

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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HOUSE BILL 371*

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

(Public)

Sponsors: Representative Mitchell.

Referred to: Environment and Natural Resources.

March 1, 2001

A BILL TO BE ENTITLED

1
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 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 Employee shall include an authorized pickup firefighter of the
16 Division of Forest Resources of the Department of Environment and
17 Natural Resources when that individual is engaged in emergency fire
18 suppression activities for the Division of Forest Resources. As used in
19 this section, 'authorized pickup firefighter' means an individual who
20 has completed required fire suppression training as a wildland
21 firefighter and who is available as needed by the Division of Forest
22 Resources for emergency fire suppression activities, including
23 immediate dispatch to wildfires and standby for initial attack on fires
24 during periods of high fire danger."

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

26 "(5) Average Weekly Wages. – "Average weekly wages" shall mean the
27 earnings of the injured employee in the employment in which he was
28 working at the time of the injury during the period of 52 weeks
29 immediately preceding the date of the injury, including the subsistence
30 allowance paid to veteran trainees by the United States government,
31 provided the amount of said allowance shall be reported monthly by
32 said trainee to his employer, divided by 52; but if the injured employee
33 lost more than seven consecutive calendar days at one or more times
34 during such period, although not in the same week, then the earnings
35 for the remainder of such 52 weeks shall be divided by the number of
36 weeks remaining after the time so lost has been deducted. Where the
37 employment prior to the injury extended over a period of less than 52
38 weeks, the method of dividing the earnings during that period by the
39 number of weeks and parts thereof during which the employee earned
40 wages shall be followed; provided, results fair and just to both parties
41 will be thereby obtained. Where, by reason of a shortness of time
42 during which the employee has been in the employment of his
43 employer or the casual nature or terms of his employment, it is
44 impractical to compute the average weekly wages as above defined,

1 regard shall be had to the average weekly amount which during the 52
2 weeks previous to the injury was being earned by a person of the same
3 grade and character employed in the same class of employment in the
4 same locality or community.

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

10 Wherever allowances of any character made to an employee in lieu
11 of wages are specified part of the wage contract they shall be deemed a
12 part of his earnings.

13 Where a minor employee, under the age of 18 years, sustains a
14 permanent disability or dies leaving dependents surviving, the
15 compensation payable for permanent disability or death shall be
16 calculated, first, upon the average weekly wage paid to adult
17 employees employed by the same employer at the time of the accident
18 in a similar or like class of work which the injured minor employee
19 would probably have been promoted to if not injured, or, second, upon
20 a wage sufficient to yield the maximum weekly compensation benefit.
21 Compensation for temporary total disability or for the death of a minor
22 without dependents shall be computed upon the average weekly wage
23 at the time of the accident, unless the total disability extends more than
24 52 weeks and then the compensation may be increased in proportion to
25 his expected earnings.

26 In case of disabling injury or death to a volunteer ~~fireman~~
27 ~~or fireman~~, member of an organized rescue ~~squad~~ ~~or squad~~, an
28 authorized pickup firefighter, as defined in subdivision (2) of this
29 section, of the Division of Forest Resources of the Department of
30 Environment and Natural Resources, when that individual is engaged
31 in emergency fire suppression activities for the Division of Forest
32 Resources, a duly appointed and sworn member of an auxiliary police
33 department organized pursuant to G.S. 160A-282G.S. 160A-282, or
34 senior members of the State Civil Air Patrol functioning under Article
35 11, Chapter 143B, under compensable circumstances, compensation
36 payable shall be calculated upon the average weekly wage the
37 volunteer ~~fireman~~ ~~or fireman~~, member of an organized rescue ~~squad~~
38 ~~or squad~~, an authorized pickup firefighter of the Division of Forest
39 Resources of the Department of Environment and Natural Resources,
40 when that individual is engaged in emergency fire suppression
41 activities for the Division of Forest Resources, member of an auxiliary
42 police ~~department~~ ~~department~~, or senior member of the State Civil Air
43 Patrol was earning in the employment wherein he principally earned
44 his livelihood as of the date of injury. Provided, however, that the

1 minimum compensation payable to a volunteer fireman, member of an
2 organized rescue ~~squad~~ ~~orsquad~~, an authorized pickup firefighter of the
3 Division of Forest Resources, of the Department of Environment and
4 Natural Resources when that individual is engaged in emergency fire
5 suppression activities for the Division of Forest Resources, a sworn
6 member of an auxiliary police department organized pursuant to G.S.
7 160A-282, or senior members of the State Civil Air Patrol shall be
8 sixty-six and two thirds percent (66 2/3%) of the maximum weekly
9 benefit established in G.S. 97-29."

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