

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 984

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

Sponsors: Senators Hoyle; Albertson, Apodaca, Brown, Dalton, East, Garwood, Goodall, Graham, Hagan, Hartsell, Hunt, Jenkins, Presnell, Rand, Soles, Stevens, Swindell, Tillman, and Weinstein.

Referred to: Commerce.

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

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

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

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

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

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

When the injury or death is caused by the willful failure of the employer to comply with any statutory requirement or any lawful order of the Commission, compensation shall be increased ten percent (10%). When the injury or death is caused by the willful failure of the employee to use a safety appliance or perform a statutory duty or by the willful breach of any rule or regulation adopted by the employer and approved by the Commission and brought to the knowledge of the employee prior to the injury

1 compensation shall be reduced ten percent (10%). ~~The burden of proof shall be upon~~
2 ~~him who claims an exemption or forfeiture under this section."~~

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

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

27 **SECTION 3.** Article 1 of Chapter 97 of the General Statutes is amended by
28 adding a new section:

29 **§ 97-25.6. Reasonable access to medical information.**

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

41 (b) Release of medical information under subsection (a) of this section by the
42 health care provider or other physician does not require the employee's authorization. If
43 medical information of an employee under subsection (a) of this section is sought from
44 health care providers who are not subject to the jurisdiction of State courts, the injured

1 employee shall sign an authorization allowing the employer or carrier to obtain the
2 medical information. Any such release of information may be held before or after the
3 filing of a claim for compensation under this Article without the knowledge, consent, or
4 presence of any other party.

5 (c) A health care provider who willfully refuses to provide medical records,
6 reports, or information or to discuss the medical condition of the injured employee
7 under this section, after a reasonable request is made for such information, shall be
8 subject to sanctions determined by the Commission.

9 (d) The Commission may adopt rules to implement this section."

10 **SECTION 4.** G.S. 97-29 reads as rewritten:

11 **"§ 97-29. Compensation rates for total incapacity.**

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

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

27 The weekly compensation payment for members of the North Carolina national
28 guard and the North Carolina State Defense Militia shall be the maximum amount
29 established annually in accordance with the last paragraph of this section per week as
30 fixed herein. The weekly compensation payment for deputy sheriffs, or those acting in
31 the capacity of deputy sheriffs, who serve upon a fee basis, shall be thirty dollars
32 (\$30.00) a week as fixed herein.

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

39 Notwithstanding any other provision of this Article, on July 1 of each year, a
40 maximum weekly benefit amount shall be computed. The amount of this maximum
41 weekly benefit shall be derived by obtaining the average weekly insured wage in
42 accordance with G.S. 96-8(22), by multiplying such average weekly insured wage by
43 1.10, and by rounding such figure to its nearest multiple of two dollars (\$2.00), and this
44 said maximum weekly benefit shall be applicable to all injuries and claims arising on

1 and after January 1 following such computation. Such maximum weekly benefit shall
2 apply to all provisions of this Chapter and shall be adjusted July 1 and effective January
3 1 of each year as herein provided."

4 **SECTION 5.** G.S. 97-30 reads as rewritten:

5 "**§ 97-30. Partial incapacity.**

6 Except as otherwise provided in G.S. 97-31, where the incapacity for work resulting
7 from the injury is partial, the employer shall pay, or cause to be paid, as hereinafter
8 provided, to the injured employee during such disability, a weekly compensation equal
9 to sixty-six and two-thirds percent (66 2/3%) of the difference between his average
10 weekly wages before the injury and the average weekly wages which he is able to earn
11 thereafter, but not more than the amount established annually to be effective October 1
12 as provided in G.S. 97-29 a week, ~~and in no case shall the period covered by such~~
13 ~~compensation be greater than 300 weeks from the date of injury.~~ week. With respect to
14 injuries that occur when the employee is age 60 or younger, the period covered by the
15 compensation shall not extend beyond the date that the employee reaches age 65, or
16 shall not exceed 500 weeks from the date of the injury, whichever occurs sooner. With
17 respect to injuries that occur after the employee reaches age 60, the period covered by
18 compensation shall not exceed 260 weeks from the date of the injury. In case the partial
19 disability begins after a period of total disability, the latter period shall be deducted
20 from the maximum period herein allowed for partial disability. An officer or member of
21 the State Highway Patrol shall not be awarded any weekly compensation under the
22 provisions of this section for the first two years of any incapacity resulting from an
23 injury by accident arising out of and in the course of the performance by him of his
24 official duties if, during such incapacity, he continues to be an officer or member of the
25 State Highway Patrol, but he shall be awarded any other benefits to which he may be
26 entitled under the provisions of this Article."

27 **SECTION 6.** G.S. 97-31(24) reads as rewritten:

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

34 **SECTION 7.** G.S. 97-31 is amended by adding a new subdivision:

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

43 a. Compensation awarded shall be for the loss of use attributable
44 to the disease alone. If the employee has smoked within 10

1 years of the employee's date of diagnosis of the loss of, or
2 permanent injury to, the lung, which includes the parietal and
3 visceral pleura surrounding the lung, resulting from exposure to
4 asbestos or silica, the compensation awarded pursuant to sub-
5 subdivision b. of this subdivision shall be reduced by one-half.
6 For purposes of this sub-subdivision, "smoked" means the
7 personal use of cigarettes or cigars at a level of at least one-
8 fourth pack a day history at any time within the 10 years prior
9 to the diagnosis.

10 b. Compensation shall be in the proportion that the partial loss
11 bears to a total loss of use of the lung, which includes the
12 parietal and visceral pleura surrounding the lung, as measured
13 by the following schedule and diagnosed by a competent
14 medical authority:

15 1. ILO Grade 1/1 or greater with or without pleural changes
16 with zero percent (0%) AMA impairment: zero percent
17 (0%) to not more than four percent (4%) loss of, or
18 permanent injury to, the lung, which includes the parietal
19 and visceral pleura.

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

25 3. ILO Grade 1/1 or greater with or without pleural changes
26 with a Class III AMA impairment: twenty-five percent
27 (25%) to not more than forty-nine percent (49%) loss of,
28 or permanent injury to, the lung, which includes the
29 parietal and visceral pleura.

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

35 For purposes of this sub-subdivision, "competent medical
36 authority" means a medical doctor who is board-certified as an
37 internist, pulmonary specialist, oncologist, pathologist, or
38 occupational medicine specialist."

39 **SECTION 8.** G.S. 97-32 reads as rewritten:

40 **"§ 97-32. Refusal of injured employee to accept suitable employment as**
41 **suspending compensation.**

42 If an injured employee refuses employment ~~procured for him~~ suitable to within his
43 ~~capacity~~ physical limitations, he shall not be entitled to any compensation ~~at any time~~

1 ~~during the continuance as a result of such refusal, unless in the opinion of the Industrial~~
2 ~~Commission such refusal was justified, refusal."~~

3 **SECTION 9.** G.S. 97-61.1 through G.S. 97-63 are repealed.

4 **SECTION 10.** It is the intent of the General Assembly to provide the North
5 Carolina Industrial Commission with adequate resources by establishing new positions
6 to assist the Commission in performing its important task.

7 **SECTION 11.** This act becomes effective October 1, 2005, and applies to
8 injuries that occur on or after that date.