

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 652
Judiciary I Committee Substitute Adopted 4/20/93

Short Title: CAP-Tort Liability.

(Public)

Sponsors:

Referred to:

March 31, 1993

A BILL TO BE ENTITLED

AN ACT TO PLACE THE CIVIL AIR PATROL UNDER THE STATE TORT CLAIMS ACT FOR STATE-APPROVED MISSIONS AND TO ALLOW CADETS OF THE CIVIL AIR PATROL TO BE ELIGIBLE FOR WORKERS' COMPENSATION WHILE ON STATE-APPROVED MISSIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-492 reads as rewritten:

"§ 143B-492. State liability.

Unless otherwise specifically provided, the members of the North Carolina Wing-Civil Air Patrol shall serve without compensation and shall not be entitled to the benefits of the retirement system for teachers and State employees as set forth in Chapter 135 of the General Statutes. The provisions of Article 31 of Chapter 143 of the General Statutes, with respect to tort claims against State departments and agencies, shall not be applicable to the activities of the North Carolina Wing-Civil Air Patrol, ~~and unless those activities are State-approved missions which are not covered by the Federal Tort Claims Act. the State or its agencies shall not in any manner be liable, for injury or damage to any person, firm, or corporation by reason of the acts of the North Carolina Wing-Civil Air Patrol, its subdivisions or any of the members or officers thereof.~~ The State shall not in any manner be liable for any of the contracts, debts, or obligations of the said organization."

Sec. 2. G.S. 143B-491 reads as rewritten:

"§ 143B-491. Personnel and benefits.

1 (a) The Wing Commander of the North Carolina Wing-Civil Air Patrol shall
2 certify to the Secretary or his designee those ~~senior members, 18 years of age or older, and~~
3 members who are in good ~~standing, as senior standing as~~ members eligible for benefits.
4 The Wing Commander shall provide the Secretary with two copies of the certification.
5 The Secretary shall acknowledge receipt of, sign, and date both copies and return one to
6 the Wing Commander. The Wing Commander shall, in the form and manner provided
7 above, notify the Secretary of any changes in personnel within 30 days thereof. Upon
8 the Secretary's signature, those members listed on the certification shall be eligible for
9 the benefits listed below.

10 (b) Those members of the North Carolina Wing-Civil Air Patrol certified under
11 subsection (a) of this section shall be deemed and considered employees of the
12 Department of Crime Control and Public Safety for workers' compensation purposes,
13 and for no other purposes, while performing duties incident to a State ~~requested and~~
14 approved mission. Such period of employment shall not extend to said members while
15 performing duties incident to a United States Air Force authorized mission or any other
16 Wing activities."

17 Sec. 3. G.S. 97-2(2) reads as rewritten:

18 "(2) Employee. – The term 'employee' means every person engaged in an
19 employment under any appointment or contract of hire or
20 apprenticeship, express or implied, oral or written, including aliens,
21 and also minors, whether lawfully or unlawfully employed, but
22 excluding persons whose employment is both casual and not in the
23 course of the trade, business, profession or occupation of his employer,
24 and as relating to those so employed by the State, the term 'employee'
25 shall include all officers and employees of the State, including such as
26 are elected by the people, or by the General Assembly, or appointed by
27 the Governor to serve on a per diem, part-time or fee basis, either with
28 or without the confirmation of the Senate; as relating to municipal
29 corporations and political subdivisions of the State, the term
30 'employee' shall include all officers and employees thereof, including
31 such as are elected by the people. The term 'employee' shall include
32 members of the North Carolina national guard, except when called into
33 the service of the United States, and members of the North Carolina
34 State guard, and members of these organizations shall be entitled to
35 compensation for injuries arising out of and in the course of the
36 performance of their duties at drill, in camp, or on special duty under
37 orders of the Governor. The term 'employee' shall include deputy
38 sheriffs and all persons acting in the capacity of deputy sheriffs,
39 whether appointed by the sheriff or by the governing body of the
40 county and whether serving on a fee basis or on a salary basis, or
41 whether deputy sheriffs serving upon a full-time basis or a part-time
42 basis, and including deputy sheriffs appointed to serve in an
43 emergency, but as to those so appointed, only during the continuation
44 of the emergency. The sheriff shall furnish to the board of county

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

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

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

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

39 The term employee shall also include ~~senior~~ members of the Civil
40 Air Patrol, ~~18 years of age or older, Patrol and~~ currently certified
41 pursuant to G.S. 143B-491(a) when performing duties in the course
42 and scope of a State ~~requested and~~ approved mission pursuant to Article
43 11 of Chapter 143B.

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

5 Any sole proprietor or partner of a business whose employees are
6 eligible for benefits under this Article may elect to be included as an
7 employee under the workers' compensation coverage of such business
8 if he is actively engaged in the operation of the business and if the
9 insurer is notified of his election to be so included. Any such sole
10 proprietor or partner shall, upon such election, be entitled to employee
11 benefits and be subject to employee responsibilities prescribed in this
12 Article."

13 Sec. 4. This act is effective upon ratification.