



# SENATE BILL 82: Achieving Business Efficiencies.

2017-2018 General Assembly

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<b>Committee:</b> Senate Rules and Operations of the Senate	<b>Date:</b> June 28, 2017
<b>Introduced by:</b> Sens. Brock, Tillman, Tucker	<b>Prepared by:</b> Greg Roney
<b>Analysis of:</b> Second Edition	Staff Attorney

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## **OVERVIEW:** *Senate Bill 82 would:*

- *Exclude direct sellers from coverage under State unemployment insurance (UI).*
- *Treat a franchisor as the employer of a franchisee's employee if:*
  - *Franchisee and franchisor jointly determine the employment relationship.*
  - *Franchisee and franchisor jointly control the employment relationship.*
- *Exempt an employee of a seasonal amusement or recreational establishment from State overtime and record keeping requirements and remove the authority of the Commissioner of Labor to allow this same group to be paid less than minimum wage.*

**CURRENT LAW:** Individuals representing companies that sell goods and services sold directly to consumers (e.g., Tupperware, Avon, Mary Kay) are covered under the State's unemployment insurance (UI) system if the agreement between the individual and company is an employer-employee relationship. The State UI system excludes independent contractors. The agreement between the individual and company could be employer-employee or independent contractor depending on the level of control exercised by the company. Under federal law, individuals working for direct sellers are not treated as employees (called "statutory non-employees") for federal unemployment tax (FUTA).

Under G.S. 95-25.24A, a franchisor is never the employer of a franchisee or the franchisee's employee.

Under G.S. 95-25.14(c), the following 7 groups are exempt from G.S. 95-25.4 (Overtime) and G.S. 95-25.15(b) (Record Keeping): (1) drivers, drivers' helpers, loaders and mechanics; (2) taxicab drivers; (3) seamen, employees of railroads, and employees of air carriers; (4) salespersons, mechanics and partsmen employed by automotive, truck, and farm implement dealers; (5) salespersons employed by trailer, boat, and aircraft dealers; (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.

## **BILL ANALYSIS:**

Section 1 would conform State UI law to federal UI law by excluding direct sellers from UI coverage based on the federal definition of direct seller.

Section 2 would create an exception to the rule that a franchisor is never the employer of a franchisee or the franchisee's employee. A franchisor will be the employer if both of the following apply:

- Franchisee and franchisor share in the determination of or codetermine the matters governing the essential terms and conditions of the employee's employment.

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- Franchisee and franchisor both directly and immediately control matters relating to the employment relationship, such as hiring, firing, discipline, supervision, and direction.

Section 3 would add a new group of workers exempt from G.S. 95-25.4 (Overtime) and G.S. 95-25.15(b) (Record Keeping): any employee of a seasonal amusement or recreational establishment. Section 3 would also remove the authority of the Commissioner of Labor to allow this same group (i.e., employees of a seasonal amusement or recreational establishment) to be paid less than the minimum wage allowed under G.S. 95-25.3.

**EFFECTIVE DATE:** Senate Bill 82 would be effective January 1, 2018.