

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

1

HOUSE BILL 1387*

Short Title: Workers Comp. Changes.

(Public)

Sponsors: Representatives Fitch, Barnes, Cunningham, Howard, Sam Hunt, McLaughlin, Payne, H. Hunter; Blue, Albertson, Barnhill, Beard, Black, Bowen, Bowman, Brown, Buchanan, Chapin, Colton, N.J. Crawford, Dawkins, Devane, Diamont, Easterling, Etheridge, Fletcher, Gamble, Gist, Gottovi, Green, Greenwood, Hackney, Hardaway, Jeffus, Kennedy, Lilley, Lineberry, Luebke, McAllister, McLawhorn, Mercer, Michaux, Miller, Nesbitt, Oldham, Stamey, Stewart, Wainwright, Warner, Wicker, and Withrow.

Referred to: Courts, Justice, Constitutional Amendments and Referenda.

May 28, 1992

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE STATUTE OF REPOSE FOR THE COLLECTION OF DEATH BENEFITS UNDER THE WORKERS COMPENSATION ACT AND TO ALLOW AN ACTION AGAINST AN EMPLOYER FOR REMOVAL OF MACHINERY GUARDS THAT RESULTS IN INJURY TO THE EMPLOYEE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-38 reads as rewritten:

"§ 97-38. Where death results proximately from compensable injury or occupational disease; dependents; burial expenses; compensation to aliens; election by partial dependents.

If death results proximately from a compensable injury or occupational ~~disease and within six years thereafter, or within two years of the final determination of disability, whichever is later,~~ disease, the employer shall pay or cause to be paid, subject to the provisions of other sections of this Article, weekly payments of compensation equal to sixty-six and two-thirds percent (66 2/3%) of the average weekly wages of the deceased employee at the time of the accident, but not more than the amount established annually to be effective October 1 as provided in G.S. 97-29, nor less than thirty dollars (\$30.00),

1 per week, and burial expenses not exceeding two thousand dollars (\$2,000), to the
2 person or persons entitled thereto as follows:

3 (1) Persons wholly dependent for support upon the earnings of the
4 deceased employee at the time of the accident shall be entitled to
5 receive the entire compensation payable share and share alike to the
6 exclusion of all other persons. If there be only one person wholly
7 dependent, then that person shall receive the entire compensation
8 payable.

9 (2) If there is no person wholly dependent, then any person partially
10 dependent for support upon the earnings of the deceased employee at
11 the time of the accident shall be entitled to receive a weekly payment
12 of compensation computed as hereinabove provided, but such weekly
13 payment shall be the same proportion of the weekly compensation
14 provided for a whole dependent as the amount annually contributed by
15 the deceased employee to the support of such partial dependent bears
16 to the annual earnings of the deceased at the time of the accident.

17 (3) If there is no person wholly dependent, and the person or all persons
18 partially dependent is or are within the classes of persons defined as
19 'next of kin' in G.S. 97-40, whether or not such persons or such classes
20 of persons are of kin to the deceased employee in equal degree, and all
21 so elect, he or they may take, share and share alike, the commuted
22 value of the amount provided for whole dependents in (1) above
23 instead of the proportional payment provided for partial dependents in
24 (2) above; provided, that the election herein provided may be exercised
25 on behalf of any infant partial dependent by a duly qualified guardian;
26 provided, further, that the Industrial Commission may, in its
27 discretion, permit a parent or person standing **in loco parentis** to such
28 infant to exercise such option in its behalf, the award to be payable
29 only to a duly qualified guardian except as in this Article otherwise
30 provided; and provided, further, that if such election is exercised by or
31 on behalf of more than one person, then they shall take the commuted
32 amount in equal shares.

33 When weekly payments have been made to an injured employee before his death,
34 the compensation to dependents shall begin from the date of the last of such payments.
35 Compensation payments due on account of death shall be paid for a period of 400
36 weeks from the date of the death of the employee; provided, however, after said 400-
37 week period in case of a widow or widower who is unable to support herself or himself
38 because of physical or mental disability as of the date of death of the employee,
39 compensation payments shall continue during her or his lifetime or until remarriage and
40 compensation payments due a dependent child shall be continued until such child
41 reaches the age of 18.

42 Compensation payable under this Article to aliens not residents (or about to become
43 nonresidents) of the United States or Canada, shall be the same in amounts as provided
44 for residents, except that dependents in any foreign country except Canada shall be

1 limited to surviving wife and child or children, or if there be no surviving wife or child
2 or children, to the surviving father or mother whom the employee has supported, either
3 in whole or in part, for a period of one year prior to the date of the injury; provided, that
4 the Commission may, in its discretion, or, upon application of the employer or insurance
5 carrier shall commute all future installments of compensation to be paid to such aliens
6 to their present value and payment of one half of such commuted amount to such aliens
7 shall fully acquit the employer and the insurance carrier."

8 Sec. 2. G.S. 95-138 is amended by adding a new subsection to read:

9 "(c) In addition to the penalties set forth herein, employers who cause the removal
10 of safety guards from machinery covered by this Article, and an employee is injured as
11 a result of the removal, shall be liable to the employee or its legal representative for all
12 personal injury and damages suffered by the employee, its heirs, and dependents as a
13 result of the guard removal. This action shall exist notwithstanding the provisions of
14 G.S. 97-10.1, shall be supplemental to the provisions of Chapter 97 of the General
15 Statutes, and shall be subject to the provisions of G.S. 97-10.2(e), in recognition of the
16 remedial nature of this Article and the employer's accountability for the consequences of
17 the violation of safety regulations adopted under this Article."

18 Sec. 3. This act is effective upon ratification and shall apply to causes of
19 action arising on or after that date.