

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H.B. 189
Feb 26, 2019
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH10094-LR-3A

Short Title: WC/Sole Proprietors Must Have Coverage. (Local)

Sponsors: Representative Alexander.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE WORKERS' COMPENSATION ACT TO REQUIRE SOLE
3 PROPRIETORS TO MAINTAIN WORKERS' COMPENSATION INSURANCE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 1 of Chapter 97 is amended by adding a new section to read:

6 "**§ 97-6.1. Sole proprietor must maintain workers' compensation insurance**

7 (a) A sole proprietor performing any work shall maintain a workers' compensation
8 insurance policy in effect at all times. This requirement applies even if the sole proprietor
9 employs no other employees. The sole proprietor is entitled to employee benefits and will be
10 subject to employee responsibilities, as prescribed in this Article.

11 (b) If a sole proprietor performs work pursuant to a contract that provides workers'
12 compensation insurance for the sole proprietor, the terms of that contract do not satisfy or
13 supersede the requirements of subsection (a) of this section.

14 (c) Failure to comply with the requirements of this section estops the sole proprietor from
15 making a claim on the workers' compensation insurance policy of another person.

16 (d) Nothing in this section is intended, or shall be construed, to affect the provisions of
17 G.S. 97-5.1 relating to the presumption that taxicab drivers are independent contractors."

18 SECTION 2. G.S. 97-2 reads as rewritten:

19 "**§ 97-2. Definitions.**

20 When used in this Article, unless the context otherwise requires:

21 ...

22 (2) Employee. – The term "employee" means every person engaged in an
23 employment under any appointment or contract of hire or apprenticeship,
24 express or implied, oral or written, including aliens, and also minors, whether
25 lawfully or unlawfully employed, but excluding persons whose employment
26 is both casual and not in the course of the trade, business, profession, or
27 occupation of his employer, and as relating to those so employed by the State,
28 the term "employee" shall include all officers and employees of the State,
29 including such as are elected by the people, or by the General Assembly, or
30 appointed by the Governor to serve on a per diem, part-time or fee basis, either
31 with or without the confirmation of the Senate; as relating to municipal
32 corporations and political subdivisions of the State, the term "employee" shall
33 include all officers and employees thereof, including such as are elected by
34 the people. The term "employee" shall include members of the North Carolina
35 National Guard while on State active duty under orders of the Governor and
36 members of the North Carolina State Defense Militia while on State active



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

21 Except as otherwise provided herein, every executive officer elected or
22 appointed and empowered in accordance with the charter and bylaws of a
23 corporation shall be considered as an employee of such corporation under this
24 Article.

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

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

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

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

1 "Employee" shall not include any person elected or appointed and
2 empowered as an executive officer, director, or committee member under the
3 charter, articles, or bylaws of a nonprofit corporation subject to Chapter 47A,
4 47C, 47F, 55A, or 59B of the General Statutes, or any organization exempt
5 from federal income tax under section 501(c)(3) of the Internal Revenue Code,
6 who performs only voluntary service for the nonprofit corporation, provided
7 that the person receives no remuneration for the voluntary service other than
8 reasonable reimbursement for expenses incurred in connection with the
9 voluntary service. When a nonprofit corporation as described herein employs
10 one or more persons who do receive remuneration other than reasonable
11 reimbursement for expenses, then any volunteer officers, directors, or
12 committee members excluded from the definition of "employee" by operation
13 of this paragraph shall be counted as employees for the sole purpose of
14 determining the number of persons regularly employed in the same business
15 or establishment pursuant to G.S. 97-2(1). Other than for the limited purpose
16 of determining the number of persons regularly employed in the same business
17 or establishment, such volunteer nonprofit officers, directors, or committee
18 members shall not be "employees" under the Act. Nothing herein shall
19 prohibit a nonprofit corporation as described herein from voluntarily electing
20 to provide for workers' compensation benefits in the manner provided in
21 G.S. 97-93 for volunteer officers, directors, or committee members excluded
22 from the definition of "employee" by operation of this paragraph. This
23 paragraph shall not apply to any volunteer firefighter, volunteer member of an
24 organized rescue squad, an authorized emergency worker when that individual
25 is engaged in emergency fire suppression activities for the North Carolina
26 Forest Service, a duly appointed and sworn member of an auxiliary police
27 department organized pursuant to G.S. 160A-282, or a senior member of the
28 State Civil Air Patrol functioning under Subpart C of Part 5 of Article 13 of
29 Chapter 143B of the General Statutes, even if such person is elected or
30 appointed and empowered as an executive officer, director, or committee
31 member under the charter, articles, or bylaws of a nonprofit corporation as
32 described herein.

33 Any ~~sole proprietor or partner~~ of a business or any member of a limited
34 liability company may elect to be included as an employee under the workers'
35 compensation coverage of such business if he or she is actively engaged in the
36 operation of the business and if the insurer is notified of his election to be so
37 included. Any such ~~sole proprietor or partner~~ or member of a limited liability
38 company shall, upon such election, be entitled to employee benefits and be
39 subject to employee responsibilities prescribed in this Article.

40 "Employee" shall include an authorized emergency worker of the North
41 Carolina Forest Service of the Department of Agriculture and Consumer
42 Services when that individual is engaged in emergency activities for the North
43 Carolina Forest Service. As used in this section, "authorized emergency
44 worker" means an individual who has completed required emergency
45 response training as required by the North Carolina Forest Service and who is
46 available as needed by the North Carolina Forest Service for emergency
47 activities, including immediate dispatch to wildfires, snow events, hurricanes,
48 earthquakes, floods, or other emergencies, and standby for initial attack on
49 fires during periods of high fire danger.

50 ...

1 (23) Sole proprietor. – An individual who (i) does not employ any other individuals
2 in the business, whether the business is incorporated or unincorporated, (ii)
3 solely owns the business by himself or herself, and (iii) operates as an
4 independent contractor."

5 **SECTION 3.** This act is effective when it becomes law.