

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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SENATE BILL 82*
Finance Committee Substitute Adopted 6/27/17

Short Title: Achieving Business Efficiencies.

(Public)

Sponsors:

Referred to:

February 15, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO EXCLUDE DIRECT SELLERS FROM THE DEFINITION OF
3 EMPLOYMENT FOR UNEMPLOYMENT INSURANCE AND TO MAKE VARIOUS
4 CHANGES TO THE EMPLOYMENT LAWS.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.(a)** G.S. 96-1(b)(12) reads as rewritten:

7 "(12) Employment. – Defined in section 3306 of the Code, with the following
8 additions and exclusions:

9 a. Additions. – The term includes service to a governmental unit, a
10 nonprofit organization, or an Indian tribe as described in 3306(c)(7)
11 and 3306(c)(8) of the Code.

12 b. Exclusions. – The term excludes all of the following:

13 1. Service performed by an independent contractor.

14 2. Service performed for a governmental entity or nonprofit
15 organization under 3309(b) and 3309(c) of the Code.

16 3. Service by one or more of the following individuals if the
17 individual is authorized to exercise independent judgment and
18 control over the performance of the work and is compensated
19 solely by way of commission:

20 A. A real estate broker, as defined in G.S. 93A-2.

21 B. A securities salesman, as defined in G.S. 78A-2.

22 4. Service performed by a direct seller, as defined in 3508(b)(2)
23 of the Code. The term does not include a person defined in
24 3508(b)(2)(A)(iii) of the Code."

25 **SECTION 1.(b)** This section becomes effective January 1, 2018, applies to claims
26 for benefits filed on or after that date, and applies to tax calculations on or after that date.

27 **SECTION 2.** G.S. 95-25.24A, as enacted in Section 1.1 of S.L. 2017-10, reads as
28 rewritten:

29 "§ 95-25.24A. Franchisee status.

30 (a) Neither a franchisee nor a franchisee's employee shall be deemed to be an employee
31 of the franchisor for any purposes, including, but not limited to, this Article and Chapters 96,
32 97, and 105 of the General Statutes, ~~Statutes~~, unless both of the following apply:

33 (1) The franchisee and franchisor share in the determination of or codetermine
34 the matters governing the essential terms and conditions of the employee's
35 employment.



1 (2) The franchisee and franchisor both directly and immediately control matters
2 relating to the employment relationship, such as hiring, firing, discipline,
3 supervision, and direction.

4 (b) For purposes of this section, "franchisee" and "franchisor" have the same definitions
5 as set out in 16 C.F.R. § 436.1."

6 **SECTION 3.(a)** G.S. 95-25.14(c) reads as rewritten:

7 (c) The provisions of G.S. 95-25.4 (Overtime), and the provisions of G.S. 95-25.15(b)
8 (Record Keeping) as they relate to this exemption, do not apply to:

9 ...

10 (8) Any employee of a seasonal amusement or recreational establishment."

11 **SECTION 3.(b)** G.S. 95-25.3(e) reads as rewritten:

12 (e) The Commissioner, in order to prevent curtailment of opportunities for employment,
13 and to not adversely affect the viability of seasonal establishments, may, by regulation,
14 establish a wage rate not less than eighty-five percent (85%) of the otherwise applicable wage
15 rate in effect under subsection (a) ~~which that~~ shall apply to any employee employed by an
16 establishment ~~which that is a seasonal amusement or recreational establishment, or a seasonal~~
17 food service establishment."

18 **SECTION 3.(c)** G.S. 95-25.4(a) reads as rewritten:

19 (a) Every employer shall pay each employee who works longer than 40 hours in any
20 workweek at a rate of not less than time and one half of the regular rate of pay of the employee
21 for those hours in excess of 40 per week; ~~provided that employers of seasonal amusement or~~
22 ~~recreational establishment employees are required to pay those employees the overtime rate~~
23 ~~only for hours in excess of 45 per workweek-week."~~

24 **SECTION 4.** Except as otherwise provided, this act becomes effective January 1,
25 2018.