

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 952

Short Title: Workers' Comp. for Farm Workers.

(Public)

Sponsors: Representatives Hackney; and Colton.

Referred to: Judiciary I.

April 19, 1991

A BILL TO BE ENTITLED

AN ACT TO BRING CERTAIN SEASONAL FARM WORKERS OF CERTAIN FARM OWNERS, FARM OPERATORS, AND AGRICULTURAL ESTABLISHMENTS WITHIN THE PURVIEW OF THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-2 reads as rewritten:

"§ 97-2. Definitions.

When used in this Article, unless the context otherwise requires –

- (1) Employment. – The term 'employment' includes employment by the State and all political subdivisions thereof, and all public and quasi-public corporations therein and all private employments in which three or more employees are regularly employed in the same business or establishment or in which one or more employees are employed in activities which involve the use or presence of radiation, except agriculture and domestic services, unless 10 or more full-time nonseasonal agricultural workers are regularly employed by the employer domestic services and an individual sawmill and logging operator with less than 10 employees, who saws and logs less than 60 days in any six consecutive months and whose principal business is unrelated to sawmilling or logging. 'Employment' also includes agricultural employments when the farm owner, farm operator, or agricultural establishment pays aggregate wages of two thousand dollars (\$2,000)

1 or more for agricultural labor to three or more agricultural workers in
2 the current or preceding year.

- 3 (2) Employee. – The term 'employee' means every person engaged in an
4 employment under any appointment or contract of hire or
5 apprenticeship, express or implied, oral or written, including aliens,
6 and also minors, whether lawfully or unlawfully employed, but
7 excluding persons whose employment is both casual and not in the
8 course of the trade, business, profession or occupation of his employer,
9 and as relating to those so employed by the State, the term 'employee'
10 shall include all officers and employees of the State, including such as
11 are elected by the people, or by the General Assembly, or appointed by
12 the Governor to serve on a per diem, part-time or fee basis, either with
13 or without the confirmation of the Senate; as relating to municipal
14 corporations and political subdivisions of the State, the term
15 'employee' shall include all officers and employees thereof, including
16 such as are elected by the people. The term 'employee' shall include
17 members of the North Carolina national guard, except when called into
18 the service of the United States, and members of the North Carolina
19 State guard, and members of these organizations shall be entitled to
20 compensation for injuries arising out of and in the course of the
21 performance of their duties at drill, in camp, or on special duty under
22 orders of the Governor. The term 'employee' shall include deputy
23 sheriffs and all persons acting in the capacity of deputy sheriffs,
24 whether appointed by the sheriff or by the governing body of the
25 county and whether serving on a fee basis or on a salary basis, or
26 whether deputy sheriffs serving upon a full-time basis or a part-time
27 basis, and including deputy sheriffs appointed to serve in an
28 emergency, but as to those so appointed, only during the continuation
29 of the emergency. The sheriff shall furnish to the board of county
30 commissioners a complete list of all deputy sheriffs named or
31 appointed by him immediately after their appointment, and notify the
32 board of commissioners of any changes made therein promptly after
33 such changes are made. Any reference to an employee who has been
34 injured shall, when the employee is dead, include also his legal
35 representative, dependents, and other persons to whom compensation
36 may be payable: Provided, further, that any employee as herein
37 defined of a municipality, county, or of the State of North Carolina
38 while engaged in the discharge of his official duty outside the
39 jurisdictional or territorial limits of the municipality, county, or the
40 State of North Carolina and while acting pursuant to authorization or
41 instruction from any superior officer, shall have the same rights under
42 this Article as if such duty or activity were performed within the
43 territorial boundary limits of his employer.

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

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

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

25 When a farm owner, farm operator, or agricultural establishment
26 arranges for agricultural labor through a farm labor contractor, the
27 agricultural workers in the farm labor contractor's crew shall be
28 deemed employees of the farm owner, farm operator, or agricultural
29 establishment for purposes of this Chapter, unless the farm labor
30 contractor has workers' compensation coverage for such agricultural
31 workers in full force and effect at the time the labor is performed.

32 The term employee shall also include senior members of the Civil Air
33 Patrol, 18 years of age or older, and currently certified pursuant to G.S.
34 143B-491(a) when performing duties in the course and scope of a State
35 requested and approved mission pursuant to Article 11 of Chapter
36 143B.

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

41 Any sole proprietor or partner of a business whose employees are
42 eligible for benefits under this Article may elect to be included as an
43 employee under the workers' compensation coverage of such business
44 if he is actively engaged in the operation of the business and if the

1 insurer is notified of his election to be so included. Any such sole
2 proprietor or partner shall, upon such election, be entitled to employee
3 benefits and be subject to employee responsibilities prescribed in this
4 Article.

5 (3) Employer. – The term 'employer' means the State and all political
6 subdivisions thereof, all public and quasi-public corporations therein,
7 every person carrying on any employment and the legal representative
8 of a deceased person or the receiver or trustee of any person. The
9 board of commissioners of each county of the State, for the purposes
10 of this law, shall be considered as 'employer' of all deputy sheriffs
11 serving within such county, or persons serving or performing the
12 duties of a deputy sheriff, whether such persons are appointed by the
13 sheriff or by the board of commissioners and whether serving on a fee
14 basis or salary basis. Each county is authorized to insure its
15 compensation liability for deputy sheriffs to the same extent it is
16 authorized to insure other compensation liability for employees
17 thereof.

18 (4) Person. – The term 'person' means individual, partnership, association
19 or corporation.

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

43 But where for exceptional reasons the foregoing would be unfair,
44 either to the employer or employee, such other method of computing

1 average weekly wages may be resorted to as will most nearly
2 approximate the amount which the injured employee would be earning
3 were it not for the injury.

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

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

20 In case of disabling injury or death to a volunteer fireman or
21 member of an organized rescue squad or duly appointed and sworn
22 member of an auxiliary police department organized pursuant to G.S.
23 160A-282 or senior members of the State Civil Air Patrol functioning
24 under Article 11, Chapter 143B, under compensable circumstances,
25 compensation payable shall be calculated upon the average weekly
26 wage the volunteer fireman or member of an organized rescue squad or
27 member of an auxiliary police department or senior member of the
28 State Civil Air Patrol was earning in the employment wherein he
29 principally earned his livelihood as of the date of injury. Provided,
30 however, that the minimum compensation payable to a volunteer
31 fireman, member of an organized rescue squad or sworn member of an
32 auxiliary police department organized pursuant to G.S. 160A-282, or
33 senior members of the State Civil Air Patrol shall be sixty-six and two-
34 thirds percent (66 2/3%) of the maximum weekly benefit established in
35 G.S. 97-29.

- 36 (6) Injury. – 'Injury and personal injury' shall mean only injury by accident
37 arising out of and in the course of the employment, and shall not
38 include a disease in any form, except where it results naturally and
39 unavoidably from the accident. With respect to back injuries, however,
40 where injury to the back arises out of and in the course of the
41 employment and is the direct result of a specific traumatic incident of
42 the work assigned, 'injury by accident' shall be construed to include
43 any disabling physical injury to the back arising out of and causally
44 related to such incident. Injury shall include breakage or damage to

- 1 eyeglasses, hearing aids, dentures, or other prosthetic devices which
2 function as part of the body; provided, however, that eyeglasses and
3 hearing aids will not be replaced, repaired, or otherwise compensated
4 for unless injury to them is incidental to a compensable injury.
- 5 (7) Carrier. – The term 'carrier' or 'insurer' means any person or fund
6 authorized under G.S. 97-93 to insure under this Article, and includes
7 self-insurers.
- 8 (8) Commission. – The term 'Commission' means the North Carolina
9 Industrial Commission, to be created under the provisions of this
10 Article.
- 11 (9) Disability. – The term 'disability' means incapacity because of injury to
12 earn the wages which the employee was receiving at the time of injury
13 in the same or any other employment.
- 14 (10) Death. – The term 'death' as a basis for a right to compensation means
15 only death resulting from an injury.
- 16 (11) Compensation. – The term 'compensation' means the money allowance
17 payable to an employee or to his dependents as provided for in this
18 Article, and includes funeral benefits provided herein.
- 19 (12) Child, Grandchild, Brother, Sister. – The term 'child' shall include a
20 posthumous child, a child legally adopted prior to the injury of the
21 employee, and a stepchild or acknowledged illegitimate child
22 dependent upon the deceased, but does not include married children
23 unless wholly dependent upon him. 'Grandchild' means a child as
24 above defined of a child as above defined. 'Brother' and 'sister' include
25 stepbrothers and stepsisters, half brothers and half sisters, and brothers
26 and sisters by adoption, but does not include married brothers nor
27 married sisters unless wholly dependent on the employee. 'Child,'
28 'grandchild,' 'brother,' and 'sister' include only persons who at the time
29 of the death of the deceased employee are under 18 years of age.
- 30 (13) Parent. – The term 'parent' includes stepparents and parents by
31 adoption, parents-in-law, and any person who for more than three
32 years prior to the death of the deceased employee stood in the place of
33 a parent to him, if dependent on the injured employee.
- 34 (14) Widow. – The term 'widow' includes only the decedent's wife living
35 with or dependent for support upon him at the time of his death; or
36 living apart for justifiable cause or by reason of his desertion at such
37 time.
- 38 (15) Widower. – The term 'widower' includes only the decedent's husband
39 living with or dependent for support upon her at the time of her death
40 or living apart for justifiable cause or by reason of her desertion at
41 such time.
- 42 (16) Adoption. – The term 'adoption' or 'adopted' means legal adoption
43 prior to the time of the injury.

- 1 (17) Singular. – The singular includes the plural and the masculine includes
2 the feminine and neuter.
- 3 (18) Hernia. – In all claims for compensation for hernia or rupture, resulting
4 from injury by accident arising out of and in the course of the
5 employee's employment, it must be definitely proven to the
6 satisfaction of the Industrial Commission:
- 7 a. That there was an injury resulting in hernia or rupture.
8 b. That the hernia or rupture appeared suddenly.
9 c. Repealed by Session Laws 1987, c. 729, s. 2.
10 d. That the hernia or rupture immediately followed an accident.
11 Provided, however, a hernia shall be compensable under this
12 Article if it arises out of and in the course of the employment
13 and is the direct result of a specific traumatic incident of the
14 work assigned.
15 e. That the hernia or rupture did not exist prior to the accident for
16 which compensation is claimed.

17 All hernia or rupture, inguinal, femoral or otherwise, so proven to
18 be the result of an injury by accident arising out of and in the course of
19 employment, shall be treated in a surgical manner by a radical
20 operation. If death results from such operation, the death shall be
21 considered as a result of the injury, and compensation paid in
22 accordance with the provisions of G.S. 97-38. In nonfatal cases, if it is
23 shown by special examination, as provided in G.S. 97-27, that the
24 injured employee has a disability resulting after the operation,
25 compensation for such disability shall be paid in accordance with the
26 provisions of this Article.

27 In case the injured employee refuses to undergo the radical
28 operation for the cure of said hernia or rupture, no compensation will
29 be allowed during the time such refusal continues. If, however, it is
30 shown that the employee has some chronic disease, or is otherwise in
31 such physical condition that the Commission considers it unsafe for
32 the employee to undergo said operation, the employee shall be paid
33 compensation in accordance with the provisions of this Article."

34 Sec. 2. G.S. 97-13(b) reads as rewritten:

35 "(b) Casual Employment, Domestic Servants, ~~Farm Laborers,~~ Federal
36 Government, Employer of Less than Three Employees. – This Article shall not apply to
37 casual employees, ~~farm laborers when fewer than 10 full time nonseasonal farm laborers are~~
38 ~~regularly employed by the same employer,~~ federal government employees in North
39 Carolina, and domestic servants, nor to employees of such persons, nor to any person,
40 firm or private corporation that has regularly in service less than three employees in the
41 same business within this State, except that any employer without regard to number of
42 employees, including an employer of domestic servants, farm laborers, or one who
43 previously had exempted himself, who has purchased workers' compensation insurance
44 to cover his compensation liability shall be conclusively presumed during life of the

1 policy to have accepted the provisions of this Article from the effective date of said
2 policy and his employees shall be so bound unless waived as provided in this Article;
3 provided however, that this Article shall apply to all employers of one or more
4 employees who are employed in activities which involve the use or presence of
5 radiation."

6 Sec. 3. This act is effective upon ratification.