



HOUSE BILL 205: WC for Inmates/UI & WC/Newsprint Employees.

2017-2018 General Assembly

Committee:	Senate Finance. If favorable, re-refer to Rules and Operations of the Senate	Date:	May 31, 2017
Introduced by:	Reps. McNeill, Zachary	Prepared by:	Greg Roney Committee Counsel
Analysis of:	Third Edition		

OVERVIEW: *House Bill 205 would:*

- *Require the average weekly wage of inmates employed under the Prison Industry Enhancement Program be calculated in accordance with the NC Workers' Compensation Act*
- *Classify a worker paid by a newsprint publisher or distributor as an employee for labor protections, unemployment insurance, and taxation if the contractual relationship meets a series of tests indicating the worker lacks control and must accept the terms offered by the employer.*

CURRENT LAW AND BACKGROUND:

Prison Industry Enhancement Program

Prisoners are generally not covered by the NC Workers' Compensation Act when working for the State or its subdivisions. An exception applies for prisoners assigned to the Department of Public Safety's Division of Adult Correction who suffer accidental injury or death related to employment. If a prisoner dies or has an injury that continues after discharge, the prisoner (or dependents or next of kin) may get workers' compensation limited to \$30 per week. The compensation stops if the person returns to prison for an offense committed after the award.

The Prison Industry Enhancement (PIE) Program is a federal program that allows private employers to employ prison inmates at a prison site. The prisoners manufacture goods and services that are then sold to the public. Correction Enterprises runs the State's PIE program. Correction Enterprises was notified that the State's limited workers' compensation failed the requirement of 18 U.S.C. 1761 and related federal rules.

Classifying Newsprint Workers as Independent Contractors or Employees

G.S. 96-1(b)(12) defines employment for unemployment insurance (UI) purposes and excludes certain newspaper delivery workers and newspaper and magazine sellers. Specifically, G.S. 96-1(b)(12) says employment is defined in "section 3306 of the [federal Internal Revenue] Code." Section 3306 of the Internal Revenue Code contains an exclusion in section 3306(c)(15)(A) for individuals under the age of 18 who deliver or distribute newspapers or shopping news and 3306(c)(15)(B) for individuals selling newspapers or magazines to consumers for a per-sale profit (i.e., excess of fixed sales price less cost of newspaper or magazine).

G.S. 97-2(2) creates a rebuttable presumption for workers' compensation coverage that an individual selling newspapers or magazines to consumers for a per-sale profit is an independent contractor and not an employee.

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House Bill 205

Page 2

BILL ANALYSIS:

Section 1 would require that the average weekly wage of inmates employed under the Prison Industry Enhancement (PIE) Program be calculated in accordance with the NC Workers' Compensation Act. Prisoners employed under the PIE Program would now be covered by workers' compensation as required by federal rules.

Section 2.(a) would classify any worker paid by a newspaper or magazine publisher or distributor as an employee if all of the following conditions are met:

- The contractual relationship between the publisher or distributor and worker is not subject to negotiation or heavily favors either party.
- The rates paid to the worker under the contractual relationship are not subject to negotiation.
- The worker is required to make deliveries according to specifications given by the publisher or distributor.
- Complaints regarding delivery are directed to the publisher or distributor without the worker being allowed to correct the matter.
- The publisher or distributor may unilaterally alter the route or method of delivery.
- Delivery does not require highly skilled labor.
- The worker does not supply any special equipment to perform the delivery.

The classification as an employee would apply for the purposes of the following Chapters of the General Statutes: Chapter 95 (Department of Labor and Labor Regulations), Chapter 96 (Employment Security/unemployment insurance (UI)), Chapter 97 (Workers' Compensation Act), Chapter 105 (Taxation), and Chapter 143 (State Departments including Industrial Commission).

Section 2.(b) would make conforming changes to the definition of "employment" in G.S. 96-1(b)(12) by moving certain newsprint workers who are excluded from the definition of employment to be included in the definition of employment. Under section 2.(b), workers under the age of 18 who deliver newspapers and workers of any age who sell newspapers or magazines for a per-sale profit would be treated as employees for purposes of unemployment insurance.

Section 2.(c) would make conforming changes to the definition of "employee" in Chapter 97 (NC Workers' Compensation Act) by removing the rebuttable presumption that an individual selling newspapers or magazines to consumers for a per-sale profit is an independent contractor and not an employee.

EFFECTIVE DATE: Section 2 of the act becomes effective on January 1, 2018. The remainder of the act is effective when it becomes law.

Brad Krehely and Kristen Harris, both with the Legislative Analysis Division, substantially contributed to this summary.