

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

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**HOUSE BILL 1768**

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

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

Referred to: Insurance, if favorable, Rules, Calendar, and Operations of the House.

May 12, 2005

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 of the employee to use a safety appliance or perform a statutory duty or by the willful breach of any rule or regulation adopted by the employer and approved by the

1 Commission and brought to the knowledge of the employee prior to the injury  
2 compensation shall be reduced ten percent (10%). ~~The burden of proof shall be upon~~  
3 ~~him who claims an exemption or forfeiture under this section."~~

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

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

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

29 **"§ 97-25. Medical treatment and supplies.**

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

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

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

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

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

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

23 **"§ 97-25.6. Reasonable access to medical information.**

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

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

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

44 **"§ 97-29. Compensation rates for total incapacity.**

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

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

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

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

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

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

38 "**§ 97-30. Partial incapacity.**

39 Except as otherwise provided in G.S. 97-31, where the incapacity for work resulting  
40 from the injury is partial, the employer shall pay, or cause to be paid, as hereinafter  
41 provided, to the injured employee during such disability, a weekly compensation equal  
42 to sixty-six and two-thirds percent (66 2/3%) of the difference between his average  
43 weekly wages before the injury and the average weekly wages which he is able to earn  
44 thereafter, but not more than the amount established annually to be effective October 1

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

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

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

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

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

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

- 1           b.     Compensation shall be in the proportion that the partial loss  
2                 bears to a total loss of use of the lung, which includes the  
3                 parietal and visceral pleura surrounding the lung, as measured  
4                 by the following schedule and diagnosed by a competent  
5                 medical authority:
- 6                 1.     ILO Grade 1/1 or greater with or without pleural changes  
7                     with zero percent (0%) AMA impairment: zero percent  
8                     (0%) to not more than four percent (4%) loss of, or  
9                     permanent injury to, the lung, which includes the parietal  
10                    and visceral pleura.
  - 11                2.     ILO Grade 1/1 or greater with or without pleural changes  
12                    with a Class II AMA impairment: five percent (5%) to  
13                    not more than twenty-four percent (24%) loss of, or  
14                    permanent injury to, the lung, which includes the parietal  
15                    and visceral pleura.
  - 16                3.     ILO Grade 1/1 or greater with or without pleural changes  
17                    with a Class III AMA impairment: twenty-five percent  
18                    (25%) to not more than forty-nine percent (49%) loss of,  
19                    or permanent injury to, the lung, which includes the  
20                    parietal and visceral pleura.
  - 21                4.     ILO Grade 1/1 or greater with or without pleural changes  
22                    with a Class IV AMA impairment: fifty percent (50%) to  
23                    one hundred percent (100%) loss of, or permanent injury  
24                    to, the lung, which includes the parietal and visceral  
25                    pleura.

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

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

31                "**§ 97-32. Refusal of injured employee to accept suitable employment as**  
32                **suspending compensation.**

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

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

38                **SECTION 11.** There is appropriated from the General Fund to the North  
39                Carolina Industrial Commission the sum of one hundred fifty-two thousand one hundred  
40                ninety-four dollars (\$152,194) for the 2005-2006 fiscal year to establish and support  
41                two Administrative Officer II (workers' compensation fraud investigator) positions and  
42                two Program Assistant V positions and the sum of one hundred fifty-two thousand one  
43                hundred ninety-four dollars (\$152,194) for the 2006-2007 fiscal year to continue and  
44                support these positions.

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

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

14           **SECTION 14.** Sections 11, 12, 13, and 14 of this act become effective July  
15 1, 2005. The remainder of this act becomes effective October 1, 2005, and applies to  
16 injuries that occur on or after that date.