

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

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HOUSE BILL 338*

Short Title: WC/Subrogation/Employer Consent. (Public)

Sponsors: Representatives Hanes, Lambeth, and Terry (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

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

March 20, 2013

A BILL TO BE ENTITLED
AN ACT AMENDING THE WORKERS' COMPENSATION LAWS TO REQUIRE
EMPLOYER CONSENT FOR THE REDUCTION BY MORE THAN FIFTY PERCENT
OF AN EMPLOYER'S SUBROGATION LIEN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-10.2(j) reads as rewritten:

"(j) Notwithstanding any other subsection in this section, in the event that a judgment is obtained by the employee in an action against a third party, or in the event that a settlement has been agreed upon by the employee and the third party, either party may apply to the resident superior court judge of the county in which the cause of action arose or where the injured employee resides, or to a presiding judge of either district, to determine the subrogation amount. After notice to the employer and the insurance carrier, after an opportunity to be heard by all interested parties, ~~and with or without the consent of the employer,~~ the judge shall determine, in his or her discretion, the amount, ~~if any,~~ of the employer's lien, whether based on accrued or prospective workers' compensation benefits, and the amount of cost of the third-party litigation to be shared between the employee and employer. The judge shall consider the anticipated amount of prospective compensation the employer or workers' compensation carrier is likely to pay to the employee in the future, the net recovery to plaintiff, the likelihood of the plaintiff prevailing at trial or on appeal, the need for finality in the litigation, and any other factors the court deems just and reasonable, in determining the appropriate amount of the employer's lien. However, the employer's lien shall not be reduced by more than fifty percent (50%) without the consent of the employer. If the matter is pending in the federal district court such determination may be made by a federal district court judge of that division."

SECTION 2. This act is effective when it becomes law.



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