

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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**HOUSE BILL 1088
Second Edition Engrossed 4/25/01**

Short Title: Workers Comp./Drivers of Interstate Carriers. (Public)

Sponsors: Representative Saunders.

Referred to: Insurance.

April 11, 2001

A BILL TO BE ENTITLED

1
2 AN ACT TO PROVIDE THAT THE COMMON LAW DETERMINES WHETHER A
3 DRIVER OF A TRUCK OR TRACTOR TRAILER OF AN INTERSTATE
4 MOTOR CARRIER IS AN EMPLOYEE SUBJECT TO THE WORKERS'
5 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 or occupation of his employer,
14 and as relating to those so employed by the State, the term "employee"
15 shall include all officers and employees of the State, including such as
16 are elected by the people, or by the General Assembly, or appointed by
17 the Governor to serve on a per diem, part-time or fee basis, either with
18 or without the confirmation of the Senate; as relating to municipal
19 corporations and political subdivisions of the State, the term
20 "employee" shall include all officers and employees thereof, including
21 such as are elected by the people. The term "employee" shall include
22 members of the North Carolina national guard while on State active
23 duty under orders of the Governor and members of the North Carolina
24 State Defense Militia while on State active duty under orders of the
25 Governor. The term "employee" shall include deputy sheriffs and all
26 persons acting in the capacity of deputy sheriffs, whether appointed by
27 the sheriff or by the governing body of the county and whether serving
28 on a fee basis or on a salary basis, or whether deputy sheriffs serving

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

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

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

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

42 The term employee shall also include members of the Civil Air
43 Patrol currently certified pursuant to G.S. 143B-491(a) when

1 performing duties in the course and scope of a State approved mission
2 pursuant to Article 11 of Chapter 143B.

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

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

15 Whether a driver of a truck or tractor trailer for a motor carrier
16 licensed by the Interstate Commerce Commission is an employee of
17 the carrier within the meaning of this subdivision or an independent
18 contractor shall be determined under the common law."

19 **SECTION 2.** This act is effective when it becomes law and applies to any
20 claim arising on or after October 1, 2001.