

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 205
Committee Substitute Favorable 3/8/17
Senate Commerce and Insurance Committee Substitute Adopted 5/24/17

Short Title: WC for Inmates/UI & WC/Newsprint Employees.

(Public)

Sponsors:

Referred to:

March 1, 2017

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING A PROVISION OF THE WORKERS' COMPENSATION ACT
3 RELATING TO PRISONERS AND PROVISIONS OF CERTAIN BENEFITS FOR
4 NEWSPRINT EMPLOYEES.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 97-13 is amended by adding a new subsection to read:

7 "(c1) Certain Inmates. – Notwithstanding the thirty dollars (\$30.00) per week limit in
8 subsection (c) of this section, the average weekly wage of inmates employed pursuant to the
9 Prison Industry Enhancement Program shall be calculated pursuant to G.S. 97-2(5)."

10 **SECTION 2.(a)** Article 3 of Chapter 95 of the General Statutes is amended by
11 adding a new section to read:

12 "**§ 95-28.5. Certain benefits for newspaper workers.**

13 Any worker meeting all of the following conditions shall be treated as an employee for the
14 purposes of Chapters 95, 96, 97, 105, and 143 of the General Statutes:

- 15 (1) The worker is paid by a person engaged in the business of publishing and
16 distributing newspapers or magazines.
17 (2) The contractual relationship between the person and worker is not subject to
18 negotiation or heavily favors either party.
19 (3) The rates paid to the worker under the contractual relationship are not
20 subject to negotiation.
21 (4) The worker is required to deliver the newspapers or magazines according to
22 specifications given by the person publishing or distributing the newspaper
23 or magazine.
24 (5) Complaints regarding delivery of the newspapers or magazines are directed
25 to the person publishing or distributing the newspaper or magazine, without
26 the worker being allowed to correct the matter.
27 (6) The person publishing or distributing the newspapers or magazines may
28 unilaterally alter the route or method of delivery.
29 (7) The work delivering the newspapers or magazines does not require highly
30 skilled labor.
31 (8) The worker does not supply any special equipment other than transportation
32 to perform the delivery."

33 **SECTION 2.(b)** G.S. 96-1(b)(12) reads as rewritten:

34 "(12) Employment. – Defined in section 3306 of the Code, with the following
35 additions and exclusions:



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- a. Additions. – The term includes ~~service~~ all of the following:
1. Service to a governmental unit, unit.
 2. Service to a nonprofit organization, or organization.
 3. Service to an Indian tribe as described in 3306(c)(7) and 3306(c)(8) of the Code.
 4. Service described in section 3306(c)(15)(A) or (B) of the Code involving delivery or distribution of newspapers or shopping news or involving the sale of newspapers or magazines.

...."

SECTION 2.(c) 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 the employee's 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 the employee's 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 their employer.

Except as otherwise provided herein, 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.

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

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

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

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

28 "Employee" shall not include any person elected or appointed and
29 empowered as an executive officer, director, or committee member under the
30 charter, articles, or bylaws of a nonprofit corporation subject to Chapter
31 47A, 47C, 47F, 55A, or 59B of the General Statutes, or any organization
32 exempt from federal income tax under section 501(c)(3) of the Internal
33 Revenue Code, who performs only voluntary service for the nonprofit
34 corporation, provided that the person receives no remuneration for the
35 voluntary service other than reasonable reimbursement for expenses incurred
36 in connection with the voluntary service. When a nonprofit corporation as
37 described herein employs one or more persons who do receive remuneration
38 other than reasonable reimbursement for expenses, then any volunteer
39 officers, directors, or committee members excluded from the definition of
40 "employee" by operation of this paragraph shall be counted as employees for
41 the sole purpose of determining the number of persons regularly employed
42 in the same business or establishment pursuant to G.S. 97-2(1). Other than
43 for the limited purpose of determining the number of persons regularly
44 employed in the same business or establishment, such volunteer nonprofit
45 officers, directors, or committee members shall not be "employees" under
46 the Act. Nothing herein shall prohibit a nonprofit corporation as described
47 herein from voluntarily electing to provide for workers' compensation
48 benefits in the manner provided in G.S. 97-93 for volunteer officers,
49 directors, or committee members excluded from the definition of
50 "employee" by operation of this paragraph. This paragraph shall not apply to
51 any volunteer firefighter, volunteer member of an organized rescue squad, an

1 authorized pickup firefighter when that individual is engaged in emergency
2 fire suppression activities for the North Carolina Forest Service, a duly
3 appointed and sworn member of an auxiliary police department organized
4 pursuant to G.S. 160A-282, or a senior member of the State Civil Air Patrol
5 functioning under Subpart C of Part 5 of Article 13 of Chapter 143B of the
6 General Statutes, even if such person is elected or appointed and empowered
7 as an executive officer, director, or committee member under the charter,
8 articles, or bylaws of a nonprofit corporation as described herein.

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

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

25 ~~It shall be a rebuttable presumption that the term "employee" shall not~~
26 ~~include any person performing services in the sale of newspapers or~~
27 ~~magazines to ultimate consumers under an arrangement whereby the~~
28 ~~newspapers or magazines are to be sold by that person at a fixed price and~~
29 ~~the person's compensation is based on the retention of the excess of the fixed~~
30 ~~price over the amount at which the newspapers or magazines are charged to~~
31 ~~the person."~~

32 **SECTION 3.** Section 2 of this act becomes effective January 1, 2018. The
33 remainder of this act is effective when it becomes law.