

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1993**

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**SENATE BILL 906**

Manufacturing and Labor Committee Substitute Adopted 5/10/93

Third Edition Engrossed 5/11/93

Select Committee on Senate Bill 906 Committee Substitute Adopted 7/8/93

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Short Title: Workers' Comp. Reform.

(Public)

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Sponsors:

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Referred to: Appropriations.

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April 19, 1993

**A BILL TO BE ENTITLED**

**AN ACT TO MAKE VARIOUS SUBSTANTIVE AMENDMENTS TO THE  
WORKERS' COMPENSATION ACT AND TO MAKE RELATED CHANGES.**

Whereas, the North Carolina Workers' Compensation Act was adopted in 1929 to delicately balance the interests of employers and injured employees, relieving employees of the burden of proving fault for workplace injuries while providing medical care as long as needed and wage support during a healing period; and

Whereas, the North Carolina workers' compensation system worked well for the next 50 years providing fair, prompt benefits for injured employees at an affordable cost to employers; and

Whereas, beginning in the 1980s, court decisions and legislative enactments expanded the Workers' Compensation Act beyond its original intent; and

Whereas, there has been a sharp increase in the number of permanent disability claims that cannot be justified by a corresponding increase in the severity of injuries and has led to expensive, time-consuming litigation over such issues as the degree of permanent disability and the expiration of temporary disability; and

Whereas, medical costs to employers pursuant to our workers' compensation system have increased at almost twice the national average for medical costs in general; and

1           Whereas, these pressures on the workers' compensation system have caused  
2 double digit increases in the cost of workers' compensation for North Carolina's  
3 employers for several consecutive years, the most recent and largest insurance rate  
4 increase being implemented by the North Carolina Rate Bureau over the objections of  
5 the Commissioner of Insurance, resulting in an average aggregate increase of almost  
6 150% in the last five years; and

7           Whereas, workers' compensation cost North Carolina's employers twice as  
8 much as it did a mere three years ago, up from \$500,000,000 in 1990 to \$1,000,000,000  
9 in 1993; and

10           Whereas, an increasing and unacceptable number of North Carolina  
11 employers, particularly small businesses, are unable to obtain workers' compensation  
12 coverage through normal, voluntary insurance markets, resulting in those employers  
13 having to attempt to self-fund their liability or to obtain insurance through the assigned  
14 risk plan and to pay a significant rate surcharge for their coverage; and

15           Whereas, the cost of coverage under the Workers' Compensation Act in North  
16 Carolina is rapidly becoming a substantial detriment to the ability of our State to attract  
17 new employers and for our State's employers to expand their employment, even forcing  
18 some employers to close or move to another state; and

19           Whereas, the time has come for the General Assembly to restore the Workers'  
20 Compensation Act so that it provides the balance and stability it enjoyed for more than  
21 50 years; Now, therefore,

22 The General Assembly of North Carolina enacts:

23           Section 1. G.S. 97-2(6) reads as rewritten:

24           "(6) Injury. – 'Injury and personal injury' ~~shall~~ mean only injury by accident  
25 arising out of and in the course of the employment, and shall not  
26 include a disease in any form, except where it results naturally and  
27 unavoidably from the accident. With respect to back injuries,  
28 however, where injury to the back arises out of and in the course of the  
29 employment and is the direct result of a specific traumatic incident of  
30 the work assigned, 'injury by accident' shall be construed to include  
31 any disabling physical injury to the back arising out of and causally  
32 related to such incident. Injury shall include breakage or damage to  
33 eyeglasses, hearing aids, dentures, or other prosthetic devices which  
34 function as part of the body; provided, however, that eyeglasses and  
35 hearing aids will not be replaced, repaired, or otherwise compensated  
36 for unless injury to them is incidental to a compensable injury. Injury  
37 or disease means only a work-related injury or disease that is the  
38 predominant cause of the disability and includes a consequence of a  
39 compensable injury when the compensable injury is the predominant  
40 cause of the consequential condition. Injury means an injury that  
41 combines with a preexisting disease or condition to cause or prolong  
42 disability or a need for treatment to the extent the injury is and remains  
43 the predominant cause of the disability or need for the treatment.  
44 Injury does not include a worsened condition if the predominant cause

1                   of the worsened condition is an injury not occurring within the course  
2                   and scope of employment. Injury, personal injury, or disease does not  
3                   mean mental injury that is unaccompanied by physical injury."

4           Sec. 2. G.S. 97-2(9) is repealed.

5           Sec. 3. G.S. 97-2(19) reads as rewritten:

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

14           Sec. 4. G.S. 97-2 is amended by adding the following new subdivisions:

15           "(20) Medically Stationary. — 'Medically stationary' means further  
16                   recovery from or lasting improvement to an injury can no longer be  
17                   reasonably anticipated after a certain date based upon reasonable  
18                   medical probability as determined by an authorized health care  
19                   provider. A finding of medically stationary is not precluded even  
20                   though future medical maintenance may be required that will not  
21                   significantly improve the condition or there exists a possibility of  
22                   improvement or deterioration resulting from the passage of time.

23           (21) Objective Findings. — 'Objective findings' means diagnostic  
24                   evidence that is substantiated by clinical findings, including, but  
25                   not limited to, diagnostic evidence regarding range of motion,  
26                   atrophy, muscle strength, and muscle spasm.

27           (22) Impairment. — 'Impairment' means an anatomical or functional  
28                   abnormality existing after the date the employee becomes  
29                   medically stationary as determined by a medically or scientifically  
30                   demonstrable finding and based upon the third edition or the most  
31                   recent subsequent edition of the American Medical Association's  
32                   Guide to the Evaluation of Permanent Impairment or comparable  
33                   publications of the American Medical Association.

34           (23) Partial Disability. — 'Partial disability' means a condition whereby  
35                   an employee, due to an injury, suffers a physical impairment.

36           (24) Temporary Total Disability. — 'Temporary total disability' means  
37                   the inability of the employee, due to an injury, to perform his duties  
38                   prior to the injury becoming medically stationary.

39           (25) Permanent Total Disability. — 'Permanent total disability' means  
40                   that the employee is unable to earn wages in the same or other  
41                   employment within North Carolina or nearby surrounding areas as  
42                   a result of an injury.

1           (26) Attending Physician. – 'Attending physician' means a doctor or  
2 physician who is primarily responsible for the treatment pursuant to  
3 this Article of an employee with an injury and who is:

4           a. A physician licensed to practice medicine or surgery in this  
5 State, Tennessee, Georgia, Virginia, or South Carolina;

6           b. A chiropractor licensed to practice chiropractic in this State,  
7 Tennessee, Georgia, Virginia, or South Carolina.

8           (27) Palliative Care. – 'Palliative care' means care rendered to  
9 temporarily reduce or moderate the intensity of an otherwise  
10 medically stationary condition, as distinguished from care that is  
11 rendered to diagnose, heal, permanently alleviate, or eliminate an  
12 undesirable medical condition."

13           Sec. 5. Chapter 97 of the General Statutes is amended by adding a new  
14 section to read:

15 **"§ 97-9.1. Burden of proof.**

16           The employee has the burden of proving that an injury arose out of and in the course  
17 and scope of employment and the burden of proving that the injury is established by  
18 medical evidence supported by objective findings."

19           Sec. 6. G.S. 97-10.1 reads as rewritten:

20 **"§ 97-10.1. Other rights and remedies against employer excluded.**

21           If (a) Except as provided in subsection (b) of this section, if the employee and the  
22 employer are subject to and have complied with the provisions of this Article, then the  
23 rights and remedies herein granted to the employee, ~~his~~ and the employee's dependents,  
24 next of kin, or personal representative shall exclude all other rights and remedies of the  
25 employee, ~~his~~ and the employee's dependents, next of kin, or personal representative as  
26 against the employer at common law or otherwise on account of or arising out of such  
27 injury or death.

28           (b) The only exception to the exclusive remedy provided in subsection (a) of this  
29 section is for an injury that results from an intentional tort by the employer. For the  
30 purposes of this Article, an intentional tort occurs only when an employer intentionally  
31 engages in misconduct knowing it is substantially certain to cause serious injury or  
32 death to employees and an employee is injured or killed by that misconduct.

33           (c) This Article shall not prohibit any person from filing a claim as provided in  
34 this Article and simultaneously commencing a civil action seeking to recover damages  
35 from an employer for the injury or death.

36           (d) For purposes of this Article, the personal liability of an employee whose  
37 actions proximately cause the injury or death to another employee shall be determined  
38 according to the same standards of conduct as provided in subsection (b) of this section  
39 as applied to the employer when the employee's actions arise out of and in the course  
40 and scope of the employment."

41           Sec. 7. G.S. 97-12 reads as rewritten:

42 **"§ 97-12. Use of intoxicant or controlled substance; willful neglect; willful**  
43 **disobedience of statutory duty, safety regulation or rule.**

1 No compensation shall be payable if the injury or death to the employee was  
2 proximately caused by:

- 3 (1) ~~His~~The employee's intoxication, provided the intoxicant was not  
4 supplied by the employer or ~~his~~the employer's agent while acting  
5 in a supervisory capacity to the employee; or  
6 (2) ~~His~~The employee's being under the influence of any controlled  
7 substance listed in the North Carolina Controlled Substances Act,  
8 G.S. 90-86, **et seq.**, where such controlled substance was not by  
9 prescription by a ~~praetitioner;~~practitioner, and provided the  
10 controlled substance was not supplied by the employer or the  
11 employer's agent while acting in a supervisory capacity to the  
12 employee; or  
13 (3) ~~His~~The employee's willful intention to injure or kill himself or  
14 another. When the injury or death is caused by the willful failure  
15 of the employer to comply with any statutory requirement or any  
16 lawful order of the Commission, compensation shall be increased  
17 ten percent (10%). When the injury or death is caused by the  
18 willful failure of the employee to use a safety appliance or perform  
19 a statutory duty or by the willful breach of any reasonable rule or  
20 regulation adopted by the employer and approved by the Commission  
21 and brought to the knowledge of the employee prior to the injury  
22 compensation shall be reduced ten percent (10%).

23 The burden of proof shall be upon ~~him who claims~~the party claiming an exemption  
24 or forfeiture under this section."

25 Sec. 8. G.S. 97-17 reads as rewritten:

26 "**§ 97-17. Settlements allowed in accordance with Article.**

27 (a) ~~Nothing herein contained~~This Article shall not be construed so as to prevent  
28 settlements made by and between the employee and employer so long as the amount of  
29 compensation and the time and manner of payment are in accordance with the  
30 provisions of this Article. ~~A copy of such settlement agreement shall be filed by employer~~  
31 ~~with and approved by the Industrial Commission. Provided, however, that no party to any~~  
32 ~~agreement for compensation approved by the Industrial Commission shall thereafter be heard to~~  
33 ~~deny the truth of the matters therein set forth, unless~~If it shall be made to appear to the  
34 satisfaction of the Commission that there has been error due to fraud, misrepresentation,  
35 undue influence or mutual mistake, in which event the Industrial Commission may set  
36 aside such a settlement agreement. Any settlement shall constitute a final determination  
37 of liability for the injury and shall be binding on all parties.

38 (b) Within 180 days from the date of the first payment of compensation, the  
39 employer may serve upon the employee an offer of settlement, which shall be filed by  
40 the employer with the Commission. If within 30 days after the service of the offer of  
41 settlement, the employee serves written notice that the offer is accepted, the employer  
42 shall file with the Commission a Notice of Intent to Settle, together with the agreed  
43 terms of settlement. The Commission may approve or reject the settlement, and unless

1 the settlement is approved or rejected within 60 days following submission of the  
2 Notice of Intent to Settle, the settlement shall be deemed approved.

3 (c) An offer of settlement not accepted within 30 days after its service shall be  
4 deemed withdrawn. The failure or refusal of the employee to timely accept the offer  
5 does not preclude a subsequent settlement.

6 (d) Evidence of an offer of settlement shall not be admissible in a subsequent  
7 proceeding on the issue of compensability."

8 Sec. 9. G.S. 97-18 reads as rewritten:

9 **"§ 97-18. Prompt payment of compensation required; installments; notice to**  
10 **Commission; penalties.**

11 (a) Compensation under this Article shall be paid periodically, promptly and  
12 directly to the person entitled thereto unless otherwise specifically provided.

13 (b) The first installment of compensation payable ~~under the terms of an agreement~~  
14 by the employer shall become due on the fourteenth day after the employer has written  
15 or actual knowledge of the injury or death, on which date all compensation then due  
16 shall be paid—paid, or the employer shall notify the Commission and advise the  
17 employee in writing of its refusal to pay and advise the employee of the employee's  
18 right to request a hearing pursuant to G.S. 97-83. ~~Thereafter compensation~~ Compensation  
19 shall be paid in installments weekly except where the Commission determines that  
20 payment in installments should be made monthly or at some other period.

21 (b1) In any claim for compensation in which the employer is uncertain whether the  
22 claim is compensable under this Article, or is uncertain of the extent of its liability  
23 under this Article, the employer may initiate compensation payments without prejudice  
24 and without admitting liability. Such payments may continue until such time as the  
25 employer decides to contest the claim or 180 days from the due date of the first payment  
26 of compensation, whichever shall first occur. The initiation of payment by the  
27 employer does not affect the right of the employer to continue to investigate or deny the  
28 compensability of the injury during this period. If, during this 180-day period during  
29 which compensation has been paid, the employer decides to contest the claim, the  
30 employer shall suspend payment of benefits and shall promptly notify the employee on  
31 a form prescribed by the Commission, stating the grounds upon which the employee's  
32 right to compensation or the extent of liability is contested. The employer shall furnish  
33 a copy to the Commission. If the employer does not contest the compensability of the  
34 injury in 180 days or less from the due date of the first payment of compensation, the  
35 employer waives the right to contest compensability. However, an employer may  
36 contest the claim after the 180-day period when the employer can show that evidence  
37 was discovered after that period that could not have been reasonably discovered earlier.

38 (c) The first installment of compensation payable under the terms of an award by  
39 the Commission, or under the terms of a judgment of the court upon an appeal from  
40 such an award, shall become due 14 days from the date of such an award or from the  
41 date of such a judgment of the court, on which date all compensation then due shall be  
42 paid. Thereafter compensation shall be paid in installments weekly, except where the  
43 Commission determines that payment in installments shall be made monthly or in some  
44 other manner. A payment becomes due within the meaning of this subsection the day

1 following expiration of time for appeal of an award or judgment or after notice waiving  
2 right of appeal by all parties has been received by the Commission, whichever is sooner.  
3 Except that if the applicable time for appeal is longer than 14 days, then payment must  
4 be made within five days after it becomes due as herein defined.

5 (d) ~~Upon making the first payment, and upon suspension of payment for any~~  
6 ~~cause, the employer shall immediately notify the Commission, in accordance with the~~  
7 ~~form prescribed by the Commission, that payment of compensation has begun or has~~  
8 ~~been suspended, as the case may be. —~~The employer's grounds for contesting the  
9 employee's claim as specified in the notice under subsection (b1) of this section are the  
10 only bases for the employer's defense on the issue of compensability in a subsequent  
11 proceeding, unless the defense is based on newly discovered evidence that could not  
12 reasonably have been discovered earlier.

13 (e) ~~If any installment of compensation payable in accordance with the terms of~~  
14 ~~an agreement approved by the Commission is not paid within 14 days after it becomes~~  
15 ~~due, as provided in subsection (b) of this section, or if any installment of compensation~~  
16 ~~payable in accordance with the terms of an award by the Commission is not paid within~~  
17 ~~14 days after it becomes due, as provided in subsection (c) of this section, there shall be~~  
18 added to such unpaid installment an amount equal to ten per centum (10%) thereof,  
19 which shall be paid at the same time as, but in addition to, such installment, unless such  
20 nonpayment is excused by the Commission after a showing by the employer that owing  
21 to conditions over which he had no control such installment could not be paid within the  
22 period prescribed for the payment.

23 (f) Within 16 days after final payment of compensation has been made, the  
24 employer shall send to the Commission a notice, in accordance with a form prescribed  
25 by the Commission, stating that such final payment has been made, the total amount of  
26 compensation paid, the name of the employee and of any other person to whom  
27 compensation has been paid, the date of the injury or death, and the date to which  
28 compensation has been paid. If the employer fails to so notify the Commission within  
29 such time, the Commission shall assess against such employer a civil penalty in the  
30 amount of twenty-five dollars (\$25.00).

31 (g) If any bill for services rendered under G.S. 97-25 by any provider of health  
32 care is not paid within 60 days after it has been approved by the Commission and  
33 returned to the responsible party, there shall be added to such unpaid bill an amount  
34 equal to ten per centum (10%) thereof, which shall be paid at the same time as, but in  
35 addition to, such medical bill, unless such late payment is excused by the Commission."

36 Sec. 10. Chapter 97 of the General Statutes is amended by adding a new  
37 section to read:

38 **"§ 97-18.1. Termination or modification of compensation benefits.**

39 (a) If the employer seeks to terminate or modify temporary total disability  
40 benefits because the employee has returned to work or because the employer has reason  
41 to believe the employee has become medically stationary or has recovered sufficiently  
42 to return to work, the employer shall notify the employee in writing of the employer's  
43 intent to terminate or modify benefits. This notice shall inform the employee of the  
44 employee's right to administrative review of the matter. The employer may suspend

1 compensation 14 days following its notice to the employee. The employee, within 30  
2 days of being notified, may request an administrative review with the Commission  
3 disputing the employer's decision to suspend compensation.

4 (b) After the request for administrative review is filed, the Commission shall  
5 promptly conduct a review of documentation submitted by the employer, together with  
6 any information submitted by the employee. The Commission shall issue a decision  
7 within 14 days following the employee's request for administrative review.

8 (c) Where the medical condition of the employee is in dispute, the Commission  
9 shall consider all medical evidence and shall make its determination based on the  
10 greater weight of the information submitted. Where, however, either party has  
11 requested an examination by an independent medical examiner pursuant to G.S. 97-27,  
12 that examiner's opinion of the employee's recovery and ability to return to work is  
13 conclusive absent clear, cogent, and convincing proof to the contrary.

14 (d) The Commission's administrative decision shall be forwarded to the parties  
15 and their attorneys by first class mail. Following receipt of the decision, either party  
16 may file a request for a hearing pursuant to G.S. 97-83. The request for hearing shall be  
17 filed within twenty days from the date of postmark of the mailed decision. If neither  
18 party requests a hearing within the prescribed time, the Commission's administrative  
19 decision constitutes a final determination. The employer is not required to continue  
20 payment of compensation following the Commission's determination upholding the  
21 employer's decision."

22 Sec. 11. G.S. 97-25 reads as rewritten:

23 **"§ 97-25. Medical treatment and supplies.**

24 (a) ~~Medical-Subject to subsection (e) of this section, G.S. 97-25.1, 97-25.2, and~~  
25 ~~97-25.3, medical compensation that effects a cure, maintains an employee in a~~  
26 ~~medically stationary condition, or prevents deterioration of an employee's condition~~  
27 ~~shall be provided by the employer. In case of a controversy arising between the employer~~  
28 ~~and employee relative to the continuance of medical, surgical, hospital, or other treatment, the~~  
29 ~~Industrial Commission may order such further treatments as may in the discretion of the~~  
30 ~~Commission be necessary. The Commission may at any time upon the request of an employee~~  
31 ~~order a change of treatment and designate other treatment suggested by the injured employee~~  
32 ~~subject to the approval of the Commission, and in such a case the expense thereof shall be~~  
33 ~~borne by the employer upon the same terms and conditions as hereinbefore provided in this~~  
34 ~~section for medical and surgical treatment and attendance.—The obligation of an employer to~~  
35 ~~provide medical compensation is limited by and subject to the provisions regarding the~~  
36 ~~modification of an award for change of condition as set forth in G.S. 97-47.~~

37 (b) In all cases of injury or disease, the employer or insurer has the right to select  
38 the attending physician. Upon written request to the insurer or to the employer's  
39 authorized representative if the employer is self-insured, the employee may procure  
40 written permission to have the employee's own physician attend the employee. If such  
41 permission is neither granted nor refused within 20 days, the employer or insurance  
42 carrier shall be deemed to have waived any objection. Objection shall be in writing and  
43 shall be deposited in the mail or hand-delivered to the employee within 20 days. Any  
44 unauthorized medical expense is not the responsibility of the employer.

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

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

14 (d) The employee, upon reasonable grounds, may petition the Industrial  
15 Commission for a change of physicians to be provided by the employer. The employee  
16 shall give notice to the employer or insurer of this request for a change of physicians to  
17 afford the employer the opportunity to fulfill its obligations under this section. The  
18 employer shall not be obligated to pay for the services obtained when notice was not  
19 given in accordance with this subsection.

20 (e) When the attending physician is a chiropractor, compensation for chiropractic  
21 treatment shall be provided by the employer for a period of 90 days from the initial  
22 treatment or for 30 office visits, whichever occurs first. A request for additional  
23 chiropractic treatment shall be submitted to the insurer at least 10 working days prior to  
24 delivery of the services and shall include documentation of the need for the services  
25 requested. When chiropractic treatment is expected to extend beyond 90 days from the  
26 date of the initial treatment, the request for additional services shall include a treatment  
27 plan, including a time schedule of measurable objectives, a projected termination date of  
28 treatment, and an estimated total cost of service. The Commission shall adopt rules  
29 governing the response to a request for additional chiropractic services and the review  
30 of a decision thereon."

31 Sec. 12. Chapter 97 of the General Statutes is amended by adding the  
32 following new sections:

33 "**§ 97-25.1. Palliative care.**

34 (a) After the employee has become medically stationary, palliative care is not  
35 compensable, except when:

36 (1) Provided to an employee who has been determined to have  
37 permanent total disability;

38 (2) Necessary to monitor administration of prescription medication  
39 required to maintain the employee in a medically stationary  
40 condition; or

41 (3) Necessary to monitor the status of a prosthetic device.

42 If the employee's attending physician determines that palliative care that would  
43 otherwise not be compensable under this section is appropriate to enable the employee  
44 to continue current employment, the attending physician shall request approval from the

1 insurer or self-insured employer for such treatment. The request for palliative services  
2 shall include a treatment plan, including a time schedule of measurable objectives, a  
3 projected termination date of treatment, and an estimated total cost of services. If  
4 approval for palliative care is not granted, the attending physician may request approval  
5 from the Commission for such treatment. The Commission shall appoint an  
6 independent medical examiner pursuant to G.S. 97-27 to review the request for  
7 treatment.

8 (b) The employer shall not be required to pay for palliative care that is not  
9 authorized pursuant to this section.

10 **"§ 97-25.2. Managed care organizations.**

11 As used in this section, 'managed care organization' means a preferred provider  
12 organization, plan, or arrangement, an exclusive provider panel, or a health maintenance  
13 organization regulated under Chapter 58 of the General Statutes. An employer or  
14 carrier may satisfy the requirements of G.S. 97-25 by contracting with a managed care  
15 organization. Notwithstanding any other provision of this Article, if an employer or  
16 carrier contracts with a managed care organization for medical services that are  
17 compensable under this Article, those employees who are covered by the contract with  
18 the managed care organization shall receive medical services in the manner prescribed  
19 by the contract or in accordance with the managed care organization's plan of operation;  
20 provided that the plan of operation has been approved by the Commissioner of  
21 Insurance and further provided that the contract complies with rules adopted by the  
22 Commission governing such managed care organizations. Immediate emergency  
23 medical services provided by a health care provider who is not a member of the  
24 managed care organization or a party to the contract are compensable under this Article.  
25 An employee must exhaust any dispute resolution procedure of a managed care  
26 organization before that employee may seek review by the Commission on any issue  
27 related to the managed care organization or the choice of a physician. Once application  
28 to the Commission has been made, the employee shall be entitled to an examination by  
29 a duly qualified physician or surgeon in the same manner as provided by G.S. 97-27.

30 If the employer or insurer elects to provide medical care through a managed care  
31 program pursuant to this section, the employee shall select the attending physician from  
32 those physicians who are members of the managed care program, and may subsequently  
33 change attending physicians once within the group of physicians who are members of  
34 the managed care program without approval from the employer or insurer. Additional  
35 changes in attending physician or any change to a physician not a member of the  
36 employer's or insurer's managed care program shall only be made pursuant to the  
37 procedures set forth in this section.

38 **"§ 97-25.3. Preauthorization.**

39 (a) An employee shall notify the insurer within five working days before hospital  
40 in-patient confinement or surgery, except in case of an emergency, in accordance with  
41 procedures prescribed by the Commission. When hospitalization or surgery is  
42 recommended, the insurer shall make a hospital confinement and surgery review and  
43 shall have reasonable opportunity to obtain an independent medical exam. A copy of  
44 the review shall be provided to the employee, attending physician, and hospital in

1 writing. Hospital and physician charges incurred without preauthorization shall be  
2 reduced by fifty percent (50%) provided that notice has been given to the hospital and  
3 physician of the requirement of preauthorization. The employee shall not be liable for  
4 payment of the balance. A hospital and physician that refuse to treat an employee for  
5 other than an emergency medical condition because preauthorization has not been  
6 obtained shall be immune from liability in any civil action.

7 (b) No health care provider may refer the employee to a diagnostic facility, pain  
8 program, work-hardening program, therapy center, or other facility without  
9 authorization from the insurer pursuant to this section except in cases of immediate  
10 medical emergency.

11 (c) The Commission shall adopt rules specifying additional types of medical care  
12 requiring express preauthorization by the insurer. The Commission shall adopt rules  
13 establishing a procedure for expedited resolution of any dispute over the denial of  
14 preauthorization by the insurer.

15 (d) When a health care provider of medical services or treatment makes referrals  
16 for medical services or treatment compensable under this Article to a health care  
17 provider or entity in which the health care provider making the referral has an  
18 investment interest, the referring provider shall, at the time of the referral, disclose that  
19 investment interest to the employee, the Commission, the employer, and the employer's  
20 insurer. The referring provider also shall file an annual disclosure statement with the  
21 Commission as provided by rules adopted by the Commission.

22 (e) Except in cases of medical emergency, the insurer shall not be liable for  
23 medical costs related to hospital in-patient confinement or surgery, chiropractic care, or  
24 physical or occupational therapy unless:

25 (1) The insurer or employer waives the right to request a second  
26 opinion from a physician approved by the insurer or the  
27 Commission no later than 14 days after the date of notification that  
28 any of these medical treatments is recommended; or

29 (2) The employee obtains a second opinion from a physician approved  
30 by the insurer or the Commission, and the second physician  
31 concurs with the attending physician's recommendation.

32 (f) The insurer or Commission may require an employee to submit to medical  
33 examinations to resolve any question about the appropriateness of medical treatment  
34 received or recommended. The Commission shall require a physical examination only  
35 after the insurer has attempted and failed to receive the permission of the employee.

36 (g) The insurer shall pay for any physical examination required under subsections  
37 (e) and (f) of this section.

38 (h) An employee who, without good cause, fails or refuses to appear at the time  
39 scheduled for a physical examination under subsections (e) or (f) of this section shall  
40 have the employee's rights suspended as provided in G.S. 97-27(a).

41 (i) A health care provider shall not pursue a private claim against an employee  
42 for all or part of the costs of medical treatment provided to the employee by the provider  
43 unless the claim is finally adjudicated not to be compensable under this Article or unless  
44 the employee fails to comply with this section."

1           Sec. 13. G.S. 97-26 reads as rewritten:

2   "**§ 97-26. Liability Fees allowed for medical treatment measured by average cost in**  
3   **community; treatment; malpractice of physician.**

4       ~~The pecuniary liability of the employer for medical, surgical, hospital service,~~  
5   ~~nursing services, medicines, sick travel or other treatment required when ordered by the~~  
6   ~~Commission, shall be limited to such charges as prevail in the same community for~~  
7   ~~similar treatment of injured persons of a like standard of living when such treatment is~~  
8   ~~paid for by the injured person, and the~~

9       (a) The Commission shall adopt a schedule of maximum fees for all services,  
10   procedures, and tasks. This schedule shall govern reimbursement of maximum fees to  
11   all health care providers under G.S. 97-25 and shall be in accordance with the  
12   following:

13       (1) The Teachers' and State Employees' Comprehensive Major  
14   Medical Plan shall provide to the Commission no later than  
15   December 1st of each year the average of all allowable charges of  
16   providers under the Teachers' and State Employees'  
17   Comprehensive Major Medical Plan for each CPT ('Current  
18   Procedural Terminology') or standard code. This subdivision does  
19   not apply to providers covered under subdivisions (2) or (3) of this  
20   subsection.

21       (2) Each hospital shall provide to the Commission no later than  
22   December 1st of each year its schedule of charges under the  
23   Teachers' and State Employees' Comprehensive Major Medical  
24   Plan.

25       (3) Each institutional provider, other than a hospital, shall provide to  
26   the Commission, upon request of the Commission, no later than  
27   December 1st of each year, its schedule of charges under the  
28   Teachers' and State Employees' Comprehensive Major Medical  
29   Plan.

30       (4) The maximum fee for a specified treatment, procedure, service, or  
31   task shall equal:

32       a. For a provider under subdivision (1) of this subsection, the  
33   average fee reported pursuant to subdivision (1) of this  
34   subsection for the CPT or standard code;

35       b. For a provider under subdivision (2) of this subsection, the fee  
36   charged by the provider under its schedule of charges with the  
37   Teachers' and State Employees' Comprehensive Major Medical  
38   Plan;

39       c. For a provider under subdivision (3) of this subsection, the fee  
40   determined by the Commission after review of the information  
41   submitted pursuant to subdivision (3).

42       (5) The codes established by the Commission shall be in accordance  
43   with the codes contained in the American Medical Association's  
44   Physicians' Current Procedural Terminology (CPT), as modified, or

1                   in standard codes and definitions produced by other recognized  
2                   professional associations for which CPT codes do not exist. The  
3                   use of modifier codes shall be strictly limited, the additional fee  
4                   allowed for each modification shall be provided in the fee schedule,  
5                   and documentation indicating the need for such modifiers shall be  
6                   required. Services, procedures, and tasks shall be billed using the  
7                   most inclusive codes available; and differing elements of a service,  
8                   procedure, or task shall not be billed individually when a single  
9                   code is available describing the complete service, procedure, or  
10                   task.

11                   (6)       Each surgical procedure shall provide for appropriate subsequent  
12                   care, including examinations, changes of dressings, and similar  
13                   services associated with postsurgery recovery, but the cost of such  
14                   care shall not be billed during the recovery period.

15                   (b)       Unless the employer or insurer and a health care provider agree to a lesser  
16                   fee, the fees charged for treatment and care under this Article shall be the provider's  
17                   usual and customary fee for the treatment or service, or the fee for that treatment or  
18                   service under the Commission's schedule, whichever is less.

19                   (c)       Health care providers shall submit charges to the employer within 30 days of  
20                   treatment or within 30 days after the end of the month during which multiple treatments  
21                   were provided. If the employer disputes a part of a provider's bill, it shall pay the  
22                   uncontested portion of the bill and shall resolve disputes regarding the balance of  
23                   medical charges in accordance with this section. Health care providers shall not charge  
24                   for diagnostic tests previously conducted by other providers, unless the provider has  
25                   reasonable grounds to believe a change in patient condition has occurred or the quality  
26                   of the prior test is doubted. The Commission shall adopt rules establishing reasonable  
27                   requirements for reports and records to be made available to other health care providers  
28                   to prevent unnecessary duplication of tests and examinations.

29                   (d)       The Commission shall promulgate rules governing treatment. Such rules shall  
30                   define appropriate clinical indications and methods of treatment, must be consistent  
31                   with appropriate standards of care and levels of quality, and shall take into account  
32                   resources available to physicians practicing in various geographic areas of the State. In  
33                   developing the rules, the Commission must consider and may adopt or modify treatment  
34                   guidelines in accordance with practice guidelines and parameters developed by the  
35                   North Carolina Board of Medical Examiners, North Carolina Medical Society, and the  
36                   American Medical Association. Neither the employer, its insurer, nor the employee  
37                   shall be responsible for reimbursing a health care provider for treatment of the injured  
38                   employee that exceeds in frequency treatment plans adopted by the Commission.

39                   (e)       The employer shall not be liable in damages for malpractice by a physician or  
40                   surgeon furnished by him pursuant to the provisions of this section, but the  
41                   consequences of any such malpractice shall be deemed part of the injury resulting from  
42                   the accident, and shall be compensated for as such.

1 (f) Unless the hospital agrees to a lesser fee, the Commission's schedule of  
2 maximum fees shall govern reimbursement to all hospitals for services, treatment, and  
3 care under this Article."

4 Sec. 14. G.S. 97-27 reads as rewritten:

5 **"§ 97-27. Medical examination; facts not privileged; refusal to be examined**  
6 **suspends compensation; autopsy.**

7 (a) After an injury, and so long as he claims compensation, the employee, if so  
8 requested by his employer or ordered by the Industrial Commission, shall, subject to the  
9 provisions of subsection ~~(b)~~, (b) and subsection (c) of this section, submit himself to  
10 examination, at reasonable times and places, by a duly qualified physician or surgeon  
11 designated and paid by the employer or the Industrial Commission. The employee shall  
12 have the right to have present at such examination any duly qualified physician or  
13 surgeon provided and paid by him. Notwithstanding the provisions of G.S. 8-53, no fact  
14 communicated to or otherwise learned by any physician or surgeon or hospital or  
15 hospital employee who may have attended or examined the employee, or who may have  
16 been present at any examination, shall be privileged in any workers' compensation case  
17 with respect to a claim pending for hearing before the Industrial Commission. If the  
18 employee refuses to submit himself to or in any way obstructs such examination  
19 requested by and provided for by the employer, his right to compensation and his right  
20 to take or prosecute any proceedings under this Article shall be suspended until such  
21 refusal or objection ceases, and no compensation shall at any time be payable for the  
22 period of obstruction, unless in the opinion of the Industrial Commission the  
23 circumstances justify the refusal or obstruction. The employer, or the Industrial  
24 Commission, shall have the right in any case of death to require an autopsy at the  
25 expense of the party requesting the same.

26 (b) ~~In those cases arising under this Article in which there is a question as to the~~  
27 ~~percentage of permanent disability suffered by an employee, if any employee, required~~  
28 ~~to submit to a physical examination under the provisions of subsection (a) is dissatisfied~~  
29 ~~with such examination or the report thereof, he shall be entitled to have another~~  
30 ~~examination by a duly qualified physician or surgeon licensed and practicing in North~~  
31 ~~Carolina or by a duly qualified physician or surgeon licensed to practice in South~~  
32 ~~Carolina, Georgia, Virginia and Tennessee provided said nonresident physician or~~  
33 ~~surgeon shall have been approved by the North Carolina Industrial Commission and his~~  
34 ~~name placed on the Commission's list of approved nonresident physicians and surgeons,~~  
35 ~~designated by him and paid by the employer or the Industrial Commission in the same~~  
36 ~~manner as physicians designated by the employer or the Industrial Commission are~~  
37 ~~paid. Provided, however, that all travel expenses incurred in obtaining said examination~~  
38 ~~shall be paid by said employee. The employer shall have the right to have present at~~  
39 ~~such examination a duly qualified physician or surgeon provided and paid by him.~~  
40 dispute as to the extent, nature, or cause of disability or death, or a dispute as to whether  
41 the employee is medically stationary, the attending physician who has provided the  
42 primary care shall make a determination on medical issues as provided in this section.  
43 If either party disputes the attending physician's findings, the parties may select an  
44 independent medical examiner by mutual agreement. If the parties are unable to

1 mutually agree on the selection of an independent medical examiner, the Commission  
2 shall assign a panel of three independent medical examiners.

3 (c) When the injured employee becomes medically stationary, the attending  
4 physician shall determine a medical impairment rating based on the most recent edition  
5 of the American Medical Association Guide to the Evaluation of Permanent  
6 Impairment. For purposes of determining levels of medical impairment, the physician  
7 shall not render a medical impairment rating based on chronic pain unless there is an  
8 anatomic or physiologic correlation to the pain. Anatomic or physiologic correlation  
9 shall be based on objective findings. If either party disputes the attending physician's  
10 findings of medical impairment, the parties may select an independent medical  
11 examiner by mutual agreement. If the parties are unable to mutually agree on the  
12 selection of an independent medical examiner, the Commission shall assign a panel of  
13 three independent medical examiners.

14 (d) When a panel of independent medical examiners has been assigned to a case  
15 under subsection (b) or subsection (c) of this section, the parties shall be notified  
16 immediately. The employee shall select one independent medical examiner from the  
17 panel within five days after notification. The employer may, no later than three days  
18 after notification of the employee's selection, reject the employee's selection of the  
19 independent medical examiner, in which case the employee's first choice of an  
20 independent medical examiner is removed from the panel, and the employee shall select  
21 one of the two remaining independent medical examiners. The findings of the  
22 independent medical examiner under subsection (b) or subsection (c) of this section  
23 shall be final, absent a showing of clear, cogent, and convincing evidence to the  
24 contrary. No hearing to contest the findings of the independent medical examiner shall  
25 be conducted until the findings of the independent medical examiner have been filed  
26 with the Commission.

27 (e) No fact communicated to or otherwise learned by any physician or surgeon  
28 who may have attended or examined the employee, or who may have been present at  
29 any examination, shall be privileged, either in hearings provided for by this Article or  
30 any action at law.

31 (f) The Commission shall certify independent medical examiners to assist the  
32 Commission. The Commission shall, in certifying, recertifying, or decertifying an  
33 independent medical examiner, consider the qualifications, training, impartiality, and  
34 commitment of the health care provider to providing quality medical care at a  
35 reasonable cost. The Commission shall require, at a minimum, that independent  
36 medical examiners:

- 37 (1) Have specialized workers' compensation training or experience  
38 with the procedures of North Carolina Workers' Compensation Act;  
39 (2) Be licensed to practice medicine or surgery in this State,  
40 Tennessee, Georgia, Virginia, or South Carolina; and  
41 (3) Be board certified."

42 Sec. 15. G.S. 97-29 reads as rewritten:

43 **"§ 97-29. Compensation rates for total ~~incapacity-~~disability.**

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

8       Notwithstanding any other provision of this section, temporary total disability  
9 benefits shall continue until any one of the following first occurs:

10           (1) The employee becomes medically stationary;

11           (2) The employee returns to regular or modified employment;

12           (3) The attending physician gives the employee a written release to  
13 return to regular employment; or

14           (4) The attending physician gives the employee a written release to  
15 return to modified employment, this employment is offered to the  
16 employee in writing, and the employee fails to begin the  
17 employment.

18       If the employee returns to work pursuant to the provisions of this subsection, the  
19 employer shall continue to provide medical compensation. In no case shall the period  
20 covered by such compensation be greater than 300 weeks from the date of injury. In no  
21 case may the period covered by the compensation provided by this subsection and G.S.  
22 97-30 exceed an aggregate total of 300 weeks.

23       (b) Where the injured employee sustains a permanent total disability, the  
24 employer shall pay, or cause to be paid to the injured employee during the permanent  
25 total disability, a weekly compensation equal to sixty-six and two-thirds percent (66  
26 2/3%) of the employee's average weekly wages, but not more than the amount  
27 established annually, to be effective October 1 as provided herein, nor less than thirty  
28 dollars (\$30.00) per week.

29       In cases of ~~total and permanent total~~ total disability, compensation, including medical  
30 compensation, shall be paid for by the employer during the lifetime of the injured  
31 employee. If death results from the injury then the employer shall pay compensation in  
32 accordance with the provisions of G.S. 97-38.

33       (c) The weekly compensation payment for members of the North Carolina  
34 national guard and the North Carolina State guard shall be the maximum amount  
35 established annually in accordance with the last paragraph of this section per week as  
36 fixed herein. The weekly compensation payment for deputy sheriffs, or those acting in  
37 the capacity of deputy sheriffs, who serve upon a fee basis, shall be thirty dollars  
38 (\$30.00) a week as fixed herein.

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

1 (d) Notwithstanding any other provision of this Article, on July 1 of each year, a  
2 maximum weekly benefit amount shall be computed. The amount of this maximum  
3 weekly benefit shall be derived by obtaining the average weekly insured wage in  
4 accordance with G.S. 96-8(22), by multiplying such average weekly insured wage by  
5 1.10, and by rounding such figure to its nearest multiple of two dollars (\$2.00), and this  
6 said maximum weekly benefit shall be applicable to all injuries and claims arising on  
7 and after January 1 following such computation. Such maximum weekly benefit shall  
8 apply to all provisions of this Chapter and shall be adjusted July 1 and effective January  
9 1 of each year as herein provided.

10 (e) In addition to the provisions of subsection (a) of this section, temporary total  
11 disability benefits may be terminated for an employee of an employer with 25 or more  
12 employees upon the written release under subdivisions (a)(3) and (a)(4) of this section,  
13 completed by the attending physician on a form prescribed by the Commission.  
14 Temporary total benefits terminate and permanent partial disability benefits, if any,  
15 begin upon certification on the release form by the physician that the employee is able  
16 to return to work at a job actually available to the employee. The physician may consult  
17 with vocational experts. The certification must specify the requirements of the job.

18 A dispute over the attending physician's certification or refusal to certify pursuant to  
19 this subsection shall be resolved by an independent medical examination pursuant to  
20 G.S. 97-27. Such determination shall be binding on the parties pending a hearing  
21 pursuant to G.S. 97-84. Notwithstanding the provisions of G.S. 97-18.1(a), the  
22 employer may terminate temporary total disability benefits seven days following receipt  
23 by the employee of notification that the physician has determined the employee can  
24 perform the specified job. Any nonpayment of benefits later determined to be due shall  
25 be subject to the ten percent (10%) penalty provisions of G.S. 97-18(e). If the employee  
26 proves incapable of sustained performance in the specified job, temporary total  
27 disability benefits shall immediately resume if the employee is otherwise entitled to the  
28 benefits.

29 (f) If an employer with 25 or more employees fails to offer an employee who  
30 sustains a compensable injury in its employment a job paying at least eighty percent  
31 (80%) of the employee's former wages within 60 days from the time the employee has  
32 been determined to be medically stationary, and another employer shall hire the  
33 employee within one year from the time the employee has become medically stationary,  
34 and the subsequent employment is full-time employment in which the employee is  
35 performing all the essential duties of the employment and there is a reasonable certainty  
36 that the subsequent employer will continue the employment of the employee at the same  
37 or greater wages into the indefinite future, then the employer shall reimburse the  
38 subsequent employer fifty percent (50%) of the employee's new gross wages actually  
39 paid to the employee, not to exceed fifty percent (50%) of the uncommuted equivalent  
40 of 52 weeks of the employee's workers' compensation rate. Such amounts payable to  
41 the subsequent employer shall be in addition to any compensation due the employee  
42 pursuant to G.S. 97-30 or G.S. 97-31. The subsequent employer shall have standing  
43 before the Commission to seek an award of said reimbursement. Any carrier or any  
44 group that self-insures the liabilities of its members under this Article may contract for

1 reimbursement by the employer for payments made pursuant to this subsection to the  
2 subsequent employer.

3 (g) Subsections (e) and (f) of this section apply to an employer with whom the  
4 employee was injured if the employer had 25 or more employees at the time of injury."

5 Sec. 15.1. Chapter 97 of the General Statutes is amended by adding the  
6 following new section:

7 "**§ 97-29.1. Use of vocational evidence.**

8 An employee's age, education, skills, and employment history shall be considered in  
9 determining disability under this Chapter; provided, this section does not apply to G.S.  
10 97-31."

11 Sec. 16. G.S. 97-30 reads as rewritten:

12 "**§ 97-30. Partial incapacity-disability.**

13 Except as otherwise provided in G.S. 97-31 where the ~~incapacity-disability~~ for work  
14 resulting from the injury is partial, the employer shall pay or cause to be paid, as  
15 hereinafter provided, to the injured employee during such disability, a weekly  
16 compensation equal to sixty-six and two-thirds percent (66 2/3%) of the difference  
17 between his average weekly wages before the injury and the average weekly wages  
18 which he is able to earn thereafter, but not more than the amount established annually to  
19 be effective October 1 as provided in G.S. 97-29 a week, and in no case shall the period  
20 covered by such compensation be greater than 300 weeks from the date of injury. In  
21 case the partial disability begins after a period of total disability, the latter period shall  
22 be deducted from the maximum period herein allowed for partial disability. An officer  
23 or member of the State Highway Patrol shall not be awarded any weekly compensation  
24 under the provisions of this section for the first two years of any incapacity resulting  
25 from an injury by accident arising out of and in the course of the performance by him of  
26 his official duties if, during such incapacity, he continues to be an officer or member of  
27 the State Highway Patrol, but he shall be awarded any other benefits to which he may  
28 be entitled under the provisions of this Article."

29 Sec. 17. Chapter 97 of the General Statutes is amended by adding a new  
30 section to read:

31 "**§ 97-32.1. Trial return to work.**

32 Notwithstanding the provisions of G.S. 97-32, an employee may attempt a single  
33 trial return to work for a period not to exceed nine months. During any such trial return  
34 to work, the employee shall be paid compensation only for any temporary partial  
35 disability which may be owed pursuant to G.S. 97-30. If the trial return to work is  
36 unsuccessful and the employee has not become medically stationary, the employee shall  
37 resume receiving temporary total disability benefits pursuant to G.S. 97-29(a). If the  
38 trial return to work is unsuccessful or the employee becomes medically stationary  
39 during the trial work period, any permanent impairment shall be determined when the  
40 trial period terminates."

41 Sec. 18. G.S. 97-40.1(a) reads as rewritten:

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

1 For the purpose of providing money for said fund the Industrial Commission may  
2 assess against the employer or its insurance carrier the payment of not to exceed ~~one~~  
3 ~~hundred dollars (\$100.00)~~ two hundred fifty dollars (\$250.00) for the loss, or loss of use,  
4 of each minor member in every case of a permanent partial disability where there is  
5 such loss, and shall assess not to exceed ~~five hundred dollars (\$500.00)~~ seven hundred  
6 fifty dollars (\$750.00) for fifty percent (50%) or more loss or loss of use of each major  
7 member, defined as back, foot, leg, hand, arm, eye, or hearing.

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

11 Sec. 19. G.S. 97-42 reads as rewritten:

12 **"§ 97-42. Deduction of payments.**

13 (a) Any payments made by the employer to the injured employee during the  
14 period of his disability, or to his dependents, which by the terms of this Article were not  
15 due and payable when made, may, subject to the approval of the Industrial Commission  
16 be deducted from the amount to be paid as compensation. Provided, that in the case of  
17 disability such deductions shall be made by shortening the period during which  
18 compensation must be paid, and not by reducing the amount of the weekly payment.

19 (b) If the injury is reported pursuant to G.S. 97-92, the employer, with the  
20 consent of the employee, may continue the injured employee on its payroll at the  
21 employee's preinjury wages, including deductions for taxes, and the value of payments  
22 made to or for the employee and his or her dependents, including the cost of health  
23 insurance, shall be offset against compensation due for that pay period. With the  
24 consent of the employee, the value of such payments by the employer exceeding  
25 compensation due for such pay periods shall be offset against benefits subsequently due  
26 pursuant to G.S. 97-30 or G.S. 97-31 by such method as the parties agree or the  
27 Commission directs."

28 Sec. 20. G.S. 97-47 reads as rewritten:

29 **"§ 97-47. Change of condition; modification of award.**

30 ~~Upon~~ Subject to G.S. 97-18.1, upon its own motion or upon the application of any  
31 party in interest on the grounds of a change in condition, the Industrial Commission  
32 may review any award, and on such review may make an award ending, diminishing, or  
33 increasing the medical compensation or compensation previously awarded, subject to  
34 the maximum or minimum provided in this Article, and shall immediately send to the  
35 parties a copy of the award. ~~No such review shall affect such award as regards any moneys~~  
36 ~~paid but no~~ No such review shall be made after two years from the date of the last  
37 payment of medical compensation or compensation pursuant to an award under this  
38 Article, except that in cases in which only medical or other treatment bills are paid, no  
39 such review shall be made after 12 months from the date of the last payment of bills for  
40 medical or other treatment, paid pursuant to this Article. Medical compensation or  
41 compensation that has been paid pursuant to the provisions of this Article prior to  
42 review shall not be affected by review or modification of an award under this section.  
43 Payment of medical compensation for palliative care under G.S. 97-25.1 shall not toll  
44 the time allowed for reviewing an award based upon a change of condition."

1           Sec. 21. G.S. 97-54 reads as rewritten:

2   **"§ 97-54. 'Disablement' defined.**

3           The term 'disablement' as used in this Article as applied to cases of asbestosis and  
4   silicosis means the event of becoming actually incapacitated because of asbestosis or  
5   silicosis to earn, in the same or any other employment, the wages which the employee  
6   was receiving at the time of his last injurious exposure to asbestosis or silicosis; ~~but in all  
7   other cases of occupational disease 'disablement' shall be equivalent to 'disability' as defined in  
8   G.S. 97-2(9)-silicosis."~~

9           Sec. 22. G.S. 97-55 is repealed.

10          Sec. 23. G.S. 97-79 reads as rewritten:

11   **"§ 97-79. Offices and supplies; deputies with power to subpoena witnesses and to  
12   take testimony; meetings; hearings.**

13          (a)   The Commission shall be provided with adequate offices in which the records  
14   shall be kept and its official business transacted during regular business hours; it shall  
15   also be provided with necessary office furniture, stationery, and other supplies.

16          (b)   The Commission may appoint deputies who shall have the same power to  
17   issue subpoenas, administer oaths, conduct hearings, hold persons, firms or corporations  
18   in contempt as provided in Chapter 5A of the General Statutes, take evidence, and enter  
19   orders, opinions, and awards based thereon as is possessed by the members of the  
20   Commission, and such deputy or deputies shall be subject to the State Personnel  
21   System. Deputies shall be attorneys licensed to practice in this State and shall have a  
22   minimum of three years' experience as attorneys.

23          (c)   The Commission or any member thereof may hold sessions at any place  
24   within the State as may be deemed necessary by the Commission.

25          (d)   Hearings before the Commission shall be open to the public and shall be  
26   stenographically reported, and the Commission is authorized to contract for the  
27   reporting of such hearings. The Commission shall by regulation provide for the  
28   preparation of a record of the hearings and other proceedings.

29          (e)   The North Carolina Industrial Commission, or any member thereof, or any  
30   deputy is authorized by appropriate order, to make additional parties plaintiff or  
31   defendant in any proceeding pending before the North Carolina Industrial Commission  
32   when it is made to appear that such new party is either a necessary party or a proper  
33   party to a final determination of the proceeding.

34          (f)   The Commission shall create an ombudsman program to assist unrepresented  
35   claimants, employers, and other parties, to enable them to protect their rights under this  
36   Article. In addition to other duties assigned by the Commission, the ombudsman shall  
37   meet with, or otherwise provide information to, injured employees, investigate  
38   complaints, and communicate with employers' insurance carriers and physicians at the  
39   request of the claimant. Assistance provided under this subsection shall not include  
40   representing the claimant in a compensation hearing."

41          Sec. 24. G.S. 97-82 is repealed.

42          Sec. 25. G.S. 97-80(a) reads as rewritten:

43          "(a)   The Commission may make rules, not inconsistent with this Article, for  
44   carrying out the provisions of this Article. Processes and procedure under this Article

1 shall be as summary and simple as reasonably may be. The Commission or any  
2 member thereof, or any person deputized by it, shall have the power, for the purpose of  
3 this Article, to tax costs against the parties, and to subpoena witnesses, administer or  
4 cause to have administered oaths, hold persons, firms or corporations in contempt as  
5 provided in Chapter 5A of the General Statutes, and to examine or cause to be examined  
6 such parts of the books and records of the parties to a proceeding as relate to questions  
7 in dispute. The Commission may order parties to participate in mediation, under rules  
8 substantially similar to those approved by the Supreme Court for use in the superior  
9 court division, and to apportion the costs among the parties. Any party to a proceeding  
10 under this Article may, upon application to the Commission, which application shall set  
11 forth the materiality of the evidence to be given, cause the depositions of witnesses  
12 residing within or without the State to be taken, the costs to be taxed as other costs by  
13 Commission. Such depositions shall be taken after giving the notice and in the manner  
14 prescribed by law for depositions in action at law, except that they shall be directed to  
15 the Commission, the commissioner, or the deputy commissioner before whom the  
16 proceedings may be pending."

17 Sec. 26. G.S. 143-296 reads as rewritten:

18 **"§ 143-296. Powers of Industrial Commission; deputies.**

19 The members of the Industrial Commission, or a deputy thereof, shall have power to  
20 issue subpoenas, administer oaths, conduct hearings, take evidence, enter orders,  
21 opinions, and awards based thereon, and punish for contempt. The Industrial  
22 Commission is authorized to appoint deputies and clerical assistants to carry out the  
23 purpose and intent of this Article, and such deputy or deputies are hereby vested with  
24 the same power and authority to hear and determine tort claims against State  
25 departments, institutions, and agencies as is by this Article vested in the members of the  
26 Industrial Commission. Such deputy or deputies shall also have and are hereby vested  
27 with the same power and authority to hear and determine cases arising under the  
28 Workers' Compensation Act when assigned to do so by the Industrial Commission. The  
29 Commission may order parties to participate in mediation, under rules substantially  
30 similar to those approved by the Supreme Court for use in the superior court division,  
31 and to apportion the costs among the parties."

32 Sec. 27. G.S. 97-83 reads as rewritten:

33 **"§ 97-83. ~~In event of disagreement, Commission is to make award after hearing.~~**

34 If the employer and the injured employee or his dependents ~~fail to reach an~~  
35 ~~agreement, in regard to compensation under this Article within 14 days after the~~  
36 ~~employee has knowledge of the injury or death, or if they have reached such an~~  
37 ~~agreement which has been signed and filed with the Commission, and compensation has~~  
38 ~~been paid or is due in accordance therewith, and the parties thereto then disagree as to~~  
39 ~~the continuance of any weekly payment under such agreement, fail to reach an~~  
40 agreement in regard to benefits under this Article within 14 days after the employer has  
41 knowledge of the injury or death, or upon the arising of a dispute under this Article,  
42 either party may make application to the Industrial Commission for a hearing in regard  
43 to the matters at issue, and for a ruling thereon. The county commissioners of each of  
44 the counties shall provide a suitable place for the Industrial Commission to conduct

1 hearings in the county seat of such county so long as the provision of such a suitable  
2 place does not interfere with the normal use of county facilities.

3 Immediately after such application has been received the Commission shall set the  
4 date of a hearing, which shall be held as soon as practicable, shall notify the parties at  
5 issue of the time and place of such hearing. The hearing or hearings shall be held in the  
6 city or county where the injury occurred, unless otherwise authorized by the Industrial  
7 Commission."

8 Sec. 28. G.S. 97-84 reads as rewritten:

9 **"§ 97-84. Determination of disputes by ~~Commission or deputy~~.**

10 ~~The Commission or any of its members. The deputy shall~~ hear the parties at issue and  
11 their representatives and witnesses, and shall determine the dispute in a summary  
12 manner. The award, together with a statement of the findings of fact, rulings of law,  
13 and other matters pertinent to the questions at issue shall be filed with the record of the  
14 proceedings, within 180 days of the close of the hearing record unless time is extended  
15 for good cause by the Commission, and a copy of the award shall immediately be sent  
16 to the parties in dispute. ~~The parties may be heard by a deputy, in which event the hearing~~  
17 ~~shall be conducted in the same way and manner prescribed for hearings which are conducted by~~  
18 ~~a member of the Industrial Commission, and said deputy shall proceed to a complete~~  
19 ~~determination of the matters in dispute, file his written opinion within 180 days of the close of~~  
20 ~~the hearing record unless time is extended for good cause by the Commission, and the deputy~~  
21 ~~shall cause to be issued an award pursuant to such determination. The decision of the deputy~~  
22 shall be based on the greater weight of credible evidence as contained in the record."

23 Sec. 29. Reserved.

24 Sec. 30. G.S. 97-87 reads as rewritten:

25 **"§ 97-87. ~~Filing agreements approved by Commission or awards; judgment in~~**  
26 **~~accordance therewith; discharge or restoration of lien.~~**

27 Any party in interest may file in the superior court of the county in which the injury  
28 occurred ~~a certified copy of a memorandum of agreement approved by the Commission, or of~~  
29 an order or decision of the Commission, or of an award of the Commission unappealed  
30 from or of an award of the Commission affirmed upon appeal, whereupon said court  
31 shall render judgment in accordance therewith, and notify the parties. Such judgment  
32 shall have the same effect, and all proceedings in relation thereto shall thereafter be the  
33 same, as though said judgment had been rendered in a suit duly heard and determined  
34 by said court: Provided, if the judgment debtor shall file a certificate duly issued by the  
35 Industrial Commission showing compliance with G.S. 97-83 with the clerk of the  
36 superior court in the county or counties where such judgment is docketed, then such  
37 clerk shall make upon the judgment roll an entry showing the filing of such certificate  
38 which shall operate as a discharge of the lien of the said judgment, and no execution  
39 shall be issued thereon; provided, further, that if at any time there is default in the  
40 payment of any installment due under the award set forth in said judgment the court  
41 may, upon application for cause and after 10 days' notice to judgment debtor, order the  
42 lien of such judgment restored, and execution may be immediately issued thereon for  
43 past due installments and for future installments as they may become due."

1           Sec. 31. Chapter 97 of the General Statutes is amended by adding the  
2 following two new sections to read:

3 **"§ 97-88.2. Penalty for misrepresentation.**

4           (a) Any person who willfully makes any false or misleading statement or  
5 representation for the purpose of obtaining or denying any benefit or payment, or  
6 assisting another to obtain or deny any benefit or payment under this Article, shall be  
7 guilty of a misdemeanor. The court may order restitution.

8           (b) The Commission shall refer all cases of suspected fraud and all violations  
9 related to workers' compensation claims, by or against insurers or self-funded  
10 employers, to the Department of Insurance to:

11                   (1) Perform investigations and refer possible criminal violations to the  
12 appropriate prosecutorial authorities;

13                   (2) Conduct administrative violation proceedings; and

14                   (3) Assess and collect penalties and restitution.

15           (b1) Any person who threatens an employee regarding the provisions of  
16 subsection (a) of this section while negotiating the amount of any compensation that  
17 such employee may be entitled to under this Article shall be guilty of a misdemeanor.

18           (c) The Commission shall not be liable in a civil action for any action made in  
19 good faith under this section, including the identification and referral of a person for  
20 investigation and prosecution for an alleged administrative violation or criminal offense.  
21 Any person, including, but not limited to, an attorney, an employee, an employer, an  
22 insurer, and an employee of an insurer, who in good faith comes forward with  
23 information under this section, shall not be liable in a civil action.

24           (d) The Commission shall report annually to the General Assembly on the  
25 number and disposition of investigations involving claimants, employers, insurance  
26 company officials, officials of third-party administrators, insurance agents, attorneys,  
27 medical providers, and vocational rehabilitation providers.

28 **"§ 97-88.3. Penalty for health care providers.**

29           (a) In addition to any liability under G.S. 97-88.2, any health care provider who  
30 willfully or intentionally undertakes the following acts is subject to an administrative  
31 penalty, assessed by the Commission, not to exceed ten thousand dollars (\$10,000):

32                   (1) Submitting charges for health care that was not furnished;

33                   (2) Fraudulently administering, providing, and attempting to collect for  
34 inappropriate or unnecessary treatment or services;

35                   (3) Failing to disclose an interest as required by this Article.

36           (b) In addition to any liability under G.S. 97-88.2, any health care provider who  
37 willfully or intentionally undertakes the following acts is subject to an administrative  
38 penalty, assessed by the Commission, not to exceed one thousand dollars (\$1,000):

39                   (1) Failing or refusing to timely file required reports or records;

40                   (2) Making unnecessary referrals;

41                   (3) Knowingly violating this Article or rules promulgated hereunder,  
42 including treatment guidelines, with intention to deceive or to gain  
43 improper advantage of a patient, employee, insurer, or the  
44 Commission.

1 (c) A health care provider who knowingly charges or otherwise holds an  
2 employee financially responsible for the cost of any services provided for a  
3 compensable injury under this Article is guilty of a misdemeanor.

4 (d) Any person, including, but not limited to, an employer, an insurer, and an  
5 employee of an insurer, who in good faith comes forward with information under this  
6 section, shall not be liable in a civil action.

7 (e) Information relating to possible violations under this section shall be reported  
8 to the Commission which shall refer the same to the appropriate licensing or regulatory  
9 board or authority for the health care provider involved.

10 (f) A hospital that relies on a written order of a physician in performing health  
11 care services shall not be subject to an administrative penalty in violation of this  
12 section."

13 Sec. 32. Reserved.

14 Sec. 33. G.S. 97-90 reads as rewritten:

15 **"§ 97-90. Legal and medical fees to be approved by Commission; misdemeanor to**  
16 **receive fees unapproved by Commission, or to solicit employment in**  
17 **adjusting claims; agreement for fee or compensation.**

18 (a) Fees for attorneys and physicians and charges of hospitals for medical  
19 compensation under this Article shall be subject to the approval of the Commission; but  
20 no physician or hospital or other medical facilities shall be entitled to collect fees from  
21 an employer or insurance carrier until he has made the reports required by the Industrial  
22 Commission in connection with the case. Unless otherwise provided by the rules,  
23 schedules, or orders of the Commission, a request for a specific prior approval to charge  
24 shall be submitted to the Commission for each such fee or charge.

25 (b) Any person (i) who receives any fee, other consideration, or any gratuity on  
26 account of services so rendered, unless such consideration or gratuity is approved by the  
27 Commission or such court, or (ii) who makes it a business to solicit employment for a  
28 lawyer or for himself in respect of any claim or award for compensation, shall be guilty  
29 of a misdemeanor, and upon conviction thereof shall, for each offense, be punished by a  
30 fine of not more than five hundred dollars (\$500.00) or by imprisonment not to exceed  
31 one year, or by both such fine and imprisonment.

32 ~~(c) If an attorney has an agreement for fee or compensation under this Article, he~~  
33 ~~shall file a copy or memorandum thereof with the hearing officer or Commission prior~~  
34 ~~to the conclusion of the hearing. If the agreement is not considered unreasonable, the~~  
35 ~~hearing officer or Commission shall approve it at the time of rendering decision. If the~~  
36 ~~agreement is found to be unreasonable by the hearing officer or Commission, the~~  
37 ~~reasons therefor shall be given and what is considered to be reasonable fee allowed. If~~  
38 ~~within five days after receipt of notice of such fee allowance, the attorney shall file~~  
39 ~~notice of appeal to the full Commission, the full Commission shall hear the matter and~~  
40 ~~determine whether or not the attorney's agreement as to a fee or the fee allowed is~~  
41 ~~unreasonable. If the full Commission is of the opinion that such agreement or fee~~  
42 ~~allowance is unreasonable and so finds, then the attorney may, by filing written notice~~  
43 ~~of appeal within 10 days after receipt of such action by the full Commission, appeal to~~  
44 ~~the resident judge of the superior court or the judge holding the courts of the district of~~

1 or in the county in which the cause of action arose or in which the claimant resides; and  
2 upon such appeal said judge shall consider the matter and determine in his discretion the  
3 reasonableness of said agreement or fix the fee and direct an order to the Commission  
4 following his determination therein. The Commission shall, within 20 days after receipt  
5 of notice of appeal from its action concerning said agreement or allowance, transmit its  
6 findings and reasons as to its action concerning such agreement or allowance to the  
7 judge of the superior court designated in the notice of appeal. In all other cases where  
8 there is no agreement for fee or compensation, the attorney or claimant may, by filing  
9 written notice of appeal within five days after receipt of notice of action of the full  
10 Commission with respect to attorneys' fees, appeal to the resident judge of the superior  
11 court or the judge holding the courts of the district of the county in which the cause  
12 arose or in which the claimant resides; and upon such appeal said judge shall consider  
13 the matter of such fee and determine in his discretion the attorneys' fees to be allowed in  
14 the cause. The Commission shall, within 20 days after notice of appeal has been filed,  
15 transmit its findings and reasons as to its action concerning such fee or compensation to  
16 the judge of the superior court designated in the notice of appeal; provided that the  
17 Commission shall in no event have any jurisdiction over any attorneys' fees in any third-  
18 party action.

19 The Industrial Commission in determining an allowance of attorneys' fees shall  
20 examine the record to determine the services rendered. Neither the employer nor its  
21 carrier shall be liable for any part of the fee to be paid to the claimant's attorney. The  
22 fees shall be allowed only on the amount of compensation disputed. The factors to be  
23 considered by the Industrial Commission in determining an allowance of attorneys' fees  
24 shall include, but not necessarily be limited to: the nature, scope, and quality of the  
25 attorneys' services; the level of skill and competence required of the attorney in  
26 rendering the services; the results achieved; the experience and skill level of the  
27 attorney; and the contingent nature of the case. In the order making the allowance of  
28 attorneys' fees, the Industrial Commission shall set forth findings sufficient to support  
29 the amount approved.

30 The Commission may reduce the attorneys' fees to an amount commensurate with  
31 the services performed, or may deny or reduce an attorneys' fees upon proof of  
32 solicitation of employment in violation of the Rules of Professional Conduct of the  
33 North Carolina State Bar.

34 (c1) No attorneys' fees in any case involving benefits under this Article shall be  
35 paid until the fee is approved by the Industrial Commission. Any contract for the  
36 payment of attorneys' fees other than as provided in this section is void. The motion for  
37 approval of an attorney fee allowance shall be submitted within 30 days following a  
38 final determination of the last appealable order of the Industrial Commission.

39 (d) Provided, that nothing contained in this section shall prevent the collection of  
40 such reasonable fees of physicians and charges for hospitalization as may be recovered  
41 in an action, or embraced in settlement of a claim, against a third-party tort-feasor as  
42 described in G.S. 97-10.

43 (e) The fees provided for in subsection (a) of this section shall be approved by  
44 the Commission no later than June 1 of the year in which the Commission exercises its

1 authority under subsection (a) of this section, but shall not become effective until July 1  
2 following such approval.

3 (f) For purposes of this section, 'compensation disputed' means compensation, as  
4 defined in G.S. 97-2(11), obtained as a result of the claimant's attorneys' legal services  
5 rendered in connection with the claim for benefits, to the extent that the amount of  
6 benefits secured is in excess of any offer of settlement filed pursuant to G.S. 97-17, if  
7 that offer of settlement was filed prior to the attorneys' involvement in the claim for  
8 benefits."

9 Sec. 34. G.S. 97-91 reads as rewritten:

10 **"§ 97-91. Commission to determine all questions.**

11 All questions arising under this Article ~~if not settled by agreements of the parties~~  
12 ~~interested therein, with the approval of the Commission,~~ shall be determined by the  
13 Commission, except as otherwise herein provided."

14 Sec. 35. G.S. 97-98 reads as rewritten:

15 **"§ 97-98. Policy must contain agreement promptly to pay benefits; continuance of**  
16 **obligation of insurer in event of default.**

17 No policy of insurance against liability arising under this Article shall be issued  
18 unless it contains the agreement of the insurer that it will promptly pay to the person  
19 entitled to same all benefits conferred by this Article, and all installments of the  
20 compensation that may be ~~awarded or agreed upon,~~ awarded, and that the obligation shall  
21 not be affected by any default of the insured after the injury or by any default in giving  
22 notice required by ~~such the~~ the policy or otherwise. ~~Such~~ The agreement shall be construed  
23 to be a direct promise by the insurer to the person entitled to compensation enforceable  
24 ~~in his name.~~ the name of the person."

25 Sec. 36. G.S. 58-36-1(5) reads as rewritten:

26 "(5) a. It is the duty of every insurer that writes workers' compensation  
27 insurance in this State and is a member of the Bureau, as defined in  
28 this section and G.S. 58-36-5 to insure and accept any workers'  
29 compensation insurance risk that has been certified to be 'difficult to  
30 place' by any fire and casualty insurance agent who is licensed in this  
31 State. When any such risk is called to the attention of the Bureau by  
32 receipt of an application with an estimated or deposit premium  
33 payment and it appears that the risk is in good faith entitled to such  
34 coverage, the Bureau will bind coverage for 30 days and will designate  
35 a member who must issue a standard workers' compensation policy of  
36 insurance that contains the usual and customary provisions found in  
37 those policies. Coverage will be bound at 12:01 A.M. on the first day  
38 following the postmark time and date on the envelope in which the  
39 application is mailed including the estimated annual or deposit  
40 premium, or the expiration of existing coverage, whichever is later. If  
41 there should be no postmark, coverage will be effective 12:01 A.M. on  
42 the date of receipt by the Bureau unless a later date is requested.  
43 Those applications hand delivered to the Bureau will be effective as of  
44 12:01 A.M. of the date following receipt by the Bureau unless a later

1 date is requested. The designated carrier may request of the Bureau  
 2 certification of the State Department of Labor that the insured is  
 3 complying with the laws, rules, and regulations of that Department.  
 4 The certification must be finished within 30 days by the State  
 5 Department of Labor unless extension of time is granted by agreement  
 6 between the Bureau and the State Department of Labor. The Bureau  
 7 will make and adopt such rules as are necessary to carry this section  
 8 into effect, subject to final approval of the Commissioner. As a  
 9 prerequisite to the transaction of workers' compensation insurance in  
 10 this State, every member of the Bureau that writes such insurance must  
 11 file with the Bureau written authority permitting the Bureau to act in  
 12 its behalf, as provided in this section, and an agreement to accept risks  
 13 that are assigned to the member by the Bureau, as provided in this  
 14 section.

15 b. Upon notice of cancellation or the decision to decline to write  
 16 or renew a policy of workers' compensation insurance for an  
 17 employer, the carrier or its agents shall supply the employer  
 18 with a form, supplied by the Bureau, by which the employer  
 19 may request the Bureau to list the employer and pertinent  
 20 information about it among a compendium of such information  
 21 on employers refused voluntary coverage, which shall be made  
 22 available by the Bureau to all insurers and self-insureds'  
 23 administrators doing business in this State. It shall be stored  
 24 and indexed to allow access to information by industry, primary  
 25 classifications of employees, geography, experience  
 26 modification, and in any other manner the Bureau determines is  
 27 commercially useful to facilitate voluntary coverage of listed  
 28 employers.

29 c. Failure or refusal by any assigned employer risk to make full  
 30 disclosure to the Bureau, servicing carrier, or insurer writing a  
 31 policy of information regarding the employer's true ownership,  
 32 change of ownership, operations, or payroll, or any other failure  
 33 to disclose fully any records pertaining to workers'  
 34 compensation insurance shall be sufficient grounds for the  
 35 Bureau to authorize the termination of the policy of that  
 36 employer."

37 Sec. 37. G.S. 97-93 reads as rewritten:

38 **"§ 97-93. Employers required to carry insurance or prove financial ability to pay**  
 39 **for benefits; employers required to post notice; self-insured employers**  
 40 **regulated by Commissioner of Insurance.**

41 (a) Every employer subject to the provisions of this Article relative to the  
 42 payment of compensation shall either:

43 (1) Insure and keep insured his liability under this Article in any  
 44 authorized corporation, association, organization, or in any mutual

1 insurance association formed by a group of employers so  
2 authorized; or

3 (2) Furnish to the Commissioner of Insurance satisfactory proof of the  
4 employer's financial ability, either alone or through membership in  
5 a group comprising two or more employers who agree to pool their  
6 liabilities under this Article, to directly pay the compensation in the  
7 amount and manner and when due as provided for in this Article.

8 (a1) Every employer who is in compliance with the provisions of subsection (a) of  
9 this section shall post in a conspicuous place in places of employment a notice stating  
10 that employment by this employer is subject to the North Carolina Workers'  
11 Compensation Act and stating whether the employer has a policy of insurance against  
12 liability or qualifies as a self-insured employer. In the event the employer allows its  
13 insurance to lapse or ceases to qualify as a self-insured employer, the employer shall,  
14 within five working days of this occurrence, remove any notices indicating otherwise.

15 (b) In the case of subdivision (a)(2) of this section, the Commissioner of  
16 Insurance may require the deposit of an acceptable security, indemnity, or bond to  
17 secure the payment of compensation liabilities as they are incurred. Any individual  
18 employer or group of employers who furnish proof of financial ability under subdivision  
19 (a)(2) of this section shall be governed in all respects by this Article and by such rules  
20 as may be promulgated by the Commissioner of Insurance.

21 (c) Payment of dividends to the members of any group of employers who agree  
22 to pool their liabilities under subdivision (a)(2) of this section shall not be contingent  
23 upon the maintenance or continuance of membership in such pools."

24 Sec. 37.1. G.S. 97-94 is amended by adding a new subsection to read:

25 "(d) Any person who, with the ability and authority to bring an employer in  
26 compliance with G.S. 97-93, wilfully and intentionally refuses and neglects to bring the  
27 employer in compliance so, shall be guilty of a misdemeanor, punishable by a fine of  
28 not less than one thousand dollars (\$1,000). The Commission may also assess a civil  
29 penalty against a person in an amount up to one hundred percent (100%) of the amount  
30 of any compensation due the employer's employees injured during the time the  
31 employer failed to comply with G.S. 97-93, provided that the person had the ability and  
32 authority to bring the employer in compliance with G.S. 97-93 and wilfully and  
33 intentionally refused or neglected to do so. The Commission may suspend collection or  
34 remit all or part of the civil penalty on condition that the employer pays the  
35 compensation due and complies with G.S. 97-93."

36 Sec. 38. The North Carolina Rate Bureau and its member companies are  
37 directed to cooperate fully with the Commissioner of Insurance in conducting a  
38 thorough and complete study of the methods and costs of assigning "difficult to place"  
39 workers' compensation insurance risks under G.S. 58-36-1(5). Such study shall be  
40 completed and the Commissioner shall report on the same to the Joint Legislative  
41 Commission on Governmental Operations by March 1, 1994, for consideration of any  
42 needed legislation in the 1994 Regular Session of the 1993 General Assembly. The  
43 report of the Commissioner, and the study preceding the same, shall examine such  
44 things as, but not be limited to, the criteria used for assigning a workers' compensation

1 risk, the qualifications of and the compensation paid to insurers which service risks  
2 assigned under that statute, safety and loss prevention services provided to risks so  
3 assigned, the acquisition expenses paid by the Rate Bureau and its member insurers to  
4 insurance agents placing risks through such assignments, and the equities of both  
5 member insurers and self-funded employers sharing in any possible losses sustained by  
6 that assigned risk plan. The study and report of the Commissioner may, in his  
7 discretion, also address the procedures and methodology for insurance rate making  
8 under Article 36 of Chapter 58 of the General Statutes.

9           Sec. 39. There is appropriated from the General Fund to the Industrial  
10 Commission the sum of one hundred thousand dollars (\$100,000) for the 1993-94 fiscal  
11 year and the sum of one hundred thousand dollars (\$100,000) for the 1994-95 fiscal  
12 year to establish an ombudsman program.

13           Sec. 40. There is appropriated from the General Fund to the Department of  
14 Insurance the sum of one hundred thousand dollars (\$100,000) for the 1993-94 fiscal  
15 year and the sum of one hundred thousand dollars (\$100,000) for the 1994-95 fiscal  
16 year for the investigation of suspected workers' compensation fraud and violation of  
17 workers' compensation claims.

18           Sec. 40.1. G.S. 97-31.1 does not apply to this act.

19           Sec. 41. The provisions of G.S. 97-79(f), as enacted by Section 23 of this act,  
20 shall not become effective unless and until the General Assembly appropriates funds for  
21 its implementation. Section 38 and Section 40.1 of this act are effective upon  
22 ratification. Section 13 of this act becomes effective October 1, 1993. Sections 39 and  
23 40 of this act become effective July 1, 1993. The remaining sections of this act become  
24 effective January 1, 1994, and apply to claims arising on or after that date; provided that  
25 section 15.1 of this act shall expire upon the enactment by the General Assembly of  
26 workers' compensation legislation recommended by the Workers Compensation Study  
27 Commission authorized by the 1993 Session of the General Assembly.