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SECTION 1. SECTION 95-25.2 OF CHAPTER 95 [DEPARTMENT OF LABOR AND LABOR REGULATIONS] IS AMENDED TO READ AS FOLLOWS:

Section 95-25.2. Definitions

In this Article, unless the context otherwise requires:

(1) "Agriculture" includes farming in all its branches performed by a farmer or on a farm as an incident to or in conjunction with farming operations.

(2) "Commissioner" means the Commissioner of Labor.

(3) "Employ" means to suffer or permit to work.

(4) "Employee" includes any individual employed by an employer.

(5) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee.

(6) "Establishment" means a physical location where business is conducted.

(7) "The Fair Labor Standards Act" means the Fair Labor Standards Act of 1938, as amended and as the same may be amended from time to time by the United States Congress.

(8) "Hours worked" includes all time an employee is employed.

(9) "Payday" means that day designated for payment of wages due by virtue of the employment relationship.

(10) "Pay periods" may be daily, weekly, biweekly, semimonthly, or monthly.

(11) "Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons. For the purposes of G.S. 95-25.2, [G.S. 95-25.3](#), [G.S. 95-25.14](#), and [G.S. 95-25.20](#), it also means the State of North Carolina, any city, town, county, or municipality, or any State or local agency or instrumentality of government. The Government of the United States and any agency of the United States (including the United States Postal Service and Postal Rate Commission) are not included as persons for any purpose under this Article.

(12) "Seasonal food service establishment" means a restaurant, food and drink stand or other establishment generally recognized as a commercial food service establishment, preparing and serving food to the public but operating 180 days or less per year.

(13) "Seasonal religious or nonprofit educational conference center or a seasonal amusement or recreational establishment" means an establishment which does not operate for more than seven months in any calendar year, or during the preceding calendar year had average receipts for any six months of such year of not more than thirty-three and one-third percent (33 ⅓ %) of its average receipts for the other six months of that year.

(14) "Tipped employee" means any employee who customarily receives more than twenty dollars (\$20.00) a month in tips.

(15) "Tip" shall mean any money or part thereof over and above the actual amount due a business for goods, food, drink, services or articles sold which is paid in

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cash or by credit card, or is given to or left for an employee by a patron or patrons of the business where the employee is employed.

(16) “Wage” paid to an employee means compensation for labor or services rendered by an employee whether determined on a time, task, piece, job, day, commission, or other basis of calculation, and the reasonable cost as determined by the Commissioner of furnishing employees with board, lodging, or other facilities. For the purposes of [G.S. 95-25.6](#) through [G.S. 95-25.13](#) “wage” includes sick pay, vacation pay, severance pay, commissions, bonuses, and other amounts promised when the employer has a policy or a practice of making such payments.

(17) “Workweek” means any period of 168 consecutive hours.

(18) “Enterprise” means the related activities performed either through unified operations or common control by any person or persons for a common business purpose and includes all such activities whether performed in one or more establishments or by one or more corporate units but shall not include the related activities performed for such enterprise by an independent contractor or franchisee.

(19) “Marketplace contractor” means a person that enters into an agreement with a marketplace platform to use the platform’s online-enabled application, software, web site, or system to receive service requests from third parties and does not perform any of the service requests at or from a physical business location operated by the marketplace platform.

(20) “Marketplace platform” means a person that operates an online-enabled application, software, web site, or system that facilitates the provision of services by marketplace contractors to individuals or entities seeking such services and accepts service requests from the public only through its online-enabled application, software, web site or system.

SECTION 2. SECTION 95-25.14 OF CHAPTER 95 [DEPARTMENT OF LABOR AND LABOR REGULATIONS] IS AMENDED TO READ AS FOLLOWS:

Section 95-25.14. Exemptions

(a) The provisions of [G.S. 95-25.3](#) (Minimum Wage), [G.S. 95-25.4](#) (Overtime), and [G.S. 95-25.5](#) (Youth Employment), and the provisions of [G.S. 95-25.15\(b\)](#) (Record Keeping) as they relate to these exemptions, do not apply to:

- (1) Any person employed in an enterprise engaged in commerce or in the production of goods for commerce as defined in the Fair Labor Standards Act:
 - a. Except as otherwise specifically provided in [G.S. 95-25.5](#);
 - b. Notwithstanding the above, any employee other than a learner, apprentice, student, or handicapped worker as defined in the Fair Labor Standards Act who is not otherwise exempt under the other provisions of this section, and for whom the applicable minimum wage under the Fair Labor Standards Act is

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less than the minimum wage provided in [G.S. 95-25.3](#), is not exempt from the provisions of [G.S. 95-25.3](#) or [G.S. 95-25.4](#);

c. Notwithstanding the above, any employer or employee exempt from the minimum wage, overtime, or child labor requirements of the Fair Labor Standards Act for whom there is no comparable exemption under this Article shall not be exempt under this subsection except that where an exemption in the Fair Labor Standards Act provides a method of computing overtime which is an alternative to the method required in [29 U.S.C.S. § 207\(a\)](#), the employer or employee subject to that alternate method shall be exempt from the provisions of [G.S. 95-25.4\(a\)](#); provided that, persons not employed at an enterprise described in subdivision (1) of this subsection shall also be subject to the same alternative methods of overtime calculation in the circumstances described in the Fair Labor Standards Act exemptions providing those alternative methods;

(2) Any person employed in agriculture, as defined under the Fair Labor Standards Act;

(3) Any person employed as a domestic, including baby sitters and companions, as defined under the Fair Labor Standards Act;

(4) Any person employed as a page in the North Carolina General Assembly or in the Governor's Office;

(5) Bona fide volunteers in medical, educational, religious, or nonprofit organizations where an employer-employee relationship does not exist;

(6) Persons confined in and working for any penal, correctional or mental institution of the State or local government;

(7) Any person employed as a model, or as an actor or performer in motion pictures or theatrical, radio or television productions, as defined under the Fair Labor Standards Act, except as otherwise specifically provided in [G.S. 95-25.5](#);

(8) Any person employed by an outdoor drama in a production role, including lighting, costumes, properties and special effects, except as otherwise specifically provided in [G.S. 95-25.5](#); but this exemption does not include such positions as office workers, ticket takers, ushers and parking lot attendants.

(b) The provisions of [G.S. 95-25.3](#) (Minimum Wage) and [G.S. 95-25.4](#) (Overtime), and the provisions of [G.S. 95-25.15\(b\)](#) (Record Keeping) as they relate to these exemptions, do not apply to:

(1) Any employee of a boys' or girls' summer camp or of a seasonal religious or nonprofit educational conference center;

(2) Any person employed in the catching, processing or first sale of seafood, as defined under the Fair Labor Standards Act;

(3) The spouse, child, or parent of the employer or any person qualifying as a dependent of the employer under the income tax laws of North Carolina;

(4) Any person employed in a bona fide executive, administrative, professional or outside sales capacity, as defined under the Fair Labor Standards Act;

(5) Repealed by Laws 1989, c. 687, § 2.

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(6) Any person while participating in a ridesharing arrangement as defined in [G.S. 136-44.21](#);

(7) Any person who is employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker, as defined in the Fair Labor Standards Act;

(8) Any marketplace contractor where an employer-employee relationship is deemed not to exist pursuant to G.S. 95-25.24B(a).

(b1) The provisions of [G.S. 95-25.3](#) (Minimum Wage) and [G.S. 95-25.4](#) (Overtime), and the provisions of [G.S. 95-25.15\(b\)](#) (Record Keeping) as they relate to the exemptions provided for in this subsection, do not apply to any of the following:

(1) Hours worked as a bona fide volunteer firefighter in an incorporated, nonprofit volunteer or community fire department.

(2) Hours worked as a bona fide volunteer rescue and emergency medical services personnel in an incorporated, nonprofit volunteer or community fire department, or an incorporated, nonprofit rescue squad.

Hours worked in accordance with this subsection shall not be considered hours worked for purposes of [G.S. 95-25.3](#) or [G.S. 95-25.4](#).

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

(1) Drivers, drivers' helpers, loaders and mechanics, as defined under the Fair Labor Standards Act;

(2) Taxicab drivers;

(3) Seamen, employees of railroads, and employees of air carriers, as defined under the Fair Labor Standards Act;

(4) Salespersons, mechanics and partsmen employed by automotive, truck, and farm implement dealers, as defined under the Fair Labor Standards Act;

(5) Salespersons employed by trailer, boat, and aircraft dealers, as defined under the Fair Labor Standards Act;

(6) Live-in child care workers or other live-in employees in homes for dependent children;

(7) Radio and television announcers, news editors, and chief engineers, as defined under the Fair Labor Standards Act.

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

(d) The provisions of this Article do not apply to the State of North Carolina, any city, town, county, or municipality, or any State or local agency or instrumentality of government, except for the following provisions, which do apply:

(1) The minimum wage provisions of [G.S. 95-25.3](#);

(2) The definition provisions of [G.S. 95-25.2](#) necessary to interpret the applicable provisions;

(3) The exemptions of subsections (a) and (b) of this section;

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(4) The complainant protection provisions of G.S. 95-25.20.

(e) Employment in a seasonal recreation program by the State of North Carolina, any city, town, county, or municipality, or any State or local agency or instrumentality of government, is exempt from all provisions of this Article, including G.S. 95-25.3 (Minimum Wage).

SECTION 3. CHAPTER 95 [DEPARTMENT OF LABOR AND LABOR REGULATIONS] IS AMENDED TO ADD A NEW SECTION 95-25.24B TO READ AS FOLLOWS:

Section 95-25.24B. Marketplace contractor status

(a) A marketplace contractor shall not be deemed to be an employee of a marketplace platform if the marketplace contractor enters into a written contract with the marketplace platform that provides for all of the following:

(i) The marketplace contractor shall be an independent contractor with respect to the marketplace platform;

(ii) The marketplace platform shall not unilaterally prescribe specific hours during which the marketplace contractor must be available to accept service requests from third party individuals or entities submitted through the marketplace platform's online-enabled application, software, web site, or system;

(iii) The marketplace platform shall not prohibit the marketplace contractor from using any online-enabled application, software, web site, or system offered by other marketplace platforms;

(iv) The marketplace platform shall not restrict the contractor from engaging in any other occupation or business;

(v) The marketplace contractor shall bear all or substantially all of the contractor's own expenses that are incurred by the contractor in performing the services;

(vi) The marketplace platform shall not provide on-site supervision during the performance of the services by the marketplace contractor;

(vii) The marketplace contractor shall not require the contractor to use specific materials, supplies or equipment in performing the services; and

(viii) That the marketplace contractor is obligated to pay federal and state income tax on any moneys earned pursuant to the contract relationship.

(b) Nothing in this section shall be construed to prohibit a marketplace platform from establishing that an employer-employee relationship does not exist with a marketplace contractor pursuant to any other provision of law if the conditions of subsection (a) of this section are not met.

(c) Subsection (a) shall not apply to a marketplace contractor where the services performed by the marketplace contractor are performed at or from a physical business location operated by the marketplace platform.

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(d) Nothing in this section shall be construed to affect the assessment, collection or reporting of sales or income tax from a marketplace contractor or marketplace platform.

SECTION 4. SECTION 96-1 OF CHAPTER 96 [EMPLOYMENT SECURITY] IS AMENDED TO READ AS FOLLOWS:

Section 96-1. Title and definitions

(a) Title.--This Chapter shall be known and may be cited as the “Employment Security Law.”

(b) Definitions.--The following definitions apply in this Chapter:

(1) Agricultural labor.--Defined in section 3306 of the Code.

(2) Average weekly insured wage.--The weekly rate obtained by dividing the total wages reported by all insured employers for a calendar year by the average monthly number of individuals in insured employment during that year and then dividing that quotient by 52.

(3) Base period.--The first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year.

(4) Benefit.--Compensation payable to an individual with respect to the individual's unemployment.

(5) Benefit year.--The fifty-two-week period beginning with the first day of a week with respect to which an individual first files a valid claim for benefits and registers for work. If the individual is payroll attached, the benefit year begins on the Sunday preceding the payroll week ending date. If the individual is not payroll attached, the benefit year begins on the Sunday of the calendar week with respect to which the individual filed a valid claim for benefits and registered for work.

(6) Code.--Defined in [G.S. 105-228.90](#).

(7) Computation date.--August 1 of each year.

(8) Department.--The North Carolina Department of Commerce.

(9) Division.--The Department's Division of Employment Security.

(10) Employee.--Defined in section 3306 of the Code.

(11) Employer or employing unit.--Any of the following:

a. An employer as defined in section 3306 of the Code.

b. A State or local governmental unit required to provide unemployment compensation coverage to its employees under section 3309 of the Code.

c. A nonprofit organization required to provide unemployment compensation coverage to its employees under section 3309 of the Code.

d. An Indian tribe required to provide unemployment compensation coverage to its employees under section 3309 of the Code.

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

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- a. Additions.--The term includes service to a governmental unit, a nonprofit organization, or an Indian tribe as described in 3306(c)(7) and 3306(c)(8) of the Code.
- b. Exclusions.--The term excludes all of the following:
 1. Service performed by an independent contractor.
 2. Service performed for a governmental entity or nonprofit organization under 3309(b) and 3309(c) of the Code.
 3. Service by one or more of the following individuals if the individual is authorized to exercise independent judgment and control over the performance of the work and is compensated solely by way of commission:
 - A. A real estate broker, as defined in [G.S. 93A-2](#).
 - B. A securities salesman, as defined in [G.S. 78A-2](#).
 4. Service performed by a marketplace contractor where an employer-employee relationship is deemed not to exist pursuant to G.S. 95-25.24B(a).

SECTION 5. SECTION 97-13 OF CHAPTER 97 [WORKERS' COMPENSATION ACT] IS AMENDED TO READ AS FOLLOWS:

Section 97-13. Exceptions from Provisions of Article

(a) Employees of Certain Railroads.--This Article shall not apply to railroads or railroad employees nor in any way repeal, amend, alter or affect Article 8 of Chapter 60 or any section thereof relating to the liability of railroads for injuries to employees, nor upon the trial of any action in tort for injuries not coming under the provisions of this Article, shall any provision herein be placed in evidence or be permitted to be argued to the jury. Provided, however, that the foregoing exemption to railroads and railroad employees shall not apply to employees of a State-owned railroad company, as defined in [G.S. 124-11](#), or to electric street railroads or employees thereof; and this Article shall apply to electric street railroads and employees thereof and to this extent the provisions of Article 8 of Chapter 60 are hereby amended.

(b) Casual Employment, Domestic Servants, Farm Laborers, Federal Government, Employer of Less than Three Employees.--This Article shall not apply to casual employees, farm laborers when fewer than 10 full-time nonseasonal farm laborers are regularly employed by the same employer, federal government employees in North Carolina, and domestic servants, nor to employees of such persons, nor to any person, firm or private corporation that has regularly in service less than three employees in the same business within this State, except that any employer without regard to number of employees, including an employer of domestic servants, farm laborers, or one who previously had exempted himself, who has purchased workers' compensation insurance to cover his compensation liability shall be conclusively presumed during life of the policy to have accepted the provisions of this Article from the effective date of said policy and

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his employees shall be so bound unless waived as provided in this Article; provided however, that this Article shall apply to all employers of one or more employees who are employed in activities which involve the use or presence of radiation.

(c) Prisoners.--This Article shall not apply to prisoners being worked by the State or any subdivision thereof, except to the following extent: Whenever any prisoner assigned to the Division of Adult Correction and Juvenile Justice of the Department of Public Safety shall suffer accidental injury or accidental death arising out of and in the course of the employment to which he had been assigned, if there be death or if the results of such injury continue until after the date of the lawful discharge of such prisoner to such an extent as to amount to a disability as defined in this Article, then such discharged prisoner or the dependents or next of kin of such discharged prisoner may have the benefit of this Article by applying to the Industrial Commission as any other employee; provided, such application is made within 12 months from the date of the discharge; and provided further that the maximum compensation to any prisoner or to the dependents or next of kin of any deceased prisoner shall not exceed thirty dollars (\$30.00) per week and the period of compensation shall relate to the date of his discharge rather than the date of the accident. If any person who has been awarded compensation under the provisions of this subsection shall be recommitted to prison upon conviction of an offense committed subsequent to the award, such compensation shall immediately cease. Any awards made under the terms of this subsection shall be paid by the Department of Public Safety from the funds available for the operation of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety. The provisions of [G.S. 97-10.1](#) and [97-10.2](#) shall apply to prisoners and discharged prisoners entitled to compensation under this subsection and to the State in the same manner as said section applies to employees and employers.

(c1) Certain Inmates.--Notwithstanding the thirty dollars (\$30.00) per week limit in subsection (c) of this section, the average weekly wage of inmates employed pursuant to the Prison Industry Enhancement Program shall be calculated pursuant to [G.S. 97-2\(5\)](#).

(d) Sellers of Agricultural Products.--This Article shall not apply to persons, firms or corporations engaged in selling agricultural products for the producers thereof on commission or for other compensation, paid by the producers, provided the product is prepared for sale by the producer.

(e) Marketplace contractors.-- This Article shall not apply to marketplace contractors where an employer-employee relationship is deemed not to exist pursuant to G.S. 95-25.24B(a).

SECTION 6. IF ANY SECTION IN THIS ACT OR ANY PART OF ANY SECTION IS DECLARED INVALID OR UNCONSTITUTIONAL, THE DECLARATION SHALL NOT AFFECT THE VALIDITY OR CONSTITUTIONALITY OF THE REMAINING PORTIONS.