



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

2017-2018 General Assembly

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<b>Committee:</b>	Senate Commerce and Insurance. If favorable, re-refer to Finance. If favorable, re-refer to Rules and Operations of the Senate	<b>Date:</b>	May 24, 2017
<b>Introduced by:</b>	Reps. McNeill, Zachary	<b>Prepared by:</b>	Kristen L. Harris
<b>Analysis of:</b>	PCS to Second Edition H205-CSTUxr-19		Committee Co-Counsel Greg Roney Staff Attorney

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**OVERVIEW:** *The Proposed Committee Substitute for House Bill 205 would 1) require that the average weekly wage of inmates employed under the Prison Industry Enhancement Program be calculated in accordance with the North Carolina Workers' Compensation Act and 2) provide that any worker paid by a newspaper or magazine publisher or distributor must be treated as an employee for the purposes of Chapters 95 [Department of Labor and Labor Regulations], 96 [Employment Security], 97 [Workers' Compensation Act], 105 [Taxation], and 143 [State Departments, Institutions, and Commissions] of the General Statutes if certain conditions are met.*

**CURRENT LAW AND BACKGROUND:**

**Prison Industry Enhancement Program**

Generally, the North Carolina Workers' Compensation Act does not apply to prisoners being worked by the State or any subdivision of the State. There is an exception for prisoners assigned to the Division of Adult Correction of the Department of Public Safety who suffer accidental injury or accidental death arising out of and in the course of the employment, if the prisoner dies or if the results of the injury continues until after the date of the lawful discharge of the prisoner and the injury amounts to a disability. In that case, the discharged prisoner, their dependents, or the next of kin of the discharged prisoner may get workers' compensation by applying to the Industrial Commission. The application must be made within 12 months from the date of the discharge. The maximum compensation to any prisoner or to the dependents or next of kin of any deceased prisoner must not exceed \$30.00 per week, and the period of compensation relates to the date of the discharge, not the date of the accident. The compensation stops if a person who has been awarded compensation is sent to prison for an offense committed after the award.

The Prison Industry Enhancement (PIE) Program is a program established by federal law that allows private commercial employers to employ prison inmates on site at a prison. The prisoners manufacture goods and services that are then sold to the public.

Correction Enterprises runs North Carolina's PIE program. Correction Enterprises was assessed by the contract vendor to the Bureau of Justice Assistance, the National Correctional Industries Association, and was found to be out of compliance with workers' compensation requirements under 18 U.S.C. 1761 and the 1999 PIECP Guideline. The finding of non-compliance risks program suspension or revocation of certification if State law is not amended.

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## Newsprint Worker Benefits

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).

### **BILL ANALYSIS:**

**Section 1** would require that the average weekly wage of inmates employed under the Prison Industry Enhancement Program be calculated in accordance with the North Carolina Workers' Compensation Act.

**Section 2.(a)** would provide that any worker paid by a newspaper or magazine publisher or distributor must be treated as an employee for the purposes of Chapters 95 [Department of Labor and Labor Regulations], 96 [Employment Security], 97 [Workers' Compensation Act], 105 [Taxation], and 143 [State Departments, Institutions, and Commissions] of the General Statutes 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.

**Section 2.(b)** would make conforming changes by amending the definition of "employment" in G.S. 96-1(b)(12) in Chapter 16 [Employment Security] of the General Statutes by including the delivery, distribution, or sale of newspapers, shopping news, or magazines. 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 by amending the definition of "employee" in Chapter 97 [The North Carolina Workers' Compensation Act] of the General Statutes by removing the rebuttable presumption that any person working in the sale of newspapers or magazines under certain financial arrangements is not an "employee" under the Act.

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

\*Staff attorney Brad Krehely substantially contributed to this summary.