

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 940

Short Title: Worker's Compensation/Realtor Status.

(Public)

Sponsors: Representatives Redwine; Boyd-McIntyre, Clary, Decker, Dedmon, Hill, Howard, McComas, McMahan, Sherrill, Smith, Thompson, and Wainwright.

Referred to: Commerce, if favorable, Insurance.

April 14, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT A REAL ESTATE BROKER AND REAL ESTATE SALESPERSON ARE NOT EMPLOYEES WITHIN THE MEANING OF 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

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1 elected by the people. The term 'employee' shall include members of
2 the North Carolina national guard, except when called into the service
3 of the United States, and members of the North Carolina State guard,
4 and members of these organizations shall be entitled to compensation
5 for injuries arising out of and in the course of the performance of their
6 duties at drill, in camp, or on special duty under orders of the Governor.
7 The term 'employee' shall include deputy sheriffs and all persons acting
8 in the capacity of deputy sheriffs, whether appointed by the sheriff or by
9 the governing body of the county and whether serving on a fee basis or
10 on a salary basis, or whether deputy sheriffs serving upon a full-time
11 basis or a part-time basis, and including deputy sheriffs appointed to
12 serve in an emergency, but as to those so appointed, only during the
13 continuation of the emergency. The sheriff shall furnish to the board of
14 county commissioners a complete list of all deputy sheriffs named or
15 appointed by him immediately after their appointment, and notify the
16 board of commissioners of any changes made therein promptly after
17 such changes are made. Any reference to an employee who has been
18 injured shall, when the employee is dead, include also his legal
19 representative, dependents, and other persons to whom compensation
20 may be payable: Provided, further, that any employee as herein defined
21 of a municipality, county, or of the State of North Carolina while
22 engaged in the discharge of his official duty outside the jurisdictional or
23 territorial limits of the municipality, county, or the State of North
24 Carolina and while acting pursuant to authorization or instruction from
25 any superior officer, shall have the same rights under this Article as if
26 such duty or activity were performed within the territorial boundary
27 limits of his employer.

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

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

40 All county agricultural extension service employees who do not
41 receive official federal appointments as employees of the United States
42 Department of Agriculture and who are field faculty members with
43 professional rank as designated in the memorandum of understanding

1 between the North Carolina Agricultural Extension Service, North
2 Carolina State University, A & T State University and the boards of
3 county commissioners shall be deemed to be employees of the State of
4 North Carolina. All other county agricultural extension service
5 employees paid from State or county funds shall be deemed to be
6 employees of the county board of commissioners in the county in which
7 the employee is employed for purposes of workers' compensation.

8 The term employee shall also include members of the Civil Air
9 Patrol currently certified pursuant to G.S. 143B-491(a) when
10 performing duties in the course and scope of a State approved mission
11 pursuant to Article 11 of Chapter 143B.

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

16 Employee shall not include any person who satisfies both of the
17 following conditions:

- 18 a. The person is a real estate broker or real estate salesman within
19 the meaning of G.S. 93A-2.
20 b. The person is an independent contractor within the meaning of
21 section 3508 of the Internal Revenue Code, as defined in G.S.
22 105-228.90.

23 Any sole proprietor or partner of a business or any member of a
24 limited liability company may elect to be included as an employee under
25 the workers' compensation coverage of such business if he is actively
26 engaged in the operation of the business and if the insurer is notified of
27 his election to be so included. Any such sole proprietor or partner or
28 member of a limited liability company shall, upon such election, be
29 entitled to employee benefits and be subject to employee responsibilities
30 prescribed in this Article."

31 Section 2. This act is effective when it becomes law.