

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001**

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**SENATE BILL 299\*  
Second Edition Engrossed 4/4/01**

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

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Sponsors: Senators Robinson; Albertson, Bingham, Carter, Harris, Martin of Pitt, Metcalf, Odom, Swindell, Thomas, Warren, Weinstein, and Wellons.

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Referred to: Insurance and Consumer Protection.

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March 5, 2001

1                                   A BILL TO BE ENTITLED  
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

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 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 1.1.** G.S. 97-2(3) reads as rewritten:

26 '(3) Employer. – The term "employer" means the State and all  
27 political subdivisions thereof, all public and quasi-public corporations  
28 therein, every person carrying on any employment and the legal  
29 representative of a deceased person or the receiver or trustee of any  
30 person. The board of commissioners of each county of the State, for  
31 the purposes of this law, shall be considered as "employer" of all  
32 deputy sheriffs serving within such county, or persons serving or  
33 performing the duties of a deputy sheriff, whether such persons are  
34 appointed by the sheriff or by the board of commissioners and whether  
35 serving on a fee basis or salary basis. Each county is authorized to  
36 insure its compensation liability for deputy sheriffs to the same extent  
37 it is authorized to insure other compensation liability for employees  
38 thereof. For purposes of this Chapter, when an authorized pickup  
39 firefighter of the Division of Forest Resources of the Department of  
40 Environment and Natural Resources is engaged in emergency fire  
41 suppression activities for the Division of Forest Resources, that  
42 individual's employer is the Division of Forest Resources."

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

1           (5) Average Weekly Wages. – "Average weekly wages" shall mean the  
2 earnings of the injured employee in the employment in which he was  
3 working at the time of the injury during the period of 52 weeks  
4 immediately preceding the date of the injury, including the subsistence  
5 allowance paid to veteran trainees by the United States government,  
6 provided the amount of said allowance shall be reported monthly by  
7 said trainee to his employer, divided by 52; but if the injured employee  
8 lost more than seven consecutive calendar days at one or more times  
9 during such period, although not in the same week, then the earnings  
10 for the remainder of such 52 weeks shall be divided by the number of  
11 weeks remaining after the time so lost has been deducted. Where the  
12 employment prior to the injury extended over a period of less than 52  
13 weeks, the method of dividing the earnings during that period by the  
14 number of weeks and parts thereof during which the employee earned  
15 wages shall be followed; provided, results fair and just to both parties  
16 will be thereby obtained. Where, by reason of a shortness of time  
17 during which the employee has been in the employment of his  
18 employer or the casual nature or terms of his employment, it is  
19 impractical to compute the average weekly wages as above defined,  
20 regard shall be had to the average weekly amount which during the 52  
21 weeks previous to the injury was being earned by a person of the same  
22 grade and character employed in the same class of employment in the  
23 same locality or community.

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

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

32           Where a minor employee, under the age of 18 years, sustains a  
33 permanent disability or dies leaving dependents surviving, the  
34 compensation payable for permanent disability or death shall be  
35 calculated, first, upon the average weekly wage paid to adult  
36 employees employed by the same employer at the time of the accident  
37 in a similar or like class of work which the injured minor employee  
38 would probably have been promoted to if not injured, or, second, upon  
39 a wage sufficient to yield the maximum weekly compensation benefit.  
40 Compensation for temporary total disability or for the death of a minor  
41 without dependents shall be computed upon the average weekly wage  
42 at the time of the accident, unless the total disability extends more than  
43 52 weeks and then the compensation may be increased in proportion to  
44 his expected earnings.

1           In case of disabling injury or death to a volunteer fireman  
2           ~~or fireman~~, member of an organized rescue squad ~~or squad~~, an  
3           authorized pickup firefighter, as defined in subdivision (2) of this  
4           section, of the Division of Forest Resources of the Department of  
5           Environment and Natural Resources, when that individual is engaged  
6           in emergency fire suppression activities for the Division of Forest  
7           Resources, a duly appointed and sworn member of an auxiliary police  
8           department organized pursuant to G.S. 160A-282G.S. 160A-282, or  
9           senior members of the State Civil Air Patrol functioning under Article  
10          11, Chapter 143B, under compensable circumstances, compensation  
11          payable shall be calculated upon the average weekly wage the  
12          volunteer fireman ~~or fireman~~, member of an organized rescue squad  
13          ~~or squad~~, an authorized pickup firefighter of the Division of Forest  
14          Resources of the Department of Environment and Natural Resources,  
15          when that individual is engaged in emergency fire suppression  
16          activities for the Division of Forest Resources, member of an auxiliary  
17          police department~~department~~, or senior member of the State Civil Air  
18          Patrol was earning in the employment wherein he principally earned  
19          his livelihood as of the date of injury. Provided, however, that the  
20          minimum compensation payable to a volunteer fireman, member of an  
21          organized rescue squad ~~or squad~~, an authorized pickup firefighter of the  
22          Division of Forest Resources, of the Department of Environment and  
23          Natural Resources when that individual is engaged in emergency fire  
24          suppression activities for the Division of Forest Resources, a sworn  
25          member of an auxiliary police department organized pursuant to G.S.  
26          160A-282, or senior members of the State Civil Air Patrol shall be  
27          sixty-six and two thirds percent (66 2/3%) of the maximum weekly  
28          benefit established in G.S. 97-29."

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