

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1993**

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SENATE BILL 906  
Manufacturing and Labor Committee Substitute Adopted 5/10/93

Short Title: Workers' Comp. Reform.

(Public)

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Sponsors:

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Referred to:

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April 19, 1993

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO MAKE VARIOUS SUBSTANTIVE AMENDMENTS TO THE  
3 WORKERS' COMPENSATION ACT.

4           Whereas, the North Carolina Workers' Compensation Act was adopted in  
5 1929 to delicately balance the interests of employers and injured employees, relieving  
6 employees of the burden of proving fault for workplace injuries while providing  
7 medical care as long as needed and wage support during a healing period; and

8           Whereas, the North Carolina workers' compensation system worked well for  
9 the next 50 years providing fair, prompt benefits for injured employees at an affordable  
10 cost to employers; and

11           Whereas, beginning in the 1980s, court decisions and legislative enactments  
12 expanded the Workers' Compensation Act beyond its original intent; and

13           Whereas, there has been a sharp increase in the number permanent disability  
14 claims that cannot be justified by a corresponding increase in the severity of injuries and  
15 have led to expensive, time-consuming litigation over such issues as the degree of  
16 permanent disability and the expiration of temporary disability; and

17           Whereas, medical costs to employers pursuant to our workers' compensation  
18 system have increased at almost twice the national average for medical costs in general;  
19 and

20           Whereas, these pressures on the workers' compensation system have caused  
21 double digit increases in the cost of workers' compensation for North Carolina's  
22 employers for several consecutive years, the most recent and largest insurance rate  
23 increase being implemented by the North Carolina Rate Bureau over the objections of

1 the Commissioner of Insurance, resulting in an average aggregate increase of almost  
2 150% in the last five years; and

3         Whereas, workers' compensation cost North Carolina's employers twice as  
4 much as it did a mere three years ago, up from \$500,000,000 in 1990 to \$1,000,000,000  
5 in 1993; and

6         Whereas, an increasing and unacceptable number of North Carolina  
7 employers, particularly small businesses, are unable to obtain workers' compensation  
8 coverage through normal, voluntary insurance markets, resulting in those employers  
9 having to attempt to self-fund their liability or to obtain insurance through the assigned  
10 risk plan and to pay a significant rate surcharge for their coverage; and

11         Whereas, the cost of coverage under the Workers' Compensation Act in North  
12 Carolina is rapidly becoming a substantial detriment to the ability of our State to attract  
13 new employers and for our State's employers to expand their employment, even forcing  
14 some employers to close or move to another state; and

15         Whereas, the time has come for the General Assembly to restore the Workers'  
16 Compensation Act so that it provides the balance and stability it enjoyed for more than  
17 50 years; Now, therefore,

18 The General Assembly of North Carolina enacts:

19         Section 1. G.S. 97-2(6) reads as rewritten:

20         "(6) Injury. – 'Injury and personal injury' ~~shall~~ mean only injury by accident  
21 arising out of and in the course of the employment, and shall not  
22 include a disease in any form, except where it results naturally and  
23 unavoidably from the accident. With respect to back injuries,  
24 however, where injury to the back arises out of and in the course of the  
25 employment and is the direct result of a specific traumatic incident of  
26 the work assigned, 'injury by accident' shall be construed to include  
27 any disabling physical injury to the back arising out of and causally  
28 related to such incident. Injury shall include breakage or damage to  
29 eyeglasses, hearing aids, dentures, or other prosthetic devices which  
30 function as part of the body; provided, however, that eyeglasses and  
31 hearing aids will not be replaced, repaired, or otherwise compensated  
32 for unless injury to them is incidental to a compensable injury. Injury  
33 or disease means only a work-related injury or disease that is the  
34 predominant cause of the disability and includes a consequence of a  
35 compensable injury when the compensable injury is the predominant  
36 cause of the consequential condition. Injury means an injury that  
37 combines with a preexisting disease or condition to cause or prolong  
38 disability or a need for treatment to the extent the injury is and remains  
39 the predominant cause of the disability or need for the treatment.  
40 Injury does not include a worsened condition if the predominant cause  
41 of the worsened condition is an injury not occurring within the course  
42 and scope of employment. Injury, personal injury, or disease does not  
43 mean mental injury that is unaccompanied by physical injury."

44         Sec. 2. G.S. 97-2(9) is repealed.

1           Sec. 3. G.S. 97-2(19) reads as rewritten:

2           "(19) Medical Compensation. —~~The term 'medical'~~'Medical compensation'  
3           means medical, surgical, hospital, nursing, and rehabilitative  
4           services, and medicines, sick travel, and other treatment, including  
5           medical and surgical supplies, ~~as may reasonably be required to effect~~  
6           ~~a cure or give relief and for such additional time as, in the judgment of~~  
7           ~~the Commission, will tend to lessen the period of disability;~~ and any  
8           original artificial members as may reasonably be necessary at the  
9           end of the healing period."

10          Sec. 4. G.S. 97-2 is amended by adding the following new subdivisions:

11          "(20) Medically Stationary. — 'Medically stationary' means further  
12          recovery from or lasting improvement to an injury can no longer be  
13          reasonably anticipated after a certain date based upon reasonable  
14          medical probability as determined by an authorized health care  
15          provider. A finding of medically stationary is not precluded even  
16          though future medical maintenance may be required that will not  
17          significantly improve the condition or there exists a possibility of  
18          improvement or deterioration resulting from the passage of time.

19          (21) Objective Findings. — 'Objective findings' means diagnostic  
20          evidence that is substantiated by clinical findings, including  
21          diagnostic evidence regarding range of motion, atrophy, muscle  
22          strength, and muscle spasm.

23          (22) Impairment. — 'Impairment' means an anatomical or functional  
24          abnormality existing after the date the employee becomes  
25          medically stationary as determined by a medically or scientifically  
26          demonstrable finding and based upon the third edition or the most  
27          recent subsequent edition of the American Medical Association's  
28          Guide to the Evaluation of Permanent Impairment or comparable  
29          publications of the American Medical Association.

30          (23) Permanent Partial Disability. — 'Permanent partial disability' means  
31          a condition whereby an employee, due to an injury, suffers a  
32          permanent physical impairment.

33          (24) Temporary Total Disability. — 'Temporary total disability' means  
34          the inability of the employee, due to an injury, to perform his duties  
35          prior to the injury becoming medically stationary.

36          (25) Permanent Total Disability. — 'Permanent total disability' means  
37          that the employee is physically unable to earn any wages in the  
38          same or other employment within North Carolina or nearby  
39          surrounding areas as a result of an injury. Permanent total disability  
40          includes the loss of both hands, both arms, both feet, both legs,  
41          both eyes, or of any two thereof, absent conclusive proof to the  
42          contrary.

1           (26) Attending Physician. – 'Attending physician' means a doctor or  
2 physician who is primarily responsible for the treatment pursuant to  
3 this Article of an employee with an injury and who is:

4           a. A physician licensed to practice medicine or surgery by the  
5 State; or

6           b. A chiropractor licensed by the State.

7           (27) Palliative Care. – 'Palliative care' means care rendered to  
8 temporarily reduce or moderate the intensity of an otherwise  
9 medically stationary condition, as distinguished from care that is  
10 rendered to diagnose, heal, permanently alleviate, or eliminate an  
11 undesirable medical condition."

12           Sec. 5. Chapter 97 of the General Statutes is amended by adding a new  
13 section to read:

14 **"§ 97-9.1. Burden of proof.**

15           The employee has the burden of proving that an injury arose out of and in the course  
16 and scope of employment and the burden of proving that the injury is established by  
17 medical evidence supported by objective findings. The employee claiming permanent  
18 total disability shall have the burden of proving a physical inability to earn any wages in  
19 the same or other employment."

20           Sec. 6. G.S. 97-10.1 reads as rewritten:

21 **"§ 97-10.1. Other rights and remedies against employer excluded.**

22           ¶ (a) Except as provided in subsection (b) of this section, if the employee and the  
23 employer are subject to and have complied with the provisions of this Article, then the  
24 rights and remedies herein granted to the employee, ~~his~~ and the employee's dependents,  
25 next of kin, or personal representative shall exclude all other rights and remedies of the  
26 employee, ~~his~~ and the employee's dependents, next of kin, or personal representative as  
27 against the employer at common law or otherwise on account of or arising out of such  
28 injury or death.

29           (b) The only exception to the exclusive remedy provided in subsection (a) of this  
30 section is for an injury that results from an intentional tort by the employer. For the  
31 purposes of this Article, an intentional tort occurs only when an employer intentionally  
32 engages in misconduct knowing it is substantially certain to cause serious injury or  
33 death to employees and an employee is injured or killed by that misconduct. Whether an  
34 act constitutes an intentional tort is a question of law and whether an employer acted  
35 with requisite intent is a question of fact for the jury.

36           (c) Subject to subsection (d) of this section, this Article shall not prohibit any  
37 person from filing a claim as provided in this Article and simultaneously commencing a  
38 civil action seeking to recover damages from an employer for the injury or death.

39           (d) If any benefits payable under the provisions of G.S. 97-30, 97-31, or 97-38  
40 are accepted by an employee or an employee's dependents, next of kin, or personal  
41 representative, then the employee and employee's dependents, next of kin, or other  
42 personal representative shall forfeit any other rights or remedies against the employer,  
43 including, but not limited to, any statutory and common law claims against the  
44 employer, whether derivative or independent, relating in any way to the injury or death.

1 Further, if an employee or an employee's dependents, next of kin, or personal  
 2 representative files a civil action seeking to recover for such injury or death from an  
 3 employer and fails to accept benefits payable under the provisions of this Article before  
 4 the time when the jury is impaneled or evidence is first presented at the trial of the civil  
 5 action, whichever occurs first, then the employee and employee's dependents, next of  
 6 kin, or personal representative have elected to proceed outside this Article and shall  
 7 forfeit any other rights and remedies against the employer including all rights and  
 8 remedies available under this Article, related to the injury or death. However, the  
 9 provisions set forth in this subsection shall not affect compensation and benefits  
 10 previously accepted by an employee that were paid pursuant to the provisions of G.S.  
 11 97-25 and G.S. 97-59, and any sums accepted by an employee or an employee's  
 12 dependents, next of kin, or personal representative shall be offset against any amount  
 13 for which the employer subsequently may be found liable for the injury, disease, or  
 14 death in the civil action. Accordingly, evidence of payments made by an employer  
 15 pursuant to G.S. 97-25 and G.S. 97-59 shall be admissible in the trial of any civil action,  
 16 but shall be limited only to interpretations of this Article and benefits actually accepted  
 17 by an employee.

18 (e) For purposes of this Article, the personal liability of an employee whose  
 19 actions proximately cause the injury or death to another employee shall be determined  
 20 according to the same standards as applied to the employer when the employee's actions  
 21 arise out of and in the course and scope of the employment."

22 Sec. 7. G.S. 97-12 reads as rewritten:

23 **"§ 97-12. Use of intoxicant or controlled substance; willful neglect; willful**  
 24 **disobedience of statutory duty, safety regulation or rule.**

25 No compensation shall be payable if the injury or death to the employee was  
 26 proximately caused by:

- 27 (1) ~~His~~The employee's intoxication, provided the intoxicant was not  
 28 supplied by the employer or his agent in a supervisory capacity to  
 29 the employee; or
- 30 (2) ~~His~~The employee's being under the influence of any controlled  
 31 substance listed in the North Carolina Controlled Substances Act,  
 32 G.S. 90-86, **et seq.**, where such controlled substance was not by  
 33 prescription by a practitioner; or
- 34 (3) ~~His~~The employee's willful intention to injure or kill himself or  
 35 another. When the injury or death is caused by the willful failure  
 36 of the employer to comply with any statutory requirement or any  
 37 lawful order of the Commission, compensation shall be increased  
 38 ten percent (10%). When the injury or death is caused by the  
 39 willful failure of the employee to use a safety appliance or perform  
 40 a statutory duty or by the willful breach of any reasonable rule or  
 41 regulation adopted by the employer ~~and approved by the Commission~~  
 42 and brought to the knowledge of the employee prior to the injury  
 43 compensation shall be reduced ten percent (10%).

1 The burden of proof shall be upon ~~him who claims~~ the party claiming an exemption  
2 or forfeiture under this section."

3 Sec. 8. G.S. 97-17 reads as rewritten:

4 **"§ 97-17. Settlements allowed in accordance with Article.**

5 (a) Nothing herein contained. This Article shall not be construed so as to prevent  
6 settlements made by and between the employee and employer so long as the amount of  
7 compensation and the time and manner of payment are in accordance with the  
8 provisions of this Article. A copy of such settlement agreement shall be filed by employer  
9 with and approved by the Industrial Commission. Provided, however, that no party to any  
10 agreement for compensation approved by the Industrial Commission shall thereafter be heard to  
11 deny the truth of the matters therein set forth, unless it shall be made to appear to the  
12 satisfaction of the Commission that there has been error due to fraud, misrepresentation, undue  
13 influence or mutual mistake, in which event the Industrial Commission may set aside such  
14 agreement. Any settlement shall constitute a final determination of liability for the  
15 injury and shall be binding on all parties.

16 (b) Parties mutually seeking to settle a claim under this Article shall file with the  
17 deputy assigned to the claim a Notice of Intent to Settle, together with the agreed terms  
18 of settlement. The Commission may approve or reject the settlement, and unless the  
19 settlement is approved or rejected within 60 days following submission of a Notice of  
20 Intent to Settle, the settlement shall be deemed approved.

21 (c) Within 180 days from the date of the first payment of compensation, the  
22 employer may serve upon the employee an offer of settlement. If within 10 days after  
23 the service of the offer of settlement, the employee serves written notice that the offer is  
24 accepted, the employee shall file with the deputy a Notice of Intent to Settle as provided  
25 for in subsection (b) of this section. An offer of settlement not accepted within 10 days  
26 after its service shall be deemed withdrawn. Evidence of the offer shall not be  
27 admissible in a subsequent proceeding on the issue of compensability. The fact that an  
28 offer of settlement is made but not accepted does not preclude a subsequent settlement."

29 Sec. 9. G.S. 97-18 reads as rewritten:

30 **"§ 97-18. Prompt payment of compensation required; installments; notice to**  
31 **Commission; penalties.**

32 (a) Compensation under this Article shall be paid periodically, promptly and  
33 directly to the person entitled thereto unless otherwise specifically provided.

34 (b) The first installment of compensation payable ~~under the terms of an agreement~~  
35 by the employer shall become due on the fourteenth day after the employer has written  
36 or actual knowledge of the injury or death, on which date all compensation then due  
37 shall be paid. paid, or the employer shall notify the Commission and advise the  
38 employee in writing of its refusal to pay and advise the employee of the employee's  
39 right to request a hearing pursuant to G.S. 97-83. Thereafter compensation Compensation  
40 shall be paid in installments weekly except where the Commission determines that  
41 payment in installments should be made monthly or at some other period.

42 (b1) In any claim for compensation in which the employer is uncertain whether the  
43 claim is compensable under this Article, or is uncertain of the extent of its liability  
44 under this Article, the employer may initiate compensation payments without prejudice

1 and without admitting liability. Such payments may continue until such time as the  
2 employer decides to contest the claim or 180 days from the due date of the first payment  
3 of compensation, whichever shall first occur. The initiation of payment by the  
4 employer does not affect the right of the employer to continue to investigate or deny the  
5 compensability of the injury during this period. If, during this 180-day period during  
6 which compensation has been paid, the employer decides to contest the claim, the  
7 employer shall suspend payment of benefits and shall promptly notify the employee on  
8 a form prescribed by the Commission, stating the grounds upon which the employee's  
9 right to compensation or the extent of liability is contested. The employer shall furnish  
10 a copy to the Commission. If the employer does not contest the compensability of the  
11 injury in 180 days or less from the due date of the first payment of compensation, the  
12 employer waives the right to contest compensability. However, an employer may  
13 contest the claim after the 180-day period when the employer can show that evidence  
14 was discovered after that period that could not have been reasonably discovered earlier.

15 (c) The first installment of compensation payable under the terms of an award by  
16 the Commission, or under the terms of a judgment of the court upon an appeal from  
17 such an award, shall become due 14 days from the date of such an award or from the  
18 date of such a judgment of the court, on which date all compensation then due shall be  
19 paid. Thereafter compensation shall be paid in installments weekly, except where the  
20 Commission determines that payment in installments shall be made monthly or in some  
21 other manner. A payment becomes due within the meaning of this subsection the day  
22 following expiration of time for appeal of an award or judgment or after notice waiving  
23 right of appeal by all parties has been received by the Commission, whichever is sooner.  
24 Except that if the applicable time for appeal is longer than 14 days, then payment must  
25 be made within five days after it becomes due as herein defined.

26 (d) ~~Upon making the first payment, and upon suspension of payment for any~~  
27 ~~cause, the employer shall immediately notify the Commission, in accordance with the~~  
28 ~~form prescribed by the Commission, that payment of compensation has begun or has~~  
29 ~~been suspended, as the case may be.—The employer's grounds for contesting the~~  
30 employee's claim as specified in the notice under subsection (b1) of this section are the  
31 only bases for the employer's defense on the issue of compensability in a subsequent  
32 proceeding, unless the defense is based on newly discovered evidence that could not  
33 reasonably have been discovered earlier.

34 (e) ~~If any installment of compensation payable in accordance with the terms of~~  
35 ~~an agreement approved by the Commission is not paid within 14–30 days after it~~  
36 ~~becomes due, as provided in subsection (b) of this section, or if any installment of~~  
37 ~~compensation payable in accordance with the terms of an award by the Commission is~~  
38 ~~not paid within 14 days after it becomes due, as provided in subsection (c) of this~~  
39 ~~section,~~ there shall be added to such unpaid installment an amount equal to ten per  
40 centum (10%) thereof, which shall be paid at the same time as, but in addition to, such  
41 installment, unless such nonpayment is excused by the Commission after a showing by  
42 the employer that owing to conditions over which he had no control such installment  
43 could not be paid within the period prescribed for the payment.

1 (f) Within 16 days after final payment of compensation has been made, the  
2 employer shall send to the Commission a notice, in accordance with a form prescribed  
3 by the Commission, stating that such final payment has been made, the total amount of  
4 compensation paid, the name of the employee and of any other person to whom  
5 compensation has been paid, the date of the injury or death, and the date to which  
6 compensation has been paid. If the employer fails to so notify the Commission within  
7 such time, the Commission shall assess against such employer a civil penalty in the  
8 amount of twenty-five dollars (\$25.00).

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

14 Sec. 10. Chapter 97 of the General Statutes is amended by adding a new  
15 section to read:

16 "**§ 97-18.1. Termination or modification of compensation benefits.**

17 (a) If the employer seeks to terminate or modify compensation benefits because  
18 the employee has returned to work or because the employer has reason to believe the  
19 employee has become medically stationary or has recovered sufficiently to return to  
20 work, the employer shall notify the employee in writing of the employer's intent to  
21 terminate or modify benefits. This notice shall inform the employee of the employee's  
22 right to administrative review of the matter. The employer may suspend compensation  
23 14 days following its notice to the employee. The employee, within 30 days of being  
24 notified, may request an administrative review with the Commission disputing the  
25 employer's decision to suspend compensation.

26 (b) After the request for administrative review is filed, the Commission shall  
27 promptly conduct a review of documentation submitted by the employer, together with  
28 any information submitted by the employee. The Commission shall issue a decision  
29 within 14 days following the employee's request for administrative review.

30 (c) Where the medical condition of the employee is in dispute, the Commission  
31 shall consider all medical evidence and shall make its determination based on the  
32 greater weight of the information submitted. Where, however, either party has  
33 requested an examination by an independent medical examiner pursuant to G.S. 97-27,  
34 that examiner's opinion of the employee's recovery and ability to return to work is  
35 conclusive absent clear and convincing proof to the contrary.

36 (d) If the Commission upholds the employer's decision to terminate or modify  
37 compensation benefits, the employee may request a hearing pursuant to G.S. 97-83. The  
38 employer shall not be required to continue payment of compensation following the  
39 Commission's determination upholding the employer's decision. If neither party  
40 requests a hearing within seven days of the administrative decision, that decision shall  
41 constitute a final determination."

42 Sec. 11. G.S. 97-25 reads as rewritten:

43 "**§ 97-25. Medical treatment and supplies.**



1       (a) ~~Medical~~ Subject to subsection (e) of this section, G.S. 97-25.1, 97-25.2, and  
2 97-25.3, medical compensation shall be provided by the employer. ~~In case of a~~  
3 ~~controversy arising between the employer and employee relative to the continuance of medical,~~  
4 ~~surgical, hospital, or other treatment, the Industrial Commission may order such further~~  
5 ~~treatments as may in the discretion of the Commission be necessary. The Commission may at~~  
6 ~~any time upon the request of an employee order a change of treatment and designate other~~  
7 ~~treatment suggested by the injured employee subject to the approval of the Commission, and in~~  
8 ~~such a case the expense thereof shall be borne by the employer upon the same terms and~~  
9 ~~conditions as hereinbefore provided in this section for medical and surgical treatment and~~  
10 ~~attendance.~~ The obligation of an employer to provide medical compensation is limited  
11 by and subject to the provisions regarding the modification of an award for change of  
12 condition as set forth in G.S. 97-47.

13       (b) In all cases of injury or disease, the employer or insurer has the right to select  
14 the attending physician. Upon written request to the insurer or to the employer's  
15 authorized representative if the employer is self-insured, the employee may procure  
16 written permission to have the employee's own physician attend the employee. If such  
17 permission is neither granted nor refused within 20 days, the employer or insurance  
18 carrier shall be deemed to have waived any objection. Objection shall be in writing and  
19 shall be deposited in the mail or hand-delivered to the employee within 20 days. Any  
20 unauthorized medical expense is not the responsibility of the employer.

21       (c) The refusal of the employee to accept any medical, hospital, surgical or other  
22 treatment or rehabilitative procedure when ordered by the Industrial Commission shall  
23 bar said employee from further compensation until such refusal ceases, and no  
24 compensation shall at any time be paid for the period of suspension unless in the  
25 opinion of the Industrial Commission the circumstances justified the refusal, in which  
26 case, the Industrial Commission may order a change in the medical or hospital service.

27       ~~If in an emergency on account of the employer's failure to provide the medical or~~  
28 ~~other care as herein specified a physician other than provided by the employer is called~~  
29 ~~to treat the injured employee, the reasonable cost of such service shall be paid by the~~  
30 ~~employer if so ordered by the Industrial Commission.~~

31       ~~Provided, however, if he so desires, an injured employee may select a physician of~~  
32 ~~his own choosing to attend, prescribe and assume the care and charge of his case,~~  
33 ~~subject to the approval of the Industrial Commission.~~

34       (d) The employee, upon reasonable grounds, may petition the Industrial  
35 Commission for a change of physicians to be provided by the employer. The employee  
36 shall give notice to the employer or insurer of this request for a change of physicians to  
37 afford the employer the opportunity to fulfill its obligations under this section. The  
38 employer shall not be obligated to pay for the services obtained when notice was not  
39 given in accordance with this subsection.

40       (e) When the attending physician is a chiropractor, compensation for chiropractic  
41 treatment shall be provided by the employer for a period of 90 days from the initial  
42 treatment or for 30 office visits, whichever occurs first. A request for additional  
43 chiropractic treatment shall be submitted to the insurer at least 10 working days prior to  
44 delivery of the services and shall include documentation of the need for the services  
45 requested. When chiropractic treatment is expected to extend beyond 90 days from the

1 date of the initial treatment, the request for additional services shall include a treatment  
2 plan, including a time schedule of measurable objectives, a projected termination date of  
3 treatment, and an estimated total cost of service. The Commission shall adopt rules  
4 governing the response to a request for additional chiropractic services and the review  
5 of a decision thereon."

6 Sec. 12. Chapter 97 of the General Statutes is amended by adding the  
7 following new sections:

8 **"§ 97-25.1. Palliative care.**

9 (a) After the employee has become medically stationary, palliative care is not  
10 compensable, except when:

11 (1) Provided to an employee who has been determined to have  
12 permanent total disability;

13 (2) Necessary to monitor administration of prescription medication  
14 required to maintain the employee in a medically stationary  
15 condition; or

16 (3) Necessary to monitor the status of a prosthetic device.

17 If the employee's attending physician determines that palliative care that would  
18 otherwise not be compensable under this section is appropriate to enable the employee  
19 to continue current employment, the attending physician shall request approval from the  
20 insurer or self-insured employer for such treatment. The request for palliative services  
21 shall include a treatment plan, including a time schedule or measuring objectives, a  
22 projected termination date of treatment, and an estimated total cost of services. If  
23 approval for palliative care is not granted, the attending physician may request approval  
24 from the Commission for such treatment. The Commission shall appoint an  
25 independent medical examiner pursuant to G.S. 97-27 to review the request for  
26 treatment.

27 (b) The employer shall not be required to pay for palliative care that is not  
28 authorized pursuant to this section.

29 **"§ 97-25.2. Managed care.**

30 Any insurer may satisfy the requirements of G.S. 97-25 by entering into a preferred  
31 provider arrangement. Notwithstanding any other provision of this Article, if an insurer  
32 enters into a preferred provider arrangement for medical services that are compensable  
33 under this Article, those employees who are subject to the preferred provider  
34 arrangement shall receive medical care in the manner prescribed by the arrangement.  
35 However, immediate emergency medical treatment from a medical provider who is not  
36 a member of the managed-care organization shall be compensable. An employee shall  
37 exhaust the dispute resolution procedure of a managed-care organization prior to  
38 seeking compensation from the Commission on an issue related to the managed care or  
39 the choice of a physician.

40 **"§ 97-25.3. Preauthorization.**

41 (a) An employee shall notify the insurer within five working days before hospital  
42 in-patient confinement or surgery, except in case of an emergency, in accordance with  
43 procedures prescribed by the Commission. When hospitalization or surgery is  
44 recommended, the insurer shall make a hospital confinement and surgery review and

1 shall have reasonable opportunity to obtain an independent medical exam. A copy of  
2 the review shall be provided to the employee, attending physician, and hospital in  
3 writing. Hospital and physician charges incurred without preauthorization and after  
4 notice has been given to the hospital and physician pursuant to this section shall be  
5 reduced by fifty percent (50%). The employee shall not be liable for payment of the  
6 balance. A hospital that refuses to treat an employee for other than an emergency  
7 medical condition because preauthorization has not been obtained shall be immune from  
8 liability in any civil action.

9 (b) No health care provider may refer the employee to a diagnostic facility, pain  
10 program, work-hardening program, therapy center, or other facility without  
11 authorization from the insurer pursuant to this section except in cases of immediate  
12 medical emergency.

13 (c) The Commission shall adopt rules pursuant to Chapter 150B of the General  
14 Statutes specifying additional types of medical care requiring express preauthorization  
15 by the insurer. The Commission shall adopt rules establishing a procedure for expedited  
16 resolution of any dispute over the denial of preauthorization by the insurer.

17 (d) When a health care provider of medical services or treatment makes referrals  
18 for medical services or treatment compensable under this Article to a health care  
19 provider or entity in which the health care provider making the referral has an  
20 investment interest, the referring provider shall, at the time of the referral, disclose that  
21 investment interest to the employee, the Commission, the employer, and the employer's  
22 insurer. The referring provider also shall file an annual disclosure statement with the  
23 Commission as provided by rules adopted by the Commission.

24 (e) Except in cases of medical emergency, the insurer shall not be liable for  
25 medical costs related to hospital in-patient confinement or surgery, chiropractic care, or  
26 physical or occupational therapy unless:

27 (1) The insurer or employer waives the right to request a second  
28 opinion from a physician approved by the insurer or the  
29 Commission no later than 14 days after the date of notification that  
30 any of these medical treatments is recommended; or

31 (2) The employee obtains a second opinion from a physician approved  
32 by the insurer or the Commission, and the second physician  
33 concurs with the attending physician's recommendation.

34 (f) The insurer or Commission may require an employee to submit to medical  
35 examinations to resolve any question about the appropriateness of medical treatment  
36 received or recommended. The Commission shall require a physical examination only  
37 after the insurer has attempted and failed to receive the permission of the employee.

38 (g) The insurer shall pay for any physical examination required under subsections  
39 (e) and (f) of this section.

40 (h) An employee who, without good cause, fails or refuses to appear at the time  
41 scheduled for a physical examination under subsections (e) or (f) of this section shall  
42 have the employee's rights suspended as provided in G.S. 97-27(a).

43 (i) A health care provider shall not pursue a private claim against an employee  
44 for all or part of the costs of medical treatment provided to the employee by the provider

1 unless the claim is finally adjudicated not to be compensable under this Article or unless  
2 the employee fails to comply with this section."

3 Sec. 13. G.S. 97-26 reads as rewritten:

4 **"§ 97-26. Liability—Fees allowed for medical treatment measured by average cost in**  
5 **community; treatment; malpractice of physician.**

6 ~~The pecuniary liability of the employer for medical, surgical, hospital service,~~  
7 ~~nursing services, medicines, sick travel or other treatment required when ordered by the~~  
8 ~~Commission, shall be limited to such charges as prevail in the same community for~~  
9 ~~similar treatment of injured persons of a like standard of living when such treatment is~~  
10 ~~paid for by the injured person, and the~~

11 (a) The Commission shall adopt a schedule of maximum fees for all services,  
12 procedures, and tasks. This schedule shall govern reimbursement of maximum fees to  
13 all health care providers under G.S. 97-25 and shall be in accordance with the  
14 following:

15 (1) Maximum allowable fees shall be based on, and be equal to,  
16 maximum fees payable under the State of North Carolina Teachers'  
17 and State Employees' Comprehensive Major Medical Plan for  
18 similar services, procedures, and tasks where such medical care is  
19 provided and shall incorporate changes.

20 (2) The fee schedule shall identify and define medical services,  
21 procedures, and tasks in accordance with the codes contained in the  
22 American Medical Association's Physicians' Current Procedural  
23 Terminology (CPT), as modified, or in standard codes and  
24 definitions produced by other recognized professional associations  
25 for which CPT codes do not exist. The use of modifier codes shall  
26 be strictly limited, the additional fee allowed for each modification  
27 shall be provided in the fee schedule, and documentation indicating  
28 the need for such modifiers shall be required. Services, procedures,  
29 and tasks shall be billed using the most inclusive codes available;  
30 and differing elements of a service, procedure, or task shall not be  
31 billed individually when a single code is available describing the  
32 complete service, procedure, or task.

33 (3) Each surgical procedure shall provide for appropriate subsequent  
34 care, including examinations, changes of dressings, and similar  
35 services associated with post-surgery recovery, but the cost of such  
36 care shall not be billed during the recovery period.

37 (b) Unless the employer or insurer and a health care provider agree to a lesser  
38 fee, the fees charged for treatment and care under this Article shall be the provider's  
39 usual and customary fee for the treatment or service, or the fee for that treatment or  
40 service under the Commission's schedule, whichever is less.

41 (c) Health care providers shall submit charges to the employer within 30 days of  
42 treatment or within 30 days after the end of the month during which multiple treatments  
43 were provided. If the employer disputes a part of a provider's bill, it shall pay the  
44 uncontested portion of the bill and shall resolve disputes regarding the balance of

1 medical charges in accordance with this section. Health care providers shall not charge  
2 for diagnostic tests previously conducted by other providers, unless a change in patient  
3 condition has occurred or the quality of the prior test is doubted. The Commission shall  
4 adopt rules establishing reasonable requirements for reports and records to be made  
5 available to other health care providers to prevent unnecessary duplication of tests and  
6 examinations.

7 (d) The Commission shall promulgate rules pursuant to Chapter 150B of the  
8 General Statutes governing treatment. Neither the employer, its insurer, nor the  
9 employee shall be responsible for reimbursing a health care provider for treatment of  
10 the injured employee that exceeds in frequency treatment plans adopted by the  
11 Commission.

12 (e) The employer shall not be liable in damages for malpractice by a physician or  
13 surgeon furnished by him pursuant to the provisions of this section, but the  
14 consequences of any such malpractice shall be deemed part of the injury resulting from  
15 the accident, and shall be compensated for as such.

16 (f) Unless the hospital agrees to a lesser fee, the Commission's schedule of  
17 maximum fees shall govern reimbursement to all hospitals for services, treatment, and  
18 care under this Article."

19 Sec. 14. G.S. 97-27 reads as rewritten:

20 "**§ 97-27. Medical examination; facts not privileged; refusal to be examined**  
21 **suspends compensation; autopsy.**

22 (a) After an injury, and so long as he claims compensation, the employee, if so  
23 requested by his employer or ordered by the Industrial Commission, shall, subject to the  
24 provisions of subsection ~~(b)~~, (b) and subsection (c) of this section, submit himself to  
25 examination, at reasonable times and places, by a duly qualified physician or surgeon  
26 designated and paid by the employer or the Industrial Commission. The employee shall  
27 have the right to have present at such examination any duly qualified physician or  
28 surgeon provided and paid by him. Notwithstanding the provisions of G.S. 8-53, no fact  
29 communicated to or otherwise learned by any physician or surgeon or hospital or  
30 hospital employee who may have attended or examined the employee, or who may have  
31 been present at any examination, shall be privileged in any workers' compensation case  
32 with respect to a claim pending for hearing before the Industrial Commission. If the  
33 employee refuses to submit himself to or in any way obstructs such examination  
34 requested by and provided for by the employer, his right to compensation and his right  
35 to take or prosecute any proceedings under this Article shall be suspended until such  
36 refusal or objection ceases, and no compensation shall at any time be payable for the  
37 period of obstruction, unless in the opinion of the Industrial Commission the  
38 circumstances justify the refusal or obstruction. The employer, or the Industrial  
39 Commission, shall have the right in any case of death to require an autopsy at the  
40 expense of the party requesting the same.

41 (b) In those cases arising under this Article in which there is a ~~question as to the~~  
42 ~~percentage of permanent disability suffered by an employee, if any employee, required~~  
43 ~~to submit to a physical examination under the provisions of subsection (a) is dissatisfied~~  
44 ~~with such examination or the report thereof, he shall be entitled to have another~~

1 ~~examination by a duly qualified physician or surgeon licensed and practicing in North~~  
2 ~~Carolina or by a duly qualified physician or surgeon licensed to practice in South~~  
3 ~~Carolina, Georgia, Virginia and Tennessee provided said nonresident physician or~~  
4 ~~surgeon shall have been approved by the North Carolina Industrial Commission and his~~  
5 ~~name placed on the Commission's list of approved nonresident physicians and surgeons,~~  
6 ~~designated by him and paid by the employer or the Industrial Commission in the same~~  
7 ~~manner as physicians designated by the employer or the Industrial Commission are~~  
8 ~~paid. Provided, however, that all travel expenses incurred in obtaining said examination~~  
9 ~~shall be paid by said employee. The employer shall have the right to have present at~~  
10 ~~such examination a duly qualified physician or surgeon provided and paid by him.~~  
11 dispute as to the extent, nature, or cause of disability or death, or a dispute as to whether  
12 the employee is medically stationary, the attending physician who has provided the  
13 primary care shall make a determination on medical issues as provided in this section.  
14 If either party disputes the attending physician's findings, the parties may select an  
15 independent medical examiner by mutual agreement. If the parties are unable to  
16 mutually agree on the selection of an independent medical examiner, the Commission  
17 shall assign a panel of three independent medical examiners.

18 (c) When the injured employee becomes medically stationary, the attending  
19 physician shall determine a medical impairment rating based on the most recent edition  
20 of the American Medical Association Guide to the Evaluation of Permanent  
21 Impairment. For purposes of determining levels of medical impairment, the physician  
22 shall not render a medical impairment rating based on chronic pain unless there is an  
23 anatomic or physiologic correlation to the pain. Anatomic or physiologic correlation  
24 shall be based on objective findings. If either party disputes the attending physician's  
25 findings of medical impairment, the parties may select an independent medical  
26 examiner by mutual agreement. If the parties are unable to mutually agree on the  
27 selection of an independent medical examiner, the Commission shall assign a panel of  
28 three independent medical examiners.

29 (d) When a panel of independent medical examiners has been assigned to a case  
30 under subsection (b) or subsection (c) of this section, the parties shall be notified  
31 immediately. The employee shall select one independent medical examiner from the  
32 panel within five days after notification. The employer may, no later than three days  
33 after notification of the employee's selection, reject the employee's selection of the  
34 independent medical examiner, in which case the employee's first choice of an  
35 independent medical examiner is removed from the panel, and the employee shall select  
36 one of the two remaining independent medical examiners. The findings of the  
37 independent medical examiner under subsection (b) or subsection (c) of this section  
38 shall be final, absent a showing of clear and convincing evidence to the contrary. No  
39 hearing to contest the findings of the independent medical examiner shall be conducted  
40 until the findings of the independent medical examiner have been filed with the  
41 Commission.

42 (e) No fact communicated to or otherwise learned by any physician or surgeon  
43 who may have attended or examined the employee, or who may have been present at

1 any examination, shall be privileged, either in hearings provided for by this Article or  
2 any action at law.

3 (f) The Commission shall certify independent medical examiners to assist the  
4 Commission. The Commission shall, in certifying, recertifying, or decertifying an  
5 independent medical examiner, consider the qualifications, training, impartiality, and  
6 commitment of the health care provider to providing quality medical care at a  
7 reasonable cost. The Commission shall require, at a minimum, that independent  
8 medical examiners:

9 (1) Have specialized workers' compensation training or experience  
10 with the procedures of North Carolina Workers' Compensation Act;

11 (2) Be licensed to practice medicine or surgery under Article 1 of  
12 Chapter 90 of the General Statutes; and

13 (3) Be board certified."

14 Sec. 15. G.S. 97-29 reads as rewritten:

15 "**§ 97-29. Compensation rates for total ~~incapacity~~-disability.**

16 (a) Except as hereinafter otherwise provided, where the incapacity for work  
17 resulting from the injury is total, employee sustains a temporary total disability, the  
18 employer shall pay or cause to be paid, as hereinafter provided, to the injured employee  
19 during such total the continuance of disability until the employee becomes medically  
20 stationary, a weekly compensation equal to sixty-six and two-thirds percent (66 2/3%)  
21 of his average weekly wages, but not more than the amount established annually to be  
22 effective October 1 as provided herein, nor less than thirty dollars (\$30.00) per week.

23 Temporary total disability benefits shall continue until any one of the following first  
24 occurs:

25 (1) The employee becomes medically stationary;

26 (2) The employee returns to regular or modified employment;

27 (3) The attending physician gives the employee a written release to  
28 return to regular employment; or

29 (4) The attending physician gives the employee a written release to  
30 return to modified employment, this employment is offered to the  
31 employee in writing, and the employee fails to begin the  
32 employment.

33 If the employee returns to work pursuant to the provisions of this subsection, the  
34 employer shall continue to provide medical care. In no case shall the period covered by  
35 such compensation be greater than 300 weeks from the date of injury. In no case may  
36 the period covered by the compensation provided by this subsection and G.S. 97-30  
37 exceed an aggregate total of 300 weeks.

38 (b) Where the injured employee sustains a permanent total disability, the  
39 employer shall pay, or cause to be paid to the injured employee during the permanent  
40 total disability, a weekly compensation equal to sixty-six and two-thirds percent (66  
41 2/3%) of the employee's average weekly wages, but not more than the amount  
42 established annually, to be effective October 1 as provided herein, nor less than thirty  
43 dollars (\$30.00) per week.

1 ~~In~~ Except as provided in G.S. 97-42.2, in cases of ~~total and permanent total~~ disability,  
2 compensation, including medical compensation, shall be paid for by the employer  
3 during the lifetime of the injured employee. If death results from the injury then the  
4 employer shall pay compensation in accordance with the provisions of G.S. 97-38.

5 (c) The weekly compensation payment for members of the North Carolina  
6 national guard and the North Carolina State guard shall be the maximum amount  
7 established annually in accordance with the last paragraph of this section per week as  
8 fixed herein. The weekly compensation payment for deputy sheriffs, or those acting in  
9 the capacity of deputy sheriffs, who serve upon a fee basis, shall be thirty dollars  
10 (\$30.00) a week as fixed herein.

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

17 (d) Notwithstanding any other provision of this Article, on July 1 of each year, a  
18 maximum weekly benefit amount shall be computed. The amount of this maximum  
19 weekly benefit shall be derived by obtaining the average weekly insured wage in  
20 accordance with G.S. 96-8(22), by multiplying such average weekly insured wage by  
21 1.10, and by rounding such figure to its nearest multiple of two dollars (\$2.00), and this  
22 said maximum weekly benefit shall be applicable to all injuries and claims arising on  
23 and after January 1 following such computation. Such maximum weekly benefit shall  
24 apply to all provisions of this Chapter and shall be adjusted July 1 and effective January  
25 1 of each year as herein provided."

26 Sec. 16. G.S. 97-30 reads as rewritten:

27 "**§ 97-30. Partial ~~incapacity~~-disability.**

28 Except as otherwise provided in G.S. 97-31 where the ~~incapacity-disability~~ for work  
29 resulting from the injury is partial, the employer shall pay or cause to be paid, as  
30 hereinafter provided, to the injured employee during such disability, a weekly  
31 compensation equal to sixty-six and two-thirds percent (66 2/3%) of the difference  
32 between his average weekly wages before the injury and the average weekly wages  
33 which he is able to earn thereafter, but not more than the amount established annually to  
34 be effective October 1 as provided in G.S. 97-29 a week, and in no case shall the period  
35 covered by such compensation be greater than 300 weeks from the date of injury. In  
36 case the partial disability begins after a period of total disability, the latter period shall  
37 be deducted from the maximum period herein allowed for partial disability. An officer  
38 or member of the State Highway Patrol shall not be awarded any weekly compensation  
39 under the provisions of this section for the first two years of any incapacity resulting  
40 from an injury by accident arising out of and in the course of the performance by him of  
41 his official duties if, during such incapacity, he continues to be an officer or member of  
42 the State Highway Patrol, but he shall be awarded any other benefits to which he may  
43 be entitled under the provisions of this Article. In no case shall the period covered by  
44 such compensation be greater than 300 weeks from the date of injury. In no case may



1 the period covered by the compensation provided by this section and G.S. 97-29(a)  
2 exceed an aggregate total of 300 weeks."

3 Sec. 17. G.S. 97-31 reads as rewritten:

4 **"§ 97-31. Schedule of injuries; rate and period of compensation.**

5 (a) In cases included by the following schedule the compensation in each case  
6 shall be paid for disability during the healing period and in addition the disability shall  
7 be deemed to continue for the period specified, and shall be in lieu of all other  
8 compensation, including disfigurement, to wit:

- 9 (1) For the loss of a thumb, sixty-six and two-thirds percent (66 2/3%)  
10 of the average weekly wages during 75 weeks.
- 11 (2) For the loss of a first finger, commonly called the index finger,  
12 sixty-six and two-thirds percent (66 2/3%) of the average weekly  
13 wages during 45 weeks.
- 14 (3) For the loss of a second finger, sixty-six and two-thirds percent (66  
15 2/3%) of the average weekly wages during 40 weeks.
- 16 (4) For the loss of a third finger, sixty-six and two-thirds percent (66  
17 2/3%) of the average weekly wages during 25 weeks.
- 18 (5) For the loss of a fourth finger, commonly called the little finger,  
19 sixty-six and two-thirds percent (66 2/3%) of the average weekly  
20 wages during 20 weeks.
- 21 (6) The loss of the first phalange of the thumb or any finger shall be  
22 considered to be equal to the loss of one half of such thumb or  
23 finger, and the compensation shall be for one half of the periods of  
24 time above specified.
- 25 (7) The loss of more than one phalange shall be considered the loss of  
26 the entire finger or thumb: Provided, however, that in no case shall  
27 the amount received for more than one finger exceed the amount  
28 provided in this schedule for the loss of a hand.
- 29 (8) For the loss of a great toe, sixty-six and two-thirds percent (66  
30 2/3%) of the average weekly wages during 35 weeks.
- 31 (9) For the loss of one of the toes other than a great toe, sixty-six and  
32 two-thirds percent (66 2/3%) of the average weekly wages during  
33 10 weeks.
- 34 (10) The loss of the first phalange of any toe shall be considered to be  
35 equal to the loss of one half of such toe, and the compensation shall  
36 be for one half of the periods of time above specified.
- 37 (11) The loss of more than one phalange shall be considered as the loss  
38 of the entire toe.
- 39 (12) For the loss of a hand, sixty-six and two-thirds percent (66 2/3%)  
40 of the average weekly wages during 200 weeks.
- 41 (13) For the loss of an arm, sixty-six and two-thirds percent (66 2/3%)  
42 of the average weekly wages during 240 weeks.
- 43 (14) For the loss of a foot, sixty-six and two-thirds percent (66 2/3%) of  
44 the average weekly wages during 144 weeks.

- 1 (15) For the loss of a leg, sixty-six and two-thirds percent (66 2/3%) of  
2 the average weekly wages during 200 weeks.
- 3 (16) For the loss of an eye, sixty-six and two-thirds percent (66 2/3%) of  
4 the average weekly wages during 120 weeks.
- 5 (17) The loss of both hands, or both arms, or both feet, or both legs, or  
6 both eyes, or any two thereof, shall constitute total and permanent  
7 disability, to be compensated according to the provisions of G.S.  
8 97-29. The employee shall have a vested right in a minimum  
9 amount of compensation for the total number of weeks of benefits  
10 provided under this section for each member involved. ~~When an~~  
11 ~~employee dies from any cause other than the injury for which he is~~  
12 ~~entitled to compensation, payment of the minimum amount of~~  
13 ~~compensation shall be payable as provided in G.S. 97-37.~~
- 14 (18) For the complete loss of hearing in one ear, sixty-six and two-thirds  
15 percent (66 2/3%) of the average weekly wages during 70 weeks;  
16 for the complete loss of hearing in both ears, sixty-six and two-  
17 thirds percent (66 2/3%) of the average weekly wages during 150  
18 weeks.
- 19 (19) Total loss of use of a member or loss of vision of an eye shall be  
20 considered as equivalent to the loss of such member or eye. The  
21 compensation for partial loss of or for partial loss of use of a  
22 member or for partial loss of vision of an eye or for partial loss of  
23 hearing shall be such proportion of the periods of payment above  
24 provided for total loss as such partial loss bears to total loss, except  
25 that in cases where there is eighty-five per centum (85%), or more,  
26 loss of vision in any eye, this shall be deemed 'industrial blindness'  
27 and compensated as for total loss of vision of such eye.
- 28 (20) The weekly compensation payments referred to in this section shall  
29 all be subject to the same limitations as to maximum and minimum  
30 as set out in G.S. 97-29.
- 31 (21) In case of serious facial or head disfigurement, the Industrial  
32 Commission shall award proper and equitable compensation not to  
33 exceed twenty thousand dollars (\$20,000). In case of enucleation  
34 where an artificial eye cannot be fitted and used, the Industrial  
35 Commission may award compensation as for serious facial  
36 disfigurement.
- 37 (22) In case of serious bodily disfigurement for which no compensation  
38 is payable under any other subdivision of this section, but  
39 excluding the disfigurement resulting from permanent loss or  
40 permanent partial loss of use of any member of the body for which  
41 compensation is fixed in the schedule contained in this section, the  
42 Industrial Commission may award proper and equitable  
43 compensation not to exceed ten thousand dollars (\$10,000).

1 (23) For the total loss of use of the back, sixty-six and two-thirds  
 2 percent (66 2/3%) of the average weekly wages during 300 weeks.  
 3 The compensation for partial loss of use of the back shall be such  
 4 proportion of the periods of payment herein provided for total loss  
 5 as such partial loss bears to total loss, except that in cases where  
 6 there is seventy-five per centum (75%) or more loss of use of the  
 7 back, in which event the injured employee shall be deemed to have  
 8 suffered 'total industrial disability' and compensated as for total  
 9 loss of use of the back.

10 (24) In case of the loss of or permanent injury to any important external  
 11 or internal organ or part of the body for which no compensation is  
 12 payable under any other subdivision of this section, the Industrial  
 13 Commission may award proper and equitable compensation not to  
 14 exceed twenty thousand dollars (\$20,000).

15 (b) The period covered by the benefits provided by G.S. 97-29(a), G.S. 97-30,  
 16 and G.S. 97-31(a) may not exceed an aggregate total of 350 weeks. This aggregate total  
 17 limitation shall not apply if the percentage of permanent physical impairment is greater  
 18 than or equal to eighty percent (80%)."

19 Sec. 18. Chapter 97 of the General Statutes is amended by adding a new  
 20 section to read:

21 "**§ 97-42.2. Coordination of benefits.**

22 Social Security Act retirement benefits or benefits received from a pension plan to  
 23 the extent the pension plan is funded by the employer shall be credited against the  
 24 amount of an award when either weekly or lump-sum payments are made to the  
 25 employee as a result of liability under this Article. The employee shall provide the  
 26 employer or insurer with proper authorization to secure the amount to which the  
 27 employee is entitled under the Social Security Act."

28 Sec. 19. G.S. 97-44 reads as rewritten:

29 "**§ 97-44. Lump sums.**

30 ~~Whenever any weekly payment has been continued for not less than six weeks, the~~  
 31 ~~liability therefor may, in unusual cases, where the Industrial Commission deems it to be~~  
 32 ~~to the best interest of the employee or his dependents, or where it will prevent undue~~  
 33 ~~hardships on the employer or his insurance carrier, without prejudicing the interests of~~  
 34 ~~the employee or his dependents, be redeemed, in whole or in part, by the payment by~~  
 35 ~~the employer of a lump sum which shall be fixed by the Commission, but in no case to~~  
 36 ~~exceed the uncommuted value of the future installments which may be due under this~~  
 37 ~~Article.~~

38 (a) A settlement may not provide for payment of any benefits in a lump-sum  
 39 except as provided in subsection (b) of this section.

40 (b) The employee may elect to commute the remainder of medical compensation  
 41 and benefits received under G.S. 97-31 to which the employee is entitled if the  
 42 employee has returned to work for at least three months and is earning at least eighty  
 43 percent (80%) of the employee's preinjury average weekly wage. If the employee elects  
 44 to commute these benefits, the employee shall not receive any additional income

1 benefits for the compensable injury. The Commission, however, in its discretion, may  
2 at any time in the case of a minor who has received permanently disabling injuries  
3 either partial or total provide that he be compensated, in whole or in part, by the  
4 payment of a lump sum, the amount of which shall be fixed by the Commission, but in  
5 no case to exceed the uncommuted value of the future installments which may be due  
6 under this Article."

7 Sec. 20. G.S. 97-47 reads as rewritten:

8 **"§ 97-47. Change of condition; modification of award.**

9 ~~Upon~~ Subject to G.S. 97-18.1, upon its own motion or upon the application of any  
10 party in interest on the grounds of a change in condition, the Industrial Commission  
11 may review any award, and on such review may make an award ending, diminishing, or  
12 increasing the medical compensation or compensation previously awarded, subject to  
13 the maximum or minimum provided in this Article, and shall immediately send to the  
14 parties a copy of the award. ~~No such review shall affect such award as regards any moneys~~  
15 ~~paid but no~~ No such review shall be made after two years from the date of the last  
16 payment of medical compensation or compensation pursuant to an award under this  
17 Article, except that in cases in which only medical or other treatment bills are paid, no  
18 such review shall be made after 12 months from the date of the last payment of bills for  
19 medical or other treatment, paid pursuant to this Article. Medical compensation or  
20 compensation that has been paid pursuant to the provisions of this Article prior to  
21 review shall not be affected by review or modification of an award under this section.  
22 Payment of medical compensation for palliative care under G.S. 97-25.1 shall not toll  
23 the time allowed for reviewing an award based upon a change of condition."

24 Sec. 21. G.S. 97-54 reads as rewritten:

25 **"§ 97-54. 'Disablement' defined.**

26 The term 'disablement' as used in this Article as applied to cases of asbestosis and  
27 silicosis means the event of becoming actually incapacitated because of asbestosis or  
28 silicosis to earn, in the same or any other employment, the wages which the employee  
29 was receiving at the time of his last injurious exposure to asbestosis or ~~silicosis;~~ ~~but in all~~  
30 ~~other cases of occupational disease 'disablement' shall be equivalent to 'disability' as defined in~~  
31 ~~G.S. 97-2(9).~~ silicosis."

32 Sec. 22. G.S. 97-55 is repealed.

33 Sec. 23. G.S. 97-79 reads as rewritten:

34 **"§ 97-79. Offices and supplies; deputies with power to subpoena witnesses and to**  
35 **take testimony; meetings; hearings.**

36 (a) The Commission shall be provided with adequate offices in which the records  
37 shall be kept and its official business transacted during regular business hours; it shall  
38 also be provided with necessary office furniture, stationery, and other supplies.

39 (b) The Commission may appoint deputies who shall have the same power to  
40 issue subpoenas, administer oaths, conduct hearings, hold persons, firms or corporations  
41 in contempt as provided in Chapter 5A of the General Statutes, take evidence, and enter  
42 orders, opinions, and awards based thereon as is possessed by the members of the  
43 Commission, and such deputy or deputies shall be subject to the State Personnel

1 System. Deputies shall be attorneys licensed to practice in this State and shall have a  
2 minimum of three years experience as attorneys.

3 (c) The Commission or any member thereof may hold sessions at any place  
4 within the State as may be deemed necessary by the Commission.

5 (d) Hearings before the Commission shall be open to the public and shall be  
6 stenographically reported, and the Commission is authorized to contract for the  
7 reporting of such hearings. The Commission shall by regulation provide for the  
8 preparation of a record of the hearings and other proceedings.

9 (e) The North Carolina Industrial Commission, or any member thereof, or any  
10 deputy is authorized by appropriate order, to make additional parties plaintiff or  
11 defendant in any proceeding pending before the North Carolina Industrial Commission  
12 when it is made to appear that such new party is either a necessary party or a proper  
13 party to a final determination of the proceeding.

14 (f) The Commission shall create an ombudsman program to assist unrepresented  
15 claimants, employers, and other parties, to enable them to protect their rights under this  
16 Article. In addition to other duties assigned by the Commission, the ombudsman shall  
17 meet with, or otherwise provide information to injured employees, investigate  
18 complaints, and communicate with employer's insurance carriers, and physicians at the  
19 request of the claimant. Assistance provided under this subsection shall not include  
20 representing the claimant in a compensation hearing."

21 Sec. 24. G.S. 97-82 is repealed.

22 Sec. 25. G.S. 97-80(a) reads as rewritten:

23 "(a) The Commission may make rules, not inconsistent with this Article, for  
24 carrying out the provisions of this Article. Processes and procedure under this Article  
25 shall be as summary and simple as reasonably may be. The Commission or any member  
26 thereof, or any person deputized by it, shall have the power, for the purpose of this  
27 Article, to tax costs against the parties, and to subpoena witnesses, administer or cause  
28 to have administered oaths, hold persons, firms or corporations in contempt as provided  
29 in Chapter 5A of the General Statutes, and to examine or cause to be examined such  
30 parts of the books and records of the parties to a proceeding as relate to questions in  
31 dispute. The Commission may order parties to participate in mediation, under rules  
32 substantially similar to those approved by the Supreme Court for use in the Superior  
33 Court division, and to apportion the costs among the parties. Any party to a proceeding  
34 under this Article may, upon application to the Commission, which application shall set  
35 forth the materiality of the evidence to be given, cause the depositions of witnesses  
36 residing within or without the State to be taken, the costs to be taxed as other costs by  
37 Commission. Such depositions shall be taken after giving the notice and in the manner  
38 prescribed by law for depositions in action at law, except that they shall be directed to  
39 the Commission, the commissioner, or the deputy commissioner before whom the  
40 proceedings may be pending."

41 Sec. 26. G.S. 143-296 reads as rewritten:

42 "**§ 143-296. Powers of Industrial Commission; deputies.**

43 The members of the Industrial Commission, or a deputy thereof, shall have power to  
44 issue subpoenas, administer oaths, conduct hearings, take evidence, enter orders,

1 opinions, and awards based thereon, and punish for contempt. The Industrial  
2 Commission is authorized to appoint deputies and clerical assistants to carry out the  
3 purpose and intent of this Article, and such deputy or deputies are hereby vested with  
4 the same power and authority to hear and determine tort claims against State  
5 departments, institutions, and agencies as is by this Article vested in the members of the  
6 Industrial Commission. Such deputy or deputies shall also have and are hereby vested  
7 with the same power and authority to hear and determine cases arising under the  
8 Workers' Compensation Act when assigned to do so by the Industrial Commission. The  
9 Commission may order parties to participate in mediation, under rules substantially  
10 similar to those approved by the Supreme Court for use in the Superior Court division,  
11 and to apportion the costs among the parties."

12 Sec. 27. G.S. 97-83 reads as rewritten:

13 **"§ 97-83. ~~In event of disagreement, Commission is to make award after hearing.~~**

14 If the employer and the injured employee or his dependents ~~fail to reach an~~  
15 ~~agreement, in regard to compensation under this Article within 14 days after the~~  
16 ~~employee has knowledge of the injury or death, or if they have reached such an~~  
17 ~~agreement which has been signed and filed with the Commission, and compensation has~~  
18 ~~been paid or is due in accordance therewith, and the parties thereto then disagree as to~~  
19 ~~the continuance of any weekly payment under such agreement, fail to reach an~~  
20 agreement in regard to benefits under this Article within 14 days after the employer has  
21 knowledge of the injury or death, or upon the arising of a dispute under this Article,  
22 either party may make application to the Industrial Commission for a hearing in regard  
23 to the matters at issue, and for a ruling thereon. The county commissioners of each of  
24 the counties shall provide a suitable place for the Industrial Commission to conduct  
25 hearings in the county seat of such county so long as the provision of such a suitable  
26 place does not interfere with the normal use of county facilities.

27 Immediately after such application has been received the Commission shall set the  
28 date of a hearing, which shall be held as soon as practicable, shall notify the parties at  
29 issue of the time and place of such hearing. The hearing or hearings shall be held in the  
30 city or county where the injury occurred, unless otherwise authorized by the Industrial  
31 Commission."

32 Sec. 28. G.S. 97-84 reads as rewritten:

33 **"§ 97-84. ~~Determination of disputes by Commission or deputy.~~**

34 ~~The Commission or any of its members~~ The deputy shall hear the parties at issue and  
35 their representatives and witnesses, and shall determine the dispute in a summary  
36 manner. The award, together with a statement of the findings of fact, rulings of law, and  
37 other matters pertinent to the questions at issue shall be filed with the record of the  
38 proceedings, within 180 days of the close of the hearing record unless time is extended  
39 for good cause by the Commission, and a copy of the award shall immediately be sent  
40 to the parties in dispute. ~~The parties may be heard by a deputy, in which event the hearing~~  
41 ~~shall be conducted in the same way and manner prescribed for hearings which are conducted by~~  
42 ~~a member of the Industrial Commission, and said deputy shall proceed to a complete~~  
43 ~~determination of the matters in dispute, file his written opinion within 180 days of the close of~~  
44 ~~the hearing record unless time is extended for good cause by the Commission, and the deputy~~

1 ~~shall cause to be issued an award pursuant to such determination.—~~The decision of the  
2 Commission shall be based on the greater weight of credible evidence as contained in  
3 the record. For purposes of this section, 'greater weight of credible evidence' means  
4 evidence that, when weighted against evidence in opposition, will produce in the mind  
5 of the trier of fact a firm conviction as to each essential element of the claim."

6 Sec. 29. G.S. 97-85 reads as rewritten:

7 **"§ 97-85. Review of award.**

8 If application is made to the Commission within 15 days from the date when notice  
9 of the award shall have been given, the full Commission shall review the award, and, if  
10 good ground be shown therefor, reconsider the evidence, receive further evidence,  
11 rehear the parties or their representatives, and, if proper, amend the award: ~~Provided,~~  
12 ~~however, when application is made for review of an award, and such an award has been heard~~  
13 ~~and determined by a commissioner of the North Carolina Industrial Commission, the~~  
14 ~~commissioner who heard and determined the dispute in the first instance, as specified by G.S.~~  
15 ~~97-84, shall be disqualified from sitting with the full Commission on the review of such award,~~  
16 ~~and the chairman of the Industrial Commission shall designate a deputy commissioner to take~~  
17 ~~such commissioner's place in the review of the particular award. The deputy commissioner so~~  
18 ~~designated, along with the two other commissioners, shall compose the full Commission upon~~  
19 ~~review. Provided further, the chairman of the Industrial Commission shall have the authority to~~  
20 ~~designate a deputy commissioner to take the place of a commissioner on the review of any~~  
21 ~~case, in which event the deputy commissioner so designated shall have the same authority and~~  
22 ~~duty as does the commissioner whose place he occupies on such review.~~award. Unless both  
23 parties request oral argument, the review shall be based on the record."

24 Sec. 30. G.S. 97-87 reads as rewritten:

25 **"§ 97-87. Filing ~~agreements approved by Commission or awards; judgment in~~**  
26 **~~accordance therewith; discharge or restoration of lien.~~**

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

44 Sec. 31. Chapter 97 of the General Statutes is amended by adding the  
45 following two new sections to read:

1 **"§ 97-88.2. Penalty for misrepresentation.**

2 (a) Any person who willfully makes any false or misleading statement or  
3 representation for the purpose of obtaining or assisting another to obtain any benefit or  
4 payment under this Article shall be guilty of a Class I felony and, upon conviction, shall  
5 be punished by a fine not to exceed ten thousand dollars (\$10,000), imprisonment not to  
6 exceed five years, or both. The court may order restitution.

7 (b) The Commission shall refer all cases of suspected fraud and all violations  
8 related to workers' compensation claims against insurers or self-funded employers to the  
9 Department of Insurance to:

10 (1) Perform investigations and refer possible criminal violations to the  
11 appropriate prosecutorial authorities;

12 (2) Conduct administrative violation proceedings; and

13 (3) Assess and collect penalties and restitution.

14 (c) Penalties collected under subsection (a) of this section shall be paid to the  
15 Department of Insurance for the costs of performing its duties under subsection (b) of  
16 this section.

17 (d) The Commission shall not be liable in a civil action for any action made in  
18 good faith under this section, including the identification and referral of a person for  
19 investigation and prosecution for an alleged administrative violation or criminal offense.  
20 Any person, including, but not limited to, an employer, an insurer, and an employee of  
21 an insurer, who in good faith comes forward with information under this section, shall  
22 not be liable in a civil action.

23 (e) The Commission shall report annually to the General Assembly on the  
24 number and disposition of investigations involving claimants, employers, attorneys,  
25 medical providers, and vocational rehabilitation providers.

26 **"§ 97-88.3. Penalty for health care providers.**

27 (a) Any health care provider who willfully or intentionally undertakes the  
28 following acts is subject to an administrative penalty not to exceed ten thousand dollars  
29 (\$10,000):

30 (1) Submitting charges for health care that was not furnished;

31 (2) Administering improper, unreasonable, or medically unnecessary  
32 treatment or services;

33 (3) Failing or refusing to timely file required reports or records;

34 (4) Making unnecessary referrals;

35 (5) Failing to disclose an interest as required by this Article;

36 (6) Violating the Commission's treatment guidelines;

37 (7) Violating any rules adopted by the Commission pursuant to  
38 Chapter 150B of the General Statutes;

39 (8) Failing to comply with any provision of this Article.

40 (b) A health care provider who knowingly charges or otherwise holds an  
41 employee financially responsible for the cost of any services provided for a  
42 compensable injury under this Article is guilty of a misdemeanor.



1       (c) Any person, including, but not limited to, an employer, an insurer, and an  
2 employee of an insurer, who in good faith comes forward with information under this  
3 section, shall not be liable in a civil action.

4       (d) Information relating to possible violations under this section shall be reported  
5 to the Commission which shall refer the same to the appropriate licensing or regulatory  
6 board or authority for the health care provider involved.

7       (e) A hospital that relies on a written order of a physician in performing health  
8 care services shall not be subject to an administrative penalty in violation of this  
9 section."

10       Sec. 32. G.S. 97-89 is repealed.

11       Sec. 33. G.S. 97-90 reads as rewritten:

12 **"§ 97-90. Legal and medical fees to be approved by Commission; misdemeanor to**  
13 **receive fees unapproved by Commission, or to solicit employment in**  
14 **adjusting claims; agreement for fee or compensation.**

15       (a) Fees for attorneys and physicians and charges of hospitals for medical  
16 compensation under this Article shall be subject to the approval of the Commission; but  
17 no physician or hospital or other medical facilities shall be entitled to collect fees from  
18 an employer or insurance carrier until he has made the reports required by the Industrial  
19 Commission in connection with the case. Unless otherwise provided by the rules,  
20 schedules, or orders of the Commission, a request for a specific prior approval to charge  
21 shall be submitted to the Commission for each such fee or charge.

22       (b) Any person (i) who receives any fee, other consideration, or any gratuity on  
23 account of services so rendered, unless such consideration or gratuity is approved by the  
24 Commission or such court, or (ii) who makes it a business to solicit employment for a  
25 lawyer or for himself in respect of any claim or award for compensation, shall be guilty  
26 of a misdemeanor, and upon conviction thereof shall, for each offense, be punished by a  
27 fine of not more than five hundred dollars (\$500.00) or by imprisonment not to exceed  
28 one year, or by both such fine and imprisonment.

29       (c) ~~If an attorney has an agreement for fee or compensation under this Article, he~~  
30 ~~shall file a copy or memorandum thereof with the hearing officer or Commission prior~~  
31 ~~to the conclusion of the hearing. If the agreement is not considered unreasonable, the~~  
32 ~~hearing officer or Commission shall approve it at the time of rendering decision. If the~~  
33 ~~agreement is found to be unreasonable by the hearing officer or Commission, the~~  
34 ~~reasons therefor shall be given and what is considered to be reasonable fee allowed. If~~  
35 ~~within five days after receipt of notice of such fee allowance, the attorney shall file~~  
36 ~~notice of appeal to the full Commission, the full Commission shall hear the matter and~~  
37 ~~determine whether or not the attorney's agreement as to a fee or the fee allowed is~~  
38 ~~unreasonable. If the full Commission is of the opinion that such agreement or fee~~  
39 ~~allowance is unreasonable and so finds, then the attorney may, by filing written notice~~  
40 ~~of appeal within 10 days after receipt of such action by the full Commission, appeal to~~  
41 ~~the resident judge of the superior court or the judge holding the courts of the district of~~  
42 ~~or in the county in which the cause of action arose or in which the claimant resides; and~~  
43 ~~upon such appeal said judge shall consider the matter and determine in his discretion the~~  
44 ~~reasonableness of said agreement or fix the fee and direct an order to the Commission~~

~~1 following his determination therein. The Commission shall, within 20 days after receipt  
2 of notice of appeal from its action concerning said agreement or allowance, transmit its  
3 findings and reasons as to its action concerning such agreement or allowance to the  
4 judge of the superior court designated in the notice of appeal. In all other cases where  
5 there is no agreement for fee or compensation, the attorney or claimant may, by filing  
6 written notice of appeal within five days after receipt of notice of action of the full  
7 Commission with respect to attorneys' fees, appeal to the resident judge of the superior  
8 court or the judge holding the courts of the district of the county in which the cause  
9 arose or in which the claimant resides; and upon such appeal said judge shall consider  
10 the matter of such fee and determine in his discretion the attorneys' fees to be allowed in  
11 the cause. The Commission shall, within 20 days after notice of appeal has been filed,  
12 transmit its findings and reasons as to its action concerning such fee or compensation to  
13 the judge of the superior court designated in the notice of appeal; provided that the  
14 Commission shall in no event have any jurisdiction over any attorneys' fees in any third-  
15 party action.~~

16 The Industrial Commission in determining an allowance of attorney fees shall  
17 examine the record to determine the services rendered. Neither the employer nor its  
18 carrier shall be liable for any part of the fee to be paid to the claimant's attorney. The  
19 fees shall be allowed only on the amount of compensation disputed. The factors to be  
20 considered by the Industrial Commission in determining an allowance of attorney fees  
21 shall include, but not necessarily be limited to: The nature, scope, and quality of the  
22 attorneys' services; the level of skill and competence required of the attorney in  
23 rendering the services; the results achieved; the experience and skill level of the  
24 attorney; and the contingent nature of the case. In the order making the allowance of  
25 attorney fees, the Industrial Commission shall set forth findings sufficient to support the  
26 amount approved.

27 The Commission may reduce the attorneys' fee to an amount commensurate with the  
28 services performed, or may deny or reduce an attorney's fee upon proof of solicitation of  
29 employment.

30 (c1) No attorneys' fee in any case involving benefits under this Article shall be  
31 paid until the fee is approved by the Industrial Commission. Any contract for the  
32 payment of attorneys' fees other than as provided in this section is void. The motion for  
33 approval of an attorney fee allowance shall be submitted within 30 days following a  
34 final determination of the last appealable order of the Industrial Commission.

35 (d) Provided, that nothing contained in this section shall prevent the collection of  
36 such reasonable fees of physicians and charges for hospitalization as may be recovered  
37 in an action, or embraced in settlement of a claim, against a third-party tort-feasor as  
38 described in G.S. 97-10.

39 (e) The fees provided for in subsection (a) of this section shall be approved by  
40 the Commission no later than June 1 of the year in which the Commission exercises its  
41 authority under subsection (a) of this section, but shall not become effective until July 1  
42 following such approval.

43 (f) For purposes of this section, 'benefits secured' means benefits obtained as a  
44 result of the claimant's attorneys' legal services rendered in connection with the claim

1 for benefits, to the extent that the amount of benefits secured is in excess of any offer of  
2 settlement filed pursuant to G.S. 97-17, if that offer of settlement was filed prior to the  
3 attorneys' involvement in the claim for benefits."

4 Sec. 34. G.S. 97-91 reads as rewritten:

5 **"§ 97-91. Commission to determine all questions.**

6 All questions arising under this Article ~~if not settled by agreements of the parties~~  
7 ~~interested therein, with the approval of the Commission,~~ shall be determined by the  
8 Commission, except as otherwise herein provided."

9 Sec. 35. G.S. 97-98 reads as rewritten:

10 **"§ 97-98. Policy must contain agreement promptly to pay benefits; continuance of**  
11 **obligation of insurer in event of default.**

12 No policy of insurance against liability arising under this Article shall be issued  
13 unless it contains the agreement of the insurer that it will promptly pay to the person  
14 entitled to same all benefits conferred by this Article, and all installments of the  
15 compensation that may be ~~awarded or agreed upon,~~ awarded, and that the obligation shall  
16 not be affected by any default of the insured after the injury or by any default in giving  
17 notice required by ~~such the~~ the policy or otherwise. ~~Such~~ The agreement shall be construed  
18 to be a direct promise by the insurer to the person entitled to compensation enforceable  
19 ~~in his name.~~ the name of the person."

20 Sec. 36. G.S. 58-36-1(5) reads as rewritten:

21 "(5) It is the duty of every insurer that writes workers' compensation  
22 insurance in this State and is a member of the Bureau, as defined in  
23 this section and G.S. 58-36-5 to insure and accept any workers'  
24 compensation insurance risk that has been certified to be 'difficult  
25 to place' by any fire and casualty insurance agent who is licensed in  
26 this State. When any such risk is called to the attention of the  
27 Bureau by receipt of an application with an estimated or deposit  
28 premium payment and it appears that the risk is in good faith  
29 entitled to such coverage, the Bureau will bind coverage for 30  
30 days and will designate a member who must issue a standard  
31 workers' compensation policy of insurance that contains the usual  
32 and customary provisions found in those policies. Coverage will  
33 be bound at 12:01 A.M. on the first day following the postmark  
34 time and date on the envelope in which the application is mailed  
35 including the estimated annual or deposit premium, or the  
36 expiration of existing coverage, whichever is later. If there should  
37 be no postmark, coverage will be effective 12:01 A.M. on the date  
38 of receipt by the Bureau unless a later date is requested. Those  
39 applications hand delivered to the Bureau will be effective as of  
40 12:01 A.M. of the date following receipt by the Bureau unless a  
41 later date is requested. The designated carrier may request of the  
42 Bureau certification of the State Department of Labor that the  
43 insured is complying with the laws, rules, and regulations of that  
44 Department. The certification must be finished within 30 days by

1 the State Department of Labor unless extension of time is granted  
2 by agreement between the Bureau and the State Department of  
3 Labor. The Bureau will make and adopt such rules as are  
4 necessary to carry this section into effect, subject to final approval  
5 of the Commissioner. As a prerequisite to the transaction of  
6 workers' compensation insurance in this State, every member of the  
7 Bureau that writes such insurance must file with the Bureau written  
8 authority permitting the Bureau to act in its behalf, as provided in  
9 this section, and an agreement to accept risks that are assigned to  
10 the member by the Bureau, as provided in this section.

11 Failure or refusal by any assigned employer risk to make full disclosure to the  
12 Bureau, servicing carrier, or insurer writing a policy of information regarding the  
13 employer's true ownership, change of ownership, operations, or payroll; or any other  
14 failure to disclose fully any records pertaining to workers' compensation insurance shall  
15 be sufficient grounds for the Bureau to authorize the termination of the policy of that  
16 employer."

17 Sec. 37. G.S. 97-93 reads as rewritten:

18 **"§ 97-93. Employers required to carry insurance or prove financial ability to pay**  
19 **for benefits; employers required to post notice; self-insured employers**  
20 **regulated by Commissioner of Insurance.**

21 (a) Every employer subject to the provisions of this Article relative to the  
22 payment of compensation shall either:

23 (1) Insure and keep insured his liability under this Article in any  
24 authorized corporation, association, organization, or in any mutual  
25 insurance association formed by a group of employers so authorized;  
26 or

27 (2) Furnish to the Commissioner of Insurance satisfactory proof of the  
28 employer's financial ability, either alone or through membership in a  
29 group comprising two or more employers who agree to pool their  
30 liabilities under this Article, to directly pay the compensation in the  
31 amount and manner and when due as provided for in this Article.

32 (a1) Every employer who is in compliance with the provisions of subsection (a) of  
33 this section shall post in a conspicuous place in places of employment a notice stating  
34 that employment by this employer is subject to the North Carolina Workers'  
35 Compensation Act and stating whether the employer has a policy of insurance against  
36 liability or qualifies as a self-insured employer. In the event the employer allows its  
37 insurance to lapse or ceases to qualify as a self-insured employer, the employer shall,  
38 within five working days of this occurrence, remove any notices indicating otherwise.

39 (b) In the case of subdivision (a)(2) of this section, the Commissioner of  
40 Insurance may require the deposit of an acceptable security, indemnity, or bond to  
41 secure the payment of compensation liabilities as they are incurred. Any individual  
42 employer or group of employers who furnish proof of financial ability under subdivision  
43 (a)(2) of this section shall be governed in all respects by this Article and by such rules  
44 as may be promulgated by the Commissioner of Insurance.

1 (c) Payment of dividends to the members of any group of employers who agree  
2 to pool their liabilities under subdivision (a)(2) of this section shall not be contingent  
3 upon the maintenance or continuance of membership in such pools."

4 Sec. 38. The North Carolina Rate Bureau and its member companies are  
5 directed to cooperate fully with the Commissioner of Insurance in conducting a  
6 thorough and complete study of the methods and costs of assigning "difficult to place"  
7 workers' compensation insurance risks under G.S. 58-36-1(5). Such study shall be  
8 completed and the Commissioner shall report on the same to the Joint Legislative  
9 Commission on Governmental Operations by March 1, 1994, for consideration of any  
10 needed legislation in the 1994 Regular Session of the 1993 General Assembly. The  
11 report of the Commissioner, and the study preceding the same, shall examine such  
12 things as, but not be limited to, the criteria used for assigning a workers' compensation  
13 risk, the qualifications of and the compensation paid to insurers which service risks  
14 assigned under that statute, safety and loss prevention services provided to risks so  
15 assigned, the acquisition expenses paid by the Rate Bureau and its member insurers to  
16 insurance agents placing risks through such assignments, and the equities of both  
17 member insurers and self-funded employers sharing in any possible losses sustained by  
18 that assigned risk plan. The study and report of the Commissioner may, in his  
19 discretion, also address the procedures and methodology for insurance rate making  
20 under Article 36 of Chapter 58 of the North Carolina General Statutes.

21 Sec. 39. The provisions of G.S. 97-79(f), as enacted by Section 23 of this act,  
22 shall not become effective unless and until the General Assembly appropriates funds for  
23 its implementation. Section 38 of this act is effective upon ratification. Section 13 of  
24 this act becomes effective October 1, 1993. The remaining sections of this act become  
25 effective January 1, 1994.