

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 540

Short Title: Workers' Comp. Changes.

(Public)

Sponsors: Senator Smith.

Referred to: Manufacturing and Labor.

March 24, 1993

A BILL TO BE ENTITLED

1 AN ACT TO MAKE TECHNICAL AND OTHER CHANGES TO THE WORKERS'
2 COMPENSATION ACT, AND TO CREATE THE SPECIAL INDUSTRIAL
3 COMMISSION FUND FOR THE OPERATION OF THE INDUSTRIAL
4 COMMISSION AND DIRECT THAT A PORTION OF THE TAX PAID ON
5 WORKERS' COMPENSATION PREMIUMS BE PAID TO THIS FUND.
6

7 The General Assembly of North Carolina enacts:

8 Section 1. G. S. 97.2(19) reads as rewritten:

9 "(19) Medical Compensation. – The term 'medical compensation' means
10 medical, surgical, hospital, nursing, and ~~rehabilitative services,~~
11 rehabilitative services including travel expenses for required job
12 searches, and medicines, sick travel, and other treatment, including
13 medical and surgical supplies, as may reasonably be required to effect
14 a cure or give relief and for such additional time as, in the judgment of
15 the Commission, will tend to lessen the period of disability; and any
16 original artificial members as may reasonably be necessary at the end
17 of the healing period."

18 Sec. 2. G.S. 97-18(e) reads as rewritten:

19 "(e) If any installment of compensation payable in accordance with the terms of
20 an agreement approved by the Commission is not paid within 14 days after it becomes
21 due, as provided in subsection (b) of this section, or if any installment of compensation
22 payable in accordance with the terms of an award by the Commission is not paid within
23 14 days after it becomes due, as provided in subsection (c) of this section, there shall be
24 added to such unpaid installment an additional amount equal to ~~ten per centum (10%)~~

1 ~~thereof, which shall be paid at the same time as, but in addition to, such installment, the~~
2 ~~amount of such installment, which shall be paid at the same time as, but in addition to,~~
3 ~~such installment, unless such nonpayment is excused by the Commission after a~~
4 ~~showing by the employer that owing to conditions over which he had no control such~~
5 ~~installment could not be paid within the period prescribed for the payment."~~

6 Sec. 3. G.S. 97-18(g) reads as rewritten:

7 "(g) If any bill for services rendered under G.S. 97-25 by any provider of health
8 care is not paid within 60 days after it has been approved by the Commission and
9 returned to the responsible party, there shall be added to such unpaid bill an ~~amount~~
10 ~~equal to ten per centum (10%) thereof, additional amount equal to the amount of such~~
11 ~~unpaid bill~~ which shall be paid at the same time as, but in addition to, such medical bill,
12 unless such late payment is excused by the Commission."

13 Sec. 4. G.S. 97-40.1(a) reads as rewritten:

14 "(a) There is hereby created a fund to be known as the 'Second Injury Fund,' to be
15 held and disbursed by the Industrial Commission as hereinafter provided.

16 For the purpose of providing money for said fund the Industrial Commission may
17 assess against the employer or its insurance carrier the payment of not to exceed ~~one~~
18 ~~hundred two hundred fifty dollars (\$100.00)-(\$250.00)~~ for the loss, or loss of use, of each
19 minor member in every case of a permanent partial disability where there is such loss,
20 and shall assess not to exceed ~~five hundred dollars (\$500.00)-seven hundred fifty dollars~~
21 ~~(\$750.00)~~ for fifty percent (50%) or more loss or loss of use of each major member,
22 defined as back, foot, leg, hand, arm, eye, or hearing.

23 In addition to the assessments hereinabove provided for, the Commission shall also
24 deposit in said fund all moneys received by it for the Second Injury Fund under the
25 provisions of G.S. 97-40."

26 Sec. 5. G.S. 97-77 reads as rewritten:

27 "**§ 97-77. North Carolina ~~Industrial Commission~~ Workers' Compensation**
28 **Commission created; members appointed by Governor; terms of office;**
29 **chairman.**

30 (a) There is hereby created a commission to be known as the North Carolina
31 ~~Industrial Workers' Compensation Commission~~, consisting of three commissioners who
32 shall devote their entire time to the duties of the Commission. The Governor shall
33 ~~appoint the members of the Commission, one for a term of two years, one for a term of four~~
34 ~~years, and one for a term of six years. Upon the expiration of each term as above mentioned,~~
35 ~~the Governor shall appoint a successor for a term of six years, and thereafter the term of office~~
36 ~~of each commissioner shall be six years. each member for a term of six years. Each~~
37 ~~member shall be a member in good standing of the North Carolina State Bar. Not more~~
38 ~~than one appointee shall be a person who, on account of his previous vocation, employment or~~
39 ~~affiliations, can be classed as a representative of employers, and not more than one appointee~~
40 ~~shall be a person who, on account of his previous vocation, employment or affiliations, can be~~
41 ~~classed as a representative of employees.~~

42 (b) One member, to be designated by the Governor, shall act as chairman. The
43 chairman shall be the chief judicial officer and the chief executive officer of the
44 ~~Industrial Workers' Compensation Commission~~; such authority shall be exercised
45 pursuant to the provisions of Chapter 126 of the General Statutes and the rules and

1 policies of the State Personnel Commission. Notwithstanding the provisions of this
2 Chapter, the chairman shall have such authority as is necessary to direct and oversee the
3 Commission. The chairman may delegate any duties and responsibilities as may be
4 necessary to ensure the proper management of the ~~Industrial-Workers' Compensation~~
5 Commission. Notwithstanding the provisions of this Chapter, Chapter 143A, and
6 Chapter 143B of the General Statutes, the chairman, with the approval of at least one of
7 the other commissioners, shall have the authority to hire or fire personnel and to transfer
8 personnel within the ~~Industrial-Workers' Compensation~~ Commission.

9 The Governor may designate one vice-chairman from the remaining two
10 commissioners. The vice-chairman shall assume the powers of the chairman upon
11 request of the chairman or when the chairman is absent for 24 hours or more. The
12 authority delegated to the vice-chairman shall be relinquished immediately upon the
13 return of the chairman or at the request of the chairman.

14 A commissioner in office shall continue to serve until the commissioner's successor
15 is duly confirmed and qualified but such holdover shall not affect the expiration date of
16 such succeeding term.

17 The salary of each commissioner shall be same as that fixed from time to time for
18 judges of the superior court except that the commissioner designated as chairman shall
19 receive one thousand dollars (\$1,000) additional per annum. In lieu of merit and other
20 increment raises paid to regular State employees, each commissioner, including the
21 commissioner designated as chairman, shall receive as longevity pay an amount equal to
22 four and eight-tenths percent (4.8%) of the annual salary set forth in the Current
23 Operations Appropriations Act payable monthly after five years of service, and nine and
24 six-tenths percent (9.6%) after 10 years of service. The term 'service' means service as a
25 member of the Workers' Compensation Commission.

26 Members of the Commission shall be reimbursed for travel and subsistence expenses
27 at the rates allowed to State officers and employees by G.S. 138-6(a)."

28 Sec. 6. G.S. 97-85 reads as rewritten:

29 **"§ 97-85. Review of award.**

30 If application is made to the Commission within 15 days from the date when notice
31 of the award shall have been given, the full Commission shall review the ~~award, and, if~~
32 ~~good ground be shown therefor, award.~~ It shall be within the sound discretion of the full
33 Commission, upon review of an award and if good ground be shown, to decide whether
34 to reconsider the evidence, receive further evidence, rehear the parties or their
35 representatives, and, if proper, amend the ~~award; award.~~ ~~Provided, however, when~~ It shall
36 further be within the sound discretion of the full Commission to remand a case, if
37 deemed necessary, back to a Deputy Commissioner for reconsideration of evidence
38 presented, receipt of further evidence, rehearing of parties or their representatives, and,
39 if proper, amendment of the original award. When application is made for review of an
40 award, and such an award has been heard and determined by a commissioner of the
41 North Carolina Industrial Commission, the commissioner who heard and determined the
42 dispute in the first instance, as specified by G.S. 97-84, shall be disqualified from sitting
43 with the full Commission on the review of such award, and the chairman of the
44 Industrial Commission shall designate a deputy commissioner to take such

1 commissioner's place in the review of the particular award. The deputy commissioner so
2 designated, along with the two other commissioners, shall compose the full Commission
3 upon review. Provided further, the chairman of the ~~Industrial~~-Commission shall have the
4 authority to designate a deputy commissioner to take the place of a commissioner on the
5 review of any case, in which event the deputy commissioner so designated shall have
6 the same authority and duty as does the commissioner whose place he occupies on such
7 review."

8 Sec. 7. G.S. 97-86.1(a) reads as rewritten:

9 "(a) When any appeal to the full Commission or appeal or certification to the
10 Court of Appeals is pending, and it appears to the Commission that any part of the
11 award appealed from is not appealed by the issues raised by such appeal, the
12 Commission may, on action or of its own motion, render a judgment directing
13 compliance with any portion of such award not affected by such appeal; or, if the only
14 issue raised by such appeal is the amount of the average weekly wage, the Commission
15 shall, on motion of the claimant, direct the payment of such portion of the compensation
16 payable under its award as is not in dispute, if any, pending final adjudication of the
17 undisputed portion thereof."

18 Sec. 8. G.S. 97-87 reads as rewritten:

19 **"§ 97-87. Filing agreements approved by Commission or awards; judgment in**
20 **accordance therewith; discharge or restoration of lien.**

21 Any party in interest may file in the superior court of the county in which the injury
22 occurred a certified copy of a memorandum of agreement approved by the Commission,
23 or of an order or decision of the Commission, or of an award of the Commission
24 unappealed from or of an award of the Commission affirmed upon appeal, whereupon
25 said court shall render judgment in accordance therewith, and notify the parties. Such
26 judgment shall have the same effect, and all proceedings in relation thereto shall
27 thereafter be the same, as though said judgment had been rendered in a suit duly heard
28 and determined by said court: Provided, if the judgment debtor shall file a certificate
29 duly issued by the ~~Industrial~~-Commission showing compliance with G.S. 97-83 with the
30 clerk of the superior court in the county or counties where such judgment is docketed,
31 then such clerk shall make upon the judgment roll an entry showing the filing of such
32 certificate which shall operate as a discharge of the lien of the said judgment, and no
33 execution shall be issued thereon; provided, further, that if at any time there is default in
34 the payment of any installment due under the award set forth in said judgment the court
35 may, upon application for cause and after 10 days' notice to judgment debtor, order the
36 lien of such judgment restored, and execution may be immediately issued thereon for
37 past due installments and for future installments as they may become due."

38 Sec. 9. G.S. 97-88 reads as rewritten:

39 **"§ 97-88. Expenses of appeals brought by insurers.**

40 If the ~~Industrial~~-Commission at a hearing on review or any court before which any
41 proceedings are brought on appeal under this Article, shall find that such hearing or
42 proceedings were brought by the ~~insurer~~-defendant and the Commission or court by its
43 decision orders the ~~insurer~~-defendant to make, or to continue payments of benefits,
44 including compensation for medical expenses, to the injured employee, the Commission

1 or court may further order that the cost to the injured employee of such hearing or
2 proceedings including therein reasonable attorney's fee to be determined by the
3 Commission shall be paid by the ~~insurer~~ defendant as a part of the bill of costs."

4 Sec. 10. G.S. 97-90(a) reads as rewritten:

5 "(a) Fees for attorneys and physicians and charges of hospitals for medical
6 compensation under this Article shall be subject to the approval of the Commission; but
7 no physician or hospital or other medical ~~facilities~~ facility shall be entitled to collect fees
8 from an employer or insurance carrier until he has made the reports required by the
9 Industrial Commission in connection with the case. Unless otherwise provided by the
10 rules, schedules, or orders of the Commission, a request for a specific prior approval to
11 charge shall be submitted to the Commission for each such fee or charge."

12 Sec. 11. G.S. 97-92(e) reads as rewritten:

13 "(e) Any employer who refuses or neglects to make the report required by this
14 section shall be liable for a penalty of ~~not less than five dollars (\$5.00) and not more than~~
15 ~~twenty five dollars (\$25.00) for each refusal or neglect.~~ one hundred dollars (\$100.00) plus
16 fifty dollars (\$50.00) for each additional day that the employer refuses or neglects to
17 make the required report. The fine herein provided may be assessed by the Commission
18 in an open hearing, with the right of review and appeal as in other cases. In the event the
19 employer has transmitted the report to the insurance carrier for transmission by such
20 insurance carrier to the Industrial Commission, the insurance carrier willfully neglecting
21 or failing to transmit the report shall be liable for the said penalty."

22 Sec. 12. G.S. 97-100 reads as rewritten:

23 "**§ 97-100. Rates for insurance; carrier to make reports for determination of**
24 **solvency; tax upon premium; returned or canceled premiums; reports of**
25 **premiums collected; wrongful or fraudulent representation of carrier**
26 **punishable as misdemeanor; notices to carrier; employer who carries**
27 **own risk shall make report on payroll.**

28 (a) The rates charged by all carriers of insurance, including the parties to any
29 mutual insurance association writing insurance against the liability for compensation
30 under this Article, shall be fair, reasonable, and adequate.

31 (b) Each such insurance carrier shall report to the Commissioner of Insurance, in
32 accordance with such reasonable rules as the Commissioner of Insurance may at any
33 time prescribe, for the purpose of determining the solvency of the carrier and the
34 adequacy of its rates; for such purpose the Commissioner of Insurance may inspect the
35 books and records of such insurance carrier, and examine its agents, officers, and
36 directors under oath.

37 (c) Every person, partnership, association, corporation, whether organized under
38 the laws of this or any other state or country, every mutual company or association and
39 every other insurance carrier insuring employers in this State against liability for
40 personal injuries to their employees, or death caused thereby, under the provisions of
41 this Article, shall, as hereinafter provided, pay a tax upon the premium received,
42 whether in cash or notes, in this State, or on account of business done in this State, for
43 such insurance in this State, at the rate provided in the Revenue Act then in force, which
44 tax shall be in lieu of all other taxes on such premiums, which tax shall be assessed and

1 collected as hereinafter provided; provided, however, that such insurance carriers shall
2 be credited with all canceled or returned premiums actually refunded during the year on
3 such insurance.

4 (d) Every such insurance carrier shall, for the six months ending December 31,
5 1929, and annually thereafter, make a return, verified by the affidavit of its president
6 and secretary, or other chief officers or agents, to the Commissioner of Insurance,
7 stating the amount of all such premiums and credits during the period covered by such
8 return. Every insurance carrier required to make such return shall file the same with the
9 Commissioner of Insurance on or before the first day of April after the close of the
10 period covered thereby, and shall at the same time pay to the State Insurance
11 Commissioner the tax provided in the Revenue Act then in force on such premium
12 ascertained, as provided in subsection (c) hereof, less returned premium on canceled
13 policies.

14 (e) If any such insurance carrier shall fail or refuse to make the return required by
15 this Article, the said Commissioner of Insurance shall assess the tax against such
16 insurance carrier at the rate herein provided for, on such amount of premium as he may
17 deem just, and the proceedings thereon shall be the same as if the return had been made.

18 (f) If any such insurance carrier shall withdraw from business in this State before
19 the tax shall fall due, as herein provided, or shall fail or neglect to pay such tax, the
20 Commissioner of Insurance shall at once proceed to collect the same; and he is hereby
21 empowered and authorized to employ such legal process as may be necessary for that
22 purpose, and when so collected he shall pay the same into the State treasury. The suit
23 may be brought by the Commissioner of Insurance, in his official capacity, in any court
24 of this State having jurisdiction. Reasonable attorney's fees may be taxed as costs
25 therein, and process may issue to any county of the State, and may be served as in civil
26 actions, or in case of unincorporated associations, partnerships, interindemnity
27 contracts, upon any agent of the parties thereto upon whom process may be served
28 under the laws of this State.

29 (g) Any person or persons who shall in this State act or assume to act as agent for
30 any such insurance carrier whose authority to do business in this State has been
31 suspended, while such suspension remains in force, or shall neglect or refuse to comply
32 with any of the provisions of this section obligatory upon such person or party or who
33 shall willfully make a false or fraudulent statement of the business or condition of any
34 such insurance carrier, or false or fraudulent return as herein provided, shall be deemed
35 guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less
36 than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000), or by
37 imprisonment for not less than 10 nor more than 90 days, or both such fine and
38 imprisonment in the discretion of the court.

39 (h) Whenever by this Article, or the terms of any policy contract, any officer is
40 required to give any notice to an insurance carrier, the same may be given by delivery,
41 or by mailing by registered letter properly addressed and stamped, to the principal office
42 or general agent of such insurance carrier within this State, or to its home office, or to
43 the secretary, general agent, or chief officer thereof in the United States, or the State
44 Insurance Commissioner.

1 (i) Any insurance carrier liable to pay a tax upon premiums under this Article
2 shall not be liable to pay any other or further tax upon such premiums, under any other
3 law of this State.

4 (j) Every employer carrying his own risk under the provisions of G.S. 97-93
5 shall, under oath, report to the Commissioner of Insurance his payroll, subject to the
6 provisions of this Article. Such report shall be made in form prescribed by the
7 Commissioner of Insurance, and at the times herein provided for premium reports by
8 insurer. The Commissioner of Insurance shall assess against such payroll a maintenance
9 fund tax computed by taking such percent of the basic premiums charged against the
10 same or most similar industry or business taken from the manual insurance rate then in
11 force in this State as is assessed in the Revenue Act against the insurance carriers for
12 premiums collected on compensation insurance policies. The Commissioner shall use
13 the approved experience modifier of an employer in calculating the employer's
14 maintenance fund tax liability under this subsection. ~~Receipts collected under this~~
15 ~~subsection shall be deposited to the credit of the State Treasurer as general fund revenue.~~

16 (k) Every group of two or more employers who have pooled their liabilities
17 pursuant to G.S. 97-93 shall pay a tax upon premiums received in this State in the same
18 manner as the tax is calculated and paid by insurance carriers insuring employers in this
19 State and set forth in subsections (c), (d), (e), and (f) above.

20 (l) A special fund in the Office of the State Treasurer, the Special Industrial
21 Commission Fund, is created. One percent (1%) of the tax on premiums collected by
22 the Commissioner of Insurance pursuant to subsections (d) and (j) of this section shall
23 be deposited in the Special Industrial Commission Fund. Interest derived from the Fund
24 shall be credited to the Fund.

25 The Special Industrial Commission Fund shall be subject to the provisions of the
26 Executive Budget Act except that no unexpended surplus of the Fund shall revert to the
27 General Fund. All funds credited to the Fund shall be used for the operation of the
28 North Carolina Industrial Commission.

29 The remaining ninety-nine percent (99%) of the tax on premiums collected by the
30 Commissioner of Insurance pursuant to subsections (d) and (j) of this section shall be
31 deposited in the General Fund."

32 Sec. 13. If Section 5 of this act is ratified, the phrase 'Industrial Commission'
33 is deleted and replaced by the phrase 'Workers' Compensation Commission wherever it
34 occurs in the General Statutes.

35 Sec. 14. Section 12 of this act becomes effective July 1, 1993, and applies to
36 all taxes imposed on workers' compensation premiums collected on or after that date.
37 The remainder of this act is effective upon ratification.