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Short Title: Employee Misclassification Reform.

(Public)

Sponsors:

Referred to:

April 2, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE EMPLOYEE FAIR CLASSIFICATION ACT.
3 The General Assembly of North Carolina enacts:

4
5 **PART I. EMPLOYEE FAIR CLASSIFICATION ACT**

6 **SECTION 1.1.** Chapter 143 of the General Statutes is amended by adding a new
7 Article to read:

8 "Article 81.

9 "Employee Fair Classification Act.

10 **"§ 143-760. Title.**

11 This Article shall be known and may be cited as the "Employee Fair Classification Act."

12 **"§ 143-761. Definitions; scope.**

13 (a) The following definitions apply in this Article:

- 14 (1) Employ. – As defined by G.S. 95-25.2(3). For the purposes of this Article,
15 an entity or individual shall not be deemed to be an employer of an
16 individual hired or otherwise engaged by or through the entity or individual's
17 independent contractor.
- 18 (2) Employee. – Any individual that is defined as an employee by either
19 G.S. 95-25.2(4), 96-1(10), 97-2(2), or 105-163.1(4). The term does not mean
20 an individual who is an independent contractor.
- 21 (3) Employee Classification Division or Division. – The Employee
22 Classification Division within the Department of Revenue.
- 23 (4) Employee misclassification. – Avoiding tax liabilities and other obligations
24 imposed by Chapter 95, 96, 97, or 105 of the General Statutes by
25 misclassifying an employee as an independent contractor.
- 26 (5) Employer. – Any individual or entity that employs one or more employees
27 as defined by G.S. 97-2(3).
- 28 (6) Secretary. – The Secretary of the Department of Revenue.

29 (b) Nothing in this Article shall be construed or is intended to change the definition of
30 "employer" or "employee" under any other provision of law.

31 **"§ 143-762. Establishment of Employee Classification Division; appointment of director;**
32 **salaries; other staff.**



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1 (a) The Employee Classification Division is established within the Department of
2 Revenue.

3 (b) The Secretary shall appoint a director of the Division to serve at the Secretary's
4 pleasure with such authority as the Secretary deems necessary to direct and oversee the
5 Division in carrying out the purposes of this Article. The director shall be exempt from the
6 State Human Resources Act and shall devote his or her entire time to the duties of the Division.
7 The director may delegate any duties and responsibilities as may be necessary to ensure the
8 proper management of the Division. The director's salary shall be set by the General Assembly.

9 (c) The Secretary may employ clerical staff, investigators, and other staff within the
10 Division as is necessary for the Division to perform its duties under this Article.
11 Notwithstanding Chapters 126, 143A, and 143B of the General Statutes or any other provision
12 of law, the director may hire or fire personnel and transfer personnel within the Division. The
13 Division shall be provided with adequate offices in which the Division's records shall be kept
14 and its official business transacted during regular business hours. The Division shall also be
15 provided with necessary office furniture, stationery, and other supplies.

16 (d) The Office of the State Chief Information Officer shall ensure that the Division is
17 provided with all necessary access to the Government Data Analytics Center and all other
18 information technology services.

19 **"§ 143-763. Division powers and duties.**

20 (a) The Division shall have the following duties:

21 (1) Be available during business hours to receive reports of employee
22 misclassification by telephonic, written, or electronic communication.

23 (2) Investigate reports of employee misclassification and coordinate with and
24 assist all relevant State agencies in recovering any back taxes, wages,
25 benefits, penalties, or other monies owed as a result of an employer engaging
26 in employee misclassification.

27 (3) Assess administrative civil penalties for instances of employee
28 misclassification as set forth in G.S. 143-765.

29 (4) Coordinate with relevant State agencies and District Attorneys' offices in the
30 prosecution of employers and individuals who fail to pay civil assessments
31 or penalties assessed as a result of the employer's or individual's involvement
32 in employee misclassification.

33 (5) Provide all relevant information pertaining to each instance of reported
34 employee misclassification to the North Carolina Department of Labor, the
35 North Carolina Division of Employment Security, and the North Carolina
36 Industrial Commission to facilitate investigation of potential violations of
37 Chapter 143, 95, 96, 97, or 105 of the General Statutes.

38 (6) Create a publicly available notice that includes the definition of employee
39 misclassification and indicates the civil penalties provided for in
40 G.S. 143-765.

41 (7) Develop methods and strategies for information sharing between State
42 agencies in order to proactively identify possible instances of employee
43 misclassification.

44 (8) Develop methods and strategies to educate employers, employees, and the
45 public about proper classification of employees and the prevention of
46 employee misclassification.

47 (b) The director shall appoint an informal advisory council to advise the director on
48 issues within the jurisdiction of the Division. The members of the advisory council shall
49 include, at a minimum:

50 (1) The following officers or the officer's designee:

51 a. Commissioner of Labor.

- b. Secretary of Revenue.
- c. Chairman of the Industrial Commission.
- d. Assistant Secretary of Commerce for the Division of Employment Security.
- e. State Budget Director.

(2) A representative of workers in this State.

(3) A representative of employers in this State.

The members of the council shall not receive compensation, per diem, or expense reimbursement from the State Treasury for their service on the advisory council. The director shall ensure that the advisory council meets as often as is necessary and no less frequently than on a quarterly basis.

(c) No later than October 1 of each year, the Division shall publish annually to the Office of the Governor and to the Joint Legislative Commission on Governmental Operations a report of the administration of this Article, together with any recommendations as the Division deems advisable. This report shall include, at a minimum, the number of reports of employee misclassification received, the number and amount of back taxes, wages, benefits, penalties, or other monies assessed, the amount of back taxes, wages, benefits, penalties, or other monies collected, and the number of cases referred to each State agency.

(d) The Division shall adopt rules in accordance with Article 2A of Chapter 150B of the General Statutes and that are not inconsistent with this Article for the purpose of carrying out the provisions of this Article and establishing the processes and procedures to be used under this Article.

"§ 143-764. Determination of independent contractor status.

(a) The following factors shall be considered in determining whether an individual is an independent contractor for purposes of this Article:

- (1) Whether the individual is engaged in an independent business, calling, or occupation.
- (2) Whether the individual is to have the independent use of his or her special skill, knowledge, or training in the execution of the work.
- (3) Whether the individual is doing a specified piece of work at a fixed price or for a lump sum or upon a quantitative basis.
- (4) Whether the individual is not subject to discharge because he or she adopts one method of doing the work rather than another.
- (5) Whether the individual is not in the regular employ of the other contracting party.
- (6) Whether the individual is free to use such assistants as he or she may think proper.
- (7) Whether the individual has full control over such assistants.
- (8) Whether the individual selects his or her own time.

(b) The presence of one or more of the foregoing factors is not controlling, nor is the presence of all of the foregoing factors required in determining whether an individual is an independent contractor. Acts taken to comply with laws or regulations shall not be considered as evidence contrary to an independent contractor determination.

(c) The provisions of this section are intended to codify the holding in *Hayes v. Board of Trustees of Elon College*, 224 N.C. 11 (1944). Other factors consistent with that holding may also be considered in making a determination under this section.

"§ 143-765. Employee misclassification prohibited; civil penalties; repeated instances of misclassification.

(a) Employee misclassification is prohibited. It shall be a violation of this Article for an employer to willfully or recklessly engage in employee misclassification. For the purposes of this Article, the term "willfully or recklessly engage in employee misclassification" shall mean

1 to knowingly commit employee misclassification as defined by G.S. 143-761(a)(4) where, in
2 consideration of the standard set forth in G.S. 143-764, there is no good-faith argument that
3 such individual was an independent contractor. In addition to the requirements of and the
4 sanctions provided by this Article, any employer found to have misclassified one or more
5 employees shall be subject to any and all sanctions or liabilities allowed by any other
6 applicable law.

7 (b) Any employer who is found by the Division to have violated this Article after being
8 assessed any back taxes, wages, benefits, penalties, or other monies by any State agency as a
9 result of misclassifying one or more employees within the previous three calendar years shall
10 be assessed a civil penalty of no greater than one thousand dollars (\$1,000) per misclassified
11 employee for any future instances of employee misclassification. In determining the amount of
12 the penalty to be assessed, the Division shall consider the degree of willfulness or recklessness
13 by the employer engaging in the employee misclassification. The penalty herein provided shall
14 be assessed by the Division administratively. Any employer found by the Division to have
15 engaged in employee misclassification may, within 60 days of receiving written notification of
16 a final finding by the Division, appeal the final finding and any accompanying civil penalty by
17 filing an appeal with the Industrial Commission. The Industrial Commission shall conduct a
18 hearing, receive evidence, and render a decision as to whether the employer violated this
19 Article and the proper amount of any civil penalty. In rendering its decision, the Industrial
20 Commission shall state its findings of fact and conclusions of law upon which the decision is
21 based.

22 (c) The employer shall have the right to appeal the decision of the Industrial
23 Commission by filing an appeal with the North Carolina Court of Appeals within 30 days of
24 receipt of the Industrial Commission's final decision. In reviewing the Industrial Commission's
25 decision, the Court of Appeals shall consider the matter *de novo* for both findings of fact and
26 conclusions of law. Enforcement of the penalty shall be made by the Office of the Attorney
27 General. The clear proceeds of penalties provided for in this subsection shall be remitted to the
28 Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

29 (d) Nothing in this section shall be construed to create a private right of action, at law or
30 in equity, for the activities prohibited by this Article.

31 **"§ 143-766. Temporary amnesty program.**

32 (a) The Division shall establish and administer a temporary amnesty program for the
33 purpose of encouraging voluntary self-reporting by employers currently engaging in employee
34 misclassification. Every employer participating in the temporary amnesty program shall be
35 immune from the civil penalties provided for in G.S. 143-765 for past instances of employee
36 misclassification that are voluntarily self-reported by the employer in accordance with the
37 procedures of the temporary amnesty program.

38 (b) The Division shall establish procedures for participation in the temporary amnesty
39 program. These procedures shall require, at a minimum, that a participating employer:

40 (1) File an application with the Division on a form prescribed by the Division on
41 or before October 1, 2016. This form shall require, at a minimum, the
42 employer's name, physical address, mailing address, telephone number,
43 Social Security number or taxpayer ID number, and disclosure of all actual
44 or potential instances of employee misclassification. If available, this form
45 shall require the employer's registered agent, drivers license number, license
46 number(s), and issuing agency of all licenses issued by a State licensing
47 board.

48 (2) Comply with any and all determinations made or directives issued by the
49 Division pertaining to the employer's application and compliance with this
50 Article.

1 (c) Nothing in this section shall be construed to limit the liability of a participating
2 employer in any civil or criminal matter not provided for by this Article.

3 **"§ 143-767. Occupational licensing boards and commissions; notice requirement;**
4 **applicant certification.**

5 (a) Every State occupational licensing board or commission that is authorized to issue
6 any license, permit, or certification shall include on every application for licensure, permit, or
7 certification, or application for renewal of the same, a certification that the applicant has read
8 and understands the employee misclassification notice set forth in G.S. 143-763(a)(6).

9 (b) Every applicant for a license, permit, or certification issued by a State occupational
10 licensing board or commission shall truthfully certify on the appropriate application that the
11 applicant has read and understands the employee misclassification notice set forth in
12 G.S. 143-763(a)(6).

13 (c) An occupational licensing board or commission shall deny the license, permit, or
14 certification application of any applicant who fails to comply with the certification requirement
15 set forth in subsection (b) of this section.

16 **"§ 143-768. Confidentiality; access to records.**

17 The records of the Division that are not civil penalty assessments or final orders relating to
18 an appeal of a civil penalty assessment, insofar as they refer to reported violations,
19 investigations, or other enforcement actions taken by the Division, are not public records under
20 G.S. 132-1 but may be shared by the Division with State and federal agencies as permitted or
21 required by law."

22 **SECTION 1.2.** G.S. 97-5.1 is repealed.

23 **SECTION 1.3.** G.S. 105-259(b) is amended by adding a new subdivision to read:

24 "(49) To furnish to the North Carolina Department of Labor, the North Carolina
25 Division of Employment Security, and the North Carolina Industrial
26 Commission employee misclassification information pursuant to
27 G.S. 143-763(a)(5) unless prohibited by law."

28 **SECTION 1.4.** The Industrial Commission shall adopt temporary and permanent
29 rules, and establish fees, in accordance with Article 2A of Chapter 150B of the General
30 Statutes, for the purpose of carrying out the provisions of G.S. 143-765(b). Rules adopted
31 pursuant to this section shall not be subject to G.S. 150B-19.1(e), 150B-19.1(f), and 150B-21.4.

32 **SECTION 1.5.** G.S. 143-760, 143-761, 143-762, 143-763, and 143-768 are
33 effective when this act becomes law. The remainder of this section becomes effective January
34 1, 2016, and applies to instances of employee misclassification occurring on or after that date.

35
36 **PART II. MISCLASSIFICATION NOTICE ADDED TO NCDOL POSTERS**

37 **SECTION 2.1.** G.S. 95-25.15(c) reads as rewritten:

38 "(c) A poster summarizing the major provisions of this Article shall be displayed in
39 every establishment subject to this Article. This poster shall also include notice indicating the
40 following in plain language:

41 (1) Any worker who is defined as an employee by either G.S. 95-25.2(4),
42 143-761(2), 96-1(10), 97-2(2), or 105-163.1(4) shall be treated as an
43 employee unless the individual is an independent contractor.

44 (2) Any employee who believes that the employee has been misclassified as an
45 independent contractor by the employee's employer may report the suspected
46 misclassification to the Employee Classification Division within the
47 Department of Revenue.

48 (3) The physical location, mailing address, telephone number, and e-mail
49 address where alleged incidents of employee misclassification may be
50 reported to the Employee Classification Division within the Department of
51 Revenue."

1
2 **PART III. SANCTIONS AND OTHER REQUIREMENTS CONCERNING EMPLOYEE**
3 **MISCLASSIFICATION**

4 **SECTION 3.1.** G.S. 87-11 reads as rewritten:

5 "**§ 87-11. Revocation of license; charges of fraud, negligence, incompetency, etc.; hearing**
6 **thereon; reissuance of certificate.**

7 (a) The Board shall have the power to refuse to issue or renew or revoke, suspend, or
8 restrict a certificate of license or to issue a reprimand or take other disciplinary action if a
9 general contractor licensed under this Article is found guilty of any fraud or deceit in obtaining
10 a license, or gross negligence, incompetency, or misconduct in the practice of his or her
11 profession, or willful violation of any provision of this ~~Article~~.Article, or if a penalty was
12 imposed pursuant to G.S. 143-765(b) that has been upheld upon final adjudication. The Board
13 shall also have the power to revoke, suspend, or otherwise restrict the ability of any person to
14 act as a qualifying party for a license to practice general contracting, as provided in
15 G.S. 87-10(c), for any copartnership, corporation or any other organization or combination, if
16 that person committed any act in violation of the provisions of this section and the Board may
17 take disciplinary action against the individual license held by that person.

18 (a1) Any person may prefer charges of fraud, deceit, negligence, or misconduct against
19 any general contractor licensed under this Article. The charges shall be in writing and sworn to
20 by the complainant and submitted to the Board. The charges, unless dismissed without hearing
21 by the Board as unfounded or trivial, shall be heard and determined by the Board in accordance
22 with the provisions of Chapter 150B of the General Statutes.

23 (b) The Board shall adopt and publish guidelines, consistent with the provisions of this
24 Article, governing the suspension and revocation of licenses. These guidelines shall include
25 references to the prohibition of employee misclassification under Article 81 of Chapter 143 of
26 the General Statutes and state that engaging in employee misclassification is grounds for
27 revocation of a license issued under this Article.

28 (c) The Board shall establish and maintain a system whereby detailed records are kept
29 regarding complaints against each licensee. This record shall include, for each licensee, the date
30 and nature of each complaint, investigatory action taken by the Board, any findings by the
31 Board, and the disposition of the matter.

32 (d) The Board may reissue a license to any person, firm or corporation whose license
33 has been revoked: Provided, five or more members of the Board vote in favor of such
34 reissuance for reasons the Board may deem sufficient.

35 The Board shall immediately notify the Secretary of State of its findings in the case of the
36 revocation of a license or of the reissuance of a revoked license.

37 A certificate of license to replace any certificate lost, destroyed or mutilated may be issued
38 subject to the rules and regulations of the Board.

39 (e) The Board shall be entitled to recover its reasonable administrative costs associated
40 with the investigation and prosecution of a violation of this Article or rules or regulations of the
41 Board up to a maximum of five thousand dollars (\$5,000) for any licensee or qualifying party
42 found to have committed any of the following:

43 (1) Fraud or deceit in obtaining a license.

44 (2) Gross negligence, incompetency, or misconduct in the practice of general
45 contracting.

46 (3) Willful violation of any provision of this Article."

47 **SECTION 3.1A.** G.S. 87-23 reads as rewritten:

48 "**§ 87-23. Revocation or suspension of license for cause.**

49 (a) The Board shall have power to revoke or suspend the license of or order the
50 reprimand or probation of any plumbing, heating, or fire sprinkler contractor, or any
51 combination thereof, who is guilty of any fraud or deceit in obtaining or renewing a license, or

1 who fails to comply with any provision or requirement of this Article, or the rules adopted by
2 the Board, if a penalty was imposed pursuant to G.S. 143-765(b) that has been upheld upon
3 final adjudication, or for gross negligence, incompetency, or misconduct, in the practice of or in
4 carrying on the business of a plumbing, heating, or fire sprinkler contractor, or any combination
5 thereof, as defined in this Article. Any person may prefer charges of such fraud, deceit, gross
6 negligence, incompetency, misconduct, or failure to comply with any provision or requirement
7 of this Article, or the rules of the Board, against any plumbing, heating, or fire sprinkler
8 contractor, or any combination thereof, who is licensed under the provisions of this Article. All
9 of the charges shall be in writing and investigated by the Board. Any proceedings on the
10 charges shall be carried out by the Board in accordance with the provisions of Chapter 150B of
11 the General Statutes.

12 (b) The Board shall adopt and publish guidelines, consistent with the provisions of this
13 Chapter, governing the suspension and revocation of licenses.

14 (c) The Board shall establish and maintain a system whereby detailed records are kept
15 regarding complaints against each licensee.

16 (d) The Board may conduct audits of the pay records and project records of licensee
17 firms in furtherance of this Article or the Employee Fair Classification Act, Article 81 of
18 Chapter 143 of the General Statutes."

19 **SECTION 3.1B.** G.S. 87-42 reads as rewritten:

20 **"§ 87-42. Duties and powers of Board.**

21 In order to protect the life, health and property of the public, the State Board of Examiners
22 of Electrical Contractors shall provide for the written examination of all applicants for
23 certification as a qualified individual, as defined in G.S. 87-41.1. The Board shall receive all
24 applications for certification as a qualified individual and all applications for licenses to be
25 issued under this Article, shall examine all applicants to determine that each has met the
26 requirements for certification and shall discharge all duties enumerated in this Article.
27 Applicants for certification as a qualified individual must be at least 18 years of age and shall
28 be required to demonstrate to the satisfaction of the Board their good character and adequate
29 technical and practical knowledge concerning the safe and proper installation of electrical work
30 and equipment. The examination to be given for this purpose shall include, but not be limited
31 to, the appropriate provisions of the National Electrical Code as incorporated in the North
32 Carolina State Building Code, the analysis of electrical plans and specifications, estimating of
33 electrical installations, and the fundamentals of the installation of electrical work and
34 equipment. Certification of qualified individuals shall be issued in the same classifications as
35 provided in this Article for license classifications. The Board shall prescribe the standards of
36 knowledge, experience and proficiency to be required of qualified individuals, which may vary
37 for the various license classifications. The Board shall issue certifications and licenses to all
38 applicants meeting the requirements of this Article and of the Board upon the receipt of the fees
39 prescribed by G.S. 87-44. The Board shall have power to make rules and regulations necessary
40 to the performance of its duties and for the effective implementation of the provisions of this
41 Article. The Board may conduct audits of the pay records and project records of licensee firms
42 in furtherance of this Article or the Employee Fair Classification Act, Article 81 of Chapter 143
43 of the General Statutes. The Board shall have the power to administer oaths and issue
44 subpoenas requiring the attendance of persons and the production of papers and records before
45 the Board in any hearing, investigation, or proceeding conducted by it. Members of the Board's
46 staff or the sheriff or other appropriate official of any county of this State shall serve all notices,
47 subpoenas, and other papers given to them by the Chairman for service in the same manner as
48 process issued by any court of record. Any person who neglects or refuses to obey a subpoena
49 issued by the Board shall be guilty of a Class 1 misdemeanor. The Board shall have the power
50 to acquire, rent, encumber, alienate, and otherwise deal with real property in the same manner
51 as a private person or corporation, subject only to approval of the Governor and the Council of

1 State. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and
2 revenues of the Board. The Board shall keep minutes of all its proceedings and shall keep an
3 accurate record of receipts and disbursements which shall be audited at the close of each fiscal
4 year by a certified public accountant, and the audit report shall be filed with the State of North
5 Carolina in accordance with Chapter 93B of the General Statutes."

6 **SECTION 3.1C.** G.S. 87-47(a1) reads as rewritten:

7 "(a) The following activities are prohibited:

- 8 (1) Offering to engage or engaging in electrical contracting without being
9 licensed.
- 10 (2) Selling, transferring, or assigning a license, regardless of whether for a fee.
- 11 (3) Aiding or abetting an unlicensed person, partnership, firm, or corporation to
12 offer to engage or to engage in electrical contracting.
- 13 (4) Being convicted of a crime involving fraud or moral turpitude.
- 14 (5) Engaging in fraud or misrepresentation to obtain a certification, obtain or
15 renew a license, or practice electrical contracting.
- 16 (6) Engaging in false or misleading advertising.
- 17 (7) Engaging in malpractice, unethical conduct, fraud, deceit, gross negligence,
18 gross incompetence, or gross misconduct in the practice of electrical
19 contracting.
- 20 (8) Engaging in employee misclassification in violation of G.S. 143-765."

21 **SECTION 3.2.** G.S. 143-59.2(a) reads as rewritten:

22 "(a) Ineligible Vendors. – A vendor is not entitled to enter into a contract for goods or
23 services with any department, institution, or agency of the State government subject to the
24 provisions of this Article if any officer or director of the vendor, or any owner if the vendor is
25 an unincorporated business ~~entity~~,entity; within five years prior to the date of the bid
26 solicitation, has been assessed a civil penalty pursuant to G.S. 143-765(b) that has been upheld
27 upon final adjudication; or within 10 years immediately prior to the date of the bid solicitation,
28 has been convicted of any violation of Chapter 78A of the General Statutes or the Securities
29 Act of 1933 or the Securities Exchange Act of 1934."

30 **SECTION 3.3.** G.S. 153A-134 is amended by adding a new subsection to read:

31 "(d) An applicant subject to regulation and licensure by a county under this section shall
32 certify to the county on the relevant application that the applicant has read and understands the
33 employee misclassification notice required under G.S. 143-763(a)(6)."

34 **SECTION 3.4.** G.S. 160A-194 is amended by adding a new subsection to read:

35 "(d) An applicant subject to regulation and licensure by a city under this section shall
36 certify to the city on the relevant application that the applicant has read and understands the
37 employee misclassification notice required under G.S. 143-763(a)(6)."

38 **SECTION 3.5.** G.S. 153A-360 reads as rewritten:

39 **"§ 153A-360. Inspections of work in progress.**

40 (a) As the work pursuant to a permit progresses, local inspectors shall make as many
41 inspections of the work as may be necessary to satisfy them that it is being done according to
42 the provisions of the applicable State and local laws and local ordinances and regulations and
43 of the terms of the permit. In exercising this power, each member of the inspection department
44 has a right, upon presentation of proper credentials, to enter on any premises within the
45 territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or
46 other enforcement action. If a permit has been obtained by an owner exempt from licensure
47 under G.S. 87-1(b)(2), no inspection shall be conducted without the owner being personally
48 present, unless the plans for the building were drawn and sealed by an architect licensed
49 pursuant to Chapter 83A of the General Statutes.

50 (b) Each owner shall certify to the county on the relevant application that the owner has
51 read and understands the employee misclassification notice required under G.S. 143-763(a)(6)."

1 **SECTION 3.6.** G.S. 160A-420 reads as rewritten:

2 "**§ 160A-420. Inspections of work in progress.**

3 (a) As the work pursuant to a permit progresses, local inspectors shall make as many
4 inspections thereof as may be necessary to satisfy them that the work is being done according
5 to the provisions of any applicable State and local laws and of the terms of the permit. In
6 exercising this power, members of the inspection department shall have a right to enter on any
7 premises within the jurisdiction of the department at all reasonable hours for the purposes of
8 inspection or other enforcement action, upon presentation of proper credentials. If a permit has
9 been obtained by an owner exempt from licensure under G.S. 87-1(b)(2), no inspection shall be
10 conducted without the owner being personally present, unless the plans for the building were
11 drawn and sealed by an architect licensed pursuant to Chapter 83A of the General Statutes.

12 (b) Each owner shall certify to the city on the relevant application that the owner has
13 read and understands the employee misclassification notice required under G.S. 143-763(a)(6)."
14

15 **PART IV. UNEMPLOYMENT INSURANCE AND WORKERS' COMPENSATION**
16 **FOR NEWSPRINT EMPLOYEES**

17 **SECTION 4.1.** G.S. 96-1(b)(12) reads as rewritten:

18 "(12) Employment. – Defined in section 3306 of the Code, with the following
19 additions and exclusions:

20 a. Additions. – The term includes ~~service~~ all of the following:

21 1. Service to a governmental unit, unit.

22 2. Service to a nonprofit organization, or organization.

23 3. Service to an Indian tribe as described in 3306(c)(7) and
24 3306(c)(8) of the Code.

25 4. Service described in section 3306(c)(15)(A) or (B) of the
26 Code involving delivery or distribution of newspapers or
27 shopping news or involving the sale of newspapers or
28 magazines.

29 "

30 **SECTION 4.2.** G.S. 97-2(2) reads as rewritten:

31 "(2) Employee. – The term "employee" means every person engaged in an
32 employment under any appointment or contract of hire or apprenticeship,
33 express or implied, oral or written, including aliens, and also minors,
34 whether lawfully or unlawfully employed, but excluding persons whose
35 employment is both casual and not in the course of the trade, business,
36 profession, or occupation of his employer, and as relating to those so
37 employed by the State, the term "employee" shall include all officers and
38 employees of the State, including such as are elected by the people, or by the
39 General Assembly, or appointed by the Governor to serve on a per diem,
40 part-time or fee basis, either with or without the confirmation of the Senate;
41 as relating to municipal corporations and political subdivisions of the State,
42 the term "employee" shall include all officers and employees thereof,
43 including such as are elected by the people. The term "employee" shall
44 include members of the North Carolina National Guard while on State active
45 duty under orders of the Governor and members of the North Carolina State
46 Defense Militia while on State active duty under orders of the Governor. The
47 term "employee" shall include deputy sheriffs and all persons acting in the
48 capacity of deputy sheriffs, whether appointed by the sheriff or by the
49 governing body of the county and whether serving on a fee basis or on a
50 salary basis, or whether deputy sheriffs serving upon a full-time basis or a
51 part-time basis, and including deputy sheriffs appointed to serve in an

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

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

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

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

38 The term "employee" shall also include members of the Civil Air Patrol
39 currently certified pursuant to G.S. 143B-1031(a) when performing duties in
40 the course and scope of a State-approved mission pursuant to Subpart C of
41 Part 5 of Article 13 of Chapter 143B of the General Statutes.

42 "Employee" shall not include any person performing voluntary service as
43 a ski patrolman who receives no compensation for such services other than
44 meals or lodging or the use of ski tow or ski lift facilities or any combination
45 thereof.

46 Any sole proprietor or partner of a business or any member of a limited
47 liability company may elect to be included as an employee under the
48 workers' compensation coverage of such business if he is actively engaged in
49 the operation of the business and if the insurer is notified of his election to
50 be so included. Any such sole proprietor or partner or member of a limited

1 liability company shall, upon such election, be entitled to employee benefits
2 and be subject to employee responsibilities prescribed in this Article.

3 Employee" shall include an authorized pickup firefighter of the North
4 Carolina Forest Service of the Department of Agriculture and Consumer
5 Services when that individual is engaged in emergency fire suppression
6 activities for the North Carolina Forest Service. As used in this section,
7 "authorized pickup firefighter" means an individual who has completed
8 required fire suppression training as a wildland firefighter and who is
9 available as needed by the North Carolina Forest Service for emergency fire
10 suppression activities, including immediate dispatch to wildfires and standby
11 for initial attack on fires during periods of high fire danger.

12 ~~It shall be a rebuttable presumption that the term "employee" shall not~~
13 ~~include any person performing services in the sale of newspapers or~~
14 ~~magazines to ultimate consumers under an arrangement whereby the~~
15 ~~newspapers or magazines are to be sold by that person at a fixed price and~~
16 ~~the person's compensation is based on the retention of the excess of the fixed~~
17 ~~price over the amount at which the newspapers or magazines are charged to~~
18 ~~the person."~~

19 **SECTION 4.3.** Sections 4.1 and 4.2 are effective when this act becomes law.
20

21 **PART V. SEVERABILITY**

22 **SECTION 5.** If any section or provision of this act is declared unconstitutional or
23 invalid by the courts, it does not affect the validity of this act as a whole or any part other than
24 the part so declared to be unconstitutional or invalid.
25

26 **PART VI. EFFECTIVE DATE**

27 **SECTION 6.** Except as otherwise provided, this act becomes effective January 1,
28 2016.