

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE DRS85167-LR-83D (03/06)

Short Title: WC/Omnibus Changes.

(Public)

Sponsors: Senator Brown (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE INSURANCE LAWS RELATING TO THE NOTICE
3 REQUIRED FOR CANCELLATION OF WORKERS' COMPENSATION INSURANCE
4 POLICIES AND TO AMEND THE WORKERS' COMPENSATION ACT
5 CONCERNING THE STATUS OF TRUCK DRIVERS AS EMPLOYEES OR
6 INDEPENDENT CONTRACTORS AND RELATING TO OUT-OF-STATE
7 ACCIDENTS AND STATE RECIPROCITY OF CLAIMS.

8 The General Assembly of North Carolina enacts:

9 SECTION 1.(a) G.S. 58-36-105(b) reads as rewritten:

10 "(b) Any cancellation permitted by subsection (a) of this section is not effective unless
11 written notice of cancellation has been given by registered or certified mail, return receipt
12 requested, to the insured not less than 15 days before the proposed effective date of
13 cancellation. The notice shall be given by registered or certified mail, return receipt requested,
14 to the insured and any other person designated in the policy to receive notice of cancellation at
15 their addresses shown in the policy or, if not indicated in the policy, at their last known
16 addresses. The notice shall state the precise reason for cancellation. Whenever notice of
17 intention to cancel is required to be given by registered or certified mail, no cancellation by the
18 insurer shall be effective unless and until such method is ~~employed and completed.~~ employed.
19 Failure to send this notice, as provided in this section, to any other person designated in the
20 policy to receive notice of cancellation invalidates the cancellation only as to that other person's
21 interest."

22 SECTION 1.(b) This section is effective when it becomes law and applies to
23 insurance policies in effect on or after that date.

24 SECTION 2.(a) G.S. 97-19.1 reads as rewritten:

25 "§ 97-19.1. **Truck, tractor, or truck tractor trailer driver's status as employee or**
26 **independent contractor.**

27 (a) An individual in the interstate or intrastate carrier industry who operates a truck,
28 tractor, or truck tractor trailer ~~licensed by a governmental motor vehicle regulatory agency for a~~
29 motor carrier as defined by G.S. 20-4.01(21b) may be an employee or an independent
30 contractor under this Article dependent upon the application of the common law test for
31 determining employment status.

32 Any principal contractor, intermediate contractor, or subcontractor, irrespective of whether
33 such contractor regularly employs three or more employees, who contracts with an individual
34 in the interstate or intrastate carrier industry who operates a truck, tractor, or truck tractor trailer
35 ~~licensed by the United States Department of Transportation for a motor carrier as defined in~~
36 G.S. 20-4.01(21b) and who has not secured the payment of compensation in the manner



1 provided for employers set forth in G.S. 97-93 for himself personally and for his employees
2 and subcontractors, if any, shall be liable as an employer under this Article for the payment of
3 compensation and other benefits on account of the injury or death of the independent contractor
4 and his employees or subcontractors due to an accident arising out of and in the course of the
5 performance of the work covered by such contract.

6 (b) Notwithstanding subsection (a) of this section, a principal contractor, intermediate
7 contractor, or subcontractor shall not be liable as an employer under this Article for the
8 payment of compensation on account of the injury or death of the independent contractor if the
9 principal contractor, intermediate contractor, or subcontractor (i) contracts with an independent
10 contractor who is ~~an individual licensed by the United States Department of Transportation and~~
11 owns or leases the vehicle providing service, (ii) the independent contractor personally operates
12 or is responsible for hiring or engaging and paying personnel who operate the vehicle, and is
13 operating the vehicle solely pursuant to that license, (iii) the independent contractor is covered
14 under an occupational accident policy either issued to the independent contractor or motor
15 carrier.

16 (c) A motor carrier and an independent contractor meeting the criteria contained in
17 subsection (b) of this section may, if mutually agreed to by the independent contractor and
18 motor carrier in writing, provide that the independent contractor and any of the independent
19 contractor's employees be covered by the motor carriers' workers' compensation insurance
20 policy or self-insurance and that the independent contractor and any of the independent
21 contractor's employees would be deemed employees of the motor carrier for purposes of
22 workers' compensation only. The motor carrier may charge the independent contractor for any
23 agreed upon premiums or, if self-insured, for any equitable assessment for such coverage. The
24 agreement shall not affect the independent contractor status of the independent contractor for
25 any purpose other than for workers' compensation.

26 (d) For purposes of this section, the term "occupational accident insurance" means the
27 type of insurance policy obtained by independent contractor owners-operators in the trucking
28 industry that includes the following benefit categories: (i) temporary total disability-type wage
29 replacement benefit, (ii) permanent disability or impairment benefit, (iii) a medical expense
30 payment benefit, and (iv) a death benefit. The occupational accident insurance policy may be
31 issued directly to the independent contractor owner-operator or issued as a master policy for
32 which the motor carrier may charge the independent contractor owner-operator an equitable
33 sum for the coverage. ~~The principal contractor, intermediate contractor, or subcontractor may~~
34 insure any and all of his independent contractors and their employees or subcontractors in a
35 blanket policy, and when insured, the independent contractors, subcontractors, and employees
36 will be entitled to compensation benefits under the blanket policy.

37 ~~A principal contractor, intermediate contractor, or subcontractor may include in the~~
38 ~~governing contract with an independent contractor in the interstate or intrastate carrier industry~~
39 ~~who operates a truck, tractor, or truck tractor trailer licensed by a governmental motor vehicle~~
40 ~~regulatory agency an agreement for the independent contractor to reimburse the cost of~~
41 ~~covering that independent contractor under the principal contractor's, intermediate contractor's,~~
42 ~~or subcontractor's coverage of his business."~~

43 **SECTION 2.(b)** This section is effective when it becomes law.

44 **SECTION 3.(a)** G.S. 97-36 reads as rewritten:

45 **"§ 97-36. Accidents taking place outside State; employees receiving compensation from**
46 **another state.state; reciprocity.**

47 (a) Where an accident happens while the employee is employed elsewhere than in this
48 State and the accident is one which would entitle ~~him or his~~ the employee or the employee's
49 dependents or next of kin to compensation if it had happened in this State, then the employee or
50 his ~~the~~ employee's dependents or next of kin shall be entitled to compensation (i) if the contract
51 of employment was made in this State, (ii) if the employer's principal place of business is in

1 this State, or (iii) if the employee's principal place of employment is within this State; provided,
2 however, that if an employee or his dependents or next of kin shall receive compensation or
3 damages under the laws of any other state nothing herein contained shall be construed so as to
4 permit a total compensation for the same injury greater than is provided for in this Article.

5 (b) If an employee in this State temporarily leaves the State incidental to the employee's
6 employment and receives an accidental injury arising out of and in the course of the
7 employment, then the employee, or beneficiaries of the employee if the injury results in death,
8 must file their claim for compensation in this State subject to the terms of any choice of forum
9 clause contained in the employee's employment contract. If there is no choice of forum clause
10 in the employment contract, then the other provisions in this section shall apply.

11 (c) An employee from another state and the employer of the employee in the other state
12 are exempt from the provisions of this Chapter while the employee is working temporarily in
13 this State only if all of the following conditions are met:

14 (1) The employer has furnished workers' compensation insurance coverage
15 under the workers' compensation insurance or similar laws of the other state
16 to cover the employee's employment while in this State.

17 (2) The extraterritorial provisions of this Chapter are recognized in the other
18 state.

19 (3) Employees and employers who are covered in this State are likewise
20 exempted from the application of the workers' compensation insurance or
21 similar laws of the other state.

22 (d) The benefits under the workers' compensation insurance or similar laws of the other
23 state, or other remedies under similar law, are the exclusive remedies against the employer for
24 any injury, whether resulting in death or not, received by the employee while working
25 temporarily for that employer in this State.

26 (e) A certificate from the governmental entity or duly authorized officer or person of
27 another state certifying that the employer from the other state is insured in that state and has
28 provided extraterritorial coverage insuring employees while working in this State is prima facie
29 evidence that the employer carries that workers' compensation insurance.

30 (f) Whenever in any appeal or other litigation the construction of the laws of another
31 jurisdiction is required, the court shall take judicial notice of such construction of the laws of
32 the other jurisdiction.

33 (g) The Industrial Commission may enter into an agreement with the workers'
34 compensation agency of any other state relating to conflicts of jurisdiction where the contract
35 of employment is in one state and the injuries occur in the other state or where there is a dispute
36 as to the boundaries or jurisdiction of the states. When such an agreement has been duly
37 executed and made public by the respective state agencies, then (i) the rights of employees who
38 are hired in the other state and injured while working temporarily in this State or hired in this
39 State and injured while working temporarily in the other states and (ii) when claims arise where
40 jurisdiction is otherwise uncertain, the rights of employees shall be determined pursuant to the
41 agreement and confined to the jurisdiction provided in the agreement.

42 (h) When an employee has a claim under the workers' compensation law of another
43 jurisdiction for the same injury or occupational disease as the claim filed in this State, the total
44 amount of compensation paid or awarded under the other workers' compensation law shall be
45 credited against the compensation due under the North Carolina Workers' Compensation Act.

46 (i) The following definitions apply in this section:

47 (1) Jurisdiction or state. – Includes a territory, province, or foreign nation.

48 (2) Working temporarily. – When an employee is working for his or her
49 employer for no more than 10 consecutive days or for no more than 25 total
50 days during a calendar year in a state other than the state where the
51 employee is primarily employed."

1 **SECTION 3.(b)** This section is effective when it becomes law and applies to
2 claims for workers' compensation insurance benefits made on or after that date regardless of the
3 date of the accident.

4 **SECTION 4.** This act is effective when it becomes law.