

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

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SENATE BILL 466\*  
Insurance and Consumer Protection Committee Substitute Adopted 4/4/01  
Third Edition Engrossed 4/5/01  
House Committee Substitute Favorable 5/29/01

Short Title: Workers' Compensation Amendments.

(Public)

Sponsors:

Referred to:

March 15, 2001

1                                    A BILL TO BE ENTITLED  
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

1 dependent, then that person shall receive the entire compensation  
2 payable.

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

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

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

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

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

42 "(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  
38 decision of the ~~Bureau~~Bureau, except for a decision made under G.S. 58-36-1(2). After  
39 a 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  
9 ~~he~~ 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 the  
11 appellant and appellee; provided that upon any final adjudication the prevailing party  
12 shall be reimbursed for his share of such costs by the other party. Each party shall, on a  
13 date determined by the Commissioner or ~~his~~ the Commissioner's designated hearing  
14 officer, but not sooner than 15 days after delivery of the completed transcript to the  
15 party, submit to the Commissioner or ~~his~~ the Commissioner's designated hearing officer  
16 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 3.1.** G.S. 97-40 reads as rewritten:

19 "**§ 97-40. Commutation and payment of compensation in absence of dependents;**  
20 **"next of kin" defined; commutation and distribution of compensation to**  
21 **partially dependent next of kin; payment in absence of both dependents**  
22 **and next of kin.**

23 Subject to the provisions of G.S. 97-38, if the deceased employee leaves neither  
24 whole nor partial dependents, then the compensation which would be payable under  
25 G.S. 97-38 to whole dependents shall be commuted to its present value and paid in a  
26 lump sum to the next of kin as herein defined. For purposes of this section and G.S.  
27 97-38, "next of kin" shall include only child, father, mother, brother or sister of the  
28 deceased employee, including adult children or adult brothers or adult sisters of the  
29 deceased, but excluding a parent who has willfully abandoned the care and maintenance  
30 of his or her child and who has not resumed its care and maintenance at least one year  
31 prior to the first occurring of the majority or death of the child and continued its care  
32 and maintenance until its death or majority. For all such next of kin who are neither  
33 wholly nor partially dependent upon the deceased employee and who take under this  
34 section, the order of priority among them shall be governed by the general law  
35 applicable to the distribution of the personal estate of persons dying intestate. In the  
36 event of exclusion of a parent based on abandonment, the claim for compensation  
37 benefits shall be treated as though the abandoning parent had predeceased the employee.  
38 For all such next of kin who were also partially dependent on the deceased employee  
39 but who exercise the election provided for partial dependents by G.S. 97-38, the general  
40 law applicable to the distribution of the personal estate of persons dying intestate shall  
41 not apply and such person or persons upon the exercise of such election, shall be

1 entitled, share and share alike, to the compensation provided in G.S. 97-38 for whole  
2 dependents commuted to its present value and paid in a lump sum.

3 If the deceased employee leaves neither whole dependents, partial dependents, nor  
4 next of kin as hereinabove defined, then no compensation shall be due or payable on  
5 account of the death of the deceased employee, except that the employer shall pay or  
6 cause to be paid the burial expenses of the deceased employee not exceeding ~~two~~  
7 ~~thousand dollars (\$2,000)~~ three thousand five hundred dollars (\$3,500) to the person or  
8 persons entitled thereto."

9 **SECTION 4.** Sections 1 and 3.1 of this act become effective October 1,  
10 2001. The remainder of this act is effective when it becomes law.