In order to preserve the State's right to  
42 collect State unemployment taxes for which a credit against  
43 federal unemployment taxes may be taken for contributions paid

1 into a State unemployment insurance fund, this paragraph 16  
2 shall not apply, with respect to any individual, to service during  
3 any period for which an assessment for federal unemployment  
4 taxes is made by the Internal Revenue Service pursuant to the  
5 Federal Unemployment Tax Act which assessment becomes a  
6 final determination (as defined by section 1313 of the Internal  
7 Revenue Code of 1954 as amended).

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

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

12 (A) If such camp:

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

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

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

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

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

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

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

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

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

43 Section 5. G.S. 96-10(a) reads as rewritten:

1       "(a) Interest on Past-Due Contributions. – Contributions unpaid on the date on  
2 which they are due and payable, as prescribed by the Commission, shall bear interest at  
3 the rate of ~~one-half of one percent (0.5%)~~ one and one-half percent (1.5%) per month from  
4 and after ~~such~~ that date until payment plus accrued interest is received by the  
5 Commission. An additional penalty in the amount of ten percent (10%) of the taxes due  
6 shall be added, but ~~said~~ that penalty shall in no event be less than five dollars (\$5.00).  
7 Penalties and interest collected pursuant to this subsection shall be paid into the Special  
8 Employment Security Administration Fund. If any employer, in good faith, pays  
9 contributions to another state or to the United States under the Federal Unemployment  
10 Tax Act, prior to a determination of liability by this Commission, ~~which~~ and the  
11 contributions were legally payable to this State, ~~such~~ the contributions, when paid to this  
12 State, shall be deemed to have been paid by the due date under the law of this State if  
13 they were paid by the due date of such the other state or the United States."

14       Section 6. G.S. 96-10(i) reads as rewritten:

15       "(i) ~~No~~ Except as otherwise provided in this subsection, no suit or proceedings for  
16 the collection of unpaid contributions may be begun under this ~~chapter~~ Chapter after five  
17 years from the date on which ~~such~~ the contributions become due, and no suit or  
18 proceeding for the purpose of establishing liability and/or status may be begun with  
19 respect to any period occurring more than five years prior to the first day of January of  
20 the year within which ~~such~~ the suit or proceeding is ~~instituted; provided, that this~~ instituted.  
21 This subsection shall not apply in any case of willful attempt in any manner to defeat or  
22 evade the payment of any contributions becoming due under this Chapter: Provided,  
23 further, that a Chapter. A proceeding shall be deemed to have been instituted or begun  
24 upon the date of issuance of an order by the chairman of the Commission directing a  
25 hearing to be held to determine liability or nonliability, and/or status under this Chapter  
26 of an employing unit, or upon the date notice and demand for payment is mailed by  
27 registered-certified mail to the last known address of the employing unit: Provided, further,  
28 that the order mentioned herein unit. The order shall be deemed to have been issued on the  
29 date such the order is mailed by ~~registered-certified~~ registered-certified mail to the last known address of the  
30 employing unit. The running of the period of limitations provided in this subsection for  
31 the making of assessments or collection shall, in a case under Title II of the United States  
32 Code, be suspended for the period during which the Commission is prohibited by reason  
33 of the case from making the assessment or collection and for a period of one year after  
34 the prohibition is removed."

35       Section 7. G. S. 96-9(b)(2) reads as rewritten:

36       "(2) Experience Rating. –

- 37       a.       Waiting Period for Rate Reduction. – No employer's contribution  
38 rate shall be reduced below the standard rate for any calendar  
39 year until its account has been chargeable with benefits for at  
40 least 12 calendar months ending July 31 immediately preceding  
41 the computation date. An employer's account has been  
42 chargeable with benefits for at least 12 calendar months if the

1            employer has reported wages paid in four completed calendar  
2            quarters pursuant to G.S. 96-9(a).

3            b.        Credit Ratio. – The Commission shall, for each year, compute a  
4            credit reserve ratio for each employer whose account has a credit  
5            balance. An employer's credit reserve ratio shall be the quotient  
6            obtained by dividing the credit balance of the employer's account  
7            as of July 31 of each year by the total taxable payroll of the  
8            employer for the 36 calendar-month period ending June 30  
9            preceding the computation date. Credit balance as used in this  
10           section means the total of all contributions paid and credited for  
11           all past periods in accordance with the provisions of G.S. 96-  
12           9(c)(1) together with all other lawful credits to the account of the  
13           employer less the total benefits charged to the account of the  
14           employer for all past periods.

15           c.        Debit Ratio. – The Commission shall for each year compute a  
16           debit ratio for each employer whose account shows that the total  
17           of all its contributions paid and credited for all past periods in  
18           accordance with G.S. 96-9(c)(1) together with all other lawful  
19           credits is less than the total benefits charged to its account for all  
20           past periods. An employer's debit ratio shall be the quotient  
21           obtained by dividing the debit balance of the employer's account  
22           as of July 31 of each year by the total taxable payroll of the  
23           employer for the 36 calendar-month period ending June 30  
24           preceding the computation date. The amount arrived at by  
25           subtracting the total amount of all contributions paid and credited  
26           for all past periods in accordance with the provisions of G.S. 96-  
27           9(c)(1) together with all other lawful credits of the employer  
28           from the total amount of all benefits charged to the account of the  
29           employer for such periods is the employer's debit balance.

30           d.        Other Provisions. – ~~For purposes of this subsection, the first date~~  
31           ~~on which an account shall be chargeable with benefits shall be~~  
32           ~~the first date with respect to which a benefit year as defined in~~  
33           ~~G.S. 96-8 can be established, based in whole or in part on wages~~  
34           ~~paid by that employer.~~

35           No employer's contribution rate shall be reduced below the  
36           standard rate for any calendar year unless its liability extends  
37           over a period of all or part of two consecutive calendar years and,  
38           as of August 1 of the second year, its credit reserve ratio meets  
39           the requirements of that schedule used in computing rates for the  
40           following calendar year, unless the employer's liability was  
41           established under G.S. 96-8(5)b and its predecessor's account  
42           was transferred as provided by G.S. 96-9(c)(4)a.



1           Whenever contributions are erroneously paid into one account  
2           which should have been paid into another account or which  
3           should have been paid into a new account, that erroneous  
4           payment can be adjusted only by refunding the erroneously paid  
5           amounts to the paying entity. No pro rata adjustment to an  
6           existing account may be made, nor can a new account be created  
7           by transferring any portion of the erroneously paid amount,  
8           notwithstanding that the entities involved may be owned,  
9           operated, or controlled by the same person or organization. No  
10          adjustment of a contribution rate can be made reducing the rate  
11          below the standard rate for any period in which the account was  
12          not in actual existence and in which it was not actually  
13          chargeable for benefits. Whenever payments are found to have  
14          been made to the wrong account, refunds can be made to the  
15          entity making the wrongful payment for a period not exceeding  
16          five years from the last day of the calendar year in which it is  
17          determined that wrongful payments were made. Notwithstanding  
18          payment into the wrong account, if an entity is determined to  
19          have met the requirements to be a covered employer, whether or  
20          not the entity has had paid on the account of its employees any  
21          sum into another account, the Commission shall collect  
22          contributions at the standard rate or the assigned rate, whichever  
23          is higher, for the five years preceding the determination of  
24          erroneous payments, which five years shall run from the last day  
25          of the calendar year in which the determination of liability for  
26          contributions or additional contributions is made. This  
27          requirement applies regardless of whether the employer acted in  
28          good faith."

29           Section 8. Section 5 of this act becomes effective January 1, 1998, and applies  
30          to contributions due on or after that date. The remainder of this act is effective when it  
31          becomes law.