

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 174
Rules and Operations of the Senate Committee Substitute Adopted 5/14/13

Short Title: Disapprove Industrial Commission Rules.

(Public)

Sponsors:

Referred to:

March 5, 2013

A BILL TO BE ENTITLED

AN ACT TO DISAPPROVE CERTAIN RULES ADOPTED BY THE NORTH CAROLINA INDUSTRIAL COMMISSION AND TO AMEND CERTAIN PROVISIONS OF THE WORKER'S COMPENSATION LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Pursuant to G.S. 150B-21.3(b1), 04 NCAC 10A .0102 (Official Forms), 04 NCAC 10A .0105 (Electronic Payment of Costs), 04 NCAC 10A .0405 (Reinstatement of Compensation), 04 NCAC 10A .0406 (Discount Rate to be Used in Determining Commuted Values), 04 NCAC 10A .0601 (Employer's Obligations Upon Notice; Denial of Liability...), 04 NCAC 10A .0603 (Responding to a Party's Request for Hearing), 04 NCAC 10A .0604 (Appointment of Guardian Ad Litem), 04 NCAC 10A .0605 (Discovery), 04 NCAC 10A .0608 (Statement of Incident Leading to Claim), 04 NCAC 10A .0609 (Motions Practice in Contested Cases), 04 NCAC 10A .0609A (Medical Motions and Emergency Medical Motions), 04 NCAC 10A .0612 (Depositions and Additional Hearings), 04 NCAC 10A .0613 (Expert Witnesses and Fees), 04 NCAC 10A .0616 (Dismissals), 04 NCAC 10A .0701 (Review by Full Commission), 04 NCAC 10A .0704 (Remand from the Appellate Courts), 04 NCAC 10C .0101 (Applicability of the Rules), 04 NCAC 10C .0103 (Definitions), 04 NCAC 10C .0107 (Communication), 04 NCAC 10C .0109 (Vocational Rehabilitation Services Return to Work), 04 NCAC 01E .0201 (Document and Record Fees), 04 NCAC 10E .0202 (Hearing Costs or Fees), 04 NCAC 10E .0203 (Fees Set by the Commission), 04 NCAC 10G .0101 (Order for Mediated Settlement Conference), 04 NCAC 10G .0104A (Foreign Language Interpreters), as adopted by the Industrial Commission on September 20, 2012, and approved by the Rules Review Commission on October 18, 2012, are disapproved.

SECTION 2. Pursuant to G.S. 150B-21.3(b1), 04 NCAC 10A .0801 (Suspension of Rules), 04 NCAC 10B .0203 (Infants and Incompetents), 04 NCAC 10B .0501 (Suspension of Rules), 04 NCAC 10C .0108 (Interaction with Physicians), 04 NCAC 10C .0201 (Suspension of Rules), 04 NCAC 10D .0110 (Suspension of Rules), 04 NCAC 10E .0301 (Suspension of Rules), 04 NCAC 10G .0105 (Sanctions), 04 NCAC 10G .0107 (Compensation of the Mediator), 04 NCAC 10G .0110 (Waiver of Rules), 04 NCAC 10H .0206 (Waiver of Rules), 04 NCAC 10I .0204 (Suspension of Rules), as adopted by the Industrial Commission on September 20, 2012, and approved by the Rules Review Commission on November 15, 2012, are disapproved.

SECTION 3. G.S. 97-18(k) reads as rewritten:

"(k) In addition to any other methods for reinstatement of compensation available under the Act, whenever the employer or insurer has admitted the employee's right to compensation, or liability has been established, the employee may move for reinstatement of compensation on



1 a form prescribed by the Commission. If the employer or insurer contests the employee's
2 request for reinstatement, the matter shall be scheduled for a formal hearing pursuant to
3 G.S. 97-83 on a preemptive basis. This subsection shall not apply to a request for a review of
4 an award on the grounds of a change in condition pursuant to G.S. 97-47."

5 **SECTION 4.** G.S. 97-2 is amended by adding a new subdivision to read:

6 "(23) Commuted Value. – The term "commuted value" means an eight percent
7 (8%) discount rate applied to unaccrued compensation."

8 **SECTION 5.** G.S. 97-40 reads as rewritten:

9 **"§ 97-40. Commutation and payment of compensation in absence of dependents; "next of**
10 **kin" defined; commutation and distribution of compensation to partially**
11 **dependent next of kin; payment in absence of both dependents and next of kin.**

12 Subject to the provisions of G.S. 97-38, if the deceased employee leaves neither whole nor
13 partial dependents, then the compensation which would be payable under G.S. 97-38 to whole
14 dependents shall be ~~commuted to its present value and~~ paid the commuted value in a lump sum
15 to the next of kin as herein defined. For purposes of this section and G.S. 97-38, "next of kin"
16 shall include only child, father, mother, brother or sister of the deceased employee, including
17 adult children or adult brothers or adult sisters of the deceased, but excluding a parent who has
18 willfully abandoned the care and maintenance of his or her child and who has not resumed its
19 care and maintenance at least one year prior to the first occurring of the majority or death of the
20 child and continued its care and maintenance until its death or majority. For all such next of kin
21 who are neither wholly nor partially dependent upon the deceased employee and who take
22 under this section, the order of priority among them shall be governed by the general law
23 applicable to the distribution of the personal estate of persons dying intestate. In the event of
24 exclusion of a parent based on abandonment, the claim for compensation benefits shall be
25 treated as though the abandoning parent had predeceased the employee. For all such next of kin
26 who were also partially dependent on the deceased employee but who exercise the election
27 provided for partial dependents by G.S. 97-38, the general law applicable to the distribution of
28 the personal estate of persons dying intestate shall not apply and such person or persons upon
29 the exercise of such election, shall be entitled, share and share alike, to the compensation
30 provided in G.S. 97-38 for whole dependents commuted to its present value and paid in a lump
31 sum.

32 If the deceased employee leaves neither whole dependents, partial dependents, nor next of
33 kin as hereinabove defined, then no compensation shall be due or payable on account of the
34 death of the deceased employee, except that the employer shall pay or cause to be paid the
35 burial expenses of the deceased employee not exceeding ten thousand dollars (\$10,000) to the
36 person or persons entitled thereto."

37 **SECTION 6.** G.S. 97-79 is amended by adding a new subsection to read:

38 "(g) The Commission shall adopt rules, in accordance with Article 2A of Chapter 150B
39 of the General Statutes, for establishing administrative motions, practices, and procedures for
40 carrying out the provisions of this Article."

41 **SECTION 7.** G.S. 97-78(f) reads as rewritten:

42 "(f) No later than April 1, 2008, the Commission shall prepare and implement a strategic
43 plan for accomplishing all of the following:

- 44 (1) Tracking compliance with the provisions of G.S. 97-18(b), (c), and (d), and
45 establishing a procedure to enforce compliance with the requirements of
46 these subsections.
- 47 (2) Expeditiously resolving requests for, or disputes involving, medical
48 compensation under G.S. 97-25, including selection of a physician, change
49 of physician, the specific treatment involved, and the provider of such
50 treatment. The Commission shall schedule a formal hearing pursuant to
51 G.S. 97-83 on a preemptive basis."

1 **SECTION 8.** G.S. 97-73(a) reads as rewritten:

2 "(a) Claims. – The Industrial Commission may establish by rule a schedule of fees to be
3 borne by all parties for examinations conducted, reports made, documents filed, and
4 agreements reviewed under this Article. The fees shall be collected in accordance with rules
5 adopted by the Industrial Commission."

6 **SECTION 9.** G.S. 97-80 reads as rewritten:

7 **"§ 97-80. Rules and regulations; subpoena of witnesses; examination of books and**
8 **records; depositions; costs.**

9 (a) The Commission shall adopt rules, in accordance with Article 2A of Chapter 150B
10 of the General Statutes and not inconsistent with this Article, for carrying out the provisions of
11 this Article.

12 The Commission shall adopt rules establishing the forms, processes, and procedure to be
13 used under this Article.

14 Processes, procedure, and discovery under this Article shall be as summary and simple as
15 reasonably may be.

16 (a1) Notwithstanding the service requirements of G.S. 1A-1, Rule 45, referenced in
17 subsection (e) of this section, the Rules of Civil Procedure do not apply to claims filed pursuant
18 to this Chapter.

19 (b) The Commission or any member thereof, or any person deputized by it, shall have
20 the power, for the purpose of this Article, to tax costs and fees against ~~the all~~ parties, to
21 administer or cause to have administered oaths, to preserve order at hearings, and to compel the
22 attendance and testimony of witnesses, and to compel the production of books, papers, records,
23 and other tangible things-witnesses.

24 (c) The Commission may order parties to participate in mediation, under rules
25 substantially similar to those approved by the Supreme Court for use in the Superior Court
26 division, except the Commission shall determine the manner in which payment of the costs of
27 the mediated settlement conference is assessed.

28 (d) The Commission may order testimony to be taken by deposition and any party to a
29 proceeding under this Article may, upon application to the Commission, which application
30 shall set forth the materiality of the evidence to be given, cause the depositions of witnesses
31 residing within or without the State to be taken, the costs and fees to be taxed as other costs by
32 Commission against all parties. Depositions ordered by the Commission upon application of a
33 party shall be taken after giving the notice and in the manner prescribed by law for depositions
34 in action at law, except that they shall be directed to the Commission, the commissioner, or the
35 deputy commissioner before whom the proceedings may be pending.

36 (e) A subpoena requiring a witness to appear to provide testimony may be issued by the
37 Commission and served in accordance with G.S. 1A-1, Rule 45. G.S. 1A-1, Rule 30(b)(6),
38 depositions shall not be permissible in a claim filed pursuant to this Chapter. A subpoena duces
39 tecum shall not be issued by the Commission or any party except as to witnesses who are not
40 party to the action. Upon a motion, the Commission may quash a subpoena if it finds that the
41 evidence the production of which is required does not relate to a matter in issue, the subpoena
42 does not describe with sufficient particularity the evidence the production of which is required,
43 or for any other reason sufficient in law the subpoena may be quashed-testimony of the witness
44 does not relate to a matter in issue or for any other reason sufficient in law. Each witness who
45 appears in obedience to such subpoena of the Commission shall receive for attendance the fees
46 and mileage for witnesses in civil cases in courts of the county where the hearing is held.

47 (f) The Commission may by rule provide for and limit the use of interrogatories and
48 other forms of discovery, including production of books, papers, records, and other tangible
49 things, and it may provide reasonable sanctions for failure to comply with a Commission order
50 compelling discovery.

1 (g) The Commission or any member or deputy thereof shall have the same power as a
2 judicial officer pursuant to Chapter 5A of the General Statutes to hold a person in civil
3 contempt, as provided thereunder, for failure to comply with an order of the Commission,
4 Commission member, or deputy. A person held in civil contempt may appeal in the manner
5 provided for appeals pursuant to G.S. 97-85 and G.S. 97-86. The provisions of G.S. 5A-24 shall
6 not apply to appeals pursuant to this subsection.

7 (h) The Commission or any member or deputy thereof shall also have the same power
8 as a judicial officer pursuant to Chapter 5A of the General Statutes to punish for criminal
9 contempt, subject to the limitations thereunder, (i) for ~~wilful~~-~~willful~~ behavior committed during
10 the sitting of the commissioner or deputy commissioner and directly tending to interrupt the
11 proceedings; (ii) for ~~wilful~~-~~willful~~ disobedience of a lawful order of the Commission or a
12 member or deputy thereof; or (iii) for ~~wilful~~-~~willful~~ refusal to be sworn or affirmed as a
13 witness, or, when so sworn or affirmed, ~~wilful~~-~~willful~~ refusal to answer any legal and proper
14 question when refusal is not legally justified. The Commission or any member or deputy
15 thereof may issue an order of arrest as provided by G.S. 15A-305 when authorized by
16 G.S. 5A-16 in connection with contempt proceedings. When the commissioner or deputy
17 commissioner chooses not to proceed summarily pursuant to G.S. 5A-14, the proceedings shall
18 be before a district court judge, and venue lies throughout the district where the order was
19 issued directing the person charged to appear. A person found in criminal contempt may appeal
20 in the manner provided for appeals in criminal actions to the superior court of the district in
21 which the order of contempt was issued, and the appeal is by hearing de novo before a superior
22 court judge."

23 **SECTION 10.** The Industrial Commission shall study the financial and economic
24 impact and operational burdens on all parties of mandating that costs and fees be submitted
25 electronically as provided by 04 NCAC 10A .0105. The Commission shall submit a report of
26 its findings and recommendations to the 2014 Regular Session of the 2013 General Assembly.

27 **SECTION 11.** This act is effective when it becomes law.