

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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**SENATE BILL 776
Judiciary I Committee Substitute Adopted 4/23/03
House Committee Substitute Favorable 5/19/03**

Short Title: Workers' Comp/Definition of Employee.

(Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

1 AN ACT TO CLARIFY THE DEFINITION OF EMPLOYEE UNDER THE
2 WORKERS' COMPENSATION ACT.
3

4 The General Assembly of North Carolina enacts:

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

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

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

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

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

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

41 The term 'employee' shall also include members of the Civil Air
42 Patrol currently certified pursuant to G.S. 143B-491(a) when
43 performing duties in the course and scope of a State-approved mission
44 pursuant to Article 11 of Chapter 143B of the General Statutes.

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

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

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

23 It shall be a rebuttable presumption that the term 'employee' shall
24 not include any person performing services in the sale of newspapers
25 or magazines to ultimate consumers under an arrangement whereby the
26 newspapers or magazines are to be sold by that person at a fixed price
27 and the person's compensation is based on the retention of the excess
28 of the fixed price over the amount at which the newspapers or
29 magazines are charged to the person."

30 **SECTION 2.** This act is effective when it becomes law and applies to any
31 claim arising on or after that date.