

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

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SENATE BILL 299\*  
Second Edition Engrossed 4/4/01  
House Committee Substitute Favorable 5/29/01

Short Title: Workers' Comp. for Pickup Firefighters-AB.

(Public)

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Sponsors:

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Referred to:

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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~~profession, or occupation of  
14 his employer, and as relating to those so employed by the State, the  
15 term 'employee' shall include all officers and employees of the State,  
16 including such as are elected by the people, or by the General  
17 Assembly, or appointed by the Governor to serve on a per diem,  
18 part-time or fee basis, either with or without the confirmation of the  
19 Senate; as relating to municipal corporations and political subdivisions  
20 of the State, the term 'employee' shall include all officers and  
21 employees thereof, including such as are elected by the people. The  
22 term 'employee' shall include members of the North Carolina national  
23 guard while on State active duty under orders of the Governor and  
24 members of the North Carolina State Defense Militia while on State  
25 active duty under orders of the Governor. The term 'employee' shall  
26 include deputy sheriffs and all persons acting in the capacity of deputy  
27 sheriffs, whether appointed by the sheriff or by the governing body of  
28 the county and whether serving on a fee basis or on a salary basis, or

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

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

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

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

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

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

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

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

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

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

1                    suppression activities for the Division of Forest Resources, that  
2                    individual's employer is the Division of Forest Resources."

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

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

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

32                   Wherever allowances of any character made to an employee in lieu  
33                   of wages are specified part of the wage ~~contract~~contract, they shall be  
34                   deemed a part of his earnings.

35                   Where a minor employee, under the age of 18 years, sustains a  
36                   permanent disability or dies leaving dependents surviving, the  
37                   compensation payable for permanent disability or death shall be  
38                   calculated, first, upon the average weekly wage paid to adult  
39                   employees employed by the same employer at the time of the accident  
40                   in a similar or like class of work which the injured minor employee  
41                   would probably have been promoted to if not injured, or, second, upon  
42                   a wage sufficient to yield the maximum weekly compensation benefit.  
43                   Compensation for temporary total disability or for the death of a minor

1 without dependents shall be computed upon the average weekly wage  
2 at the time of the accident, unless the total disability extends more than  
3 52 ~~weeks~~weeks, and then the compensation may be increased in  
4 proportion to his expected earnings.

5 In case of disabling injury or death to a volunteer ~~fireman~~  
6 ~~or~~fireman; member of an organized rescue ~~squad~~squad; an  
7 authorized pickup firefighter, as defined in subdivision (2) of this  
8 section, when that individual is engaged in emergency fire suppression  
9 activities for the Division of Forest Resources; a duly appointed and  
10 sworn member of an auxiliary police department organized pursuant to  
11 G.S. 160A-282G.S. 160A-282; or senior members of the State Civil  
12 Air Patrol functioning under Article 11, Chapter 143B, 11 of Chapter  
13 143B of the General Statutes, under compensable circumstances,  
14 compensation payable shall be calculated upon the average weekly  
15 wage the volunteer ~~fireman~~ ~~or~~fireman, member of an organized rescue  
16 squad ~~or~~squad, authorized pickup firefighter of the Division of Forest  
17 Resources, when that individual is engaged in emergency fire  
18 suppression activities for the Division of Forest Resources, member of  
19 an auxiliary police ~~department~~ ~~department~~, or senior member of the  
20 State Civil Air Patrol was earning in the employment wherein he  
21 principally earned his livelihood as of the date of injury. Provided,  
22 however, that the minimum compensation payable to a volunteer  
23 fireman, member of an organized rescue ~~squad~~ ~~or~~squad, an authorized  
24 pickup firefighter of the Division of Forest Resources of the  
25 Department of Environment and Natural Resources, when that  
26 individual is engaged in emergency fire suppression activities for the  
27 Division of Forest Resources, a sworn member of an auxiliary police  
28 department organized pursuant to G.S. 160A-282, or senior members  
29 of the State Civil Air Patrol shall be sixty-six and ~~two-thirds~~two-thirds  
30 percent (66 2/3%) of the maximum weekly benefit established in G.S.  
31 97-29."

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