

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

S

2

SENATE BILL 466*
Insurance and Consumer Protection Committee Substitute Adopted 4/4/01

Short Title: Workers' Compensation Amendments.

(Public)

Sponsors:

Referred to:

March 15, 2001

A BILL TO BE ENTITLED

1
2 AN ACT TO INCREASE THE AMOUNT OF BURIAL EXPENSES COVERAGE
3 UNDER THE WORKERS' COMPENSATION ACT; TO CHANGE A
4 REQUIREMENT IN THE LOSS COSTS RATE-MAKING LAW; AND TO
5 AMEND THE RATE BUREAU APPEAL STATUTE TO PROVIDE THAT
6 MEMBER COMPANIES ARE NOT ALLOWED TO APPEAL BUREAU
7 DECISIONS ON RATES OR LOSS COSTS.

8 The General Assembly of North Carolina enacts:

9 **SECTION 1.** G.S. 97-38 reads as rewritten:

10 "**§ 97-38. Where death results proximately from compensable injury or**
11 **occupational disease; dependents; burial expenses; compensation to**
12 **aliens; election by partial dependents.**

13 If death results proximately from a compensable injury or occupational disease and
14 within six years thereafter, or within two years of the final determination of disability,
15 whichever is later, the employer shall pay or cause to be paid, subject to the provisions
16 of other sections of this Article, weekly payments of compensation equal to sixty-six
17 and two-thirds percent (66 2/3%) of the average weekly wages of the deceased
18 employee at the time of the accident, but not more than the amount established annually
19 to be effective October 1 as provided in G.S. 97-29, nor less than thirty dollars (\$30.00),
20 per week, and burial expenses not exceeding ~~two thousand dollars (\$2,000),~~ three
21 thousand five hundred dollars (\$3,500), to the person or persons entitled thereto as
22 follows:

- 23 (1) Persons wholly dependent for support upon the earnings of the
24 deceased employee at the time of the accident shall be entitled to
25 receive the entire compensation payable share and share alike to the
26 exclusion of all other persons. If there be only one person wholly
27 dependent, then that person shall receive the entire compensation
28 payable.

1 (2) If there is no person wholly dependent, then any person partially
2 dependent for support upon the earnings of the deceased employee at
3 the time of the accident shall be entitled to receive a weekly payment
4 of compensation computed as hereinabove provided, but such weekly
5 payment shall be the same proportion of the weekly compensation
6 provided for a whole dependent as the amount annually contributed by
7 the deceased employee to the support of such partial dependent bears
8 to the annual earnings of the deceased at the time of the accident.

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

25 When weekly payments have been made to an injured employee before his death,
26 the compensation to dependents shall begin from the date of the last of such payments.
27 Compensation payments due on account of death shall be paid for a period of 400
28 weeks from the date of the death of the employee; provided, however, after said
29 400-week period in case of a widow or widower who is unable to support herself or
30 himself because of physical or mental disability as of the date of death of the employee,
31 compensation payments shall continue during her or his lifetime or until remarriage and
32 compensation payments due a dependent child shall be continued until such child
33 reaches the age of 18.

34 Compensation payable under this Article to aliens not residents (or about to become
35 nonresidents) of the United States or Canada, shall be the same in amounts as provided
36 for residents, except that dependents in any foreign country except Canada shall be
37 limited to surviving spouse and child or children, or if there be no surviving spouse or
38 child or children, to the surviving father or mother."

39 **SECTION 2.** G.S. 58-36-100(j) reads as rewritten:

40 "(j) For reference filings filed by the Bureau:

- 1 (1) If the insurer has filed to have its loss multiplier remain on file,
2 applicable to subsequent reference filings, and a new reference filing is
3 filed and approved and if:
- 4 a. The insurer decides to use the revision of the prospective loss
5 costs and effective date as filed, then the insurer does not file
6 anything with the Commissioner. Rates are the combination of
7 the prospective loss costs and the on-file loss multiplier and
8 become effective on the effective date of the loss costs.
- 9 b. The insurer decides to use the prospective loss costs as filed but
10 with a different effective date, then the insurer must notify the
11 Commissioner of its effective date before the effective date of
12 the loss costs.
- 13 c. The insurer decides to use the revision of the prospective loss
14 costs, but wishes to change its loss multiplier, then the insurer
15 must file a revised reference filing adoption form before the
16 effective date of the reference filing.
- 17 d. The insurer decides not to revise its rates using the prospective
18 loss costs, then the insurer must notify the Commissioner before
19 the effective date of the loss costs.
- 20 (2) If an insurer has not elected to have its loss multiplier remain on file,
21 applicable to future prospective loss costs reference filings, and a new
22 reference filing is filed and approved, and if:
- 23 a. The insurer decides to use the prospective loss costs to revise its
24 rates, then the insurer must file a reference filing adoption form
25 including its effective date.
- 26 b. The insurer decides not to use the revisions, then the insurer
27 does not file anything with the Commissioner.
- 28 c. The insurer decides to change its multiplier, then the insurer
29 must file a reference filing adoption form referencing the
30 current approved prospective loss costs, including its effective
31 date and, if applicable, its loss costs modification factor and
32 supporting documentation. The insurer shall not make a change
33 to its loss costs multiplier based on any reference filing other
34 than the current approved reference filing."

35 **SECTION 3.** G.S. 58-36-35 reads as rewritten:

36 **"§ 58-36-35. Appeal to Commissioner from decision of Bureau.**

37 (a) Any member of the Bureau may appeal to the Commissioner from any decision
38 of the ~~Bureau.~~ Bureau, except for a decision made under G.S. 58-36-1(2). After a
39 hearing held on not ~~less~~ fewer than 10 days' written notice to the appellant and to the
40 Bureau, the Commissioner shall issue an order approving the decision or directing the
41 Bureau to reconsider the decision. ~~In the event~~ If the Commissioner directs the Bureau
42 to reconsider the decision and the Bureau fails to take action satisfactory to the

1 Commissioner, the Commissioner shall make such order as ~~he~~ the Commissioner may
2 see fit.

3 (b) No later than 20 days before ~~each~~ the hearing, the appellant shall file with the
4 Commissioner or ~~his~~ the Commissioner's designated hearing officer and shall serve on
5 the appellee a written statement of his case and any evidence ~~he~~ the appellant intends to
6 offer at the hearing. No later than five days before such hearing, the appellee shall file
7 with the Commissioner or ~~his~~ the Commissioner's designated hearing officer and shall
8 serve on the appellant a written statement of ~~his~~ the appellee's case and any evidence ~~he~~
9 the appellee intends to offer at the hearing. Each such hearing shall be recorded and
10 transcribed. The cost of ~~such~~ the recording and transcribing shall be borne equally by
11 the appellant and appellee; provided that upon any final adjudication the prevailing
12 party shall be reimbursed for his share of such costs by the other party. Each party shall,
13 on a date determined by the Commissioner or ~~his~~ the Commissioner's designated
14 hearing officer, but not sooner than 15 days after delivery of the completed transcript to
15 the party, submit to the Commissioner or ~~his~~ the Commissioner's designated hearing
16 officer and serve on the other party, a proposed order. The Commissioner or ~~his~~ the
17 Commissioner's designated hearing officer shall then issue an order."

18 **SECTION 4.** Section 1 of this act becomes effective October 1, 2001. The
19 remainder of this act is effective when it becomes law.