

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1993**

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HOUSE BILL 1494

Short Title: Workers' Comp/Forest Fires.

(Public)

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Sponsors: Representative Warner.

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Referred to: Rules, Calendar, and Operations of the House.

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May 17, 1993

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE BENEFITS FOR INJURY OR DEATH TO HOURLY  
2 EMPLOYEES OF THE DIVISION OF FOREST RESOURCES, DEPARTMENT  
3 OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES INVOLVED IN  
4 FIGHTING FOREST FIRES UNDER COMPENSABLE CIRCUMSTANCES.  
5

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 97-2(5) reads as rewritten:

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

1 employer or the casual nature or terms of his employment, it is  
2 impractical to compute the average weekly wages as above defined,  
3 regard shall be had to the average weekly amount which during the 52  
4 weeks previous to the injury was being earned by a person of the same  
5 grade and character employed in the same class of employment in the  
6 same locality or community.

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

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

15 Where a minor employee, under the age of 18 years, sustains a  
16 permanent disability or dies leaving dependents surviving, the  
17 compensation payable for permanent disability or death shall be  
18 calculated, first, upon the average weekly wage paid to adult  
19 employees employed by the same employer at the time of the accident  
20 in a similar or like class of work which the injured minor employee  
21 would probably have been promoted to if not injured, or, second, upon  
22 a wage sufficient to yield the maximum weekly compensation benefit.  
23 Compensation for temporary total disability or for the death of a minor  
24 without dependents shall be computed upon the average weekly wage  
25 at the time of the accident, unless the total disability extends more than  
26 52 weeks and then the compensation may be increased in proportion to  
27 his expected earnings.

28 In case of disabling injury or death to a volunteer ~~fireman or fireman,~~  
29 member of an organized rescue ~~squad or squad,~~ hourly employee of the  
30 Division of Forest Resources of the Department of Environment,  
31 Health, and Natural Resources involved in fighting forest fires, duly  
32 appointed and sworn member of an auxiliary police department  
33 organized pursuant to G.S. ~~160A-282-160A-282,~~ or senior members of  
34 the State Civil Air Patrol functioning under Article 11, Chapter 143B,  
35 under compensable circumstances, compensation payable shall be  
36 calculated upon the average weekly wage the volunteer ~~fireman or~~  
37 fireman, member of an organized rescue ~~squad or~~ squad, hourly  
38 employee of the Division of Forest Resources involved in fighting  
39 forest fires, member of an auxiliary police ~~department~~ department, or  
40 senior member of the State Civil Air Patrol was earning in the  
41 employment wherein he principally earned his livelihood as of the date  
42 of injury. Provided, however, that the minimum compensation  
43 payable to a volunteer fireman, member of an organized rescue ~~squad~~  
44 or squad, hourly employee of the Division of Forest Resources

1                    involved in fighting forest fires, sworn member of an auxiliary police  
2                    department organized pursuant to G.S. 160A-282, or senior members  
3                    of the State Civil Air Patrol shall be sixty-six and two-thirds percent  
4                    (66 2/3%) of the maximum weekly benefit established in G.S. 97-29."

5                    Sec. 2. This act is effective upon ratification and applies to all claims filed on  
6 or after that date.