

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

FILED SENATE
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SENATE DRS15203-LR-41A (02/04)

Short Title: UI/Direct Sellers/Nonemployee Status. (Public)

Sponsors: Senator Tarte (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE UNEMPLOYMENT INSURANCE LAWS TO CLARIFY THAT
3 A DIRECT SELLER IS NOT AN EMPLOYEE.

4 The General Assembly of North Carolina enacts:

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

6 "(b) Definitions. – The following definitions apply in this Chapter:

7 ...

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

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

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

14 1. Service performed by an independent contractor.

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

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

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

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

23 4. Service performed by an individual engaged in the trade or
24 business of selling or soliciting the sale of consumer products
25 (including services or other intangibles) in the home or other
26 than in a permanent retail establishment:

27 A. Pursuant to a written contract between the individual
28 and the person for whom the services are performed
29 and the contract expressly provides that the individual
30 will not be treated as an employee for federal and
31 State tax purposes; or

32 B. To any buyer on a buy-sell basis, a
33 deposit-commission basis, or any similar basis for
34 resale by the buyer or any other person in the home or
35 other than in a permanent retail establishment, if
36 substantially all the remuneration (whether or not paid



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in cash) for the performance of the services is (i) directly related to sales or other output, including the performance of services, rather than to the number of hours worked and (ii) pursuant to a written contract between the individual and the person for whom the services are performed and the contract expressly provides that the individual will not be treated as an employee for federal and State tax purposes.

5. Service performed by an individual engaged in the trade or business of selling or soliciting the sale of consumer products (including services or other intangibles) in a permanent retail establishment pursuant to a written contract between the individual and the owner of the retail establishment that the individual will not be treated as an employee for federal and State tax purposes if:

- A. The individual receives no remuneration from the owner of the retail establishment;
- B. The owner of the retail establishment has no control over the activities of the individual while the individual is at the establishment; and
- C. The individual's activities at the retail establishment are for the sole purpose of selling to or soliciting sales from persons who frequent the retail establishment."

SECTION 2. This act is effective when it becomes law.