

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003**

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**HOUSE BILL 892**

Short Title: Workers Comp./Interstate Carrier Drivers. (Public)

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Sponsors: Representatives Saunders and McComas (Primary Sponsors).

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Referred to: Judiciary II.

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April 7, 2003

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT THE COMMON LAW DETERMINES WHETHER A  
2 DRIVER OF A TRUCK OR TRACTOR TRAILER OF AN INTERSTATE  
3 MOTOR CARRIER IS AN EMPLOYEE SUBJECT TO THE WORKERS'  
4 COMPENSATION ACT.  
5

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  
28 on a fee basis or on a salary basis, or whether deputy sheriffs serving  
29 upon a full-time basis or a part-time basis, and including deputy

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

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

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

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

41           The term employee shall also include members of the Civil Air  
42 Patrol currently certified pursuant to G.S. 143B-491(a) when  
43 performing duties in the course and scope of a State approved mission  
44 pursuant to Article 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 or any member of a  
6 limited liability company may elect to be included as an employee  
7 under the workers' compensation coverage of such business if he is  
8 actively engaged in the operation of the business and if the insurer is  
9 notified of his election to be so included. Any such sole proprietor or  
10 partner or member of a limited liability company shall, upon such  
11 election, be entitled to employee benefits and be subject to employee  
12 responsibilities prescribed in this Article.

13 Whether a driver of a truck or tractor trailer for a motor carrier  
14 licensed by the Interstate Commerce Commission is an employee of  
15 the carrier within the meaning of this subdivision or an independent  
16 contractor shall be determined under the common law."

17 **SECTION 2.** This act is effective when it becomes law and applies to any  
18 claim arising on or after October 1, 2003.