

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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SENATE BILL 776

Short Title: Workers' Comp/Definition of Employee. (Public)

(Public)

Sponsors: Senators Dalton, Clodfelter; Ballantine, Bingham, Hartsell, Hoyle, Lucas, Smith, and Stevens.

Referred to: Judiciary I.

April 3, 2003

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

The term 'employee' shall also include members of the Civil Air Patrol currently certified pursuant to G.S. 143B-491(a) when performing duties in the course and scope of a State-approved mission 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 'Employee' shall not include any person performing services in the
24 delivery or distribution of newspapers or shopping news, unless the
25 delivery or distribution is to any point for subsequent delivery or
26 distribution. 'Employee' shall not include any person performing
27 services in the sale of newspapers or magazines to ultimate consumers
28 under an arrangement whereby the newspapers or magazines are to be
29 sold by that person at a fixed price and the person's compensation is
30 based on the retention of the excess of the fixed price over the amount
31 at which the newspapers or magazines are charged to the person,
32 regardless of whether the person is guaranteed an amount of
33 compensation for the service or is entitled to be credited for the
34 amount the person had been charged for the unsold newspapers or
35 magazines that are returned.'

36 **SECTION 2.** This act is effective when it becomes law.