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CHAPTER 27.

EMPLOYMENT SECURITY‑‑GENERAL PROVISIONS

ARTICLE 1.

SHORT TITLE; PURPOSE; CONSTRUCTION; AMENDMENTS

**SECTION 41‑27‑10.** Short title.

Chapters 27 through 41 of this Title shall be known and may be cited as the “South Carolina Employment Security Law.”

**SECTION 41‑27‑20.** Declaration of State public policy.

Without intending that this section shall supersede, alter or modify the specific provisions contained in Chapters 27 through 41 of this Title, but as a guide to the interpretation and application of Chapters 27 through 41 of this Title, the public policy of this State is declared to be as follows: Economic insecurity due to unemployment is a serious menace to health, morals and welfare of the people of this State; involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the General Assembly to prevent its spread and to lighten its burden which so often falls with crushing force upon the unemployed worker and his family; the achievement of social security requires protection against this greatest hazard of our economic life; this can be provided by encouraging the employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The General Assembly therefore declares that in its considered judgment the public good and the general welfare of the citizens of this State require the enactment of this measure, under the police powers of the State, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

**SECTION 41‑27‑30.** Construction.

Nothing in Chapters 27 through 41 of this Title shall be construed to cause the Commission or the courts of this State in interpreting such chapters to be bound by interpretations as to liability or nonliability of employers by Federal administrative agencies, nor is it the intent of the General Assembly to require an identical coverage of employers under such chapters with that under Section 3101 et seq. of the Federal Internal Revenue Code.

**SECTION 41‑27‑40.** Amendments.

The General Assembly reserves the right to amend or repeal all or any part of Chapters 27 through 41 of this Title at any time and there shall be no vested private right of any kind against any such amendment or repeal. All the rights, privileges, and immunities conferred by such chapters or acts done pursuant thereto shall exist subject to the power of the General Assembly to amend or repeal such chapters at any time.

ARTICLE 3.

DEFINITIONS

**SECTION 41‑27‑110.** Generally.

As used in Chapters 27 through 41 of this Title, unless the context clearly requires otherwise, the terms defined in the following sections shall have the meanings therein ascribed to them.

**SECTION 41‑27‑120.** Agricultural labor.

The term “agricultural labor” includes all service performed:

(1) On a farm, in the employ of any person, in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry, pigeons and fur‑bearing animals and wildlife;

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement or maintenance of such farm and its tools and equipment or in salvaging timber or clearing land of brush and other debris left by a hurricane, if a major part of such service is performed on a farm;

(3) In connection with the production or harvesting of any commodity defined as an agricultural commodity in Section 15(g) of the Federal Agricultural Marketing Act, as amended, or in connection with the ginning of cotton, or cleaning of seed, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes.

(4) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivery to storage or to market or to a carrier for transportation to market in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one half of the commodity with respect to which such service is performed;

(5) In the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in paragraph (1) of this section, but only if such operators produced more than one half of the commodity with respect to which such service is performed;

(6) The provisions of paragraphs (4) and (5) shall not be deemed to be applicable with respect to services performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(7) On a farm operated for profit if such service is not in the course of the employer’s trade or business or is domestic service in the private home of the employer.

(8) As used in this section the term “farm” includes stock, dairy, poultry, pigeons, fruit, fur‑bearing animals and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

**SECTION 41‑27‑130.** Annual payroll.

“Annual payroll” means the total amount of wages subject to the contribution provisions of Chapters 27 through 41 of this Title which are paid by an employer during a period of twelve consecutive months.

**SECTION 41‑27‑140.** Average weekly wage.

The average weekly wage of an insured worker shall be determined by dividing his total wages paid for insured work in that quarter of his base period in which such wages were highest by thirteen.

**SECTION 41‑27‑150.** Base period.

“Base period” means the first four of the last five completed calendar quarters immediately preceding the first day of an individual’s benefit year; provided, that in the case of a combined wage claim filed by an individual in accord with an arrangement entered into by the Commission under the provision of Section 41‑29‑140(2) the base period shall be that applicable under the law of the paying state.

**SECTION 41‑27‑160.** Benefit year.

“Benefit year” means the one‑year period beginning with the day as of which an insured worker first files a request for determination of his insured status, and thereafter the one‑year period beginning with the day as of which he next files such request after the end of his last preceding “benefit year”; provided, that in the case of a combined wage claim filed by an individual in accord with an arrangement entered into by the Commission under the provisions of Section 41‑29‑140(2) the benefit year shall be that applicable under the law of the paying state. The filing of a notice of unemployment shall be deemed a request for determination of insured status if a current benefit year has not previously been established. Requests for determination of insured status shall be made in accordance with such regulations as the Commission may prescribe.

**SECTION 41‑27‑170.** Benefits.

“Benefits” means the money payments payable to an individual as provided in Chapters 27 through 41 of this Title with respect to his unemployment.

**SECTION 41‑27‑180.** Claimant.

“Claimant” means an individual who has filed a request for a determination of insured status, a request for initiation of a claim series in a benefit year, a notice of unemployment, a certification for waiting‑week credit, or a claim for benefits.

**SECTION 41‑27‑190.** Commission.

“Commission” means the South Carolina Employment Security Commission.

**SECTION 41‑27‑200.** Contributions.

“Contributions” means the money payment required by Chapter 31, Article 1 to be made into the State unemployment compensation fund by an employer.

**SECTION 41‑27‑210.** Employer.

“Employer” means:

(1) Any employing unit which during any calendar year prior to January 1, 1972, in each of twenty different weeks, whether or not such weeks were consecutive, had in employment four or more individuals, irrespective of whether the same individuals were employed in each such week. For the purpose of this section, active officers of a corporation shall be counted as in employment.

(2) Any employing unit, which, after December 31, 1971:

(a) In any calendar quarter in either the current or preceding calendar year paid for service in employment wages of fifteen hundred dollars or more; or

(b) For some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding year, had in employment at least one individual (irrespective of whether the same individual was in employment in each such day);

(3) Any individual or other legal entity which acquired substantially all of the business of another which at the time of such acquisition was an employer subject to Chapters 27 through 41 of this Title and continues such acquired business; provided, however, that if only a part of the business of another is acquired the employing unit acquiring such part shall not be deemed an employer unless such part, if conducted separately, would have been liable as an employer under such chapters.

(4) Any individual or other legal entity which acquired substantially all of the business of another employing unit, if the employment record of such employing unit subsequent to such acquisition, together with the employment record of the acquired business prior to such acquisition, both within the same calendar year, will be sufficient to constitute such employing unit an employer subject to Chapters 27 through 41 of this Title under item (2) of this section; provided, however, that if only a part of the business of another is acquired by an individual or other legal entity the employment record of such part prior to acquisition shall be considered and not the whole employment record of the business from which such part was acquired as if such part was conducted.

(5) Any employing unit for which:

(a) Service in employment as defined in Section 41‑27‑230(2)(a) is performed after December 31, 1971; or

(b) Service in employment as defined in Section 41‑27‑230(2)(b) is performed after December 31, 1977.

(6) Any employing unit for which service in employment as defined in Section 41‑27‑230(3) is performed after December 31, 1971.

(7) Any employing unit for which service in employment as defined in Section 41‑27‑230(5) is performed after December 31, 1977.

(8) Any employing unit for which service in employment as defined in Section 41‑27‑230(6) is performed after December 31, 1977.

(9) Any employing unit which has elected to become fully subject to Chapters 27 through 41 of this Title pursuant to Section 41‑37‑20.

(10)(a) In determining whether or not an employing unit for which service other than domestic service is also performed is an employer under paragraphs (2), (5), (6), or (7) of this section, the wages paid or the employment of an employee performing domestic service after December 31, 1977, shall not be taken into account.

(b) In determining whether or not an employing unit for which service other than agricultural labor is also performed is an employer under paragraphs (2), (5), (6), or (8) of this section, the wages paid or the employment of an employee performing service in agricultural labor after December 31, 1977, shall not be taken into account. If an employing unit is determined an employer of agricultural labor, such employing unit shall be determined an employer for purposes of paragraph (2) of this section.

(11) For purposes of paragraphs (2), (6), (7) and (8), employment shall include service which would constitute employment but for the fact that such service is deemed to be performed entirely within another state pursuant to an election under an arrangement entered into in accordance with Section 41‑27‑550 by the Commission and an agency charged with the administration of any other state or federal unemployment compensation law.

(12) For purposes of paragraphs (2)(b), (4) and (7), if any calendar week includes both December thirty‑first and January first, the days of that week up to January first shall be deemed one calendar week and the days beginning January first another such week.

(13) Any Native American tribe or tribal unit for which service in employment as defined in Chapters 27 through 41 of this title is performed.

(14) Any employing unit which is liable under the Federal Unemployment Tax Act, Section 3301 of the Internal Revenue Code of 1986, is a covered employer immediately upon having its first South Carolina employment, regardless of the number of employees working in South Carolina or the period for which they are employed.

**SECTION 41‑27‑220.** Employing unit.

“Employing unit” means any individual or type of organization, including any partnership, association, trust, estate, joint‑stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof or the legal representative of a deceased person, this State or any of its instrumentalities and subdivisions which has, or subsequent to January 1, 1935 has had, in its employ one or more individuals performing services for it within this State.

For the purpose of Chapters 27 through 41 of this Title, the following rule for the continuation of partnership shall apply:

(1) General rule. ‑ An existing partnership shall be considered as continuing if it is not terminated.

(2) Termination.‑‑(a) General Rule. ‑ For purposes of item (1), a partnership shall be considered as terminated only if

(i) No part of any business, financial operation or venture of the partnership continues to be carried on by any of its partners in a partnership, or

(ii) Within a twelve‑month period there is a sale or exchange of fifty percent or more of the total interest in partnership capital and profits.

(b) Special Rules.

(i) Merger or consolidation. ‑ In the case of the merger or consolidation of two or more partnerships, the resulting partnership shall, for purposes of this section, be considered the continuation of any merging or consolidating partnership whose members own an interest of more than fifty percent in the capital and profits of the resulting partnership.

(ii) Division of a partnership. ‑ In the case of a division of a partnership into two or more partnerships, the resulting partnerships, other than any resulting partnership the members of which had an interest of fifty percent or less in the capital and profits of the prior partnership, shall, for purposes of this section, be considered a continuation of the prior partnership.

**SECTION 41‑27‑230.** Employment.

“Employment” means:

(1) Any service performed prior to January 1, 1978, which was employment as defined in this subsection prior to such date and, subject to the other provisions of this subsection, service performed after December 31, 1977, for wages under a contract of hire, written or oral, expressed or implied, including service in interstate commerce by:

(a) Any officer of a corporation; or

(b) Any individual who, under the usual common law rules applicable in determining the employer‑employee relationship, has the status of an employee; or

(c) Any individual other than an individual who is an employee under subdivision (a) or (b) who performs services for remuneration for any employing unit:

(i) As an agent‑driver or commission‑driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk) or laundry or dry‑cleaning services, for his principal;

(ii) As a traveling or city salesman, other than as an agent‑driver or commission‑driver, engaged upon a full‑time basis in the solicitation on behalf of, and the transmission to, his principal (except for side‑line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants or similar establishments for merchandise for resale or supplies for use in their business operations; provided, that for purposes of subparagraph (1)(c), the term “employment” shall include services described in (i) and (ii) above performed after December 31, 1971, only if:

A. The contract of service contemplates that substantially all of the services are to be performed personally by such individual;

B. The individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation); and

C. The services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(2)(a) Service performed after December 31, 1971, by an individual in the employ of this State or any of its instrumentalities (or in the employ of this State and one or more other States or their instrumentalities) for a hospital or institution of higher education located in this State, or a political subdivision of this State which has elected to cover such service; provided, that such service is excluded from “employment” as defined in the Federal Unemployment Tax Act solely by reason of Section 3306(c)(7) of that act and is not excluded from “employment” under Section 41‑27‑230(4) of this Title.

(b) Service performed after December 31, 1977, in the employ of this State or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by this State and one or more other states or political subdivisions, or any service performed in the employ of any instrumentality of this State or any political subdivisions thereof, and one or more other states or political subdivisions; provided, that such service is excluded from “employment” as defined in the Federal Unemployment Tax Act by Section 3306(c)(7) of that act and is not excluded from “employment” under Section 41‑27‑230(4) of this Title.

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

(a) The service is excluded from “employment” as defined in the Federal Unemployment Tax Act solely by reason of Section 3306(c)(8) of that act; and

(b) The organization had four or more individuals in employment in each of twenty different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

(4) For the purposes of paragraphs (2) and (3) the term “employment” shall not apply to service excluded from employment by reason of Section 41‑27‑260(10).

(5) Service performed after December 31, 1977, by an individual in agricultural labor as defined in Section 41‑27‑120 of this Title when:

(a) Such service is performed for a person who:

(i) During any calendar quarter in either the current or preceding calendar year paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor (not taking into account service in agricultural labor performed before January 1, 1980, by an alien referred to in division (b) of this subparagraph); or

(ii) For some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor (not taking into account service performed before January 1, 1980, by an alien referred to in division (b) of this subparagraph), ten or more individuals regardless of whether they were employed at the same moment of time.

(b) Such service is not performed in agricultural labor if performed before January 1, 1980, by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to Sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act.

(c) For the purposes of this paragraph any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader:

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

(ii) If such individual is not an employee of such other person within the meaning of paragraph (1) of this section.

(d) For the purposes of this paragraph, in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person who is not treated as an employee of such crew leader under (c); such other person and not the crew leader shall be treated as the employer of such individual, and such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his own behalf or on behalf of such other person) for the service in agricultural labor performed for such other person.

(e) For the purposes of this paragraph, the term “crew leader” means an individual who:

(i) Furnished individuals to perform service in agricultural labor for any other person;

(ii) Pays (either on his own behalf or on behalf of such other person) the individuals so furnished by him for the service in agricultural labor performed by them, and

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

(6) Service performed after December 31, 1977, by an individual in domestic service, which includes all service for a person in the operation and maintenance of a private household, local college club or local chapter of a college fraternity or sorority as distinguished from service as an employee in the pursuit of an employer’s trade, occupation, profession, enterprise or vocation, and such service is performed for a person who paid cash remuneration of one thousand dollars or more after December 31, 1977, in the current calendar year or the preceding calendar year to individuals employed in such domestic service in any calendar quarter.

(7) The term “employment” shall include the service of an individual who is a citizen of the United States, performed outside the United States after December 31, 1971 (except in Canada, and in the case of the Virgin Islands after December 31, 1971, and prior to January 1 of the year following the year in which the United States Secretary of Labor approves the unemployment compensation law of the Virgin Islands under Section 3304(a) of the Internal Revenue Code of 1954) in the employ of an American employer (other than service which is deemed “employment” under the provisions of Section 41‑27‑230(9) and Section 41‑27‑230(11) of this section or the parallel provisions of another State’s law), if:

(a) The employer’s principal place of business in the United States is located in this State; or

(b) The employer has no place of business in the United States, but,

(i) the employer is an individual who is a resident of this State; or

(ii) the employer is a corporation which is organized under the laws of this State; or

(iii) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this State is greater than the number who are residents of any one other State; or

(c) None of the criteria of divisions (a) and (b) of this subparagraph are met but the employer has elected coverage in this State, or the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this State.

(d) An “American employer”, for the purpose of this paragraph, means a person who is an individual who is a resident of the United States; or a partnership if two‑thirds or more of the partners are residents of the United States; or a trust, if all of the trustees are residents of the United States; or a corporation organized under the laws of the United States or of any state.

(e) As used in this section, the term “United States” includes the states, the District of Columbia, the Commonwealth of Puerto Rico, and effective one day after the date on which the United States Secretary of Labor approves its unemployment compensation law under Section 3304(a) of the Internal Revenue Code of 1954, the term shall include the Virgin Islands.

(8) All service performed by an officer or member of the crew of an American vessel on or in connection with such vessel, if the operating office, from which the operations of such vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed and control is within this State; and

(9) The term “employment” shall include an individual’s entire service, performed within or both within and without this State, in the United States if:

(a) The service is localized in this State; or

(b) The service is not localized in any state but some of the service is performed in this State and:

(i) the base of operation or, if there is no base of operation, the place from which such service is directed or controlled is in this State; or

(ii) the base of operation or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual’s residence is in this State; or

(c) The service, wherever performed, is within the United States or Canada, if:

(i) such service is not covered under the unemployment compensation law of any other state or Canada; and

(ii) the place from which the service is directed or controlled is in this State.

(10) Services not covered under Item 7 of this section and performed entirely without this State, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to Chapters 27 through 41 of this Title if the individual performing such services is a resident of this State and the Commission approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to Chapters 27 through 41 of this Title.

(11) Service shall be deemed to be localized within a state if the service is performed entirely within such state, or if the service is performed both within and without such state, but the service performed without such state is incidental to the individual’s service within the state; for example, is temporary or transitory in nature or consists of isolated transactions.

**SECTION 41‑27‑235.** Employment by Native American tribes; benefits; contributions.

(A) The term “employment” means service performed in the employ of a Native American tribe, as defined in Section 3306(u) of the Federal Unemployment Tax Act (FUTA), if the service is excluded from “employment” as defined in FUTA solely by reason of Section 3306(C)(7), FUTA, and is not otherwise excluded from “employment” under this title.

(B) Benefits based on service in employment defined in this section are payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other service subject under this title.

(C)(1) Native American tribes or tribal units including subdivisions, subsidiaries, or business enterprises wholly owned by such tribes subject to this title shall pay contributions under the same terms and conditions as all other subject employers, unless they elect to pay into the state unemployment trust fund amounts equal to the amount of benefits attributable to service in the employ of the Native American tribe or tribal unit including all extended benefits paid for any reason.

(2) Native American tribes or tribal units that elect to pay benefits attributable to service in their employ but fail to reimburse the required payments, including interest and penalty assessments, within ninety days of the receipt of a bill, cause the Native American tribe to lose the option to make payments in lieu of contributions for the following tax year unless payment in full is received before the contribution rates for the next year are computed. The commission shall notify the United States Internal Revenue Service and the United States Department of Labor of a tribe or tribal unit’s failure to make required payments within ninety days of a final notice of delinquency.

(3) A Native American tribe that loses the option to make payments in lieu of contributions shall have that option reinstated if, after a period of one year, all contributions have been paid on a timely basis and no contributions, payments in lieu of contributions, penalties, or interest remain outstanding.

**SECTION 41‑27‑240.** Employment office.

“Employment office” means a free public employment office operated by this State or other office maintained for the purpose of serving applicants or claimants or maintained as a part of a state‑controlled system of public employment offices.

**SECTION 41‑27‑250.** Employment security administration fund.

“Employment security administration fund” means the employment security administration fund established by Chapters 27 through 41 of this Title, from which administrative expenses under such chapters shall be paid.

**SECTION 41‑27‑260.** Exempted employment.

The term “employment” as used in Chapters 27 through 41 of this Title shall not include:

(1) Labor engaged in the seafood industry, which is defined as persons employed in the commercial netting, catching, and gathering of seafood, and the processing of such seafood for the fresh market;

(2) Casual labor not in the course of the employing unit’s trade or business;

(3) Service performed by an individual in the employ of his son, daughter or spouse and service performed by a child under the age of eighteen in the employ of his father or mother;

(4) Service performed in the employ of the United States Government or any instrumentality of the United States immune under the Constitution of the United States from the contributions imposed by Chapters 27 through 41 of this Title, except that to the extent that the Congress of the United States shall permit states to require instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation act, all of the provisions of Chapters 27 through 41 of this Title shall be applicable to such instrumentalities and to services performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers; provided, that if this State shall not be certified for any year by the Secretary of Labor or his successors under the Federal Internal Revenue Code, the payments required of such instrumentalities with respect to such year shall be refunded by the Commission from the funds in the same manner and within the same period as is provided in Section 41‑31‑360 with respect to contributions erroneously collected;

(5) Service performed after December 31, 1977, in the employ of a governmental entity referred to in Section 41‑27‑230(2)(b), if such service is performed by an individual in the exercise of his duties;

(a) As an elected official or as the appointed successor of an elected official;

(b) As a member of a legislative body, or a member of the judiciary of a state or political subdivision;

(c) As a member of the State National Guard or Air National Guard;

(d) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency;

(e) In a position which, under or pursuant to the laws of this State, is designated as a major nontenured policymaking or advisory position, or a policymaking position the performance of the duties of which ordinarily does not require more than eight hours per week.

(6) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress; provided, that the Commission shall enter into agreements with the proper agencies under such act of Congress, which agreements shall become effective ten days after publication thereof in the manner provided in Section 41‑29‑130 for general rules, to provide reciprocal treatment to individuals who have after acquiring potential rights to benefits under Chapters 27 through 41 of this Title, acquired rights to unemployment compensation under such act of Congress or who have, after acquiring potential rights to unemployment compensation under such act of Congress, acquired rights to benefits under Chapters 27 through 41 of this Title;

(7) Service other than service performed as defined in Section 41‑27‑230(3) performed in the employ of a corporation, community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office, provided, that service performed in the employ of an organization operated for the primary purpose of carrying on a trade or business for profit shall not be exempt on the ground that all of its profits are payable to one or more organizations exempt under this paragraph;

(8) Service other than service performed as defined in Section 41‑27‑230(3) which is performed in any calendar quarter in the employ of any organization exempt from federal income tax under Section 501(a) (other than an organization described in Section 401(a)) or under Section 521 of the Federal Internal Revenue Code of 1954, if the remuneration for such service is less than fifty dollars;

(9) The term “employment” shall not include:

(a) Service performed 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;

(b) Service performed by an individual under the age of twenty‑two 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;

(c) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital, as defined in Section 41‑27‑280.

(10) For the purposes of Section 41‑27‑230(2) and (3), “employment” does not include service performed:

(a) in the direct employ of a church, convention, or association of churches or an organization operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church, convention, or association of churches; or

(b) by an ordained, a commissioned, or a 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 the order; or

(c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age, physical or mental deficiency, or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be absorbed readily in the competitive labor market by an individual receiving rehabilitation or remunerative work; or

(d) before January 1, 1978, for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution and after December 31, 1977, by an inmate of a custodial or penal institution; or

(e) as part of an unemployment work‑relief or work‑training program assisted or financed in whole or in part by a federal agency, an agency or political subdivision of a state, or an individual receiving work relief or work training, unless a federal law, rule, or regulation mandates unemployment insurance coverage to individuals in a particular work‑relief or work‑training program; or

(f) by an inmate who participates in a project designated by the Director of the Bureau of Justice Assistance pursuant to Public Law 90‑351.

(11) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(12) Service performed as a student nurse in the employ of a hospital or a nurses’ training school by an individual who is enrolled and is regularly attending classes in a nurses’ training school chartered or approved pursuant to state law, and service performed as an intern in the employ of a hospital by an individual who has completed a four years’ course in a medical school chartered and approved pursuant to state law;

(13) Service performed by an individual for an employer as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such employer is performed for remuneration solely by way of commission;

(14) Service other than service performed as defined in Section 41‑27‑230(3) by an individual for an employer as a real estate salesman or agent, if all such service performed by such individual for such employer is performed for remuneration solely by way of commission;

(15) Service performed in the employ of a foreign government, including service as a consular or other officer or employee or a nondiplomatic representative.

(16) “Agricultural labor” as such term is defined by Section 41‑27‑120 when performed by students who are enrolled and regularly attending classes for at least five months during a particular year at a secondary school or at an accredited college, university, or technical school and also when performed by part‑time persons who do not qualify as students hereunder but who at the conclusion of their agricultural labor would not qualify for any benefits under the provisions of the South Carolina Employment Security Law.

(17) Services performed as a member of a Native American tribal council or services in a fishing rights related activity of a Native American tribe by a member of such tribe for another member of such tribe or by a qualified Native American entity.

**SECTION 41‑27‑270.** Fund.

“Fund” means the unemployment compensation fund established by Chapters 27 through 41 of this Title, to which all contributions required and from which all benefits provided under such chapters shall be paid.

**SECTION 41‑27‑280.** Hospital.

“Hospital” means an institution which has been licensed or approved by the South Carolina Department of Health and Environmental Control as a hospital.

**SECTION 41‑27‑290.** Institution of higher education.

“Institution of higher education,” for the purpose of this section, means an educational institution which:

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

(2) Is legally authorized in this State to provide a program of education beyond high school;

(3) Provides an educational program for which it awards a bachelor’s or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(4) Is a public or other nonprofit institution.

(5) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this State are institutions of higher education for purposes of this section.

**SECTION 41‑27‑300.** Insured work.

“Insured work” means employment for employers.

**SECTION 41‑27‑310.** Insured worker.

An “insured worker” is an individual who has been paid wages in his base period for insured work equal to or exceeding one and one‑half times the total of his wages paid in the quarter of such base period in which his wages for insured work were highest; provided, however, that no individual shall qualify as an insured worker unless he has been paid at least nine hundred dollars in his base period for insured work and five hundred forty dollars in that quarter of his base period in which such wages were highest.

**SECTION 41‑27‑320.** Payments in lieu of contributions.

“Payments in lieu of contributions” means the money payments to the unemployment compensation fund required by the provisions of Section 41‑31‑630.

**SECTION 41‑27‑330.** Secretary of Labor.

“Secretary of Labor” means the United States Secretary of Labor.

**SECTION 41‑27‑340.** Educational institution.

“Educational institution” means any educational institution except an institution of higher education as defined in Section 41‑27‑290 of this Title:

(1) In which participants, trainees or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of instructors or teachers;

(2) Which is legally authorized in this State to provide a program of education; and

(3) Which offers a course of study or training which may be academic, technical trade, or preparation for gainful employment in a recognized occupation.

**SECTION 41‑27‑350.** State.

State includes, in addition to the states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and effective one day after the date on which the United States Secretary of Labor approves its unemployment compensation law under Section 3304(a) of the Internal Revenue Code of 1954, the term shall include the Virgin Islands.

**SECTION 41‑27‑360.** Statewide average weekly wage.

“Statewide average weekly wage” means the amount computed by the Commission as of July first of each year which shall be the aggregate amount of wages (irrespective of the limitation on the amount of wages subject to contributions by reason of Section 41‑27‑380(2)) reported by employers as paid during the first four of the last six completed calendar quarters prior to such date, divided by a figure representing fifty‑two times the twelve‑month average of the number of employees in the pay period containing the twelfth day of each month during the same four calendar quarters as reported by such employers.

**SECTION 41‑27‑370.** Unemployed.

(1) An individual is deemed “unemployed” in any week during which he performs no services and with respect to which no wages are payable to him or in any week of less than full‑time work if the wages payable to him with respect to such week are less than his weekly benefit amount. The commission must prescribe regulations applicable to unemployed individuals, making such distinctions in the procedures as to total unemployment, part‑total unemployment, partial unemployment of individuals attached to their regular jobs, and other forms of short‑time work, as the commission deems necessary.

(2) An individual is deemed “unemployed” in any week during which no governmental or other pension, retirement or retired pay, annuity, or other similar periodic payment which is attributable to his employment is payable to him or, if such payment is payable to him with respect to such weeks, the amount thereof is less than his weekly benefit amount. Each eligible individual who is unemployed in any week and who is receiving a governmental or other pension, retirement or retired pay, annuity, or other similar periodic payment which is attributable to his employment must be paid with respect to such week a benefit in an amount equal to his weekly benefit amount less the pension, retirement or retired pay, annuity, or other similar periodic payment payable to him with respect to such week. Such benefit if not a multiple of one dollar must be computed to the next lower multiple of one dollar. The amount of benefits payable to an individual for any week which begins after the effective date of the applicable provision in the Federal Unemployment Tax Act and which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or other similar periodic payment which is based on the previous work of such individual must be reduced (but not below zero) by an amount equal to the amount of such pension, retirement or retired pay, annuity, or other payment which is reasonably attributable to such week. However, if the provisions of the Federal Unemployment Tax Act permit, the requirements of this subsection shall only apply in the case of a pension, retirement or retired pay, annuity, or other similar periodic payment under a plan maintained (or contributed to) by a base period employer or chargeable employer.

In the event the individual has participated in any pension, retirement or retired pay, annuity, or other similar plan of the base period employer or chargeable employer by having made contributions to such plan, the weekly benefit amount payable to such individual for such week shall be reduced (but not below zero):

(a) by the pro‑rated weekly amount of the pension after deductions of that portion of the pension that is directly attributable to the percentage of the contributions made to the plan by such individual; or

(b) by no part of the pension if the entire contributions to the plan were provided by such individual, or by the individual and an employer (or any other person or organization) who is not a base period employer or chargeable employer; or

(c) by the entire pro‑rated weekly amount of the pension if item (a) or item (b) does not apply.

This provision is effective for all weeks commencing on or after August 29, 1982.

For purposes of this subsection, social security benefits are not considered a governmental or other pension, retirement or retired pay, annuity, or other similar periodic payment attributable to the beneficiary’s employment. As a result, the offset of social security will be reduced from 50% to 0% based on the fact that individuals are required to contribute to social security.

(3) No individual may be considered as unemployed in any week in which the commission finds that his unemployment is due to a vacation week with respect to which the individual is receiving or has received his regular wages. This subsection is not applicable to any claimant whose employer fails to comply, in respect to such vacation period, with the requirements of all regulations or procedures of the commission regarding the filing of notices, reports, information, or claims in connection with individual, group, or mass separations arising from the vacation.

(4) No individual may be considered as unemployed in any week (not to exceed two in any benefit year) in which the commission finds that his unemployment is due to a vacation week which is constituted a vacation period without pay by reason of a written contract between the employer and the employees or by reason of the employer’s vacation policy and practice to his employees. This provision applies only if it is found by the commission that employment will be available for the claimant with the employer at the end of a vacation period as described in this section. This subsection is not applicable to any claimant whose employer fails to comply, in respect to such vacation period, with the requirements of all regulations or procedures of the commission regarding the filing of notices, reports, information, or claims in connection with individual, group, or mass separations arising from the vacation.

**SECTION 41‑27‑380.** Wages.

(1) “Wages” means all remuneration paid for personal services, including commissions and bonuses, any sums paid to an employee by an employer pursuant to an order of the National Labor Relations Board or by private agreement, consent, or arbitration for loss of pay by reason of discharge and cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration paid in any medium other than cash is estimated and determined in accordance with regulations prescribed by the Commission. “Wages” includes all tip income (including charged tips) which are received while performing services which constitute employment and are included in a written statement furnished to the employer. “Wages” does not include:

(a) The amount of any payment with respect to services performed in behalf of an individual in its employ under a plan or system established by an employing unit which makes provision for individuals in its employ generally or for a class or classes of individuals (including any amount paid by an employing unit for insurance or annuities or into a fund to provide for any such payment), on account of (i) retirement, (ii) sickness or accident disability, (iii) medical and hospitalization expenses in connection with sickness or accident disability, or (iv) death, provided the individual is in its employ (A) has not the option to receive, instead of provisions for death benefits, any part of payment or, if the death benefit is insured, any part of the premiums (or contributions to premiums) paid by his employing unit and (B) has not the right, under the provisions of the plan, system, or policy of insurance providing for a death benefit, to assign the benefit or receive a cash consideration in lieu of the benefit either upon his withdrawal from the plan or system providing for the benefit or upon termination of the plan, system, or policy of insurance or of his services with the employing unit.

(b) Any amounts received from this State or the Federal Government by members of the South Carolina National Guard, the United States Naval Reserve, the Officers Reserve Corps, the Enlisted Reserve Corps, and the Reserve Corps of Marines as drill pay, including longevity pay and allowances.

(c) The payment by an employing unit (without deduction from the remuneration of the individual in its employ) of the tax imposed upon an individual in its employ, under Section 3101 of the Federal Internal Revenue Code, only if the service is agricultural labor or domestic service in a private home of the employer.

(d) Any payment (other than vacation pay or sick pay) made to an employee after the month in which he attains the age of sixty‑five, if he did not work for the employer in the period for which payment is made.

(e) Any remuneration paid in a medium other than cash for service performed in agricultural labor or domestic service.

(2) For the purpose of Chapter 31, Article 1, of this title, “wages” does not include that part of remuneration which, after remuneration equal to seven thousand dollars has been paid in a calendar year to an individual by an employer or his predecessor or with respect to employment during any calendar year, is paid to the individual by the employer during the calendar year unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. For the purposes of this subsection, employment includes service constituting employment under any unemployment compensation law of another state.

**SECTION 41‑27‑390.** Week.

“Week” means calendar week or such period of seven consecutive days as the Commission may by regulation prescribe. The Commission may likewise determine that a week shall be deemed to be “in,” “within” or “during” that benefit year which includes the greater part of such week.

**SECTION 41‑27‑410.** Employment security administrative contingency assessment.

Effective January 1, 1986, the employment security administrative contingency assessment is an assessment of six one‑hundredths of one percent to be assessed upon the wages as defined in Section 41‑27‑380(2) of all employers except those who have either elected to make payments in lieu of contributions as defined in Section 41‑31‑620 or are liable for the payment of contributions as defined in Section 41‑31‑620 or are liable for the payment of contributions and are classified as a state agency or any political subdivision or any instrumentality of the political subdivision as defined in Section 41‑27‑230(2) or have been assigned a contribution base rate of five and four‑tenths percent.

ARTICLE 5.

OTHER PROVISIONS

**SECTION 41‑27‑510.** Prescribing regulations as to unemployed individuals.

The Commission shall prescribe regulations applicable to unemployed individuals, making such distinctions in the procedures as to total unemployment, part‑total unemployment, partial unemployment of the individuals attached to their regular jobs and other forms of short‑time work as the Commission deems necessary.

**SECTION 41‑27‑520.** Included and excluded service.

If the services performed during one half or more of any pay period by an individual for the person employing him constitute employment, all the services of such individual for such period shall be deemed to be employment; but if the services performed during more than one half of any such pay period by an individual for the person employing him do not constitute employment, then none of the services of such individual for such period shall be deemed to be employment. As used in this section the term “pay‑period” means a period of not more than thirty‑one consecutive days for which a payment of remuneration is ordinarily made to the individual by the person employing him. This section shall not be applicable with respect to services performed in a pay period by an individual for the person employing him when any such service is excepted by item (8) of Section 41‑27‑260.

**SECTION 41‑27‑530.** Separate establishments deemed single employing unit.

All individuals performing services within this State for any employing unit which maintains two or more separate establishments within this State shall be deemed to be employed by a single employing unit for all the purposes of Chapters 27 through 41 of this Title.

**SECTION 41‑27‑540.** Individuals employed to assist agents or employees.

Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of Chapters 27 through 41 of this Title, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the work.

**SECTION 41‑27‑550.** Reciprocal agreements.

The Commission may enter into agreements with the appropriate agencies of other states or the Federal Government whereby individuals performing services in this and other States for a single employing unit under circumstances not specifically provided for in Section 41‑27‑230 or under similar provisions in the unemployment compensation laws of such other states shall be deemed to be engaged in employment performed entirely within this State or within one of such other states and whereby potential rights to benefits accumulative under the unemployment compensation laws of one or more states or under such law of the Federal Government or both may constitute the basis for the payment of benefits through a single appropriate agency under terms which the Commission finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund, and the Commission may enter into agreements with appropriate agencies of other states or the Federal Government administering unemployment compensation laws to provide that contributions on wages for services performed by an individual in more than one state for the same employer may be paid to the appropriate agency of one state.

**SECTION 41‑27‑560.** Prohibition of libel or slander actions.

No report, communication or any other such matter either oral or written from an employee or employer to the other or to the Commission or any of its agents, representatives or employees which shall have been written, sent, delivered or made in connection with the requirements and the administration of Chapters 27 through 41 of this Title shall be made the subject matter or basis of any suit for slander or libel in any court of the State.

**SECTION 41‑27‑570.** Defense of suits involving duties of Commission.

In case of a suit to enjoin the collection of the contributions provided for in Chapters 27 through 41 of this Title, to test the validity of such chapters or for any other purpose connected with its duties, the Commission shall be made a party thereto and the Attorney General or counsel for the Commission shall defend such suit in accordance with the provisions of Section 41‑27‑580.

**SECTION 41‑27‑580.** Representation of Commission in civil actions.

In any civil action to enforce the provisions of Chapters 27 through 41 of this Title the Commission and the State may be represented by any qualified attorney who is employed by the Commission and is designated by it for this purpose or, at the Commission’s request, by the Attorney General.

**SECTION 41‑27‑590.** Prosecution of criminal actions.

All criminal actions for violation of any provision of Chapters 27 through 41 of this Title or of any rules or regulations issued pursuant thereto shall be prosecuted by the Attorney General of the State or at his request and under his direction by the solicitor of any circuit or any prosecuting attorney in any court of competent jurisdiction in the county in which the employer has a place of business or the violator resides.

**SECTION 41‑27‑600.** Compromises.

The Commission may compromise any civil penalty or cause or action arising under the provisions of Chapters 27 through 41 of this Title instead of commencing suit thereon and may compromise any such case after suit thereon has been commenced. In such cases the Commission shall keep on file in its office the reasons for settlement by compromise, together with a statement on the amount of contribution imposed, the amount of additional contribution, penalty or interest imposed by law in consequence of neglect or delinquency and the amount actually paid in accordance with the terms of the compromise.

**SECTION 41‑27‑610.** Place where failure to perform acts deemed to occur.

The failure to do any act required by or under the provisions of Chapters 27 through 41 of this Title shall be deemed an act committed in part at the office of the Commission in Columbia.

**SECTION 41‑27‑620.** Commission’s certificate as prima facie evidence.

The certificate of the Commission to the effect that a contribution has not been paid, that a report has not been made, that information has not been furnished or that records have not been produced or made available for inspection, as required under Chapters 27 through 41 of this Title, shall be prima facie evidence thereof.

**SECTION 41‑27‑630.** Liability of State and Commission for payment of benefits.

Benefits shall be deemed to be due and payable under Chapters 27 through 41 of this Title only to the extent provided in such chapters and to the extent that moneys are available therefor to the credit of the unemployment compensation fund and neither the State nor the Commission shall be liable for any amount in excess of such sums.

**SECTION 41‑27‑640.** Extension of unemployment insurance coverage to political subdivisions mandated by P.L. 94‑566.

Notwithstanding the provisions of this act, any extension of unemployment insurance coverage to political subdivisions in this State mandated by P.L. 94‑566 shall be continued in effect at the option of the governing body of the political subdivision to the extent any part of the coverage mandated in P.L. 94‑566 upon state and local government is either declared unconstitutional by the Supreme Court of the United States, or is repealed by an act of Congress. If P.L. 94‑566 or the federal acts it amends is stayed pendente lite as to the employees of this State or one of its cities or counties by any court of competent jurisdiction, the coverage of all employees under this law is automatically stayed.