

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 299*
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Short Title: Workers' Comp. for Pickup Firefighters-AB. (Public)

Sponsors: Senators Robinson; Albertson, Bingham, Carter, Harris, Martin of Pitt, Metcalf, Odom, Swindell, Thomas, Warren, Weinstein, and Wellons.

Referred to: Insurance and Consumer Protection.

March 5, 2001

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT PICKUP FIREFIGHTERS OF THE DIVISION OF
3 FOREST RESOURCES, DEPARTMENT OF ENVIRONMENT AND NATURAL
4 RESOURCES, ARE ELIGIBLE FOR COMPENSATION UNDER THE
5 WORKERS' COMPENSATION ACT.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 97-2(2) reads as rewritten:

8 "(2) Employee. – The term "employee" means every person engaged in an
9 employment under any appointment or contract of hire or
10 apprenticeship, express or implied, oral or written, including aliens,
11 and also minors, whether lawfully or unlawfully employed, but
12 excluding persons whose employment is both casual and not in the
13 course of the trade, business, profession or occupation of his employer,
14 and as relating to those so employed by the State, the term "employee"
15 shall include all officers and employees of the State, including such as
16 are elected by the people, or by the General Assembly, or appointed by
17 the Governor to serve on a per diem, part-time or fee basis, either with
18 or without the confirmation of the Senate; as relating to municipal
19 corporations and political subdivisions of the State, the term
20 "employee" shall include all officers and employees thereof, including
21 such as are elected by the people. The term "employee" shall include
22 members of the North Carolina national guard while on State active
23 duty under orders of the Governor and members of the North Carolina
24 State Defense Militia while on State active duty under orders of the
25 Governor. The term "employee" shall include deputy sheriffs and all
26 persons acting in the capacity of deputy sheriffs, whether appointed by
27 the sheriff or by the governing body of the county and whether serving

1 on a fee basis or on a salary basis, or whether deputy sheriffs serving
2 upon a full-time basis or a part-time basis, and including deputy
3 sheriffs appointed to serve in an emergency, but as to those so
4 appointed, only during the continuation of the emergency. The sheriff
5 shall furnish to the board of county commissioners a complete list of
6 all deputy sheriffs named or appointed by him immediately after their
7 appointment, and notify the board of commissioners of any changes
8 made therein promptly after such changes are made. Any reference to
9 an employee who has been injured shall, when the employee is dead,
10 include also his legal representative, dependents, and other persons to
11 whom compensation may be payable: Provided, further, that any
12 employee as herein defined of a municipality, county, or of the State of
13 North Carolina while engaged in the discharge of his official duty
14 outside the jurisdictional or territorial limits of the municipality,
15 county, or the State of North Carolina and while acting pursuant to
16 authorization or instruction from any superior officer, shall have the
17 same rights under this Article as if such duty or activity were
18 performed within the territorial boundary limits of his employer.

19 Every executive officer elected or appointed and empowered in
20 accordance with the charter and bylaws of a corporation shall be
21 considered as an employee of such corporation under this Article.

22 Any such executive officer of a corporation may, notwithstanding
23 any other provision of this Article, be exempt from the coverage of the
24 corporation's insurance contract by such corporation specifically
25 excluding such executive officer in such contract of insurance and the
26 exclusion to remove such executive officer from the coverage shall
27 continue for the period such contract of insurance is in effect, and
28 during such period such executive officers thus exempted from the
29 coverage of the insurance contract shall not be employees of such
30 corporation under this Article.

31 All county agricultural extension service employees who do not
32 receive official federal appointments as employees of the United States
33 Department of Agriculture and who are field faculty members with
34 professional rank as designated in the memorandum of understanding
35 between the North Carolina Agricultural Extension Service, North
36 Carolina State University, A & T State University and the boards of
37 county commissioners shall be deemed to be employees of the State of
38 North Carolina. All other county agricultural extension service
39 employees paid from State or county funds shall be deemed to be
40 employees of the county board of commissioners in the county in
41 which the employee is employed for purposes of workers'
42 compensation.

43 The term employee shall also include members of the Civil Air
44 Patrol currently certified pursuant to G.S. 143B-491(a) when

1 performing duties in the course and scope of a State approved mission
2 pursuant to Article 11 of Chapter 143B.

3 Employee shall not include any person performing voluntary
4 service as a ski patrolman who receives no compensation for such
5 services other than meals or lodging or the use of ski tow or ski lift
6 facilities or any combination thereof.

7 Any sole proprietor or partner of a business or any member of a
8 limited liability company may elect to be included as an employee
9 under the workers' compensation coverage of such business if he is
10 actively engaged in the operation of the business and if the insurer is
11 notified of his election to be so included. Any such sole proprietor or
12 partner or member of a limited liability company shall, upon such
13 election, be entitled to employee benefits and be subject to employee
14 responsibilities prescribed in this Article.

15 Employee shall include an authorized pickup firefighter of the
16 Division of Forest Resources of the Department of Environment and
17 Natural Resources when that individual is engaged in emergency fire
18 suppression activities for the Division of Forest Resources. As used in
19 this section, 'authorized pickup firefighter' means an individual who
20 has completed required fire suppression training as a wildland
21 firefighter and who is available as needed by the Division of Forest
22 Resources for emergency fire suppression activities, including
23 immediate dispatch to wildfires and standby for initial attack on fires
24 during periods of high fire danger."

25 **SECTION 1.1.** G.S. 97-2(3) reads as rewritten:

26 '(3) Employer. – The term "employer" means the State and all
27 political subdivisions thereof, all public and quasi-public corporations
28 therein, every person carrying on any employment and the legal
29 representative of a deceased person or the receiver or trustee of any
30 person. The board of commissioners of each county of the State, for
31 the purposes of this law, shall be considered as "employer" of all
32 deputy sheriffs serving within such county, or persons serving or
33 performing the duties of a deputy sheriff, whether such persons are
34 appointed by the sheriff or by the board of commissioners and whether
35 serving on a fee basis or salary basis. Each county is authorized to
36 insure its compensation liability for deputy sheriffs to the same extent
37 it is authorized to insure other compensation liability for employees
38 thereof. For purposes of this Chapter, when an authorized pickup
39 firefighter of the Division of Forest Resources of the Department of
40 Environment and Natural Resources is engaged in emergency fire
41 suppression activities for the Division of Forest Resources, that
42 individual's employer is the Division of Forest Resources."

43 **SECTION 2.** G.S. 97-2(5) reads as rewritten:

1 "(5) Average Weekly Wages. – "Average weekly wages" shall mean the
2 earnings of the injured employee in the employment in which he was
3 working at the time of the injury during the period of 52 weeks
4 immediately preceding the date of the injury, including the subsistence
5 allowance paid to veteran trainees by the United States government,
6 provided the amount of said allowance shall be reported monthly by
7 said trainee to his employer, divided by 52; but if the injured employee
8 lost more than seven consecutive calendar days at one or more times
9 during such period, although not in the same week, then the earnings
10 for the remainder of such 52 weeks shall be divided by the number of
11 weeks remaining after the time so lost has been deducted. Where the
12 employment prior to the injury extended over a period of less than 52
13 weeks, the method of dividing the earnings during that period by the
14 number of weeks and parts thereof during which the employee earned
15 wages shall be followed; provided, results fair and just to both parties
16 will be thereby obtained. Where, by reason of a shortness of time
17 during which the employee has been in the employment of his
18 employer or the casual nature or terms of his employment, it is
19 impractical to compute the average weekly wages as above defined,
20 regard shall be had to the average weekly amount which during the 52
21 weeks previous to the injury was being earned by a person of the same
22 grade and character employed in the same class of employment in the
23 same locality or community.

24 But where for exceptional reasons the foregoing would be unfair,
25 either to the employer or employee, such other method of computing
26 average weekly wages may be resorted to as will most nearly
27 approximate the amount which the injured employee would be earning
28 were it not for the injury.

29 Wherever allowances of any character made to an employee in lieu
30 of wages are specified part of the wage contract they shall be deemed a
31 part of his earnings.

32 Where a minor employee, under the age of 18 years, sustains a
33 permanent disability or dies leaving dependents surviving, the
34 compensation payable for permanent disability or death shall be
35 calculated, first, upon the average weekly wage paid to adult
36 employees employed by the same employer at the time of the accident
37 in a similar or like class of work which the injured minor employee
38 would probably have been promoted to if not injured, or, second, upon
39 a wage sufficient to yield the maximum weekly compensation benefit.
40 Compensation for temporary total disability or for the death of a minor
41 without dependents shall be computed upon the average weekly wage
42 at the time of the accident, unless the total disability extends more than
43 52 weeks and then the compensation may be increased in proportion to
44 his expected earnings.

1 In case of disabling injury or death to a volunteer ~~fireman~~
2 ~~or fireman~~, member of an organized rescue ~~squad~~~~or squad~~, an
3 authorized pickup firefighter, as defined in subdivision (2) of this
4 section, of the Division of Forest Resources of the Department of
5 Environment and Natural Resources, when that individual is engaged
6 in emergency fire suppression activities for the Division of Forest
7 Resources, a duly appointed and sworn member of an auxiliary police
8 department organized pursuant to G.S. 160A-282, or
9 senior members of the State Civil Air Patrol functioning under Article
10 11, Chapter 143B, under compensable circumstances, compensation
11 payable shall be calculated upon the average weekly wage the
12 volunteer ~~fireman~~~~or fireman~~, member of an organized rescue ~~squad~~
13 ~~or squad~~, an authorized pickup firefighter of the Division of Forest
14 Resources of the Department of Environment and Natural Resources,
15 when that individual is engaged in emergency fire suppression
16 activities for the Division of Forest Resources, member of an auxiliary
17 police department, or senior member of the State Civil Air
18 Patrol was earning in the employment wherein he principally earned
19 his livelihood as of the date of injury. Provided, however, that the
20 minimum compensation payable to a volunteer fireman, member of an
21 organized rescue ~~squad~~~~or squad~~, an authorized pickup firefighter of the
22 Division of Forest Resources, of the Department of Environment and
23 Natural Resources when that individual is engaged in emergency fire
24 suppression activities for the Division of Forest Resources, a sworn
25 member of an auxiliary police department organized pursuant to G.S.
26 160A-282, or senior members of the State Civil Air Patrol shall be
27 sixty-six and two thirds percent (66 2/3%) of the maximum weekly
28 benefit established in G.S. 97-29."

29 **SECTION 3.** This act is effective when it becomes law and applies to claims
30 filed on or after that date.