

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE DRS25162-LR-117 (03/10)

Short Title: WC/Nonprofit Corp. Volunteers & Officers. (Public)

Sponsors: Senator Hartsell (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE DEFINITION OF "EMPLOYEE" UNDER THE WORKERS'
3 COMPENSATION ACT TO EXCLUDE VOLUNTEERS AND OFFICERS OF CERTAIN
4 NONPROFIT CORPORATIONS AND ASSOCIATIONS.

5 The General Assembly of North Carolina enacts:

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

7 "§ 97-2. Definitions.

8 When used in this Article, unless the context otherwise requires:

9 ...

10 (2) Employee. – The term "employee" means every person engaged in an
11 employment under any appointment or contract of hire or apprenticeship,
12 express or implied, oral or written, including aliens, and also minors,
13 whether lawfully or unlawfully employed, but excluding persons whose
14 employment is both casual and not in the course of the trade, business,
15 profession, or occupation of his employer, and as relating to those so
16 employed by the State, the term "employee" shall include all officers and
17 employees of the State, including such as are elected by the people, or by the
18 General Assembly, or appointed by the Governor to serve on a per diem,
19 part-time or fee basis, either with or without the confirmation of the Senate;
20 as relating to municipal corporations and political subdivisions of the State,
21 the term "employee" shall include all officers and employees thereof,
22 including such as are elected by the people. The term "employee" shall
23 include members of the North Carolina National Guard while on State active
24 duty under orders of the Governor and members of the North Carolina State
25 Defense Militia while on State active duty under orders of the Governor. The
26 term "employee" shall include deputy sheriffs and all persons acting in the
27 capacity of deputy sheriffs, whether appointed by the sheriff or by the
28 governing body of the county and whether serving on a fee basis or on a
29 salary basis, or whether deputy sheriffs serving upon a full-time basis or a
30 part-time basis, and including deputy sheriffs appointed to serve in an
31 emergency, but as to those so appointed, only during the continuation of the
32 emergency. The sheriff shall furnish to the board of county commissioners a
33 complete list of all deputy sheriffs named or appointed by him immediately
34 after their appointment and notify the board of commissioners of any
35 changes made therein promptly after such changes are made. Any reference
36 to an employee who has been injured shall, when the employee is dead,



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1 include also the employee's legal representative, dependents, and other
2 persons to whom compensation may be payable: Provided, further, that any
3 employee, as herein defined, of a municipality, county, or of the State of
4 North Carolina, while engaged in the discharge of the employee's official
5 duty outside the jurisdictional or territorial limits of the municipality, county,
6 or the State of North Carolina and while acting pursuant to authorization or
7 instruction from any superior officer, shall have the same rights under this
8 Article as if such duty or activity were performed within the territorial
9 boundary limits of their employer.

10 ~~Every~~ Except as otherwise provided herein, every executive officer
11 elected or appointed and empowered in accordance with the charter and
12 bylaws of a corporation shall be considered as an employee of such
13 corporation under this Article.

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

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

33 The term "employee" shall also include members of the Civil Air Patrol
34 currently certified pursuant to G.S. 143B-1031(a) when performing duties in
35 the course and scope of a State-approved mission pursuant to Subpart C of
36 Part 5 of Article 13 of Chapter 143B of the General Statutes.

37 "Employee" shall not include any person performing voluntary service as
38 a ski patrolman who receives no compensation for such services other than
39 meals or lodging or the use of ski tow or ski lift facilities or any combination
40 thereof.

41 "Employee" shall not include any person performing voluntary service
42 for a nonprofit corporation subject to Chapters 47A, 47C, 47F, 55A, or 59B
43 of the General Statutes, or any organization exempt from federal income tax
44 under section 501(c)(3) of the Internal Revenue Code, provided that the
45 person receives no remuneration for the voluntary service other than
46 reasonable reimbursement for expenses incurred in connection with the
47 voluntary service. A person performing such voluntary service is not an
48 "employee" even if the individual was elected or appointed and empowered
49 as an executive officer, director, or committee member under the charter,
50 articles, or bylaws of a nonprofit corporation subject to Chapters 47A, 47C,

1 47F, 55A, or 59B of the General Statutes, or any organization exempt from
2 federal tax under section 501(c)(3) of the Internal Revenue Code.

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

10 Employee" shall include an authorized pickup firefighter of the North
11 Carolina Forest Service of the Department of Agriculture and Consumer
12 Services when that individual is engaged in emergency fire suppression
13 activities for the North Carolina Forest Service. As used in this section,
14 "authorized pickup firefighter" means an individual who has completed
15 required fire suppression training as a wildland firefighter and who is
16 available as needed by the North Carolina Forest Service for emergency fire
17 suppression activities, including immediate dispatch to wildfires and standby
18 for initial attack on fires during periods of high fire danger.

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

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