

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 703
SENATE BILL 434

AN ACT TO MAKE CERTAIN TECHNICAL AMENDMENTS TO THE WORKERS'
COMPENSATION ACT AND TO INCREASE ASSESSMENTS BY THE
INDUSTRIAL COMMISSION FOR THE SECOND INJURY FUND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-2 is amended by adding a new subdivision to read:

"(19) Medical Compensation. – The term 'medical compensation' means medical, surgical, hospital, nursing, and rehabilitative services, and medicines, sick travel, and other treatment, including medical and surgical supplies, as may reasonably be required to effect a cure or give relief and for such additional time as, in the judgment of the Commission, will tend to lessen the period of disability; and any original artificial members as may reasonably be necessary at the end of the healing period."

Sec. 2. G.S. 97-10.2(f) reads as rewritten:

- "(f) (1) If the employer has filed a written admission of liability for benefits under this Chapter with, or if an award final in nature in favor of the employee has been entered by the Industrial Commission, then any amount obtained by any person by settlement with, judgment against, or otherwise from the third party by reason of such injury or death shall be disbursed by order of the Industrial Commission for the following purposes and in the following order of priority:
- a. First to the payment of actual court costs taxed by judgment.
 - b. Second to the payment of the fee of the attorney representing the person making settlement or obtaining judgment, and except for the fee on the subrogation interest of the employer such fee shall not be subject to the provisions of ~~§ 90 of this Chapter~~ G.S. 97-90, but shall not exceed one third of the amount obtained or recovered of the third party.
 - c. Third to the reimbursement of the employer for all benefits by way of compensation or ~~medical treatment~~ medical compensation expense paid or to be paid by the employer under award of the Industrial Commission.
 - d. Fourth to the payment of any amount remaining to the employee or his personal representative.

- (2) The attorney fee paid under (f)(1) shall be paid by the employee and the employer in direct proportion to the amount each shall receive under (f)(1)c and (f)(1)d hereof and shall be deducted from such payments when distribution is made."

Sec. 3. G.S. 97-25 reads as rewritten:

"§ 97-25. Medical treatment and supplies.

~~Medical, surgical, hospital, nursing services, medicines, sick travel, rehabilitation services, and other treatment including medical and surgical supplies as may reasonably be required to effect a cure or give relief and for such additional time as in the judgment of the Commission will tend to lessen the period of disability, and in addition thereto such original artificial members as may be reasonably necessary at the end of the healing period~~ Medical compensation shall be provided by the employer. In case of a controversy arising between the employer and employee relative to the continuance of medical, surgical, hospital, or other treatment, the Industrial Commission may order such further treatments as may in the discretion of the Commission be necessary.

The Commission may at any time upon the request of an employee order a change of treatment and designate other treatment suggested by the injured employee subject to the approval of the Commission, and in such a case the expense thereof shall be borne by the employer upon the same terms and conditions as hereinbefore provided in this section for medical and surgical treatment and attendance.

The refusal of the employee to accept any medical, hospital, surgical or other treatment or rehabilitative procedure when ordered by the Industrial Commission shall bar said employee from further compensation until such refusal ceases, and no compensation shall at any time be paid for the period of suspension unless in the opinion of the Industrial Commission the circumstances justified the refusal, in which case, the Industrial Commission may order a change in the medical or hospital service.

If in an emergency on account of the employer's failure to provide the medical or other care as herein specified a physician other than provided by the employer is called to treat the injured employee, the reasonable cost of such service shall be paid by the employer if so ordered by the Industrial Commission.

Provided, however, if he so desires, an injured employee may select a physician of his own choosing to attend, prescribe and assume the care and charge of his case, subject to the approval of the Industrial Commission."

Sec. 4. G.S. 97-29 reads as rewritten:

"§ 97-29. Compensation rates for total incapacity.

Except as hereinafter otherwise provided, where the incapacity for work resulting from the injury is total, the employer shall pay or cause to be paid, as hereinafter provided, to the injured employee during such total disability a weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of his average weekly wages, but not more than the amount established annually to be effective October 1 as provided herein, nor less than thirty dollars (\$30.00) per week.

In cases of total and permanent disability, compensation, including ~~reasonable and necessary nursing services, medicines, sick travel, medical, hospital, and other treatment or care of rehabilitative services~~ medical compensation, shall be paid for by the

employer during the lifetime of the injured employee. If death results from the injury then the employer shall pay compensation in accordance with the provisions of G.S. 97-38.

The weekly compensation payment for members of the North Carolina national guard and the North Carolina State guard shall be the maximum amount established annually in accordance with the last paragraph of this section per week as fixed herein. The weekly compensation payment for deputy sheriffs, or those acting in the capacity of deputy sheriffs, who serve upon a fee basis, shall be thirty dollars (\$30.00) a week as fixed herein.

An officer or member of the State Highway Patrol shall not be awarded any weekly compensation under the provisions of this section for the first two years of any incapacity resulting from an injury by accident arising out of and in the course of the performance by him of his official duties if, during such incapacity, he continues to be an officer or member of the State Highway Patrol, but he shall be awarded any other benefits to which he may be entitled under the provisions of this Article.

Notwithstanding any other provision of this Article, ~~beginning August 1, 1975, and~~ on July 1 of each ~~year thereafter, year,~~ a maximum weekly benefit amount shall be computed. The amount of this maximum weekly benefit shall be derived by obtaining the average weekly insured wage in accordance with G.S. 96-8(22), by multiplying such average weekly insured wage by 1.10, and by rounding such figure to its nearest multiple of two dollars (\$2.00), and this said maximum weekly benefit shall be applicable to all injuries and claims arising on and after January 1 following such computation. Such maximum weekly benefit shall apply to all provisions of this Chapter ~~effective August 1, 1975,~~ and shall be adjusted July 1 and effective January 1 of each year ~~thereafter~~ as herein provided."

Sec. 5. G.S. 97-59 reads as rewritten:

"§ 97-59. Employer to pay for treatment.

~~Medical, surgical, hospital, nursing services, medicine, sick travel, rehabilitation services and other treatment as may reasonably be required to tend to lessen the period of disability or provide needed relief~~ Medical compensation shall be paid by the employer in cases in which awards are made for disability or damage to organs as a result of an occupational disease after bills for same have been approved by the Industrial Commission.

In case of a controversy arising between the employer and employee relative to the continuance of medical, surgical, hospital or other treatment, the Industrial Commission may order such further treatments as may in the discretion of the Commission be necessary."

Sec. 6. G.S. 97-90(a) reads as rewritten:

"(a) Fees for attorneys and physicians and charges of hospitals for ~~services and charges for nursing services, medicines and sick travel~~ medical compensation under this Article shall be subject to the approval of the Commission; but no physician or hospital or other medical facilities shall be entitled to collect fees from an employer or insurance carrier until he has made the reports required by the Industrial Commission in connection with the case. Unless otherwise provided by the rules, schedules, or orders

of the Commission, a request for a specific prior approval to charge shall be submitted to the Commission for each such fee or charge."

Sec. 7. G.S. 97-19 reads as rewritten:

"§ 97-19. Liability of principal contractors; certificate that subcontractor has complied with law; right to recover compensation of those who would have been liable; order of liability.

Any principal contractor, intermediate contractor, or subcontractor who shall sublet any contract for the performance of any work without requiring from such subcontractor or obtaining from the Industrial Commission a certificate, issued by ~~the Industrial Commission, a workers' compensation insurance carrier, or a certificate of compliance issued by the Department of Insurance to a self-insured subcontractor,~~ stating that such subcontractor has complied with G.S. 97-93 hereof, shall be liable, irrespective of whether such subcontractor has regularly in service less than four employees in the same business within this State, to the same extent as such subcontractor would be if he were subject to the provisions of this Article for the payment of compensation and other benefits under this Article on account of the injury or death of any such subcontractor, any principal or partner of such subcontractor or any employee of such subcontractor due to an accident arising out of and in the course of the performance of the work covered by such subcontract. If the principal contractor, intermediate contractor or subcontractor shall obtain such certificate at the time of subletting such contract to subcontractor, he shall not thereafter be held liable to any such subcontractor, any principal or partner of such subcontractor, or any employee of such subcontractor for compensation or other benefits under this Article. If the subcontractor has no employees and waives in writing his right to coverage under this section, the principal contractor, intermediate contractor, or subcontractor subletting the contract shall not thereafter be held liable for compensation or other benefits under this Article to said subcontractor. Subcontractors who have no employees are not required to comply with G.S. 97-93. ~~The Industrial Commission, upon demand shall furnish such certificate, and may charge therefor the cost thereof, not to exceed twenty five cents (25¢).~~

Any principal contractor, intermediate contractor, or subcontractor paying compensation or other benefits under this Article, under the foregoing provisions of this section, may recover the amount so paid from any person, persons, or corporation who independently of such provision, would have been liable for the payment thereof.

Every claim filed with the Industrial Commission under this section shall be instituted against all parties liable for payment, and said Commission, in its award, shall fix the order in which said parties shall be exhausted, beginning with the immediate employer.

The principal or owner may insure any or all of his contractors and their employees in a blanket policy, and when so insured such contractor's employees will be entitled to compensation benefits regardless of whether the relationship of employer and employee exists between the principal and the contractor."

Sec. 8. G.S. 97-24(b) reads as rewritten:

"(b) If any claim for compensation is hereafter made upon the theory that such claim or the injury upon which said claim is based is within the jurisdiction of the

Industrial Commission under the provisions of this Article, and if the Commission, or the ~~Supreme Court~~ appellate courts on appeal, shall adjudge that such claim is not within the Article, the claimant, or if he dies, his personal representative, shall have one year after the rendition of a final judgment in the case within which to commence an action at law."

Sec. 9. G.S. 97-92 is amended by adding a new subsection to read:

"(f) Any bill, report, application, and document of every nature and kind, which is required or permitted by Commission rules to be transmitted to the Commission by electronic media or is recorded among the Commission records on computer disk, optical disk, microfilm, or similar media and which is produced or reproduced in written form in the normal course of business or is certified as a true and accurate copy of the data recorded at the Commission in the normal course of its business shall be treated as a signed original in all uses before the Commission and as a duplicate within the meaning of Rule 1003 of the North Carolina Rules of Evidence."

Sec. 10. G.S. 97-53 reads as rewritten:

"§ 97-53. Occupational diseases enumerated; when due to exposure to chemicals.

The following diseases and conditions only shall be deemed to be occupational diseases within the meaning of this Article:

- (1) Anthrax.
- (2) Arsenic poisoning.
- (3) Brass poisoning.
- (4) Zinc poisoning.
- (5) Manganese poisoning.
- (6) Lead poisoning. Provided the employee shall have been exposed to the hazard of lead poisoning for at least 30 days in the preceding 12 months' period; and, provided further, only the employer in whose employment such employee was last injuriously exposed shall be liable.
- (7) Mercury poisoning.
- (8) Phosphorus poisoning.
- (9) Poisoning by carbon bisulphide, menthanol, naphtha or volatile halogenated hydrocarbons.
- (10) Chrome ulceration.
- (11) Compressed-air illness.
- (12) Poisoning by benzol, or by nitro and amido derivatives of benzol (dinitrolbenzol, anilin, and others).
- (13) Any disease, other than hearing loss covered in another subdivision of this section, which is proven to be due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation or employment, but excluding all ordinary diseases of life to which the general public is equally exposed outside of the employment.
- (14) Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye due to tar, pitch, bitumen, mineral oil, or paraffin, or any compound, product, or residue of any of these substances.

- (15) Radium poisoning or disability or death due to radioactive properties of substances or to roentgen rays, X rays or exposure to any other source of radiation; provided, however, that the disease under this subdivision shall be deemed to have occurred on the date that disability or death shall occur by reason of such disease.
- (16) Blisters due to use of tools or appliances in the employment.
- (17) Bursitis due to intermittent pressure in the employment.
- (18) Miner's nystagmus.
- (19) Bone felon due to constant or intermittent pressure in employment.
- (20) Synovitis, caused by trauma in employment.
- (21) Tenosynovitis, caused by trauma in employment.
- (22) Carbon monoxide poisoning.
- (23) Poisoning by sulphuric, hydrochloric or hydrofluoric acid.
- (24) Asbestosis.
- (25) Silicosis.
- (26) Psittacosis.
- (27) Undulant fever.
- (28) Loss of hearing caused by harmful noise in the employment. The following rules shall be applicable in determining eligibility for compensation and the period during which compensation shall be payable:
 - a. The term 'harmful noise' means sound in employment capable of producing occupational loss of hearing as hereinafter defined. Sound of an intensity of less than 90 decibels, A scale, shall be deemed incapable of producing occupational loss of hearing as defined in this section.
 - b. 'Occupational loss of hearing' shall mean a permanent sensorineural loss of hearing in both ears caused by prolonged exposure to harmful noise in employment. Except in instances of preexisting loss of hearing due to disease, trauma, or congenital deafness in one ear, no compensation shall be payable under this subdivision unless prolonged exposure to harmful noise in employment has caused loss of hearing in both ears as hereinafter provided.
 - c. No compensation benefits shall be payable for temporary total or temporary partial disability under this subdivision and there shall be no award for tinnitus or a psychogenic hearing loss.
 - d. An employer shall become liable for the entire occupational hearing loss to which his employment has contributed, but if previous deafness is established by a hearing test or other competent evidence, whether or not the employee was exposed to harmful noise within six months preceding such test, the employer shall not be liable for previous loss so established, nor shall he be liable for any loss for which compensation has

previously been paid or awarded and the employer shall be liable only for the difference between the percent of occupational hearing loss determined as of the date of disability as herein defined and the percentage of loss established by the preemployment and audiometric examination excluding, in any event, hearing losses arising from nonoccupational causes.

- e. In the evaluation of occupational hearing loss, only the hearing levels at the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second shall be considered. Hearing losses for frequencies below 500 and above 3,000 cycles per second are not to be considered as constituting compensable hearing disability.
- f. The employer liable for the compensation in this section shall be the employer in whose employment the employee was last exposed to harmful noise in North Carolina during a period of 90 working days or parts thereof, and an exposure during a period of less than 90 working days or parts thereof shall be held not to be an injurious exposure; provided, however, that in the event an insurance carrier has been on the risk for a period of time during which an employee has been injuriously exposed to harmful noise, and if after insurance carrier goes off the risk said employee has been further exposed to harmful noise, although not exposed for 90 working days or parts thereof so as to constitute an injurious exposure, such carrier shall, nevertheless, be liable.
- g. The percentage of hearing loss shall be calculated as the average, in decibels, of the thresholds of hearing for the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second. Pure tone air conduction audiometric instruments, properly calibrated according to accepted national standards such as American Standards Association, Inc., (ASA), International Standards Organization (ISO), or American National Standards Institute, Inc., (ANSI), shall be used for measuring hearing loss. If more than one audiogram is taken, the audiogram having the lowest threshold will be used to calculate occupational hearing loss. If the losses of hearing average 15 decibels (26 db if ANSI or ISO) or less in the ~~three-four~~ frequencies, such losses of hearing shall not constitute any compensable hearing disability. If the losses of hearing average 82 decibels (93 db if ANSI or ISO) or more in the ~~three-four~~ frequencies, then the same shall constitute and be total or one hundred percent (100%) compensable hearing loss. In measuring hearing impairment, the lowest measured losses in each of the ~~three-four~~ frequencies shall be added together and divided by ~~three-four~~ to determine the average decibel loss. For each decibel of loss

exceeding 15 decibels (26 db if ANSI or ISO) an allowance of one and one-half percent (1 1/2%) shall be made up to the maximum of one hundred percent (100%) which is reached at 82 decibels (93 db if ANSI or ISO). In determining the binaural percentage of loss, the percentage of impairment in the better ear shall be multiplied by five. The resulting figure shall be added to the percentage of impairment in the poorer ear, and the sum of the two divided by six. The final percentage shall represent the binaural hearing impairment.

- h. There shall be payable for total occupational loss of hearing in both ears 150 weeks of compensation, and for partial occupational loss of hearing in both ears such proportion of these periods of payment as such partial loss bears to total loss.
- i. No claim for compensation for occupational hearing loss shall be filed until after six months have elapsed since exposure to harmful noise with the last employer. The last day of such exposure shall be the date of disability. The regular use of employer-provided protective devices capable of preventing loss of hearing from the particular harmful noise where the employee works shall constitute removal from exposure to such particular harmful noise.
- j. No consideration shall be given to the question of whether or not the ability of an employee to understand speech is improved by the use of a hearing aid. The North Carolina Industrial Commission may order the employer to provide the employee with an original hearing aid if it will materially improve the employee's ability to hear.
- k. No compensation benefits shall be payable for the loss of hearing caused by harmful noise after October 1, 1971, if employee fails to regularly utilize employer-provided protection device or devices, capable of preventing loss of hearing from the particular harmful noise where the employee works.

Occupational diseases caused by chemicals shall be deemed to be due to exposure of an employee to the chemicals herein mentioned only when as a part of the employment such employee is exposed to such chemicals in such form and quantity, and used with such frequency as to cause the occupational disease mentioned in connection with such chemicals."

Sec. 11. G.S. 97-40.1(a) reads as rewritten:

"(a) There is hereby created a fund to be known as the 'Second Injury Fund,' to be held and disbursed by the Industrial Commission as hereinafter provided.

For the purpose of providing money for said fund the Industrial Commission may assess against the employer or its insurance carrier the payment of not to exceed ~~fifty dollars (\$50.00)~~ one hundred dollars (\$100.00) for the loss, or loss of use, of each minor member in every case of a permanent partial disability where there is such loss, and

shall assess not to exceed ~~two hundred dollars (\$200.00)~~ five hundred dollars (\$500.00) for fifty percent (50%) or more loss or loss of use of each major member, defined as back, foot, leg, hand, arm, eye, or hearing.

In addition to the assessments hereinabove provided for, the Commission shall also deposit in said fund all moneys received by it for the Second Injury Fund under the provisions of G.S. 97-40."

Sec. 12. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives