

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-353
HOUSE BILL 618

AN ACT TO INCREASE THE CRIMINAL PENALTIES FOR
MISREPRESENTATION AND FOR FAILURE TO SECURE COMPENSATION
UNDER THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-88.2 reads as rewritten:

"§ 97-88.2. Penalty for ~~misrepresentation~~-fraud.

(a) Any person who willfully makes a false statement or representation of a material fact for the purpose of obtaining or denying any benefit or payment, or assisting another to obtain or deny any benefit or payment under this Article, shall be guilty of a Class 1 ~~misdemeanor~~-misdemeanor if the amount at issue is less than one thousand dollars (\$1,000). Violation of this section is a Class H felony if the amount at issue is one thousand dollars (\$1,000) or more. The court may order restitution.

(b) The Commission shall:

- (1) Perform investigations regarding all cases of suspected fraud and all violations related to workers' compensation claims, by or against insurers or self-funded employers, and refer possible criminal violations to the appropriate prosecutorial authorities;
- (2) Conduct administrative violation proceedings; and
- (3) Assess and collect civil penalties and restitution.

(c) Any person who threatens an employee with criminal prosecution under the provisions of subsection (a) of this section for the purpose of coercing or attempting to coerce the employee into agreeing to compensation or agreeing to forgo compensation under this Article shall be guilty of a ~~Class 1 misdemeanor~~-Class H felony.

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

(e) The Commission shall report annually to the General Assembly on the number and disposition of investigations involving claimants, employers, insurance company officials, officials of third-party administrators, insurance agents, attorneys, health care providers, and vocational rehabilitation providers."

Section 2. G.S. 97-94 reads as rewritten:

"§ 97-94. Employers required to give proof that they have complied with preceding section; penalty for not keeping liability insured; review; liability for compensation; criminal penalties for failure to secure payment of compensation a misdemeanor. compensation.

(a) Every employer subject to the compensation provisions of this Article shall file with the Commission, in form prescribed by it, as often as the Commission determines to be necessary, evidence of its compliance with the provisions of G.S. 97-93 and all other provisions relating thereto.

(b) Any employer required to secure the payment of compensation under this Article who refuses or neglects to secure such compensation shall be punished by a penalty of one dollar (\$1.00) for each employee, but not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100) for each day of such refusal or neglect, and until the same ceases; and ~~he~~ the employer shall be liable during continuance of such refusal or neglect to an employee either for compensation under this Article or at law at the election of the injured employee.

The penalty herein provided may be assessed by the Industrial Commission administratively, with the right to a hearing if requested within 30 days after notice of the assessment of the penalty and the right of review and appeal as in other cases. Enforcement of the penalty shall be made by the Office of the Attorney General.

(c) Any employer required to secure the payment of compensation under this Article who willfully ~~refuses or neglects~~ fails to secure such compensation shall be guilty of a ~~Class 1 misdemeanor.~~ Class H felony. Any employer required to secure the payment of compensation under this Article who neglects to secure the payment of compensation shall be guilty of a Class 1 misdemeanor.

(d) Any person who, with the ability and authority to bring an employer in compliance with G.S. 97-93, ~~willfully and intentionally refuses or neglects~~ willfully fails to bring the employer in compliance, shall be guilty of a ~~Class 1 misdemeanor and~~ Class H felony. Any person who, with the ability and authority to bring an employer in compliance with G.S. 97-93, neglects to bring the employer in compliance, shall be guilty of a Class 1 misdemeanor. Any person who violates this subsection may be assessed a civil penalty by the Commission in an amount up to one hundred percent (100%) of the amount of any compensation due the employer's employees injured during the time the employer failed to comply with G.S. 97-93.

(e) Notwithstanding the provisions of G.S. 97-101, the Commission may suspend collection or remit all or part of ~~the any~~ any civil penalty imposed under this section on condition that the employer or person pays the compensation due and complies with G.S. 97-93."

Section 3. This act becomes effective October 1, 1997, and applies to offenses occurring on or after that date.

In the General Assembly read three times and ratified this the 22nd day of July, 1997.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 4:07 p.m. this 1st day of August, 1997