

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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HOUSE BILL 462

Short Title: Workers' Comp/Certain Public School Students. (Public)

Sponsors: Representative Owens.

Referred to: Insurance.

March 5, 2001

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT PUBLIC AND CHARTER SCHOOL STUDENTS
2 WHO PARTICIPATE IN UNPAID, SCHOOL-APPROVED, WORK-BASED
3 LEARNING EXPERIENCES LOCATED OFF SCHOOL GROUNDS ARE
4 ELIGIBLE FOR COMPENSATION UNDER THE WORKERS'
5 COMPENSATION ACT.
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7 The General Assembly of North Carolina enacts:

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

9 "(2) Employee. – The term 'employee' means every person engaged in an
10 employment under any appointment or contract of hire or
11 apprenticeship, express or implied, oral or written, including aliens,
12 and also minors, whether lawfully or unlawfully employed, but
13 excluding persons whose employment is both casual and not in the
14 course of the trade, business, profession or occupation of his employer,
15 and as relating to those so employed by the State, the term 'employee'
16 shall include all officers and employees of the State, including such as
17 are elected by the people, or by the General Assembly, or appointed by
18 the Governor to serve on a per diem, part-time or fee basis, either with
19 or without the confirmation of the Senate; as relating to municipal
20 corporations and political subdivisions of the State, the term
21 'employee' shall include all officers and employees thereof, including
22 such as are elected by the people. The term 'employee' shall include
23 members of the North Carolina national guard while on State active
24 duty under orders of the Governor and members of the North Carolina
25 State Defense Militia while on State active duty under orders of the
26 Governor. The term 'employee' shall include deputy sheriffs and all
27 persons acting in the capacity of deputy sheriffs, whether appointed by
28 the sheriff or by the governing body of the county and whether serving

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

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

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

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

43 The term employee shall also include members of the Civil Air
44 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 The term employee shall include any public school student enrolled
16 in kindergarten through twelfth grade who is participating in an
17 unpaid, school-approved, work-based learning experience that is
18 located off the public school grounds on the premises of a business or
19 other entity that employs individuals. The local board of education or
20 the charter school is the employer within the meaning of this Article
21 during the time that the student is participating in this unpaid, school-
22 approved, work-based learning experience. For purposes of this
23 section, 'public school' includes a charter school established under Part
24 6A of Article 16 of Chapter 115C of the General Statutes."

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. The minimum average weekly wage required
26 under this subdivision shall be used to compute compensation for an
27 employee who is a public school student enrolled in kindergarten
28 through twelfth grade and who is participating in an unpaid, school-
29 approved, work-based learning experience located off the public
30 school grounds on the premises of a business or other entity that
31 employs individuals.

32 In case of disabling injury or death to a volunteer fireman or
33 member of an organized rescue squad or duly appointed and sworn
34 member of an auxiliary police department organized pursuant to G.S.
35 160A-282 or senior members of the State Civil Air Patrol functioning
36 under Article 11, Chapter 143B, under compensable circumstances,
37 compensation payable shall be calculated upon the average weekly
38 wage the volunteer fireman or member of an organized rescue squad or
39 member of an auxiliary police department or senior member of the
40 State Civil Air Patrol was earning in the employment wherein he
41 principally earned his livelihood as of the date of injury. Provided,
42 however, that the minimum compensation payable to a volunteer
43 fireman, member of an organized rescue squad or sworn member of an
44 auxiliary police department organized pursuant to G.S. 160A-282, or

1 senior members of the State Civil Air Patrol shall be sixty-six and two
2 thirds percent (66 2/3%) of the maximum weekly benefit established in
3 G.S. 97-29."

4 **SECTION 3.** G.S. 97-10.1 reads as rewritten:

5 "**§ 97-10.1. Other rights and remedies against employer excluded.**

6 (a) If the employee and the employer are subject to and have complied with the
7 provisions of this Article, then the rights and remedies herein granted to the employee,
8 his dependents, next of kin, or personal representative shall exclude all other rights and
9 remedies of the employee, his dependents, next of kin, or representative as against the
10 employer at common law or otherwise on account of such injury or death.

11 (b) The rights and remedies under this Article shall be the sole remedies against
12 the local board of education, the charter school, or against the business or other entity,
13 for a compensable injury of a public school student enrolled in grades K-12 who is
14 participating in an unpaid, school-approved, work-based learning experience that is
15 located off public school grounds on the premises of a business or other entity that
16 employs individuals. For purposes of this section, 'public school' includes a charter
17 school established under Part 6A of Article 16 of Chapter 115C of the General
18 Statutes."

19 **SECTION 4.** This act becomes effective July 1, 2001, and applies to injuries
20 that occur on or after that date.