

1 HB526
2 150993-1
3 By Representatives Williams (J), McClurkin, Chesteen, Buttram,
4 Mask, Johnson (K), Drake, McMillan, Beckman, Wren, Standridge,
5 Jones, Carns, Roberts, Butler, Greer, Sanderford, Davis,
6 Patterson, Ball, Tuggle, Sessions, Williams (P), Faust, Brown,
7 Merrill and Collins
8 RFD: Commerce and Small Business
9 First Read: 02-APR-13

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8 SYNOPSIS: Under existing law, there is no explicit
9 language that prohibits employment as a substitute
10 employee at a school from qualifying for
11 unemployment compensation. This bill would provide
12 that the term "employment" for purposes of
13 qualifying for unemployment compensation does not
14 include services performed as a substitute employee
15 in a school.

16
17 A BILL
18 TO BE ENTITLED
19 AN ACT

20
21 Relating to unemployment compensation; to amend
22 Section 25-4-10, Code of Alabama 1975, by adding a new
23 provision to include an exemption from the term "employment"
24 for services as a substitute employee in a school.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

26 Section 1. Section 25-4-10, Code of Alabama 1975, is
27 amended to read as follows:

1 "§25-4-10.

2 "(a) Subject to other provisions of this chapter,
3 "employment" means:

4 "(1) Any service performed prior to January 1, 1978,
5 which was employment as defined in this section prior to such
6 date and, subject to the other provisions of this section,
7 services performed for remuneration after December 31, 1977,
8 including service in interstate commerce, by:

9 "a. Any officer of a corporation; or

10 "b. Any individual who, under the usual common law
11 rules applicable in determining the employer-employee
12 relationship, has the status of an employee; or

13 "c. Any individual other than an individual who is
14 an employee under paragraphs a. or b. of this subdivision (1)
15 who performs services for remuneration for any person:

16 "1. As an agent-driver or commission-driver engaged
17 in distributing meat products, bakery products, beverages
18 (other than milk) or laundry or dry cleaning services for a
19 principal;

20 "2. As a traveling or city salesman engaged upon a
21 full-time basis in the solicitation on behalf of, and the
22 transmission to, his or her principal (except for sideline
23 sales activities on behalf of some other person) of orders
24 from wholesalers, retailers, contractors, or operators of
25 hotels, restaurants, or other similar establishments for
26 merchandise for resale or supplies for use in their business
27 operations.

1 "For purposes of paragraph c. of this subdivision,
2 the term "employment" shall include services described in
3 subparagraphs 1 and 2 of paragraph c. of this subdivision,
4 performed after December 31, 1971, only if:

5 "(i) The contract of service contemplates that
6 substantially all of the services are to be performed
7 personally by such individual;

8 "(ii) The individual does not have a substantial
9 investment in facilities used in connection with the
10 performance of the services (other than in facilities for
11 transportation); and

12 "(iii) The services are not in the nature of a
13 single transaction that is not part of a continuing
14 relationship with the person for whom the services are
15 rendered.

16 "(2) Service performed:

17 "a. After December 31, 1971, but prior to January 1,
18 1978, by an individual in the employ of this state or any of
19 its instrumentalities or political subdivisions or their
20 instrumentalities (or in the employ of any of the foregoing
21 and one or more other states or their instrumentalities or
22 political subdivisions) for a hospital or institution of
23 higher education located in this state; provided, however,
24 that such service is excluded from "employment" as defined in
25 the Federal Unemployment Tax Act solely by reason of Section
26 3306(c) (7) of that act, and is not excluded from "employment"
27 under subsection (b) of this section; provided further, that

1 such service in the employ of a political subdivision or any
2 of its instrumentalities shall be deemed to be "employment"
3 within the meaning of this chapter only if the political
4 subdivision or its instrumentalities has elected to become an
5 employer subject to this chapter pursuant to Section 25-4-131
6 for all such service in the employ of the political
7 subdivision and its instrumentalities and has not ceased to be
8 an employer subject hereto pursuant to Section 25-4-130 or
9 Section 25-4-131; and

10 "b. After December 31, 1977, in the employ of this
11 state or any of its instrumentalities or of any political
12 subdivision thereof or any of its instrumentalities or any
13 instrumentality of more than one of the foregoing or any
14 instrumentality of any one of the foregoing and one or more
15 other states or political subdivisions, provided, however,
16 that such service is excluded from "employment" as defined in
17 the Federal Unemployment Tax Act by Section 3306(c)(7) of that
18 act and is not excluded from "employment" under subsection (b)
19 of this section.

20 "c. For the purposes of this chapter, the term
21 "governmental entity" in reference to this state is defined as
22 the entirety of state government, but for the purposes of
23 reporting, accounting or other administrative procedures such
24 entity shall be divided into each department, agency, board,
25 commission, and any other separately organized division or
26 instrumentality of this state. The Comptroller of this state
27 shall make such payments to the director as are required by

1 the other provisions of this chapter as they pertain to the
2 various organizational components of the state. The
3 Comptroller is hereby authorized to require of such components
4 such payments as are necessary to discharge his or her
5 responsibilities and shall enforce such payments under the
6 provisions of subsection (b) of Section 25-4-51.

7 "d. The term "governmental entity" in reference to
8 any political subdivision is defined as each county and its
9 instrumentalities and each municipality and its
10 instrumentalities, except that each instrumentality of a
11 political subdivision which is separately incorporated or
12 otherwise removed from the control of the governing body of
13 the political subdivision shall be a separate governmental
14 entity. Instrumentalities organized and operated jointly by
15 any combination of two or more of the aforementioned entities
16 shall be considered as constituting a separate governmental
17 entity. The foregoing notwithstanding, each separate public
18 school system shall constitute a separate governmental entity.

19 "(3) Service performed after December 31, 1971, by
20 an individual in the employ of a religious, charitable,
21 educational, or other organization but only if the following
22 conditions are met:

23 "a. The service is excluded from "employment" as
24 defined in the Federal Unemployment Tax Act solely by reason
25 of Section 3306(c)(8) of that act, and is not excluded from
26 "employment" under subdivisions (8) and (21) of subsection (b)
27 of this section; and

1 "b. The organization had four or more individuals in
2 employment for some portion of a day in each of 20 different
3 weeks, whether or not such weeks were consecutive, within
4 either the current or preceding calendar year, regardless of
5 whether they were employed at the same moment of time.

6 "(4)a. Service performed after December 31, 1977, by
7 an individual in agricultural labor as defined in subdivision
8 (1) of subsection (b) of this section, when:

9 "1. Such service is performed for an employing unit
10 which:

11 "(i) During any calendar quarter in either the
12 current or the preceding calendar year paid remuneration in
13 cash of \$20,000 or more to individuals employed in
14 agricultural labor (not taking into account service in
15 agricultural labor performed before January 1, 1984, by an
16 alien referred to in subparagraph 2. of this paragraph a.; or

17 "(ii) For some portion of a day in each of 20
18 different calendar weeks, whether or not such weeks were
19 consecutive, in either the current or the preceding calendar
20 year, employed in agricultural labor (not taking into account
21 service in agricultural labor performed before January 1,
22 1984, by an alien referred to in subparagraph 2. of this
23 paragraph a., 10 or more individuals, regardless of whether
24 they were employed at the same moment of time.

25 "2. For the purposes of this paragraph a., such
26 service is not considered to be performed in agricultural
27 labor if performed before January 1, 1984, by an individual

1 who is an alien admitted to the United States to perform
2 service in agricultural labor pursuant to Sections 214(c) and
3 101(a)(15)(H) of the Immigration and Nationality Act.

4 "3. For the purposes of this paragraph a., any
5 individual who is a member of a crew furnished by a crew
6 leader to perform service in agricultural labor for any other
7 person shall be treated as an employee of such crew leader.

8 "(i) If such crew leader holds a valid certificate
9 of registration under the Farm Labor Contractor Registration
10 Act of 1963, or substantially all the members of such crew
11 operate or maintain tractors, mechanized harvesting or crop
12 dusting equipment, or any other mechanized equipment, which is
13 provided by such crew leader; and

14 "(ii) If such individual is not an employee of any
15 other person within the meaning of subdivision (1) of this
16 subsection.

17 "4. For the purposes of this subdivision (4) in the
18 case of any individual who is furnished by a crew leader to
19 perform service in agricultural labor for any other person and
20 who is not treated as an employee of such crew leader under
21 subparagraph 3. of this paragraph a.:

22 "(i) Such other person and not the crew leader shall
23 be treated as the employer of such individual; and

24 "(ii) Such other person shall be treated as having
25 paid cash remuneration to such individual in an amount equal
26 to the amount of cash remuneration paid to such individual by
27 the crew leader (either on his or her own behalf or on the

1 behalf of such other person) for the service in agricultural
2 labor performed for such other person.

3 "5. For the purposes of this paragraph a., the term
4 "crew leader" shall mean an individual who:

5 "(i) Furnishes individuals to perform service in
6 agricultural labor for any other persons;

7 "(ii) Pays (either on his or her own behalf or on
8 behalf of such other person) the individuals so furnished by
9 him or her for the service in agricultural labor performed by
10 them; and

11 "(iii) Has not entered into a written agreement with
12 the farm operator under which such crew leader is designated
13 as an employee of such farm operator.

14 "b. Domestic service after December 31, 1977, in a
15 private home, local college club, or local chapter of a
16 college fraternity or sorority performed for a person, their
17 spouse, or estate who paid cash remuneration of \$1,000 or more
18 in any calendar quarter in the current calendar year or the
19 preceding calendar year to individuals employed in such
20 domestic service.

21 "For the purposes of this paragraph b. the term
22 "domestic service" includes all service for a person in the
23 operation and maintenance of a private household, local
24 college club, or local chapter of a college fraternity or
25 sorority as distinguished from service as an employee in the
26 pursuit of an employer's trade, occupation, profession,
27 enterprise, or vocation.

1 "(5) The term "employment" shall include the service
2 of an individual who is a citizen of the United States,
3 performed outside the United States after December 31, 1971,
4 (except in Canada or in the case of the Virgin Islands after
5 December 31, 1971, and prior to January 1 of the year
6 following the year in which the U.S. Secretary of Labor
7 approves the Unemployment Compensation Law of the Virgin
8 Islands under Section 3304(a) of the Internal Revenue Code of
9 1954) in the employ of an American employer (other than
10 service which is deemed "employment" under the provisions of
11 subdivision (8) or (9) of this subsection (a) or the parallel
12 provisions of another state's law), if:

13 "a. The employer's principal place of business in
14 the United States is located in this state; or

15 "b. The employer has no place of business in the
16 United States, but:

17 "1. The employer is an individual who is a resident
18 of this state; or

19 "2. The employer is a corporation which is organized
20 under the laws of this state; or

21 "3. The employer is a partnership or a trust and the
22 number of the partners or trustees who are residents of this
23 state is greater than the number who are residents of any
24 other state; or

25 "c. None of the criteria of paragraphs a. and b. of
26 this subdivision (5) is met but the employer has elected
27 coverage in this state, or the employer having failed to elect

1 coverage in any state, the individual has filed a claim for
2 benefits, based on such service, under the law of this state.

3 "d. An "American employer," for the purpose of this
4 subsection, means a person who is:

5 "1. An individual who is a resident of the United
6 States; or

7 "2. A partnership, if two-thirds or more of the
8 partners are residents of the United States; or

9 "3. A trust, if all of the trustees are residents of
10 the United States; or

11 "4. A corporation organized under the laws of the
12 United States or of any state.

13 "e. For the purposes of this subdivision (5), the
14 term "United States" includes the states of the United States,
15 the District of Columbia, the Commonwealth of Puerto Rico, and
16 in the case of the Virgin Islands, after December 31 of the
17 year in which the U.S. Secretary of Labor approves the Virgin
18 Islands' Unemployment Insurance Law for the first time.

19 "(6) Notwithstanding subdivision (8) of this
20 subsection (a), all service performed by an officer or a
21 member of the crew of an American vessel on or in connection
22 with such vessel, if the operating office from which the
23 operations of such vessel operating on navigable waters
24 within, or within and without, the United States are
25 ordinarily and regularly supervised, managed, directed and
26 controlled, is within this state.

1 "(7) Notwithstanding any other provisions of this
2 section, service with respect to which a tax is required to be
3 paid under any federal law imposing a tax against which credit
4 may be taken for contributions required to be paid into a
5 state unemployment fund or which as a condition for full tax
6 credit against the tax imposed by the Federal Unemployment Tax
7 Act is required to be covered under this chapter.

8 "(8) Subject to the other provisions of this
9 section, the term "employment" shall include an employee's
10 entire service, performed within or both within and without
11 this state if:

12 "a. The service is localized in this state; or

13 "b. The service is not localized in any state but
14 some of the service is performed in this state and the base of
15 operations, or, if there is no base of operations, then the
16 place from which such service is directed or controlled is in
17 this state, or the base of operations or place from which such
18 service is directed or controlled is not in any state in which
19 some part of the service is performed, but the employee's
20 residence is in this state;

21 "c. Service shall be deemed to be localized within a
22 state if the service is performed entirely within such state,
23 or the service is performed both within and without such
24 state, but the service performed without such state is
25 incidental to the employee's service within the state; for
26 example, service which is temporary or transitory in nature or
27 consists of isolated transactions;

1 "d. The service shall be deemed to be localized in
2 this state wherever such service is performed within the
3 United States, as defined in paragraph e. of subdivision (5)
4 of this subsection, if such service is not covered under the
5 unemployment compensation law of any other state, as defined
6 in Section 25-4-14, and the place from which such service is
7 directed or controlled is in this state.

8 "(9) Services not covered under subdivision (8) of
9 this subsection (a) and performed entirely without the state,
10 with respect to no part of which contributions are required
11 and paid under an unemployment compensation law of any other
12 state or of the federal government, shall be deemed to be
13 employment subject to this chapter if the employee performing
14 such service is a resident of this state and the director
15 approves the election of the employing unit for whom such
16 services are performed. The entire service of such employee
17 shall be deemed to be "employment" subject to this chapter.

18 "(10) The term "employment" includes a person's
19 entire services if such service is deemed performed in this
20 state by virtue of reciprocal agreements pursuant to the
21 provisions of Section 25-4-120 and does not include any
22 service which by virtue of such agreement is deemed performed
23 in another state.

24 "(11) The term "employment" includes services in the
25 employ of an Indian tribe. The term "Indian tribe" has the
26 meaning given the term by Section 4(e) of the Indian
27 Self-Determination and Education Assistance Act (25 USC

1 450b(c)), and includes any subdivision, subsidiary, or
2 business enterprise wholly owned by the Indian tribe.

3 "(b) The term "employment" shall not include:

4 "(1) Except as provided in paragraph a. of
5 subdivision (4) of subsection (a) of this section, service
6 performed by an individual in agricultural labor. For
7 purposes of this chapter, the term "agricultural labor" means
8 any service performed prior to January 1, 1978, which was
9 agricultural labor as defined in this section prior to such
10 date, and remunerated service performed after December 31,
11 1977, if such service was performed:

12 "a. On a farm, in the employ of any employing unit,
13 in connection with cultivating the soil, or in connection with
14 raising or harvesting any agricultural or horticultural
15 commodity, including the raising, shearing, feeding, caring
16 for, training, and management of livestock, bees, poultry, and
17 fur-bearing animals and wildlife.

18 "b. In the employ of the owner or tenant or other
19 operator of a farm, in connection with the operation,
20 management, conservation, improvement, or maintenance of such
21 farm and its tools and equipment, or in salvaging timber or
22 clearing land of brush and other debris left by a hurricane,
23 if the major part of such service is performed on a farm.

24 "c. In connection with the production or harvesting
25 of any commodity defined as an agricultural commodity in
26 Section 15(g) of the Agricultural Marketing Act, as amended
27 (46 Stat. 1550, Sec. 3; 12 U.S.C. 1141j), or in connection

1 with the ginning of cotton, or in connection with the
2 operation or maintenance of ditches, canals, reservoirs, or
3 waterways, not owned or operated for profit, used exclusively
4 for supplying and storing water for farming purposes.

5 "d. In the employ of the operator of a farm, a group
6 of operators of farms (or a cooperative organization of which
7 such operators are members) in handling, planting, drying,
8 packing, packaging, processing, freezing, grading, storing, or
9 delivering to storage or to market or to a carrier for
10 transportation to market, in its unmanufactured state, any
11 agricultural or horticultural commodities, but only if such
12 operator or group of operators (or a cooperative organization
13 of which such operators are members) produced more than one
14 half of the commodity with respect to which service is
15 performed; provided, however, the provisions of this paragraph
16 shall not be deemed to be applicable with respect to service
17 performed in connection with commercial canning or commercial
18 freezing or in connection with any agricultural or
19 horticultural commodity after its delivery to a terminal
20 market for distribution for consumption.

21 "e. On a farm operated for profit if such service is
22 not in the course of the employer's trade or business.

23 "As used in this subdivision, the term "farm"
24 includes stock, dairy, poultry, fruit, fur-bearing animal and
25 truck farms, plantations, ranches, nurseries, ranges,
26 greenhouses, or other similar structures used primarily for

1 the raising of agricultural or horticultural commodities, and
2 orchards.

3 "(2) Prior to January 1, 1978, domestic services in
4 a private home, local college club, or local chapter of a
5 college fraternity or sorority and after December 31, 1977, if
6 the provisions of paragraph b. of subdivision (4) of
7 subsection (a) of this section are not met.

8 "(3) Casual labor not in the usual course of the
9 employer's trade or business performed after December 31,
10 1971, in any calendar quarter by an individual, unless the
11 cash remuneration paid for such service is \$50 or more and
12 such service is performed by an individual who is regularly
13 employed by such employing unit to perform such service. For
14 the purposes of this subdivision, an individual shall be
15 deemed to be regularly employed to perform service not in the
16 course of an employing unit's trade or business during a
17 calendar quarter only if:

18 "a. On each of some 24 days during such quarter such
19 individual performs such service for some portion of the day;
20 or

21 "b. Such individual was regularly employed (as
22 determined under paragraph a. of this subdivision) by such
23 employing unit in the performance of such service during the
24 preceding calendar quarter.

25 "(4) Service performed by an individual in the
26 employ of his or her son, daughter or spouse, and service

1 performed by an individual under the age of 21 in the employ
2 of his or her father or mother.

3 "(5) Prior to January 1, 1978, except to the extent
4 set forth in subdivision (2) of subsection (a) of this
5 section, service performed in the employ of this state, or any
6 political subdivision thereof, or of any instrumentality of
7 this state or its political subdivisions.

8 "(6) Prior to January 1, 1978, except as provided in
9 subdivision (2) of subsection (a) of this section, service
10 performed in the employ of any other state or any political
11 subdivisions thereof, or any instrumentality of any one or
12 more of the foregoing which is wholly owned by one or more
13 such states or political subdivisions, and any service
14 performed in the employ of any instrumentality of any one or
15 more other states or their political subdivisions to the
16 extent that the instrumentality is, with respect to such
17 service, immune, under the Constitution of the United States
18 from the tax imposed by Section 3301 of the Federal Internal
19 Revenue Code.

20 "(7) Service performed in the employ of the United
21 States government or of any instrumentality wholly owned by
22 the United States, except that if the Congress of the United
23 States shall permit states to require any instrumentalities of
24 the United States to make payments into an unemployment fund
25 under this chapter, then to the extent permitted by Congress
26 and from and after the date as of which such permission
27 becomes effective, all of the provisions of this chapter shall

1 be applicable to such instrumentalities and to services
2 performed by employees for such instrumentalities in the same
3 manner, to the same extent, and on the same terms as to all
4 other employers and employing units; provided, however, if
5 this state should not be certified by the Secretary of Labor
6 under Section 3304(c) of the Federal Internal Revenue Code for
7 any year, then the payment required of such instrumentality
8 with respect to such year shall be deemed to have been
9 erroneously collected within the meaning of Article 3 of this
10 chapter and shall be refunded by the director from the fund in
11 accordance with the provisions of Section 25-4-137.

12 "(8) Except to the extent set forth in subdivision
13 (3) of subsection (a) of this section, service performed in
14 the employ of a corporation, community chest, fund, or
15 foundation organized and operated exclusively for religious,
16 charitable, scientific, literary, or educational purposes, or
17 for the prevention of cruelty to children or animals, no part
18 of the net earnings of which inures to the benefit of any
19 private shareholder or individual, and no substantial part of
20 the activities of which is carrying on propaganda, or
21 otherwise attempting to influence legislation.

22 "(9) Service performed after June 30, 1939, with
23 respect to which unemployment compensation is payable under
24 the Railroad Unemployment Insurance Act of Congress (52 Stat.
25 1094, as amended) and services with respect to which
26 unemployment compensation is payable under any other
27 unemployment compensation system established by an act of

1 Congress; provided, however, that the director is hereby
2 authorized and directed to enter into agreements with the
3 proper agencies under such act or acts of Congress, which
4 agreements shall become effective 10 days after publication
5 thereof in the manner provided in Section 25-4-111 for general
6 rules to provide reciprocal treatment to individuals who have,
7 after acquiring potential rights to benefits under this
8 chapter acquired rights to unemployment compensation under
9 such act or acts of Congress, or who have, after acquiring
10 potential rights to unemployment compensation under such act
11 or acts of Congress, acquired rights to benefits under this
12 chapter.

13 "(10) Service performed by an individual as an
14 insurance agent or as an insurance solicitor, if all such
15 service performed by such individual is performed for
16 remuneration solely by way of commission.

17 "(11) Service performed, in the employ of a school,
18 college, or university, if such service is performed:

19 "a. By a student who is enrolled and is regularly
20 attending classes at such school, college, or university. ~~or~~

21 "b. By the spouse of such a student, if such spouse
22 is advised at the time such spouse commences to perform such
23 service, that:

24 "1. The employment of such spouse to perform such
25 service is provided under a program to provide financial
26 assistance to such student by such school, college, or
27 university; and

1 "2. Such employment will not be covered by any
2 program of unemployment insurance.

3 "c. By an individual performing services on an
4 intermittent basis as a substitute employee.

5 "(12) Service performed by an individual who is
6 enrolled at a nonprofit or public educational institution
7 which normally maintains a regular faculty and curriculum and
8 normally has a regularly organized body of students in
9 attendance at the place where its educational activities are
10 carried on, as a student in a full-time program, taken for
11 credit at such institution, which combines academic
12 instruction with work experience, if such service is an
13 integral part of such program, and such institution has so
14 certified to the employer, except this paragraph shall not
15 apply to service performed in a program established for or on
16 behalf of an employer or group of employers.

17 "(13) Service performed in the employ of a hospital,
18 if such service is performed by a patient of the hospital as
19 defined in subsection (e) of this section, or service
20 performed as a student nurse in the employ of a hospital or a
21 nurses' training school by an individual who is enrolled and
22 is regularly attending classes in a nurses' training school
23 chartered or approved pursuant to state laws, and service
24 performed as an intern in the employ of a hospital by an
25 individual who has completed a four-year course in a medical
26 school chartered or approved pursuant to state law.

1 "(14) Service performed by an individual under the
2 age of 18 in the delivery or distribution of newspapers or
3 shopping news, not including delivery or distribution to any
4 point for subsequent delivery or distribution.

5 "(15) Except as provided in subdivisions (2) and (3)
6 of subsection (a) of this section, any employment or service
7 which is excluded by the express statutory provisions of
8 Section 3306 of the Federal Internal Revenue Code as amended.

9 "(16) Service performed by an officer or member of
10 the crew of a vessel which is not an American vessel. The
11 term "American vessel" means any vessel documented or numbered
12 under the law of the United States, and includes any vessel
13 which is neither documented nor numbered under the laws of the
14 United States nor documented under the laws of any foreign
15 country, if its crew is employed solely by one or more
16 citizens or residents of the United States or corporations
17 organized under the laws of the United States or of any state.

18 "(17) Service performed by an individual in (or as
19 an officer or member of the crew of a vessel while it is
20 engaged in) the catching, taking, harvesting, cultivating, or
21 farming of any kind of fish, shellfish, crustacea, sponges,
22 seaweeds, or other aquatic forms of animal and vegetable life
23 (including service performed by any such individual as an
24 ordinary incident to any such activity), except:

25 "a. Service performed in connection with the
26 catching or taking of salmon or halibut for commercial
27 purposes; and

1 "b. Service performed on or in connection with a
2 vessel of more than 10 net tons (determined in the manner
3 provided for determining the register tonnage of merchant
4 vessels under the laws of the United States).

5 "(18) Service performed in the employ of a foreign
6 government (including service as a consular or other officer
7 or employee or a nondiplomatic representative).

8 "(19) Service performed in the employ of an
9 instrumentality wholly owned by a foreign government if:

10 "a. The service is of a character similar to that
11 performed in foreign countries by employees of the United
12 States government or of an instrumentality thereof; and

13 "b. The director finds that the United States
14 Secretary of State has certified to the United States
15 Secretary of the Treasury that the foreign government, with
16 respect to whose instrumentality exemption is claimed, grants
17 an equivalent exemption with respect to similar service
18 performed in the foreign country by employees of the United
19 States government and of instrumentalities thereof.

20 "(20) Except to the extent set forth in subdivision
21 (3) of subsection (a) of this section, service performed in
22 any calendar quarter in the employ of any organization exempt
23 from income tax under Section 501(a) of the Federal Internal
24 Revenue Code (other than organizations described in Section
25 401(a)) or under Section 521 of such Code, if the remuneration
26 for such service is less than \$50.

1 "(21) Services performed for any governmental
2 entity, institution or organization described in subdivisions
3 (2) and (3) of subsection (a) of this section:

4 "a. In the employ of:

5 "1. A church or convention or association of
6 churches; or

7 "2. An organization that is operated primarily for
8 religious purposes and which is either operated, supervised,
9 controlled, or principally supported by a church or convention
10 or association of churches; or

11 "b. By a duly ordained, commissioned or licensed
12 minister of a church in the exercise of his or her ministry or
13 by a member of a religious order in the exercise of duties
14 required by such order; or

15 "c. Except as provided in subdivision (7) of
16 subsection (a) of Section 25-4-8:

17 "1. Prior to January 1, 1978, in the employ of a
18 school which is not an institution of higher education;

19 "2. After December 31, 1977, in the employ of a
20 governmental entity referred to in paragraph b. of subdivision
21 (2) of subsection (a) of this section, if such service is
22 performed by an individual in the exercise of duties:

23 "(i) As an elected official;

24 "(ii) As a member of a legislative body, or a member
25 of the judiciary of this state or any of its political
26 subdivisions or of an Indian tribe;

1 "(iii) As a member of the State National Guard or
2 Air National Guard;

3 "(iv) As an employee serving on a temporary basis in
4 case of fire, storm, snow, earthquake, flood, or similar
5 emergency (this exclusion does not apply to permanent
6 employees whose usual responsibilities include emergency
7 situations);

8 "(v) In a position which, under or pursuant to the
9 laws of this state or of an Indian tribe, is designated as a
10 major nontenured policymaking or advisory position or a
11 policymaking or advisory position the performance of the
12 duties of which ordinarily does not require more than 8 hours
13 per week; or

14 "d. In a facility conducted for the purpose of
15 carrying out a program of rehabilitation for individuals whose
16 earning capacity is impaired by age or physical or mental
17 deficiency or injury or providing remunerative work for
18 individuals who because of their impaired physical or mental
19 capacity cannot be readily absorbed in the competitive labor
20 market by an individual receiving such rehabilitation or
21 remunerative work; provided however, if an individual's
22 employment is otherwise characterized as employment under
23 subsection (a) and the individual is performing work under the
24 Javits Wagner O'Day Act or a similar set-aside program under
25 the laws of the United States, the individual's employment
26 shall be considered employment under subsection (a) as of the
27 date of such written election.

1 "e. As part of an unemployment work relief or work
2 training program assisted or financed in whole or in part by
3 any federal agency or an agency of a state or political
4 subdivision thereof or of an Indian tribe, by an individual
5 receiving such work relief or work training; or

6 "f. For a hospital in a state prison or other state
7 correctional institution prior to January 1, 1978, by an
8 inmate of the prison or correctional institution and, after
9 December 31, 1977, by an inmate of a custodial or penal
10 institution.

11 "(22) Services performed by an individual as a
12 qualified real estate agent. For the purposes of this chapter
13 the term "qualified real estate agent" shall mean an
14 individual who is a sales person if:

15 "a. Such individual is a licensed real estate agent;
16 and

17 "b. Substantially all of the remuneration for
18 services performed as a real estate agent (whether or not paid
19 in cash) is directly related to sales or other output
20 (including the performance of services), rather than the
21 number of hours worked, and

22 "c. The services performed by the individual are
23 performed pursuant to a written contract between such
24 individual and the person for whom the services are performed
25 and such contract provides that the individual will not be
26 treated as an employee with respect to such services for
27 federal tax purposes.

1 "(23) Services performed by an individual as a
2 direct seller. For the purposes of this chapter the term
3 "direct seller" shall mean any individual who:

4 "a. Is engaged in the trade or business of selling
5 (or soliciting the sale of) consumer products to any buyer on
6 a:

7 "1. Buy-sell basis, or

8 "2. Deposit-commission basis, or

9 "3. Any similar basis which the U.S. Secretary of
10 the Treasury prescribes by regulations, for resale (by the
11 buyer or any other individual), in the home or otherwise than
12 in a permanent retail establishment; or

13 "b. Is engaged in the trade or business of selling
14 (or soliciting the sale of) consumer products to a consumer in
15 the home or otherwise than in a permanent retail
16 establishment, and

17 "c. Substantially all of the remuneration for the
18 services performed by such individual as a direct seller
19 (whether or not paid in cash) is directly related to sales or
20 output (including the performance of services) rather than to
21 the number of hours worked, and

22 "d. The services performed by such individual are
23 performed pursuant to a written contract between such
24 individual and the person for whom the services are performed
25 and such contract provides that the individual will not be
26 treated as an employee with respect to such services for
27 federal tax purposes.

1 "(24) Services performed by an individual as a
2 product demonstrator. For the purposes of this chapter, the
3 term "product demonstrator" shall mean any individual who
4 satisfies both of the following requirements:

5 "a. Is engaged in the trade or business of
6 demonstrating, exhibiting, or soliciting the purchase of food,
7 food-related products offered for sale, or other consumer
8 products offered for sale to any buyer on the premises of a
9 grocery store, dry good store, or similar retail
10 establishment, or trade show;

11 "b. Who performs those services pursuant to a
12 written contract between the individual and a person whose
13 principal business is providing demonstrators to third parties
14 for such purposes and the contract provides that the
15 individual will not be treated as an employee with respect to
16 the services for federal tax purposes.

17 "(25) Services performed by an individual committed
18 to a penal institution.

19 "(c) "Institution of higher education," for the
20 purposes of this chapter, means an educational institution
21 which:

22 "(1) Admits as regular students only individuals
23 having a certificate of graduation from a high school, or the
24 recognized equivalent of such a certificate;

25 "(2) Is legally authorized in this state to provide
26 a program of education beyond high school;

1 "(3) Provides an educational program for which it
2 awards a bachelor's or higher degree, or provides a program
3 which is acceptable for full credit toward such a degree, or a
4 program of postgraduate or postdoctoral studies, or a program
5 of training to prepare students for gainful employment in a
6 recognized occupation.

7 "(d) For the purposes of this chapter the term
8 "educational institution" means an educational institution
9 (including an institution of higher education as defined in
10 subsection (c) of this section) in which:

11 "(1) Participants, trainees, or students are offered
12 an organized course of study or training designed to transfer
13 to them knowledge, skills, information, doctrines, attitudes,
14 or abilities from, by, or under the guidance of an
15 instructor(s) or teacher(s).

16 "(2) It is approved, licensed, or issued a permit to
17 operate as a school by the State Department of Education or
18 other government agency that is authorized within the state to
19 approve, license, or issue a permit for the operation of a
20 school.

21 "(3) The courses of study or training which it
22 offers may be academic, technical, trade, or preparation for
23 gainful employment in a recognized occupation, as opposed to
24 study or training in the social graces or skills or whose
25 primary purpose is to provide baby-sitting or day care
26 services although some learning activities may be included.

1 "In any particular case, the question of whether or
2 not an institution is an educational institution (other than
3 an institution of higher education) within the meaning of the
4 criteria described above will depend on what that particular
5 institution actually does.

6 "(e) "Hospital" means an institution which has been
7 licensed, certified or approved by the State Board of Health
8 or the State Department of Mental Health and Mental
9 Retardation as a hospital or a similar institution operated by
10 the state or any of its political subdivisions or by an
11 instrumentality of either of the foregoing.

12 "(f) If the services performed during one half or
13 more of any pay period by an employee for the employing unit
14 employing him or her constitute employment, all of the
15 services of such employee for such period shall be deemed to
16 be employment, but if the services performed during more than
17 one half of any such pay period by an employee for the
18 employing unit employing him or her do not constitute
19 employment, then none of the services of such employee for
20 such period shall be deemed to be employment. As used in this
21 subsection the term "pay period" means a period (of not more
22 than 31 consecutive days) for which a payment or remuneration
23 is ordinarily made to the employee by the employing unit
24 employing the employee."

25 Section 2. This act shall become effective on the
26 first day of the third month following its passage and
27 approval by the Governor, or its otherwise becoming law.

