

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001**

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**HOUSE BILL 462  
Committee Substitute Favorable 4/12/01**

Short Title: Workers' Comp/Certain Public School Students. (Public)

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Sponsors:

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Referred to:

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March 5, 2001

A BILL TO BE ENTITLED

1  
2 AN ACT TO PROVIDE THAT PUBLIC AND CHARTER SCHOOL STUDENTS  
3 WHO PARTICIPATE IN UNPAID, SCHOOL-APPROVED, WORK-BASED  
4 LEARNING EXPERIENCES LOCATED OFF SCHOOL GROUNDS ARE  
5 ELIGIBLE FOR COMPENSATION UNDER THE WORKERS'  
6 COMPENSATION ACT.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 97-2(2) reads as rewritten:

9 "(2) Employee. – The term 'employee' means every person engaged in an  
10 employment under any appointment or contract of hire or  
11 apprenticeship, express or implied, oral or written, including aliens,  
12 and also minors, whether lawfully or unlawfully employed, but  
13 excluding persons whose employment is both casual and not in the  
14 course of the trade, business, profession or occupation of his employer,  
15 and as relating to those so employed by the State, the term 'employee'  
16 shall include all officers and employees of the State, including such as  
17 are elected by the people, or by the General Assembly, or appointed by  
18 the Governor to serve on a per diem, part-time or fee basis, either with  
19 or without the confirmation of the Senate; as relating to municipal  
20 corporations and political subdivisions of the State, the term  
21 'employee' shall include all officers and employees thereof, including  
22 such as are elected by the people. The term 'employee' shall include  
23 members of the North Carolina national guard while on State active  
24 duty under orders of the Governor and members of the North Carolina  
25 State Defense Militia while on State active duty under orders of the  
26 Governor. The term 'employee' shall include deputy sheriffs and all  
27 persons acting in the capacity of deputy sheriffs, whether appointed by  
28 the sheriff or by the governing body of the county and whether serving  
29 on a fee basis or on a salary basis, or whether deputy sheriffs serving

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

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

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

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

42 The term employee shall also include members of the Civil Air Patrol  
43 currently certified pursuant to G.S. 143B-491(a) when performing

1 duties in the course and scope of a State approved mission pursuant to  
2 Article 11 of Chapter 143B of the General Statutes.

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 The term employee shall include any public school student enrolled  
16 in sixth through twelfth grade who is enrolled in an unpaid, school-  
17 approved, work-based learning experience that is located off the public  
18 school grounds on the premises of a business or other entity that  
19 employs individuals. The local board of education or the charter school  
20 is the employer within the meaning of this Article during the time that  
21 the student is enrolled in this unpaid, school-approved, work-based  
22 learning experience. For purposes of this section, 'public school'  
23 includes a charter school established under Part 6A of Article 16 of  
24 Chapter 115C of the General Statutes."

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

26 "(5) Average Weekly Wages. – 'Average weekly wages' shall mean the  
27 earnings of the injured employee in the employment in which he was  
28 working at the time of the injury during the period of 52 weeks  
29 immediately preceding the date of the injury, including the subsistence  
30 allowance paid to veteran trainees by the United States government,  
31 provided the amount of said allowance shall be reported monthly by  
32 said trainee to his employer, divided by 52; but if the injured employee  
33 lost more than seven consecutive calendar days at one or more times  
34 during such period, although not in the same week, then the earnings  
35 for the remainder of such 52 weeks shall be divided by the number of  
36 weeks remaining after the time so lost has been deducted. Where the  
37 employment prior to the injury extended over a period of less than 52  
38 weeks, the method of dividing the earnings during that period by the  
39 number of weeks and parts thereof during which the employee earned  
40 wages shall be followed; provided, results fair and just to both parties  
41 will be thereby obtained. Where, by reason of a shortness of time  
42 during which the employee has been in the employment of his  
43 employer or the casual nature or terms of his employment, it is

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

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

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

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

27 The minimum weekly compensation as provided in G.S. 97-29  
28 shall be the weekly compensation paid for total incapacity pursuant to  
29 G.S. 27-29, partial incapacity pursuant to G.S. 97-30, disability in the  
30 schedule of injuries for which average weekly wages are used in  
31 determining compensation pursuant to G.S. 97-31, or death pursuant to  
32 G.S. 97-38, from a compensable injury under this Chapter of an  
33 employee who is a public school student enrolled in sixth through  
34 twelfth grade and who is enrolled in an unpaid, school-approved,  
35 work-based learning experience located off the public school grounds  
36 on the premises of a business or other entity that employs individuals.  
37 Except as otherwise provided, the provisions of this Article apply to an  
38 injury to an employee who is a public school student enrolled in sixth  
39 through twelfth grade and who is enrolled in an unpaid, school-  
40 approved, work-based learning experience located off the public  
41 school grounds on the premises of a business or other entity that  
42 employs individuals.

1           In case of disabling injury or death to a volunteer fireman or  
2 member of an organized rescue squad or duly appointed and sworn  
3 member of an auxiliary police department organized pursuant to G.S.  
4 160A-282 or senior members of the State Civil Air Patrol functioning  
5 under Article 11, Chapter 143B of the General Statutes, under  
6 compensable circumstances, compensation payable shall be calculated  
7 upon the average weekly wage the volunteer fireman or member of an  
8 organized rescue squad or member of an auxiliary police department  
9 or senior member of the State Civil Air Patrol was earning in the  
10 employment wherein he principally earned his livelihood as of the date  
11 of injury. Provided, however, that the minimum compensation payable  
12 to a volunteer fireman, member of an organized rescue squad or sworn  
13 member of an auxiliary police department organized pursuant to G.S.  
14 160A-282, or senior members of the State Civil Air Patrol shall be  
15 sixty-six and two thirds percent (66 2/3%) of the maximum weekly  
16 benefit established in G.S. 97-29."

17           **SECTION 3.** G.S. 97-10.1 reads as rewritten:

18   "**§ 97-10.1. Other rights and remedies against employer excluded.**

19       (a) If the employee and the employer are subject to and have complied with the  
20 provisions of this Article, then the rights and remedies herein granted to the employee,  
21 his dependents, next of kin, or personal representative shall exclude all other rights and  
22 remedies of the employee, his dependents, next of kin, or representative as against the  
23 employer at common law or otherwise on account of such injury or death.

24       (b) Notwithstanding G.S. 97-10.2 or any other provision of this Article, the rights  
25 and remedies under this Article shall be the sole remedies against the local board of  
26 education, the charter school, or against the business or other entity, for a compensable  
27 injury of a public school student enrolled in grades 6-12 who is enrolled in an unpaid,  
28 school-approved, work-based learning experience that is located off public school  
29 grounds on the premises of a business or other entity that employs individuals. For  
30 purposes of this section, 'public school' includes a charter school established under Part  
31 6A of Article 16 of Chapter 115C of the General Statutes."

32           **SECTION 4.** This act becomes effective July 1, 2002, and applies to injuries  
33 that occur on or after that date.