

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1993**

**S**

**4**

SENATE BILL 906

Manufacturing and Labor Committee Substitute Adopted 5/10/93

Third Edition Engrossed 5/11/93

Select Committee on Senate Bill 906 Committee Substitute Adopted 7/8/93

Short Title: Workers' Comp. Reform.

(Public)

---

Sponsors:

---

Referred to: Appropriations.

---

April 19, 1993

A BILL TO BE ENTITLED

1 AN ACT TO MAKE VARIOUS SUBSTANTIVE AMENDMENTS TO THE  
2 WORKERS' COMPENSATION ACT AND TO MAKE RELATED CHANGES.  
3

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 of permanent  
14 disability claims that cannot be justified by a corresponding increase in the severity of  
15 injuries and has led to expensive, time-consuming litigation over such issues as the  
16 degree of 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

1 employers for several consecutive years, the most recent and largest insurance rate  
2 increase being implemented by the North Carolina Rate Bureau over the objections of  
3 the Commissioner of Insurance, resulting in an average aggregate increase of almost  
4 150% in the last five years; and

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

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

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

17       Whereas, the time has come for the General Assembly to restore the Workers'  
18 Compensation Act so that it provides the balance and stability it enjoyed for more than  
19 50 years; Now, therefore,

20 The General Assembly of North Carolina enacts:

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

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

1                   and scope of employment. Injury, personal injury, or disease does not  
2                   mean mental injury that is unaccompanied by physical injury."

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

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

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

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

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

22           (21) Objective Findings. — 'Objective findings' means diagnostic  
23           evidence that is substantiated by clinical findings, including, but  
24           not limited to, diagnostic evidence regarding range of motion,  
25           atrophy, muscle strength, and muscle spasm.

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

33           (23) Partial Disability. — 'Partial disability' means a condition whereby  
34           an employee, due to an injury, suffers a physical impairment.

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

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

6           b. A chiropractor licensed to practice chiropractic in this State,  
7 Tennessee, Georgia, Virginia, or South Carolina.

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

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

15 **"§ 97-9.1. Burden of proof.**

16           The employee has the burden of proving that an injury arose out of and in the course  
17 and scope of employment and the burden of proving that the injury is established by  
18 medical evidence supported by objective findings."

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

20 **"§ 97-10.1. Other rights and remedies against employer excluded.**

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

28           (b) The only exception to the exclusive remedy provided in subsection (a) of this  
29 section is for an injury that results from an intentional tort by the employer. For the  
30 purposes of this Article, an intentional tort occurs only when an employer intentionally  
31 engages in misconduct knowing it is substantially certain to cause serious injury or  
32 death to employees and an employee is injured or killed by that misconduct.

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

36           (d) If any benefits payable under the provisions of G.S. 97-29(b), 97-30, or 97-31  
37 are accepted by an employee or an employee's dependents, next of kin, or personal  
38 representative, then the employee and employee's dependents, next of kin, or other  
39 personal representative shall forfeit any other rights or remedies against the employer,  
40 including, but not limited to, any statutory and common-law claims against the  
41 employer, whether derivative or independent, relating in any way to the injury or death.  
42 Further, if an employee or an employee's dependents, next of kin, or personal  
43 representative files a civil action seeking to recover for such injury or death from an  
44 employer and fails to accept benefits payable under the provisions of this Article before

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

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

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

21 **"§ 97-12. Use of intoxicant or controlled substance; willful neglect; willful**  
 22 **disobedience of statutory duty, safety regulation or rule.**

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

- 25 (1) ~~His~~The employee's intoxication, provided the intoxicant was not  
 26 supplied by the employer or ~~his~~the employer's agent while acting  
 27 in a supervisory capacity to the employee; or  
 28 (2) ~~His~~The employee's being under the influence of any controlled  
 29 substance listed in the North Carolina Controlled Substances Act,  
 30 G.S. 90-86, et seq., where such controlled substance was not by  
 31 prescription by a ~~practitioner~~, practitioner, and provided the  
 32 controlled substance was not supplied by the employer or the  
 33 employer's agent while acting in a supervisory capacity to the  
 34 employee; or  
 35 (3) ~~His~~The employee's willful intention to injure or kill himself or  
 36 another. When the injury or death is caused by the willful failure  
 37 of the employer to comply with any statutory requirement or any  
 38 lawful order of the Commission, compensation shall be increased  
 39 ten percent (10%). When the injury or death is caused by the  
 40 willful failure of the employee to use a safety appliance or perform  
 41 a statutory duty or by the willful breach of any reasonable rule or  
 42 regulation adopted by the employer and approved by the Commission  
 43 and brought to the knowledge of the employee prior to the injury  
 44 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—If it shall be made to appear to the  
12 satisfaction of the Commission that there has been error due to fraud, misrepresentation,  
13 undue influence or mutual mistake, in which event the Industrial Commission may set  
14 aside such a settlement agreement. Any settlement shall constitute a final determination  
15 of liability for the injury and shall be binding on all parties.

16 (b) Within 180 days from the date of the first payment of compensation, the  
17 employer may serve upon the employee an offer of settlement, which shall be filed by  
18 the employer with the Commission. If within 30 days after the service of the offer of  
19 settlement, the employee serves written notice that the offer is accepted, the employer  
20 shall file with the Commission a Notice of Intent to Settle, together with the agreed  
21 terms of settlement. The Commission may approve or reject the settlement, and unless  
22 the settlement is approved or rejected within 60 days following submission of the  
23 Notice of Intent to Settle, the settlement shall be deemed approved.

24 (c) An offer of settlement not accepted within 30 days after its service shall be  
25 deemed withdrawn. The failure or refusal of the employee to timely accept the offer  
26 does not preclude a subsequent settlement.

27 (d) Evidence of an offer of settlement shall not be admissible in a subsequent  
28 proceeding on the issue of compensability."

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

36 (d) Following an administrative decision by the Commission pursuant to  
37 subsection (b) of this section, either party may file a request for a hearing pursuant to  
38 G.S. 97-83. The employer shall not be required to continue payment of compensation  
39 following the Commission's determination upholding the employer's decision. If neither  
40 party requests a hearing within seven days of the administrative decision, that decision  
41 shall 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 of measurable 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 organizations.**

30 As used in this section, 'managed care organization' means a preferred provider  
31 organization, plan, or arrangement, an exclusive provider panel, or a health maintenance  
32 organization regulated under Chapter 58 of the General Statutes. An employer or  
33 carrier may satisfy the requirements of G.S. 97-25 by contracting with a managed care  
34 organization. Notwithstanding any other provision of this Article, if an employer or  
35 carrier contracts with a managed care organization for medical services that are  
36 compensable under this Article, those employees who are covered by the contract with  
37 the managed care organization shall receive medical services in the manner prescribed  
38 by the contract or in accordance with the managed care organization's plan of operation;  
39 provided that the plan of operation has been approved by the Commissioner of  
40 Insurance and further provided that the contract complies with rules adopted by the  
41 Commission governing such managed care organizations. Immediate emergency  
42 medical services provided by a health care provider who is not a member of the  
43 managed care organization or a party to the contract are compensable under this Article.  
44 An employee must exhaust any dispute resolution procedure of a managed care

1 organization before that employee may seek review by the Commission on any issue  
2 related to the managed care organization or the choice of a physician. Once application  
3 to the Commission has been made, the employee shall be entitled to an examination by  
4 a duly qualified physician or surgeon in the same manner as provided by G.S. 97-27.

5 If the employer or insurer elects to provide medical care through a managed care  
6 program pursuant to this section, the employee shall select the attending physician from  
7 those physicians who are members of the managed care program, and may subsequently  
8 change attending physicians once within the group of physicians who are members of  
9 the managed care program without approval from the employer or insurer. Additional  
10 changes in attending physician or any change to a physician not a member of the  
11 employer's or insurer's managed care program shall only be made pursuant to the  
12 procedures set forth in this section.

13 **"§ 97-25.3. Preauthorization.**

14 (a) An employee shall notify the insurer within five working days before hospital  
15 in-patient confinement or surgery, except in case of an emergency, in accordance with  
16 procedures prescribed by the Commission. When hospitalization or surgery is  
17 recommended, the insurer shall make a hospital confinement and surgery review and  
18 shall have reasonable opportunity to obtain an independent medical exam. A copy of  
19 the review shall be provided to the employee, attending physician, and hospital in  
20 writing. Hospital and physician charges incurred without preauthorization shall be  
21 reduced by fifty percent (50%) provided that notice has been given to the hospital and  
22 physician of the requirement of preauthorization. The employee shall not be liable for  
23 payment of the balance. A hospital and physician that refuse to treat an employee for  
24 other than an emergency medical condition because preauthorization has not been  
25 obtained shall be immune from liability in any civil action.

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

30 (c) The Commission shall adopt rules specifying additional types of medical care  
31 requiring express preauthorization by the insurer. The Commission shall adopt rules  
32 establishing a procedure for expedited resolution of any dispute over the denial of  
33 preauthorization by the insurer.

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

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

- 1           (1)     The insurer or employer waives the right to request a second  
2           opinion from a physician approved by the insurer or the  
3           Commission no later than 14 days after the date of notification that  
4           any of these medical treatments is recommended; or  
5           (2)     The employee obtains a second opinion from a physician approved  
6           by the insurer or the Commission, and the second physician  
7           concurs with the attending physician's recommendation.  
8           (f)     The insurer or Commission may require an employee to submit to medical  
9           examinations to resolve any question about the appropriateness of medical treatment  
10          received or recommended. The Commission shall require a physical examination only  
11          after the insurer has attempted and failed to receive the permission of the employee.  
12          (g)     The insurer shall pay for any physical examination required under subsections  
13          (e) and (f) of this section.  
14          (h)     An employee who, without good cause, fails or refuses to appear at the time  
15          scheduled for a physical examination under subsections (e) or (f) of this section shall  
16          have the employee's rights suspended as provided in G.S. 97-27(a).  
17          (i)     A health care provider shall not pursue a private claim against an employee  
18          for all or part of the costs of medical treatment provided to the employee by the provider  
19          unless the claim is finally adjudicated not to be compensable under this Article or unless  
20          the employee fails to comply with this section."

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

22   "**§ 97-26. ~~Liability—Fees allowed for medical treatment measured by average cost in~~**  
23   **~~community; treatment; malpractice of physician.~~**

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

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

- 33    —           (1)     The Teachers' and State Employees' Comprehensive Major  
34           Medical Plan shall provide to the Commission no later than  
35           December 1st of each year the average of all allowable charges of  
36           providers under the Teachers' and State Employees'  
37           Comprehensive Major Medical Plan for each CPT ('Current  
38           Procedural Terminology') or standard code. This subdivision does  
39           not apply to providers covered under subdivisions (2) or (3) of this  
40           subsection.  
41           (2)     Each hospital shall provide to the Commission no later than  
42           December 1st of each year its schedule of charges under the  
43           Teachers' and State Employees' Comprehensive Major Medical  
44           Plan.

- 1           (3)     Each institutional provider, other than a hospital, shall provide to  
2           the Commission, upon request of the Commission, no later than  
3           December 1st of each year, its schedule of charges under the  
4           Teachers' and State Employees' Comprehensive Major Medical  
5           Plan.
- 6           (4)     The maximum fee for a specified treatment, procedure, service, or  
7           task shall equal:
- 8           a.       For a provider under subdivision (1) of this subsection, the  
9           average fee reported pursuant to subdivision (1) of this  
10           subsection for the CPT or standard code;
- 11           b.       For a provider under subdivision (2) of this subsection, the fee  
12           charged by the provider under its schedule of charges with the  
13           Teachers' and State Employees' Comprehensive Major Medical  
14           Plan;
- 15           c.       For a provider under subdivision (3) of this subsection, the fee  
16           determined by the Commission after review of the information  
17           submitted pursuant to subdivision (3).
- 18           (5)     The codes established by the Commission shall be in accordance  
19           with the codes contained in the American Medical Association's  
20           Physicians' Current Procedural Terminology (CPT), as modified, or  
21           in standard codes and definitions produced by other recognized  
22           professional associations for which CPT codes do not exist. The  
23           use of modifier codes shall be strictly limited, the additional fee  
24           allowed for each modification shall be provided in the fee schedule,  
25           and documentation indicating the need for such modifiers shall be  
26           required. Services, procedures, and tasks shall be billed using the  
27           most inclusive codes available; and differing elements of a service,  
28           procedure, or task shall not be billed individually when a single  
29           code is available describing the complete service, procedure, or  
30           task.
- 31           (6)     Each surgical procedure shall provide for appropriate subsequent  
32           care, including examinations, changes of dressings, and similar  
33           services associated with postsurgery recovery, but the cost of such  
34           care shall not be billed during the recovery period.
- 35           (b)     Unless the employer or insurer and a health care provider agree to a lesser  
36           fee, the fees charged for treatment and care under this Article shall be the provider's  
37           usual and customary fee for the treatment or service, or the fee for that treatment or  
38           service under the Commission's schedule, whichever is less.
- 39           (c)     Health care providers shall submit charges to the employer within 30 days of  
40           treatment or within 30 days after the end of the month during which multiple treatments  
41           were provided. If the employer disputes a part of a provider's bill, it shall pay the  
42           uncontested portion of the bill and shall resolve disputes regarding the balance of  
43           medical charges in accordance with this section. Health care providers shall not charge  
44           for diagnostic tests previously conducted by other providers, unless the provider has

1 reasonable grounds to believe a change in patient condition has occurred or the quality  
2 of the prior test is doubted. The Commission shall adopt rules establishing reasonable  
3 requirements for reports and records to be made available to other health care providers  
4 to prevent unnecessary duplication of tests and examinations.

5 (d) The Commission shall promulgate rules governing treatment. Such rules shall  
6 define appropriate clinical indications and methods of treatment, must be consistent  
7 with appropriate standards of care and levels of quality, and shall take into account  
8 resources available to physicians practicing in various geographic areas of the State. In  
9 developing the rules, the Commission must consider and may adopt or modify treatment  
10 guidelines in accordance with practice guidelines and parameters developed by the  
11 North Carolina Board of Medical Examiners, North Carolina Medical Society, and the  
12 American Medical Association. Neither the employer, its insurer, nor the employee  
13 shall be responsible for reimbursing a health care provider for treatment of the injured  
14 employee that exceeds in frequency treatment plans adopted by the Commission.

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

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

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

23 "**§ 97-27. Medical examination; facts not privileged; refusal to be examined**  
24 **suspends compensation; autopsy.**

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

1 (b) In those cases arising under this Article in which there is a question as to the  
2 percentage of permanent disability suffered by an employee, if any employee, required  
3 to submit to a physical examination under the provisions of subsection (a) is dissatisfied  
4 with such examination or the report thereof, he shall be entitled to have another  
5 examination by a duly qualified physician or surgeon licensed and practicing in North  
6 Carolina or by a duly qualified physician or surgeon licensed to practice in South  
7 Carolina, Georgia, Virginia and Tennessee provided said nonresident physician or  
8 surgeon shall have been approved by the North Carolina Industrial Commission and his  
9 name placed on the Commission's list of approved nonresident physicians and surgeons,  
10 designated by him and paid by the employer or the Industrial Commission in the same  
11 manner as physicians designated by the employer or the Industrial Commission are  
12 paid. Provided, however, that all travel expenses incurred in obtaining said examination  
13 shall be paid by said employee. The employer shall have the right to have present at  
14 such examination a duly qualified physician or surgeon provided and paid by him.  
15 dispute as to the extent, nature, or cause of disability or death, or a dispute as to whether  
16 the employee is medically stationary, the attending physician who has provided the  
17 primary care shall make a determination on medical issues as provided in this section.  
18 If either party disputes the attending physician's findings, the parties may select an  
19 independent medical examiner by mutual agreement. If the parties are unable to  
20 mutually agree on the selection of an independent medical examiner, the Commission  
21 shall assign a panel of three independent medical examiners.

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

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

1 be conducted until the findings of the independent medical examiner have been filed  
2 with the Commission.

3 (e) No fact communicated to or otherwise learned by any physician or surgeon  
4 who may have attended or examined the employee, or who may have been present at  
5 any examination, shall be privileged, either in hearings provided for by this Article or  
6 any action at law.

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

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

15 (2) Be licensed to practice medicine or surgery in this State,  
16 Tennessee, Georgia, Virginia, or South Carolina; and

17 (3) Be board certified."

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

19 "**§ 97-29. Compensation rates for total ~~incapacity~~-disability.**

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

27 Notwithstanding any other provision of this section, temporary total disability  
28 benefits shall continue until any one of the following first occurs:

29 (1) The employee becomes medically stationary;

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

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

33 (4) The attending physician gives the employee a written release to  
34 return to modified employment, this employment is offered to the  
35 employee in writing, and the employee fails to begin the  
36 employment.

37 If the employee returns to work pursuant to the provisions of this subsection, the  
38 employer shall continue to provide medical compensation. In no case shall the period  
39 covered by such compensation be greater than 300 weeks from the date of injury. In no  
40 case may the period covered by the compensation provided by this subsection and G.S.  
41 97-30 exceed an aggregate total of 300 weeks.

42 (b) Where the injured employee sustains a permanent total disability, the  
43 employer shall pay, or cause to be paid to the injured employee during the permanent  
44 total disability, a weekly compensation equal to sixty-six and two-thirds percent (66

1 2/3%) of the employee's average weekly wages, but not more than the amount  
2 established annually, to be effective October 1 as provided herein, nor less than thirty  
3 dollars (\$30.00) per week.

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

8 (c) The weekly compensation payment for members of the North Carolina  
9 national guard and the North Carolina State guard shall be the maximum amount  
10 established annually in accordance with the last paragraph of this section per week as  
11 fixed herein. The weekly compensation payment for deputy sheriffs, or those acting in  
12 the capacity of deputy sheriffs, who serve upon a fee basis, shall be thirty dollars  
13 (\$30.00) a week as fixed herein.

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

20 (d) Notwithstanding any other provision of this Article, on July 1 of each year, a  
21 maximum weekly benefit amount shall be computed. The amount of this maximum  
22 weekly benefit shall be derived by obtaining the average weekly insured wage in  
23 accordance with G.S. 96-8(22), by multiplying such average weekly insured wage by  
24 1.10, and by rounding such figure to its nearest multiple of two dollars (\$2.00), and this  
25 said maximum weekly benefit shall be applicable to all injuries and claims arising on  
26 and after January 1 following such computation. Such maximum weekly benefit shall  
27 apply to all provisions of this Chapter and shall be adjusted July 1 and effective January  
28 1 of each year as herein provided.

29 (e) In addition to the provisions of subsection (a) of this section, temporary total  
30 disability benefits may be terminated for an employee of an employer with 25 or more  
31 employees upon the written release under subdivisions (a)(3) and (a)(4) of this section,  
32 completed by the attending physician on a form prescribed by the Commission.  
33 Temporary total benefits terminate and permanent partial disability benefits, if any,  
34 begin upon certification on the release form by the physician that the employee is able  
35 to return to work at a job actually available to the employee. The physician may consult  
36 with vocational experts. The certification must specify the requirements of the job.

37 A dispute over the attending physician's certification or refusal to certify pursuant to  
38 this subsection shall be resolved by an independent medical examination pursuant to  
39 G.S. 97-27. Such determination shall be binding on the parties pending a hearing  
40 pursuant to G.S. 97-84. Notwithstanding the provisions of G.S. 97-18.1(a), the  
41 employer may terminate temporary total disability benefits seven days following receipt  
42 by the employee of notification that the physician has determined the employee can  
43 perform the specified job. Any nonpayment of benefits later determined to be due shall  
44 be subject to the ten percent (10%) penalty provisions of G.S. 97-18(e). If the employee

1 proves incapable of sustained performance in the specified job, temporary total  
2 disability benefits shall immediately resume if the employee is otherwise entitled to the  
3 benefits.

4 (f) If an employer with 25 or more employees fails to offer an employee who  
5 sustains a compensable injury in its employment a job paying at least eighty percent  
6 (80%) of the employee's former wages within 60 days from the time the employee has  
7 been determined to be medically stationary, and another employer shall hire the  
8 employee within one year from the time the employee has become medically stationary,  
9 and the subsequent employment is full-time employment in which the employee is  
10 performing all the essential duties of the employment and there is a reasonable certainty  
11 that the subsequent employer will continue the employment of the employee at the same  
12 or greater wages into the indefinite future, then the employer shall reimburse the  
13 subsequent employer fifty percent (50%) of the employee's new gross wages actually  
14 paid to the employee, not to exceed fifty percent (50%) of the uncommuted equivalent  
15 of 52 weeks of the employee's workers' compensation rate. Such amounts payable to  
16 the subsequent employer shall be in addition to any compensation due the employee  
17 pursuant to G.S. 97-30 or G.S. 97-31. The subsequent employer shall have standing  
18 before the Commission to seek an award of said reimbursement. Any carrier or any  
19 group that self-insures the liabilities of its members under this Article may contract for  
20 reimbursement by the employer for payments made pursuant to this subsection to the  
21 subsequent employer.

22 (g) Subsections (e) and (f) of this section apply to an employer with whom the  
23 employee was injured if the employer had 25 or more employees at the time of injury."

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

25 "**§ 97-30. Partial incapacity-disability.**

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

42 Sec. 17. Chapter 97 of the General Statutes is amended by adding a new  
43 section to read:

44 "**§ 97-32.1. Trial return to work.**

1 Notwithstanding the provisions of G.S. 97-32, an employee may attempt a single  
2 trial return to work for a period not to exceed nine months. During any such trial return  
3 to work, the employee shall be paid compensation only for any temporary partial  
4 disability which may be owed pursuant to G.S. 97-30. If the trial return to work is  
5 unsuccessful and the employee has not become medically stationary, the employee shall  
6 resume receiving temporary total disability benefits pursuant to G.S. 97-29(a). If the  
7 trial return to work is unsuccessful or the employee becomes medically stationary  
8 during the trial work period, any permanent impairment shall be determined when the  
9 trial period terminates."

10 Sec. 18. G.S. 97-40.1(a) reads as rewritten:

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

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

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

23 Sec. 19. G.S. 97-42 reads as rewritten:

24 "**§ 97-42. Deduction of payments.**

25 (a) Any payments made by the employer to the injured employee during the  
26 period of his disability, or to his dependents, which by the terms of this Article were not  
27 due and payable when made, may, subject to the approval of the Industrial Commission  
28 be deducted from the amount to be paid as compensation. Provided, that in the case of  
29 disability such deductions shall be made by shortening the period during which  
30 compensation must be paid, and not by reducing the amount of the weekly payment.

31 (b) If the injury is reported pursuant to G.S. 97-92, the employer, with the  
32 consent of the employee, may continue the injured employee on its payroll at the  
33 employee's preinjury wages, including deductions for taxes, and the value of payments  
34 made to or for the employee and his or her dependents, including the cost of health  
35 insurance, shall be offset against compensation due for that pay period. With the  
36 consent of the employee, the value of such payments by the employer exceeding  
37 compensation due for such pay periods shall be offset against benefits subsequently due  
38 pursuant to G.S. 97-30 or G.S. 97-31 by such method as the parties agree or the  
39 Commission directs."

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

41 "**§ 97-47. Change of condition; modification of award.**

42 ~~Upon~~ Subject to G.S. 97-18.1, upon its own motion or upon the application of any  
43 party in interest on the grounds of a change in condition, the Industrial Commission  
44 may review any award, and on such review may make an award ending, diminishing, or

1 increasing the medical compensation or compensation previously awarded, subject to  
2 the maximum or minimum provided in this Article, and shall immediately send to the  
3 parties a copy of the award. ~~No such review shall affect such award as regards any moneys~~  
4 ~~paid but no~~ No such review shall be made after two years from the date of the last  
5 payment of medical compensation or compensation pursuant to an award under this  
6 Article, except that in cases in which only medical or other treatment bills are paid, no  
7 such review shall be made after 12 months from the date of the last payment of bills for  
8 medical or other treatment, paid pursuant to this Article. Medical compensation or  
9 compensation that has been paid pursuant to the provisions of this Article prior to  
10 review shall not be affected by review or modification of an award under this section.  
11 Payment of medical compensation for palliative care under G.S. 97-25.1 shall not toll  
12 the time allowed for reviewing an award based upon a change of condition."

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

14 **"§ 97-54. 'Disablement' defined.**

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

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

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

23 **"§ 97-79. Offices and supplies; deputies with power to subpoena witnesses and to**  
24 **take testimony; meetings; hearings.**

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

28 (b) The Commission may appoint deputies who shall have the same power to  
29 issue subpoenas, administer oaths, conduct hearings, hold persons, firms or corporations  
30 in contempt as provided in Chapter 5A of the General Statutes, take evidence, and enter  
31 orders, opinions, and awards based thereon as is possessed by the members of the  
32 Commission, and such deputy or deputies shall be subject to the State Personnel  
33 System. Deputies shall be attorneys licensed to practice in this State and shall have a  
34 minimum of three years' experience as attorneys.

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

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

41 (e) The North Carolina Industrial Commission, or any member thereof, or any  
42 deputy is authorized by appropriate order, to make additional parties plaintiff or  
43 defendant in any proceeding pending before the North Carolina Industrial Commission

1 when it is made to appear that such new party is either a necessary party or a proper  
2 party to a final determination of the proceeding.

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

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

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

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

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

31 "**§ 143-296. Powers of Industrial Commission; deputies.**

32 The members of the Industrial Commission, or a deputy thereof, shall have power to  
33 issue subpoenas, administer oaths, conduct hearings, take evidence, enter orders,  
34 opinions, and awards based thereon, and punish for contempt. The Industrial  
35 Commission is authorized to appoint deputies and clerical assistants to carry out the  
36 purpose and intent of this Article, and such deputy or deputies are hereby vested with  
37 the same power and authority to hear and determine tort claims against State  
38 departments, institutions, and agencies as is by this Article vested in the members of the  
39 Industrial Commission. Such deputy or deputies shall also have and are hereby vested  
40 with the same power and authority to hear and determine cases arising under the  
41 Workers' Compensation Act when assigned to do so by the Industrial Commission. The  
42 Commission may order parties to participate in mediation, under rules substantially  
43 similar to those approved by the Supreme Court for use in the superior court division,  
44 and to apportion the costs among the parties."

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

2   **"§ 97-83. ~~In event of disagreement, Commission is to make award after hearing.~~**

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

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

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

22   **"§ 97-84. ~~Determination of disputes by Commission or deputy.~~**

23       ~~The Commission or any of its members. The deputy shall hear the parties at issue and~~  
24 ~~their representatives and witnesses, and shall determine the dispute in a summary~~  
25 ~~manner. The award, together with a statement of the findings of fact, rulings of law,~~  
26 ~~and other matters pertinent to the questions at issue shall be filed with the record of the~~  
27 ~~proceedings, within 180 days of the close of the hearing record unless time is extended~~  
28 ~~for good cause by the Commission, and a copy of the award shall immediately be sent~~  
29 ~~to the parties in dispute. The parties may be heard by a deputy, in which event the hearing~~  
30 ~~shall be conducted in the same way and manner prescribed for hearings which are conducted by~~  
31 ~~a member of the Industrial Commission, and said deputy shall proceed to a complete~~  
32 ~~determination of the matters in dispute, file his written opinion within 180 days of the close of~~  
33 ~~the hearing record unless time is extended for good cause by the Commission, and the deputy~~  
34 ~~shall cause to be issued an award pursuant to such determination. The decision of the deputy~~  
35 shall be based on the greater weight of credible evidence as contained in the record."

36           Sec. 29. Reserved.

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

38   **"§ 97-87. ~~Filing agreements approved by Commission or awards; judgment in~~**  
39       **~~accordance therewith; discharge or restoration of lien.~~**

40       Any party in interest may file in the superior court of the county in which the injury  
41 occurred ~~a certified copy of a memorandum of agreement approved by the Commission, or of~~  
42 ~~an order or decision of the Commission, or of an award of the Commission unappealed~~  
43 ~~from or of an award of the Commission affirmed upon appeal, whereupon said court~~  
44 shall render judgment in accordance therewith, and notify the parties. Such judgment

1 shall have the same effect, and all proceedings in relation thereto shall thereafter be the  
2 same, as though said judgment had been rendered in a suit duly heard and determined  
3 by said court: Provided, if the judgment debtor shall file a certificate duly issued by the  
4 Industrial Commission showing compliance with G.S. 97-83 with the clerk of the  
5 superior court in the county or counties where such judgment is docketed, then such  
6 clerk shall make upon the judgment roll an entry showing the filing of such certificate  
7 which shall operate as a discharge of the lien of the said judgment, and no execution  
8 shall be issued thereon; provided, further, that if at any time there is default in the  
9 payment of any installment due under the award set forth in said judgment the court  
10 may, upon application for cause and after 10 days' notice to judgment debtor, order the  
11 lien of such judgment restored, and execution may be immediately issued thereon for  
12 past due installments and for future installments as they may become due."

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

15 **"§ 97-88.2. Penalty for misrepresentation.**

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

22       (b) The Commission shall refer all cases of suspected fraud and all violations  
23 related to workers' compensation claims, by or against insurers or self-funded  
24 employers, to the Department of Insurance to:

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

27               (2) Conduct administrative violation proceedings; and

28               (3) Assess and collect penalties and restitution.

29       (c) The Commission shall not be liable in a civil action for any action made in  
30 good faith under this section, including the identification and referral of a person for  
31 investigation and prosecution for an alleged administrative violation or criminal offense.  
32 Any person, including, but not limited to, an attorney, an employee, an employer, an  
33 insurer, and an employee of an insurer, who in good faith comes forward with  
34 information under this section, shall not be liable in a civil action.

35       (d) The Commission shall report annually to the General Assembly on the  
36 number and disposition of investigations involving claimants, employers, insurance  
37 company officials, officials of third-party administrators, insurance agents, attorneys,  
38 medical providers, and vocational rehabilitation providers.

39 **"§ 97-88.3. Penalty for health care providers.**

40       (a) In addition to any liability under G.S. 97-88.2, any health care provider who  
41 willfully or intentionally undertakes the following acts is subject to an administrative  
42 penalty, assessed by the Commission, not to exceed ten thousand dollars (\$10,000):

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

1           (2)     Fraudulently administering, providing, and attempting to collect for  
2                     inappropriate or unnecessary treatment or services;

3           (3)     Failing to disclose an interest as required by this Article.

4       (b)     In addition to any liability under G.S. 97-88.2, any health care provider who  
5       willfully or intentionally undertakes the following acts is subject to an administrative  
6       penalty, assessed by the Commission, not to exceed one thousand dollars (\$1,000):

7           (1)     Failing or refusing to timely file required reports or records;

8           (2)     Making unnecessary referrals;

9           (3)     Knowingly violating this Article or rules promulgated hereunder,  
10                   including treatment guidelines, with intention to deceive or to gain  
11                   improper advantage of a patient, employee, insurer, or the  
12                   Commission.

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

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

19       (e)     Information relating to possible violations under this section shall be reported  
20       to the Commission which shall refer the same to the appropriate licensing or regulatory  
21       board or authority for the health care provider involved.

22       (f)     A hospital that relies on a written order of a physician in performing health  
23       care services shall not be subject to an administrative penalty in violation of this  
24       section."

25       Sec. 32. Reserved.

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

27       "**§ 97-90. Legal and medical fees to be approved by Commission; misdemeanor to**  
28       **receive fees unapproved by Commission, or to solicit employment in**  
29       **adjusting claims; agreement for fee or compensation.**

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

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

1 (c) If an attorney has an agreement for fee or compensation under this Article, he  
2 shall file a copy or memorandum thereof with the hearing officer or Commission prior  
3 to the conclusion of the hearing. If the agreement is not considered unreasonable, the  
4 hearing officer or Commission shall approve it at the time of rendering decision. If the  
5 agreement is found to be unreasonable by the hearing officer or Commission, the  
6 reasons therefor shall be given and what is considered to be reasonable fee allowed. If  
7 within five days after receipt of notice of such fee allowance, the attorney shall file  
8 notice of appeal to the full Commission, the full Commission shall hear the matter and  
9 determine whether or not the attorney's agreement as to a fee or the fee allowed is  
10 unreasonable. If the full Commission is of the opinion that such agreement or fee  
11 allowance is unreasonable and so finds, then the attorney may, by filing written notice  
12 of appeal within 10 days after receipt of such action by the full Commission, appeal to  
13 the resident judge of the superior court or the judge holding the courts of the district of  
14 or in the county in which the cause of action arose or in which the claimant resides; and  
15 upon such appeal said judge shall consider the matter and determine in his discretion the  
16 reasonableness of said agreement or fix the fee and direct an order to the Commission  
17 following his determination therein. The Commission shall, within 20 days after receipt  
18 of notice of appeal from its action concerning said agreement or allowance, transmit its  
19 findings and reasons as to its action concerning such agreement or allowance to the  
20 judge of the superior court designated in the notice of appeal. In all other cases where  
21 there is no agreement for fee or compensation, the attorney or claimant may, by filing  
22 written notice of appeal within five days after receipt of notice of action of the full  
23 Commission with respect to attorneys' fees, appeal to the resident judge of the superior  
24 court or the judge holding the courts of the district of the county in which the cause  
25 arose or in which the claimant resides; and upon such appeal said judge shall consider  
26 the matter of such fee and determine in his discretion the attorneys' fees to be allowed in  
27 the cause. The Commission shall, within 20 days after notice of appeal has been filed,  
28 transmit its findings and reasons as to its action concerning such fee or compensation to  
29 the judge of the superior court designated in the notice of appeal; provided that the  
30 Commission shall in no event have any jurisdiction over any attorneys' fees in any third-  
31 party action.

32 The Industrial Commission in determining an allowance of attorneys' fees shall  
33 examine the record to determine the services rendered. Neither the employer nor its  
34 carrier shall be liable for any part of the fee to be paid to the claimant's attorney. The  
35 fees shall be allowed only on the amount of compensation disputed. The factors to be  
36 considered by the Industrial Commission in determining an allowance of attorneys' fees  
37 shall include, but not necessarily be limited to: the nature, scope, and quality of the  
38 attorneys' services; the level of skill and competence required of the attorney in  
39 rendering the services; the results achieved; the experience and skill level of the  
40 attorney; and the contingent nature of the case. In the order making the allowance of  
41 attorneys' fees, the Industrial Commission shall set forth findings sufficient to support  
42 the amount approved.

43 The Commission may reduce the attorneys' fees to an amount commensurate with  
44 the services performed, or may deny or reduce an attorneys' fees upon proof of

1 solicitation of employment in violation of the Rules of Professional Conduct of the  
2 North Carolina State Bar.

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

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

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

16 (f) For purposes of this section, 'compensation disputed' means compensation, as  
17 defined in G.S. 97-2(11), obtained as a result of the claimant's attorneys' legal services  
18 rendered in connection with the claim for benefits, to the extent that the amount of  
19 benefits secured is in excess of any offer of settlement filed pursuant to G.S. 97-17, if  
20 that offer of settlement was filed prior to the attorneys' involvement in the claim for  
21 benefits."

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

23 **"§ 97-91. Commission to determine all questions.**

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

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

28 **"§ 97-98. Policy must contain agreement promptly to pay benefits; continuance of**  
29 **obligation of insurer in event of default.**

30 No policy of insurance against liability arising under this Article shall be issued  
31 unless it contains the agreement of the insurer that it will promptly pay to the person  
32 entitled to same all benefits conferred by this Article, and all installments of the  
33 compensation that may be ~~awarded or agreed upon,~~ awarded, and that the obligation shall  
34 not be affected by any default of the insured after the injury or by any default in giving  
35 notice required by ~~such the~~ the policy or otherwise. ~~Such~~ The agreement shall be construed  
36 to be a direct promise by the insurer to the person entitled to compensation enforceable  
37 in ~~his name-~~ the name of the person."

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

39 "(5) a. It is the duty of every insurer that writes workers' compensation  
40 insurance in this State and is a member of the Bureau, as defined in  
41 this section and G.S. 58-36-5 to insure and accept any workers'  
42 compensation insurance risk that has been certified to be 'difficult to  
43 place' by any fire and casualty insurance agent who is licensed in this  
44 State. When any such risk is called to the attention of the Bureau by

1 receipt of an application with an estimated or deposit premium  
2 payment and it appears that the risk is in good faith entitled to such  
3 coverage, the Bureau will bind coverage for 30 days and will designate  
4 a member who must issue a standard workers' compensation policy of  
5 insurance that contains the usual and customary provisions found in  
6 those policies. Coverage will be bound at 12:01 A.M. on the first day  
7 following the postmark time and date on the envelope in which the  
8 application is mailed including the estimated annual or deposit  
9 premium, or the expiration of existing coverage, whichever is later. If  
10 there should be no postmark, coverage will be effective 12:01 A.M. on  
11 the date of receipt by the Bureau unless a later date is requested.  
12 Those applications hand delivered to the Bureau will be effective as of  
13 12:01 A.M. of the date following receipt by the Bureau unless a later  
14 date is requested. The designated carrier may request of the Bureau  
15 certification of the State Department of Labor that the insured is  
16 complying with the laws, rules, and regulations of that Department.  
17 The certification must be finished within 30 days by the State  
18 Department of Labor unless extension of time is granted by agreement  
19 between the Bureau and the State Department of Labor. The Bureau  
20 will make and adopt such rules as are necessary to carry this section  
21 into effect, subject to final approval of the Commissioner. As a  
22 prerequisite to the transaction of workers' compensation insurance in  
23 this State, every member of the Bureau that writes such insurance must  
24 file with the Bureau written authority permitting the Bureau to act in  
25 its behalf, as provided in this section, and an agreement to accept risks  
26 that are assigned to the member by the Bureau, as provided in this  
27 section.

28 b. Upon notice of cancellation or the decision to decline to write  
29 or renew a policy of workers' compensation insurance for an  
30 employer, the carrier or its agents shall supply the employer  
31 with a form, supplied by the Bureau, by which the employer  
32 may request the Bureau to list the employer and pertinent  
33 information about it among a compendium of such information  
34 on employers refused voluntary coverage, which shall be made  
35 available by the Bureau to all insurers and self-insureds'  
36 administrators doing business in this State. It shall be stored  
37 and indexed to allow access to information by industry, primary  
38 classifications of employees, geography, experience  
39 modification, and in any other manner the Bureau determines is  
40 commercially useful to facilitate voluntary coverage of listed  
41 employers.

42 c. Failure or refusal by any assigned employer risk to make full  
43 disclosure to the Bureau, servicing carrier, or insurer writing a  
44 policy of information regarding the employer's true ownership,

1 change of ownership, operations, or payroll, or any other failure  
2 to disclose fully any records pertaining to workers'  
3 compensation insurance shall be sufficient grounds for the  
4 Bureau to authorize the termination of the policy of that  
5 employer."

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

7 **"§ 97-93. Employers required to carry insurance or prove financial ability to pay**  
8 **for benefits; employers required to post notice; self-insured employers**  
9 **regulated by Commissioner of Insurance.**

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

12 (1) Insure and keep insured his liability under this Article in any  
13 authorized corporation, association, organization, or in any mutual  
14 insurance association formed by a group of employers so  
15 authorized; or

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

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

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

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

37 Sec. 37.1. G.S. 97-94 is amended by adding a new subsection to read:

38 "(d) Any person who, with the ability and authority to bring an employer in  
39 compliance with G.S. 97-93, wilfully and intentionally refuses and neglects to bring the  
40 employer in compliance so, shall be guilty of a misdemeanor, punishable by a fine of  
41 not less than one thousand dollars (\$1,000). The Commission may also assess a civil  
42 penalty against a person in an amount up to one hundred percent (100%) of the amount  
43 of any compensation due the employer's employees injured during the time the  
44 employer failed to comply with G.S. 97-93, provided that the person had the ability and

1 authority to bring the employer in compliance with G.S. 97-93 and wilfully and  
2 intentionally refused or neglected to do so. The Commission may suspend collection or  
3 remit all or part of the civil penalty on condition that the employer pays the  
4 compensation due and complies with G.S. 97-93."

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

22       Sec. 39. There is appropriated from the General Fund to the Industrial  
23 Commission the sum of one hundred thousand dollars (\$100,000) for the 1993-94 fiscal  
24 year and the sum of one hundred thousand dollars (\$100,000) for the 1994-95 fiscal  
25 year to establish an ombudsman program.

26       Sec. 40. There is appropriated from the General Fund to the Department of  
27 Insurance the sum of one hundred thousand dollars (\$100,000) for the 1993-94 fiscal  
28 year and the sum of one hundred thousand dollars (\$100,000) for the 1994-95 fiscal  
29 year for the investigation of suspected workers' compensation fraud and violation of  
30 workers' compensation claims.

31       Sec. 41. The provisions of G.S. 97-79(f), as enacted by Section 23 of this act,  
32 shall not become effective unless and until the General Assembly appropriates funds for  
33 its implementation. Section 38 of this act is effective upon ratification. Section 13 of  
34 this act becomes effective October 1, 1993. Sections 39 and 40 of this act become  
35 effective July 1, 1993. The remaining sections of this act become effective January 1,  
36 1994, and apply to claims arising on or after that date.