

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE DRH60447-LD-132A (4/13)

Short Title: Amend Workers' Compensation Act/Funds. (Public)

Sponsors: Representatives Gibson, Daughtridge, Brubaker, and Owens (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE WORKERS' COMPENSATION ACT AND TO APPROPRIATE FUNDS FOR NEW POSITIONS NEEDED TO ASSIST THE NORTH CAROLINA INDUSTRIAL COMMISSION TO ENSURE THAT THE COMMISSION HAS ADEQUATE RESOURCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-12 reads as rewritten:

"§ 97-12. Use of intoxicant or controlled substance; willful neglect; willful disobedience of statutory duty, safety regulation or rule.

(a) No compensation shall be payable if the injury or death to the employee was proximately caused by:

- (1) His intoxication, provided the intoxicant was not supplied by the employer or his agent in a supervisory capacity to the employee; or
- (2) His being under the influence of any controlled substance listed in the North Carolina Controlled Substances Act, G.S. 90-86, et seq., where such controlled substance was not by prescription by a practitioner; or
- (3) His willful intention to injure or kill himself or another.

(b) A positive drug or alcohol test result shall be a conclusive presumption of impairment resulting from the use of drugs or alcohol. No compensation shall be allowed when the employee refuses to submit to or cooperate with a blood or other applicable medical test after the accident, if the employee had previously been warned in writing by the employer that such refusal would forfeit the employee's right to recover benefits under this Article.

When the injury or death is caused by the willful failure of the employer to comply with any statutory requirement or any lawful order of the Commission, compensation shall be increased ten percent (10%). When the injury or death is caused by the willful failure

1 of the employee to use a safety appliance or perform a statutory duty or by the willful
2 breach of any rule or regulation adopted by the employer and approved by the
3 Commission and brought to the knowledge of the employee prior to the injury
4 compensation shall be reduced ten percent (10%). ~~The burden of proof shall be upon~~
5 ~~him who claims an exemption or forfeiture under this section."~~

6 **SECTION 2.** G.S. 97-18(b) reads as rewritten:

7 "(b) When the employer admits the employee's right to compensation, the first
8 installment of compensation ~~payable~~ by the employer shall ~~become due on the~~
9 ~~fourteenth day after the employer has written or actual notice of the injury or death, on~~
10 ~~which date all compensation then due shall be paid.~~ be paid within 14 days after the
11 employer or carrier completes its investigation of the employee's claims. The employer
12 shall make a decision whether to admit or deny an employee's right to compensation no
13 more than 90 days after the employer has written notice of the employee's filing of a
14 claim on an approved Commission Form 18, Form 18B, or Form 33. In the event the
15 employer no longer exists as a legal entity, any carrier insuring the employer at the time
16 of the injury or last injurious exposure shall have 90 days from the date of receipt of the
17 notice of claim from the Industrial Commission to accept the claim or deny the
18 employee's right to compensation. The Commission may extend the deadline for
19 admitting or denying a claim at its discretion. Compensation thereafter shall be paid in
20 installments weekly except where the Commission determines that payment in
21 installments should be made monthly or at some other period. Upon paying the first
22 installment of compensation and upon suspending, reinstating, changing, or modifying
23 such compensation for any cause, the insurer shall immediately notify the Commission,
24 on a form prescribed by the Commission, that compensation has begun, or has been
25 suspended, reinstated, changed, or modified. A copy of each notice shall be provided to
26 the employee. The first notice of payment to the Commission shall contain the date and
27 nature of the injury, the average weekly wages of the employee, the weekly
28 compensation rate, the date the disability resulting from the injury began, and the date
29 compensation commenced."

30 **SECTION 3.** G.S. 97-25 reads as rewritten:

31 "**§ 97-25. Medical treatment and supplies.**

32 Medical compensation shall be provided by the employer. Notwithstanding the
33 provisions of G.S. 8-53, any law relating to the privacy of medical records or
34 information, and the prohibition against ex parte communications at common law, an
35 employer paying medical compensation to a provider rendering treatment under this
36 Chapter may obtain records of the treatment without the express authorization of the
37 employee. In case of a controversy arising between the employer and employee relative
38 to the continuance of medical, surgical, hospital, or other treatment, the Industrial
39 Commission may order such further treatments as may in the discretion of the
40 Commission be necessary.

41 The Commission may at any time upon the request of an employee order a change of
42 treatment and designate other treatment suggested by the injured employee subject to
43 the approval of the Commission, and in such a case the expense thereof shall be borne

1 by the employer upon the same terms and conditions as hereinbefore provided in this
2 section for medical and surgical treatment and attendance.

3 The refusal of the employee to accept any medical, hospital, surgical or other
4 treatment ~~or rehabilitative procedure~~ when ordered by the Industrial Commission shall
5 bar said employee from further compensation until such refusal ceases, and no
6 compensation shall at any time be paid for the period of suspension unless in the
7 opinion of the Industrial Commission the circumstances justified the refusal, in which
8 case, the Industrial Commission may order a change in the medical or hospital service.
9 If the employer offers vocational rehabilitative services to an employee, the employee
10 shall fully cooperate in accepting these rehabilitative services to the extent the employee
11 is physically able to perform the vocational rehabilitative services. The employee shall
12 be barred from further compensation if the Commission determines that the employee
13 failed to fully cooperate with accepting these vocational rehabilitative services, and no
14 compensation shall be paid at anytime for the period that the employee failed to accept
15 the rehabilitative services.

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

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

23 **SECTION 4.** Article 1 of Chapter 97 of the General Statutes is amended by
24 adding a new section:

25 **"§ 97-25.6. Reasonable access to medical information.**

26 (a) It is the policy of the State that all parties have reasonable access to medical
27 information to facilitate the administration of this Article. An employee who reports an
28 injury or illness to the employer that the employee claims is work-related waives any
29 physician-patient privilege with respect to any condition or complaint reasonably related
30 to the condition for which the employee seeks compensation. Any medical records,
31 reports, and information for an employee relevant to the injury or illness for which the
32 employee is seeking compensation must be furnished when requested by the employer,
33 the insurance carrier, an authorized qualified rehabilitation provider, or the attorney for
34 the employer or carrier, along with any necessary discussion of the medical condition,
35 when the medical records, reports, information, and discussion are restricted to
36 conditions relating to the injury.

37 (b) Release of medical information under subsection (a) of this section by the
38 health care provider or other physician does not require the employee's authorization. If
39 medical information of an employee under subsection (a) of this section is sought from
40 health care providers who are not subject to the jurisdiction of State courts, the injured
41 employee shall sign an authorization allowing the employer or carrier to obtain the
42 medical information. Any such release of information may be held before or after the
43 filing of a claim for compensation under this Article without the knowledge, consent, or
44 presence of any other party."

1 **SECTION 5.** G.S. 97-29 reads as rewritten:

2 "**§ 97-29. Compensation rates for total incapacity.**

3 Except as hereinafter otherwise provided, where the incapacity for work resulting
4 from the injury is total, the employer shall pay or cause to be paid, as hereinafter
5 provided, to the injured employee during such total disability a weekly compensation
6 equal to sixty-six and two-thirds percent (66 2/3%) of his average weekly wages, but
7 not more than the amount established annually to be effective October 1 as provided
8 herein, nor less than thirty dollars (\$30.00) per week. With respect to injuries that occur
9 when the employee is age 60 or younger, the period covered by the compensation shall
10 not, subject to G.S. 97-31(17) only, extend beyond the date that the employee reaches
11 age 65, and in no case shall the period covered exceed 500 weeks from the date of the
12 injury. With respect to injuries that occur after the employee reaches age 60, the period
13 covered by compensation shall not exceed 260 weeks from the date of the injury.

14 In cases of total and permanent compensation, including medical compensation,
15 shall be paid for by the employer during the lifetime of the injured employee. If death
16 results from the injury then the employer shall pay compensation in accordance with the
17 provisions of G.S. 97-38.

18 The weekly compensation payment for members of the North Carolina national
19 guard and the North Carolina State Defense Militia shall be the maximum amount
20 established annually in accordance with the last paragraph of this section per week as
21 fixed herein. The weekly compensation payment for deputy sheriffs, or those acting in
22 the capacity of deputy sheriffs, who serve upon a fee basis, shall be thirty dollars
23 (\$30.00) a week as fixed herein.

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

30 Notwithstanding any other provision of this Article, on July 1 of each year, a
31 maximum weekly benefit amount shall be computed. The amount of this maximum
32 weekly benefit shall be derived by obtaining the average weekly insured wage in
33 accordance with G.S. 96-8(22), by multiplying such average weekly insured wage by
34 1.10, and by rounding such figure to its nearest multiple of two dollars (\$2.00), and this
35 said maximum weekly benefit shall be applicable to all injuries and claims arising on
36 and after January 1 following such computation. Such maximum weekly benefit shall
37 apply to all provisions of this Chapter and shall be adjusted July 1 and effective January
38 1 of each year as herein provided."

39 **SECTION 6.** G.S. 97-30 reads as rewritten:

40 "**§ 97-30. Partial incapacity.**

41 Except as otherwise provided in G.S. 97-31, where the incapacity for work resulting
42 from the injury is partial, the employer shall pay, or cause to be paid, as hereinafter
43 provided, to the injured employee during such disability, a weekly compensation equal
44 to sixty-six and two-thirds percent (66 2/3%) of the difference between his average

1 weekly wages before the injury and the average weekly wages which he is able to earn
2 thereafter, but not more than the amount established annually to be effective October 1
3 as provided in G.S. 97-29 a week, and in no case shall the period covered by such
4 compensation be greater than 300 weeks from the date of injury. week. With respect to
5 injuries that occur when the employee is age 60 or younger, the period covered by the
6 compensation shall not extend beyond the date that the employee reaches age 65, or
7 shall not exceed 500 weeks from the date of the injury, whichever occurs sooner. With
8 respect to injuries that occur after the employee reaches age 60, the period covered by
9 compensation shall not exceed 260 weeks from the date of the injury. In case the partial
10 disability begins after a period of total disability, the latter period shall be deducted
11 from the maximum period herein allowed for partial disability. An officer or member of
12 the State Highway Patrol shall not be awarded any weekly compensation under the
13 provisions of this section for the first two years of any incapacity resulting from an
14 injury by accident arising out of and in the course of the performance by him of his
15 official duties if, during such incapacity, he continues to be an officer or member of the
16 State Highway Patrol, but he shall be awarded any other benefits to which he may be
17 entitled under the provisions of this Article."

18 **SECTION 7.** G.S. 97-31(24) reads as rewritten:

19 "(24) In case of the loss of or permanent injury to any important external or
20 internal organ or part of the body for which no compensation is
21 payable under any other subdivision of this section, the Industrial
22 Commission may award proper and equitable compensation not to
23 exceed twenty thousand dollars (\$20,000). This subdivision does not
24 apply to the loss or permanent injury to the lungs and parietal and
25 visceral pleura surrounding the lungs resulting from exposure to
26 asbestos or silica."

27 **SECTION 8.** G.S. 97-31 is amended by adding a new subdivision to read:

28 "(25) In case of the loss of, or permanent injury to, the lung, which includes
29 the parietal and visceral pleura surrounding the lung, resulting from
30 exposure to asbestos or silica for which no compensation has been paid
31 or is payable for partial or total disability, compensation shall be
32 payable in an amount not to exceed twenty thousand dollars (\$20,000)
33 and shall be in lieu of compensation under any other subdivision of
34 this section. Compensation under this subdivision is subject to the
35 following limitations:

36 a. Compensation awarded shall be for the loss of use attributable
37 to the disease alone. If the employee has smoked within 10
38 years of the employee's date of diagnosis of the loss of, or
39 permanent injury to, the lung, which includes the parietal and
40 visceral pleura surrounding the lung, resulting from exposure to
41 asbestos or silica, the compensation awarded pursuant to
42 sub-subdivision b. of this subdivision shall be reduced by
43 one-half. For purposes of this sub-subdivision, "smoked" means
44 the personal use of cigarettes or cigars at a level of at least

1 one-fourth-pack-a-day history at anytime within the 10 years
2 prior to the diagnosis.

3 b. Compensation shall be in the proportion that the partial loss
4 bears to a total loss of use of the lung, which includes the
5 parietal and visceral pleura surrounding the lung, as measured
6 by the following schedule and diagnosed by a competent
7 medical authority:

8 1. ILO Grade 1/1 or greater with or without pleural changes
9 with zero percent (0%) AMA impairment: zero percent
10 (0%) to not more than four percent (4%) loss of, or
11 permanent injury to, the lung, which includes the parietal
12 and visceral pleura.

13 2. ILO Grade 1/1 or greater with or without pleural changes
14 with a Class II AMA impairment: five percent (5%) to
15 not more than twenty-four percent (24%) loss of, or
16 permanent injury to, the lung, which includes the parietal
17 and visceral pleura.

18 3. ILO Grade 1/1 or greater with or without pleural changes
19 with a Class III AMA impairment: twenty-five percent
20 (25%) to not more than forty-nine percent (49%) loss of,
21 or permanent injury to, the lung, which includes the
22 parietal and visceral pleura.

23 4. ILO Grade 1/1 or greater with or without pleural changes
24 with a Class IV AMA impairment: fifty percent (50%) to
25 one hundred percent (100%) loss of, or permanent injury
26 to, the lung, which includes the parietal and visceral
27 pleura.

28 For purposes of this sub-subdivision, "competent medical
29 authority" means a medical doctor who is board-certified as an
30 internist, pulmonary specialist, oncologist, pathologist, or
31 occupational medicine specialist."

32 **SECTION 9.** G.S. 97-32 reads as rewritten:

33 **"§ 97-32. Refusal of injured employee to accept suitable employment as**
34 **suspending compensation.**

35 ~~If an injured employee refuses employment procured for him suitable to within his~~
36 ~~capacity physical limitations, he shall not be entitled to any compensation at any time~~
37 ~~during the continuance as a result of such refusal, unless in the opinion of the Industrial~~
38 ~~Commission such refusal was justified.refusal."~~

39 **SECTION 10.** G.S. 97-61.1 through G.S. 97-63 are repealed.

40 **SECTION 11.** There is appropriated from the General Fund to the North
41 Carolina Industrial Commission the sum of one hundred fifty-two thousand one hundred
42 ninety-four dollars (\$152,194) for the 2005-2006 fiscal year to establish and support
43 two Administrative Officer II (workers' compensation fraud investigator) positions and
44 two Program Assistant V positions and the sum of one hundred fifty-two thousand one

1 hundred ninety-four dollars (\$152,194) for the 2006-2007 fiscal year to continue and
2 support these positions.

3 **SECTION 12.** There is appropriated from the General Fund to the North
4 Carolina Industrial Commission the sum of one hundred sixty-one thousand six hundred
5 seventy-two dollars (\$161,672) for the 2005-2006 fiscal year to establish and support
6 two Administrative Officer II (ombudsman) positions, one Program Assistant V
7 position, and one Receptionist III position and the sum of one hundred sixty-one
8 thousand six hundred seventy-two dollars (\$161,672) for the 2006-2007 fiscal year to
9 continue and support these positions.

10 **SECTION 13.** There is appropriated from the General Fund to the North
11 Carolina Industrial Commission the sum of two hundred thousand seven hundred
12 ninety-five dollars (\$200,795) for the 2005-2006 fiscal year to establish and support
13 four Industrial Safety Rep II positions and one Program Assistant V position and the
14 sum of two hundred thousand seven hundred ninety-five dollars (\$200,795) for the
15 2006-2007 fiscal year to continue and support these positions.

16 **SECTION 14.** Sections 11, 12, 13, and 14 of this act become effective July
17 1, 2005. The remainder of this act becomes effective October 1, 2005, and applies to
18 injuries that occur on or after that date.