

Chapter 97.
Workers' Compensation Act.
Article 1.
Workers' Compensation Act.

§ 97-1. Short title.

This Article shall be known and cited as The North Carolina Workers' Compensation Act. (1929, c. 120, s. 1; 1979, c. 714, s. 1.)

§ 97-1.1. References to workmen's compensation.

Any reference in any act, public or local, to the "Workmen's Compensation Act," "Workmen's Compensation," or "workmen's compensation" shall be deemed to refer respectively to "Workers' Compensation Act," "Workers' Compensation" or "workers' compensation." (1979, c. 714, s. 4.)

§ 97-2. Definitions.

When used in this Article, unless the context otherwise requires:

- (1) Employment. – The term "employment" includes employment by the State and all political subdivisions thereof, and all public and quasi-public corporations therein and all private employments in which three or more employees are regularly employed in the same business or establishment or in which one or more employees are employed in activities which involve the use or presence of radiation, except agriculture and domestic services, unless 10 or more full-time nonseasonal agricultural workers are regularly employed by the employer and an individual sawmill and logging operator with less than 10 employees, who saws and logs less than 60 days in any six consecutive months and whose principal business is unrelated to sawmilling or logging.
- (2) Employee. – The term "employee" means every person engaged in an employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also minors, whether lawfully or unlawfully employed, but excluding persons whose employment is both casual and not in the course of the trade, business, profession, or occupation of his employer, and as relating to those so employed by the State, the term "employee" shall include all officers and employees of the State, including such as are elected by the people, or by the General Assembly, or appointed by the Governor to serve on a per diem, part-time or fee basis, either with or without the confirmation of the Senate; as relating to municipal corporations and political subdivisions of the State, the term "employee" shall include all officers and employees thereof, including such as are elected by the people. The term "employee" shall include members of the North Carolina National Guard while on State active duty under orders of the Governor and members of the North Carolina State Defense Militia while on State active duty under orders of the Governor. The term "employee" shall include deputy sheriffs and all persons acting in the capacity of deputy sheriffs, whether appointed by the sheriff or by the governing body of the county and whether serving on a fee basis or on a salary basis, or whether deputy sheriffs serving upon a full-time basis or a part-time basis, and including deputy sheriffs appointed to serve in an emergency, but as to those so appointed, only during the continuation of the emergency. The sheriff shall furnish to the board of county commissioners a complete list of all deputy sheriffs named or appointed by him immediately

1 after their appointment and notify the board of commissioners of any
2 changes made therein promptly after such changes are made. Any reference
3 to an employee who has been injured shall, when the employee is dead,
4 include also his legal representative, dependents, and other persons to whom
5 compensation may be payable: Provided, further, that any employee, as
6 herein defined, of a municipality, county, or of the State of North Carolina,
7 while engaged in the discharge of his official duty outside the jurisdictional
8 or territorial limits of the municipality, county, or the State of North Carolina
9 and while acting pursuant to authorization or instruction from any superior
10 officer, shall have the same rights under this Article as if such duty or
11 activity were performed within the territorial boundary limits of his
12 employer.

13 Every executive officer elected or appointed and empowered in
14 accordance with the charter and bylaws of a corporation shall be considered
15 as an employee of such corporation under this Article.

16 Any such executive officer of a corporation may, notwithstanding any
17 other provision of this Article, be exempt from the coverage of the
18 corporation's insurance contract by such corporation's specifically excluding
19 such executive officer in such contract of insurance, and the exclusion to
20 remove such executive officer from the coverage shall continue for the
21 period such contract of insurance is in effect, and during such period such
22 executive officers thus exempted from the coverage of the insurance contract
23 shall not be employees of such corporation under this Article.

24 All county agricultural extension service employees who do not receive
25 official federal appointments as employees of the United States Department
26 of Agriculture and who are field faculty members with professional rank as
27 designated in the memorandum of understanding between the North
28 Carolina Agricultural Extension Service, North Carolina State University, A
29 & T State University, and the boards of county commissioners shall be
30 deemed to be employees of the State of North Carolina. All other county
31 agricultural extension service employees paid from State or county funds
32 shall be deemed to be employees of the county board of commissioners in
33 the county in which the employee is employed for purposes of workers'
34 compensation.

35 The term "employee" shall also include members of the Civil Air Patrol
36 currently certified pursuant to G.S. 143B-491(a) [G.S. 143B-1031(a)] when
37 performing duties in the course and scope of a State-approved mission
38 pursuant to Article 11 of Chapter 143B [Subpart C of Part 5 of Article 13 of
39 Chapter 143B] of the General Statutes.

40 "Employee" shall not include any person performing voluntary service as
41 a ski patrolman who receives no compensation for such services other than
42 meals or lodging or the use of ski tow or ski lift facilities or any combination
43 thereof.

44 Any sole proprietor or partner of a business or any member of a limited
45 liability company may elect to be included as an employee under the
46 workers' compensation coverage of such business if he is actively engaged in
47 the operation of the business and if the insurer is notified of his election to
48 be so included. Any such sole proprietor or partner or member of a limited
49 liability company shall, upon such election, be entitled to employee benefits
50 and be subject to employee responsibilities prescribed in this Article.

1 "Employee" shall include an authorized pickup firefighter of the Division
2 of Forest Resources of the Department of Agriculture and Consumer
3 Services when that individual is engaged in emergency fire suppression
4 activities for the Division of Forest Resources. As used in this section,
5 "authorized pickup firefighter" means an individual who has completed
6 required fire suppression training as a wildland firefighter and who is
7 available as needed by the Division of Forest Resources for emergency fire
8 suppression activities, including immediate dispatch to wildfires and standby
9 for initial attack on fires during periods of high fire danger.

10 It shall be a rebuttable presumption that the term "employee" shall not
11 include any person performing services in the sale of newspapers or
12 magazines to ultimate consumers under an arrangement whereby the
13 newspapers or magazines are to be sold by that person at a fixed price and
14 the person's compensation is based on the retention of the excess of the fixed
15 price over the amount at which the newspapers or magazines are charged to
16 the person.

17 (3) Employer. – The term "employer" means the State and all political
18 subdivisions thereof, all public and quasi-public corporations therein, every
19 person carrying on any employment, and the legal representative of a
20 deceased person or the receiver or trustee of any person. The board of
21 commissioners of each county of the State, for the purposes of this law, shall
22 be considered as "employer" of all deputy sheriffs serving within such
23 county, or persons serving or performing the duties of a deputy sheriff,
24 whether such persons are appointed by the sheriff or by the board of
25 commissioners and whether serving on a fee basis or salary basis. Each
26 county is authorized to insure its compensation liability for deputy sheriffs to
27 the same extent it is authorized to insure other compensation liability for
28 employees thereof. For purposes of this Chapter, when an authorized pickup
29 firefighter of the Division of Forest Resources of the Department of
30 Agriculture and Consumer Services is engaged in emergency fire
31 suppression activities for the Division of Forest Resources, that individual's
32 employer is the Division of Forest Resources.

33 (4) Person. – The term "person" means individual, partnership, association or
34 corporation.

35 (5) Average Weekly Wages. – "Average weekly wages" shall mean the earnings
36 of the injured employee in the employment in which he was working at the
37 time of the injury during the period of 52 weeks immediately preceding the
38 date of the injury, including the subsistence allowance paid to veteran
39 trainees by the United States government, provided the amount of said
40 allowance shall be reported monthly by said trainee to his employer, divided
41 by 52; but if the injured employee lost more than seven consecutive calendar
42 days at one or more times during such period, although not in the same
43 week, then the earnings for the remainder of such 52 weeks shall be divided
44 by the number of weeks remaining after the time so lost has been deducted.
45 Where the employment prior to the injury extended over a period of fewer
46 than 52 weeks, the method of dividing the earnings during that period by the
47 number of weeks and parts thereof during which the employee earned wages
48 shall be followed; provided, results fair and just to both parties will be
49 thereby obtained. Where, by reason of a shortness of time during which the
50 employee has been in the employment of his employer or the casual nature
51 or terms of his employment, it is impractical to compute the average weekly

1 wages as above defined, regard shall be had to the average weekly amount
2 which during the 52 weeks previous to the injury was being earned by a
3 person of the same grade and character employed in the same class of
4 employment in the same locality or community.

5 But where for exceptional reasons the foregoing would be unfair, either
6 to the employer or employee, such other method of computing average
7 weekly wages may be resorted to as will most nearly approximate the
8 amount which the injured employee would be earning were it not for the
9 injury.

10 Wherever allowances of any character made to an employee in lieu of
11 wages are specified part of the wage contract, they shall be deemed a part of
12 his earnings.

13 Where a minor employee, under the age of 18 years, sustains a
14 permanent disability or dies leaving dependents surviving, the compensation
15 payable for permanent disability or death shall be calculated, first, upon the
16 average weekly wage paid to adult employees employed by the same
17 employer at the time of the accident in a similar or like class of work which
18 the injured minor employee would probably have been promoted to if not
19 injured, or, second, upon a wage sufficient to yield the maximum weekly
20 compensation benefit. Compensation for temporary total disability or for the
21 death of a minor without dependents shall be computed upon the average
22 weekly wage at the time of the accident, unless the total disability extends
23 more than 52 weeks, and then the compensation may be increased in
24 proportion to his expected earnings.

25 In case of disabling injury or death to a volunteer fireman; member of an
26 organized rescue squad; an authorized pickup firefighter, as defined in
27 subdivision (2) of this section, when that individual is engaged in emergency
28 fire suppression activities for the Division of Forest Resources; a duly
29 appointed and sworn member of an auxiliary police department organized
30 pursuant to G.S. 160A-282; or senior members of the State Civil Air Patrol
31 functioning under Article 11 of Chapter 143B [Subpart C of Part 5 of Article
32 13 of Chapter 143B] of the General Statutes, under compensable
33 circumstances, compensation payable shall be calculated upon the average
34 weekly wage the volunteer fireman, member of an organized rescue squad,
35 authorized pickup firefighter of the Division of Forest Resources, when that
36 individual is engaged in emergency fire suppression activities for the
37 Division of Forest Resources, member of an auxiliary police department, or
38 senior member of the State Civil Air Patrol was earning in the employment
39 wherein he principally earned his livelihood as of the date of injury.
40 Provided, however, that the minimum compensation payable to a volunteer
41 fireman, member of an organized rescue squad, an authorized pickup
42 firefighter of the Division of Forest Resources of the Department of
43 Agriculture and Consumer Services, when that individual is engaged in
44 emergency fire suppression activities for the Division of Forest Resources, a
45 sworn member of an auxiliary police department organized pursuant to G.S.
46 160A-282, or senior members of the State Civil Air Patrol shall be sixty-six
47 and two-thirds percent (66 2/3%) of the maximum weekly benefit
48 established in G.S. 97-29.

49 (6) Injury. – "Injury and personal injury" shall mean only injury by accident
50 arising out of and in the course of the employment, and shall not include a
51 disease in any form, except where it results naturally and unavoidably from

1 the accident. With respect to back injuries, however, where injury to the
2 back arises out of and in the course of the employment and is the direct
3 result of a specific traumatic incident of the work assigned, "injury by
4 accident" shall be construed to include any disabling physical injury to the
5 back arising out of and causally related to such incident. Injury shall include
6 breakage or damage to eyeglasses, hearing aids, dentures, or other prosthetic
7 devices which function as part of the body; provided, however, that
8 eyeglasses and hearing aids will not be replaced, repaired, or otherwise
9 compensated for unless injury to them is incidental to a compensable injury.

- 10 (7) Carrier. – The term "carrier" or "insurer" means any person or fund
11 authorized under G.S. 97-93 to insure under this Article, and includes
12 self-insurers.
- 13 (8) Commission. – The term "Commission" means the North Carolina Industrial
14 Commission, to be created under the provisions of this Article.
- 15 (9) Disability. – The term "disability" means incapacity because of injury to
16 earn the wages which the employee was receiving at the time of injury in the
17 same or any other employment.
- 18 (10) Death. – The term "death" as a basis for a right to compensation means only
19 death resulting from an injury.
- 20 (11) Compensation. – The term "compensation" means the money allowance
21 payable to an employee or to his dependents as provided for in this Article,
22 and includes funeral benefits provided herein.
- 23 (12) Child, Grandchild, Brother, Sister. – The term "child" shall include a
24 posthumous child, a child legally adopted prior to the injury of the
25 employee, and a stepchild or acknowledged illegitimate child dependent
26 upon the deceased, but does not include married children unless wholly
27 dependent upon him. "Grandchild" means a child as above defined of a child
28 as above defined. "Brother" and "sister" include stepbrothers and stepsisters,
29 half brothers and half sisters, and brothers and sisters by adoption, but does
30 not include married brothers nor married sisters unless wholly dependent on
31 the employee. "Child," "grandchild," "brother," and "sister" include only
32 persons who at the time of the death of the deceased employee are under 18
33 years of age.
- 34 (13) Parent. – The term "parent" includes stepparents and parents by adoption,
35 parents-in-law, and any person who for more than three years prior to the
36 death of the deceased employee stood in the place of a parent to him, if
37 dependent on the injured employee.
- 38 (14) Widow. – The term "widow" includes only the decedent's wife living with or
39 dependent for support upon him at the time of his death; or living apart for
40 justifiable cause or by reason of his desertion at such time.
- 41 (15) Widower. – The term "widower" includes only the decedent's husband living
42 with or dependent for support upon her at the time of her death or living
43 apart for justifiable cause or by reason of her desertion at such time.
- 44 (16) Adoption. – The term "adoption" or "adopted" means legal adoption prior to
45 the time of the injury.
- 46 (17) Singular. – The singular includes the plural and the masculine includes the
47 feminine and neuter.
- 48 (18) Hernia. – In all claims for compensation for hernia or rupture, resulting from
49 injury by accident arising out of and in the course of the employee's
50 employment, it must be definitely proven to the satisfaction of the Industrial
51 Commission:

- a. That there was an injury resulting in hernia or rupture.
- b. That the hernia or rupture appeared suddenly.
- c. Repealed by Session Laws 1987, c. 729, s. 2.
- d. That the hernia or rupture immediately followed an accident. Provided, however, a hernia shall be compensable under this Article if it arises out of and in the course of the employment and is the direct result of a specific traumatic incident of the work assigned.
- e. That the hernia or rupture did not exist prior to the accident for which compensation is claimed.

All hernia or rupture, inguinal, femoral or otherwise, so proven to be the result of an injury by accident arising out of and in the course of employment, shall be treated in a surgical manner by a radical operation. If death results from such operation, the death shall be considered as a result of the injury, and compensation paid in accordance with the provisions of G.S. 97-38. In nonfatal cases, if it is shown by special examination, as provided in G.S. 97-27, that the injured employee has a disability resulting after the operation, compensation for such disability shall be paid in accordance with the provisions of this Article.

In case the injured employee refuses to undergo the radical operation for the cure of said hernia or rupture, no compensation will be allowed during the time such refusal continues. If, however, it is shown that the employee has some chronic disease, or is otherwise in such physical condition that the Commission considers it unsafe for the employee to undergo said operation, the employee shall be paid compensation in accordance with the provisions of this Article.

- (19) Medical Compensation. – The term "medical compensation" means medical, surgical, hospital, nursing, and rehabilitative services, including, but not limited to, attendant care services prescribed by a health care provider authorized by the employer or subsequently by the Commission, vocational rehabilitation, and medicines, sick travel, and other treatment, including medical and surgical supplies, as may reasonably be required to effect a cure or give relief and for such additional time as, in the judgment of the Commission, will tend to lessen the period of disability; and any original artificial members as may reasonably be necessary at the end of the healing period and the replacement of such artificial members when reasonably necessitated by ordinary use or medical circumstances.
- (20) Health care provider. – The term "health care provider" means physician, hospital, pharmacy, chiropractor, nurse, dentist, podiatrist, physical therapist, rehabilitation specialist, psychologist, and any other person providing medical care pursuant to this Article.
- (21) Managed care organization. – The term "managed care organization" means a preferred provider organization or a health maintenance organization regulated under Chapter 58 of the General Statutes. "Managed care organization" also means a preferred provider benefit plan of an insurance company, hospital, or medical service corporation in which utilization review or quality management programs are used to manage the provision of health care services and benefits under this Chapter.
- (22) Suitable employment. – The term "suitable employment" means employment offered to the employee or, if prohibited by the Immigration and Nationality Act, 8 U.S.C. § 1324a, employment available to the employee that (i) prior to reaching maximum medical improvement is within the employee's work

1 restrictions, including rehabilitative or other noncompetitive employment
2 with the employer of injury approved by the employee's authorized health
3 care provider or (ii) after reaching maximum medical improvement is
4 employment that the employee is capable of performing considering the
5 employee's preexisting and injury-related physical and mental limitations,
6 vocational skills, education, and experience and is located within a 50-mile
7 radius of the employee's residence at the time of injury or the employee's
8 current residence if the employee had a legitimate reason to relocate since
9 the date of injury. No one factor shall be considered exclusively in
10 determining suitable employment. (1929, c. 120, s. 2; 1933, c. 448; 1939, c.
11 277, s. 1; 1943, c. 543; c. 672, s. 1; 1945, c. 766; 1947, c. 698; 1949, c. 399;
12 1953, c. 619; 1955, c. 644; c. 1026, s. 1; c. 1055; 1957, c. 95; 1959, c. 289;
13 1961, cc. 231, 235; 1967, c. 1229, s. 1; 1969, c. 206, s. 2; c. 707; 1971, c.
14 284, s. 1; c. 1231, s. 1; 1973, c. 521, ss. 1, 2; c. 763, ss. 1-3; c. 1291, s. 14;
15 1975, c. 266, s. 1; c. 284, ss. 2, 3; c. 288; c. 718, s. 3; c. 817, s. 1; 1977, c.
16 419; c. 893, s. 1; 1979, cc. 86, 374; c. 516, ss. 4, 5; c. 714, s. 3; 1981, c. 421,
17 ss. 1, 2; 1983, c. 833; 1983 (Reg. Sess., 1984), c. 1042, s. 1; 1985, cc. 133,
18 144; 1987, c. 729, ss. 1, 2; 1991, c. 703, s. 1; 1993, c. 389, s. 3; 1993 (Reg.
19 Sess., 1994), c. 679, ss. 2.6, 10.7; 1995, c. 517, s. 35; 1999-219, s. 4.2;
20 1999-418, s. 1; 1999-456, s. 33(c); 2001-204, ss. 1, 1.1, 2; 2003-156, s. 1;
21 2009-281, s. 1; 2011-145, s. 13.25(mm), (xx); 2011-287, s. 2.)

22
23 **§ 97-3. Presumption that all employers and employees have come under provisions of**
24 **Article.**

25 From and after January 1, 1975, every employer and employee, as hereinbefore defined and
26 except as herein stated, shall be presumed to have accepted the provisions of this Article
27 respectively to pay and accept compensation for personal injury or death by accident arising out
28 of and in the course of his employment and shall be bound thereby. (1929, c. 120, s. 4; 1973, c.
29 1291, s. 1.)

30
31 **§ 97-4: Repealed by Session Laws 1973, c. 1291, s. 2.**

32
33 **§ 97-5. Presumption as to contract of service.**

34 Every contract of service between any employer and employee covered by this Article,
35 written or implied, now in operation or made or implied prior to July 1, 1929, shall, after that
36 date, be presumed to continue, subject to the provisions of this Article; and every such contract
37 made subsequent to that date shall be presumed to have been made subject to the provisions of
38 this Article. (1929, c. 120, s. 6; 1973, c. 1291, s. 3.)

39
40 **§ 97-6. No special contract can relieve an employer of obligations.**

41 No contract or agreement, written or implied, no rule, regulation, or other device shall in
42 any manner operate to relieve an employer in whole or in part, of any obligation created by this
43 Article, except as herein otherwise expressly provided. (1929, c. 120, s. 7.)

44
45 **§ 97-6.1: Repealed by 1991 (Regular Session, 1992), c. 1021, s. 4.**

46
47 **§ 97-7. State or subdivision and employees thereof.**

48 Neither the State nor any municipal corporation within the State, nor any political
49 subdivision thereof, nor any employee of the State or of any such corporation or subdivision,
50 shall have the right to reject the provisions of this Article relative to payment and acceptance of
51 compensation, and G.S. 97-100(c) does not apply to them: Provided, that all such corporations

1 or subdivisions are hereby authorized to self-insure or purchase insurance to secure its liability
2 under this Article and to include thereunder the liability of such subordinate governmental
3 agencies as the county board of health, the school board, and other political and quasi-political
4 subdivisions supported in whole or in part by the municipal corporation or political subdivision
5 of the State. Each municipality is authorized to make appropriations for these purposes and to
6 fund them by levy of property taxes pursuant to G.S. 153A-149 and G.S. 160A-209 and by the
7 allocation of other revenues whose use is not otherwise restricted by law. (1929, c. 120, s. 8;
8 1931, c. 274, s. 1; 1945, c. 766; 1957, c. 1396, s. 1; 1961, c. 1200; 1973, c. 803, s. 34; c. 1291,
9 s. 4; 2006-105, s. 1.10.)

10
11 **§ 97-8. Prior injuries and deaths unaffected.**

12 The provisions of this Article shall not apply to injuries or deaths, nor to accidents which
13 occurred prior to July 1, 1929. (1929, c. 120, s. 9.)

14
15 **§ 97-9. Employer to secure payment of compensation.**

16 Every employer subject to the compensation provisions of this Article shall secure the
17 payment of compensation to his employees in the manner hereinafter provided; and while such
18 security remains in force, he or those conducting his business shall only be liable to any
19 employee for personal injury or death by accident to the extent and in the manner herein
20 specified. (1929, c. 120, s. 10; 1973, c. 1291, s. 5.)

21
22 **§ 97-10. Repealed by Session Laws 1959, c. 1324.**

23
24 **§ 97-10.1. Other rights and remedies against employer excluded.**

25 If the employee and the employer are subject to and have complied with the provisions of
26 this Article, then the rights and remedies herein granted to the employee, his dependents, next
27 of kin, or personal representative shall exclude all other rights and remedies of the employee,
28 his dependents, next of kin, or representative as against the employer at common law or
29 otherwise on account of such injury or death. (1929, c. 120, s. 11; 1933, c. 449, s. 1; 1943, c.
30 622; 1959, c. 1324; 1973, c. 1291, s. 6.)

31
32 **§ 97-10.2. Rights under Article not affected by liability of third party; rights and
33 remedies against third parties.**

34 (a) The right to compensation and other benefits under this Article for disability,
35 disfigurement, or death shall not be affected by the fact that the injury or death was caused
36 under circumstances creating a liability in some person other than the employer to pay damages
37 therefor, such person hereinafter being referred to as the "third party." The respective rights and
38 interests of the employee-beneficiary under this Article, the employer, and the employer's
39 insurance carrier, if any, in respect of the common-law cause of action against such third party
40 and the damages recovered shall be as set forth in this section.

41 (b) The employee, or his personal representative if he be dead, shall have the exclusive
42 right to proceed to enforce the liability of the third party by appropriate proceedings if such
43 proceedings are instituted not later than 12 months after the date of injury or death, whichever
44 is later. During said 12-month period, and at any time thereafter if summons is issued against
45 the third party during said 12-month period, the employee or his personal representative shall
46 have the right to settle with the third party and to give a valid and complete release of all claims
47 to the third party by reason of such injury or death, subject to the provisions of (h) below.

48 (c) If settlement is not made and summons is not issued within said 12-month period,
49 and if employer shall have filed with the Industrial Commission a written admission of liability
50 for the benefits provided by this Chapter, then either the employee or the employer shall have
51 the right to proceed to enforce the liability of the third party by appropriate proceedings; either

1 shall have the right to settle with the third party and to give a valid and complete release of all
2 claims to the third party by reason of such injury or death, subject to the provisions of (h)
3 below. Provided that 60 days before the expiration of the period fixed by the applicable statute
4 of limitations if neither the employee nor the employer shall have settled with or instituted
5 proceedings against the third party, all such rights shall revert to the employee or his personal
6 representative.

7 (d) The person in whom the right to bring such proceeding or make settlement is vested
8 shall, during the continuation thereof, also have the exclusive right to make settlement with the
9 third party and the release of the person having the right shall fully acquit and discharge the
10 third party except as provided by (h) below. A proceeding so instituted by the person having
11 the right shall be brought in the name of the employee or his personal representative and the
12 employer or the insurance carrier shall not be a necessary or proper party thereto. If the
13 employee or his personal representative shall refuse to cooperate with the employer by being
14 the party plaintiff, then the action shall be brought in the name of the employer and the
15 employee or his personal representative shall be made a party plaintiff or party defendant by
16 order of court.

17 (e) The amount of compensation and other benefits paid or payable on account of such
18 injury or death shall be admissible in evidence in any proceeding against the third party. In the
19 event that said amount of compensation and other benefits is introduced in such a proceeding
20 the court shall instruct the jury that said amount will be deducted by the court from any amount
21 of damages awarded to the plaintiff. If the third party defending such proceeding, by answer
22 duly served on the employer, sufficiently alleges that actionable negligence of the employer
23 joined and concurred with the negligence of the third party in producing the injury or death,
24 then an issue shall be submitted to the jury in such case as to whether actionable negligence of
25 employer joined and concurred with the negligence of the third party in producing the injury or
26 death. The employer shall have the right to appear, to be represented, to introduce evidence, to
27 cross-examine adverse witnesses, and to argue to the jury as to this issue as fully as though he
28 were a party although not named or joined as a party to the proceeding. Such issue shall be the
29 last of the issues submitted to the jury. If the verdict shall be that actionable negligence of the
30 employer did join and concur with that of the third party in producing the injury or death, then
31 the court shall reduce the damages awarded by the jury against the third party by the amount
32 which the employer would otherwise be entitled to receive therefrom by way of subrogation
33 hereunder and the entire amount recovered, after such reduction, shall belong to the employee
34 or his personal representative free of any claim by the employer and the third party shall have
35 no further right by way of contribution or otherwise against the employer, except any right
36 which may exist by reason of an express contract of indemnity between the employer and the
37 third party, which was entered into prior to the injury to the employee. In the event that the
38 court becomes aware that there is an express contract of indemnity between the employer and
39 the third party the court may in the interest of justice exclude the employer from the trial of the
40 claim against the third party and may meet the issue of the actionable negligence of the
41 employer to the jury in a separate hearing.

42 (f) (1) If the employer has filed a written admission of liability for benefits under
43 this Chapter with, or if an award final in nature in favor of the employee has
44 been entered by the Industrial Commission, then any amount obtained by
45 any person by settlement with, judgment against, or otherwise from the third
46 party by reason of such injury or death shall be disbursed by order of the
47 Industrial Commission for the following purposes and in the following order
48 of priority:

49 a. First to the payment of actual court costs taxed by judgment and/or
50 reasonable expenses incurred by the employee in the litigation of the
51 third-party claim.

- 1 b. Second to the payment of the fee of the attorney representing the
2 person making settlement or obtaining judgment, and except for the
3 fee on the subrogation interest of the employer such fee shall not be
4 subject to the provisions of G.S. 97-90 but shall not exceed one third
5 of the amount obtained or recovered of the third party.
6 c. Third to the reimbursement of the employer for all benefits by way of
7 compensation or medical compensation expense paid or to be paid by
8 the employer under award of the Industrial Commission.
9 d. Fourth to the payment of any amount remaining to the employee or
10 his personal representative.

11 (2) The attorney fee paid under (f)(1) shall be paid by the employee and the
12 employer in direct proportion to the amount each shall receive under (f)(1)c
13 and (f)(1)d hereof and shall be deducted from such payments when
14 distribution is made.

15 (g) The insurance carrier affording coverage to the employer under this Chapter shall be
16 subrogated to all rights and liabilities of the employer hereunder but this shall not be construed
17 as conferring any other or further rights upon such insurance carrier than those herein conferred
18 upon the employer, anything in the policy of insurance to the contrary notwithstanding.

19 (h) In any proceeding against or settlement with the third party, every party to the claim
20 for compensation shall have a lien to the extent of his interest under (f) hereof upon any
21 payment made by the third party by reason of such injury or death, whether paid in settlement,
22 in satisfaction of judgment, as consideration for covenant not to sue, or otherwise and such lien
23 may be enforced against any person receiving such funds. Neither the employee or his personal
24 representative nor the employer shall make any settlement with or accept any payment from the
25 third party without the written consent of the other and no release to or agreement with the third
26 party shall be valid or enforceable for any purpose unless both employer and employee or his
27 personal representative join therein; provided, that this sentence shall not apply:

28 (1) If the employer is made whole for all benefits paid or to be paid by him
29 under this Chapter less attorney's fees as provided by (f)(1) and (2) hereof
30 and the release to or agreement with the third party is executed by the
31 employee; or

32 (2) If either party follows the provisions of subsection (j) of this section.

33 (i) Institution of proceedings against or settlement with the third party, or acceptance of
34 benefits under this Chapter, shall not in any way or manner affect any other remedy which any
35 party to the claim for compensation may have except as otherwise specifically provided in this
36 Chapter, and the exercise of one remedy shall not in any way or manner be held to constitute an
37 election of remedies so as to bar the other.

38 (j) Notwithstanding any other subsection in this section, in the event that a judgment is
39 obtained by the employee in an action against a third party, or in the event that a settlement has
40 been agreed upon by the employee and the third party, either party may apply to the resident
41 superior court judge of the county in which the cause of action arose or where the injured
42 employee resides, or to a presiding judge of either district, to determine the subrogation
43 amount. After notice to the employer and the insurance carrier, after an opportunity to be heard
44 by all interested parties, and with or without the consent of the employer, the judge shall
45 determine, in his discretion, the amount, if any, of the employer's lien, whether based on
46 accrued or prospective workers' compensation benefits, and the amount of cost of the
47 third-party litigation to be shared between the employee and employer. The judge shall
48 consider the anticipated amount of prospective compensation the employer or workers'
49 compensation carrier is likely to pay to the employee in the future, the net recovery to plaintiff,
50 the likelihood of the plaintiff prevailing at trial or on appeal, the need for finality in the
51 litigation, and any other factors the court deems just and reasonable, in determining the

1 appropriate amount of the employer's lien. If the matter is pending in the federal district court
2 such determination may be made by a federal district court judge of that division. (1929, c. 120,
3 s. 11; 1933, c. 449, s. 1; 1943, c. 622; 1959, c. 1324; 1963, c. 450, s. 1; 1971, c. 171, s. 1; 1979,
4 c. 865, s. 1; 1983, c. 645, ss. 1, 2; 1991, c. 408, s. 1; c. 703, s. 2; 1999-194, s. 1; 2004-199, s.
5 13(b).)

6
7 **§ 97-10.3. Minors illegally employed.**

8 In any case where an employer and employee are subject to the provisions of this Chapter,
9 any injury to a minor while employed contrary to the laws of this State shall be compensable
10 under this Chapter as if said minor were an adult, subject to the other provisions of this
11 Chapter. (1929, c. 120, s. 11; 1933, c. 449, s. 1; 1943, c. 622; 1959, c. 1324.)
12

13 **§ 97-11. Employer not relieved of statutory duty.**

14 Nothing in this Article shall be construed to relieve any employer or employee from penalty
15 for failure or neglect to perform any statutory duty. (1929, c. 120, s. 12.)
16

17 **§ 97-12. Use of intoxicant or controlled substance; willful neglect; willful disobedience of
18 statutory duty, safety regulation or rule.**

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

- 21 (1) His intoxication, provided the intoxicant was not supplied by the employer
22 or his agent in a supervisory capacity to the employee; or
- 23 (2) His being under the influence of any controlled substance listed in the North
24 Carolina Controlled Substances Act, G.S. 90-86, et seq., where such
25 controlled substance was not by prescription by a practitioner; or
- 26 (3) His willful intention to injure or kill himself or another.

27 When the injury or death is caused by the willful failure of the employer to comply with any
28 statutory requirement or any lawful order of the Commission, compensation shall be increased
29 ten percent (10%). When the injury or death is caused by the willful failure of the employee to
30 use a safety appliance or perform a statutory duty or by the willful breach of any rule or
31 regulation adopted by the employer and approved by the Commission and brought to the
32 knowledge of the employee prior to the injury compensation shall be reduced ten percent
33 (10%). The burden of proof shall be upon him who claims an exemption or forfeiture under this
34 section.

35 "Intoxication" and "under the influence" shall mean that the employee shall have consumed
36 a sufficient quantity of intoxicating beverage or controlled substance to cause the employee to
37 lose the normal control of his or her bodily or mental faculties, or both, to such an extent that
38 there was an appreciable impairment of either or both of these faculties at the time of the injury.

39 A result consistent with "intoxication" or being "under the influence" from a blood or other
40 medical test conducted in a manner generally acceptable to the scientific community and
41 consistent with applicable State and federal law, if any, shall create a rebuttable presumption of
42 impairment from the use of alcohol or a controlled substance. (1929, c. 120, s. 13; 1975, c. 740;
43 2005-448, s. 2.)
44

45 **§ 97-12.1. Willful misrepresentation in applying for employment.**

46 No compensation shall be allowed under this Article for injury by accident or occupational
47 disease if the employer proves that (i) at the time of hire or in the course of entering into
48 employment, (ii) at the time of receiving notice of the removal of conditions from a conditional
49 offer of employment, or (iii) during the course of a post-offer medical examination:

- 50 (1) The employee knowingly and willfully made a false representation as to the
51 employee's physical condition;

- 1 (2) The employer relied upon one or more false representations by the
2 employee, and the reliance was a substantial factor in the employer's
3 decision to hire the employee; and
4 (3) There was a causal connection between false representation by the employee
5 and the injury or occupational disease. (2011-287, s. 3.)
6

7 **§ 97-13. Exceptions from provisions of Article.**

8 (a) Employees of Certain Railroads. – This Article shall not apply to railroads or
9 railroad employees nor in any way repeal, amend, alter or affect Article 8 of Chapter 60 or any
10 section thereof relating to the liability of railroads for injuries to employees, nor upon the trial
11 of any action in tort for injuries not coming under the provisions of this Article, shall any
12 provision herein be placed in evidence or be permitted to be argued to the jury. Provided,
13 however, that the foregoing exemption to railroads and railroad employees shall not apply to
14 employees of a State-owned railroad company, as defined in G.S. 124-11, or to electric street
15 railroads or employees thereof; and this Article shall apply to electric street railroads and
16 employees thereof and to this extent the provisions of Article 8 of Chapter 60 are hereby
17 amended.

18 (b) Casual Employment, Domestic Servants, Farm Laborers, Federal Government,
19 Employer of Less than Three Employees. – This Article shall not apply to casual employees,
20 farm laborers when fewer than 10 full-time nonseasonal farm laborers are regularly employed
21 by the same employer, federal government employees in North Carolina, and domestic
22 servants, nor to employees of such persons, nor to any person, firm or private corporation that
23 has regularly in service less than three employees in the same business within this State, except
24 that any employer without regard to number of employees, including an employer of domestic
25 servants, farm laborers, or one who previously had exempted himself, who has purchased
26 workers' compensation insurance to cover his compensation liability shall be conclusively
27 presumed during life of the policy to have accepted the provisions of this Article from the
28 effective date of said policy and his employees shall be so bound unless waived as provided in
29 this Article; provided however, that this Article shall apply to all employers of one or more
30 employees who are employed in activities which involve the use or presence of radiation.

31 (c) Prisoners. – This Article shall not apply to prisoners being worked by the State or
32 any subdivision thereof, except to the following extent: Whenever any prisoner assigned to the
33 State Division of Adult Correction of the Department of Public Safety shall suffer accidental
34 injury or accidental death arising out of and in the course of the employment to which he had
35 been assigned, if there be death or if the results of such injury continue until after the date of
36 the lawful discharge of such prisoner to such an extent as to amount to a disability as defined in
37 this Article, then such discharged prisoner or the dependents or next of kin of such discharged
38 prisoner may have the benefit of this Article by applying to the Industrial Commission as any
39 other employee; provided, such application is made within 12 months from the date of the
40 discharge; and provided further that the maximum compensation to any prisoner or to the
41 dependents or next of kin of any deceased prisoner shall not exceed thirty dollars (\$30.00) per
42 week and the period of compensation shall relate to the date of his discharge rather than the
43 date of the accident. If any person who has been awarded compensation under the provisions of
44 this subsection shall be recommitted to prison upon conviction of an offense committed
45 subsequent to the award, such compensation shall immediately cease. Any awards made under
46 the terms of this subsection shall be paid by the State Division of Adult Correction of the
47 Department of Public Safety from the funds available for the operation of the Division of Adult
48 Correction of the Department of Public Safety. The provisions of G.S. 97-10.1 and 97-10.2
49 shall apply to prisoners and discharged prisoners entitled to compensation under this subsection
50 and to the State in the same manner as said section applies to employees and employers.

1 (d) Sellers of Agricultural Products. – This Article shall not apply to persons, firms or
2 corporations engaged in selling agricultural products for the producers thereof on commission
3 or for other compensation, paid by the producers, provided the product is prepared for sale by
4 the producer. (1929, c. 120, s. 14; 1933, c. 401; 1935, c. 150; 1941, c. 295; 1943, c. 543; 1945,
5 c. 766; 1957, c. 349, s. 10; c. 809; 1967, c. 996, s. 13; 1971, c. 284, s. 2; c. 1176; 1975, c. 718,
6 s. 3; 1979, c. 247, s. 1; c. 714, s. 2; 1981, c. 378, s. 1; 1983 (Reg. Sess., 1984), c. 1042, s. 2;
7 1987, c. 729, s. 3; 2000-146, s. 11; 2011-145, s. 19.1(h).)

8
9 **§§ 97-14 through 97-16. Repealed by Session Laws 1973, c. 1291, ss. 7-9.**

10
11 **§ 97-17. Settlements allowed in accordance with Article.**

12 (a) This article does not prevent settlements made by and between the employee and
13 employer so long as the amount of compensation and the time and manner of payment are in
14 accordance with the provisions of this Article. A copy of a settlement agreement shall be filed
15 by the employer with and approved by the Commission. No party to any agreement for
16 compensation approved by the Commission shall deny the truth of the matters contained in the
17 settlement agreement, unless the party is able to show to the satisfaction of the Commission
18 that there has been error due to fraud, misrepresentation, undue influence or mutual mistake, in
19 which event the Commission may set aside the agreement. Except as provided in this
20 subsection, the decision of the Commission to approve a settlement agreement is final and is
21 not subject to review or collateral attack.

22 (b) The Commission shall not approve a settlement agreement under this section, unless
23 all of the following conditions are satisfied:

- 24 (1) The settlement agreement is deemed by the Commission to be fair and just,
25 and that the interests of all of the parties and of any person, including a
26 health benefit plan that paid medical expenses of the employee have been
27 considered.
- 28 (2) The settlement agreement contains a list of all of the known medical
29 expenses of the employee related to the injury to the date of the settlement
30 agreement, including medical expenses that the employer or carrier disputes,
31 and a list of medical expenses, if any, that will be paid by the employer
32 under the settlement agreement.
- 33 (3) The settlement agreement contains a finding that the positions of all of the
34 parties to the agreement are reasonable as to the payment of medical
35 expenses.

36 It is not necessary, however, to satisfy the condition in subdivision (2) of this subsection when
37 in the settlement agreement the employer agrees to pay all medical expenses of the employee
38 related to the injury to the date of the settlement agreement.

39 (c) In determining whether the positions of all of the parties to the agreement are
40 reasonable as to the payment of medical expenses under subdivision (3) of subsection (b) of
41 this section, the Commission shall consider all of the following:

- 42 (1) Whether the employer admitted or reasonably denied the employee's claim
43 for compensation.
- 44 (2) The amount of all of the known medical expenses of the employee related to
45 the injury to the date of the settlement agreement, including medical
46 expenses that the employer or carrier disputes.
- 47 (3) The need for finality in the litigation.

48 (d) Nothing in this section shall be construed to limit the application of G.S. 44-49 and
49 G.S. 44-50 to funds in compensation for settlement under this section.

1 (e) Nothing in this section prevents the parties from reaching a separate
2 contemporaneous agreement resolving issues not covered by this Article. (1929, c. 120, s. 18;
3 1963, c. 436; 2001-216, s. 2; 2001-487, s. 102(b); 2005-448, s. 3; 2011-287, s. 4.)
4

5 **§ 97-18. Prompt payment of compensation required; installments; payment without**
6 **prejudice; notice to Commission; penalties.**

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

9 (b) When the employer or insurer admits the employee's right to compensation, the first
10 installment of compensation payable by the employer shall become due on the fourteenth day
11 after the employer has written or actual notice of the injury or death, on which date all
12 compensation then due shall be paid. Compensation thereafter shall be paid in installments
13 weekly except where the Commission determines that payment in installments should be made
14 monthly or at some other period. Upon paying the first installment of compensation and upon
15 suspending, reinstating, changing, or modifying such compensation for any cause, the insurer
16 shall immediately notify the Commission, on a form prescribed by the Commission, that
17 compensation has begun, or has been suspended, reinstated, changed, or modified. A copy of
18 each notice shall be provided to the employee. The first notice of payment to the Commission
19 shall contain the date and nature of the injury, the average weekly wages of the employee, the
20 weekly compensation rate, the date the disability resulting from the injury began, and the date
21 compensation commenced.

22 (c) If the employer or insurer denies the employee's right to compensation, the
23 employer or insurer shall notify the Commission, on or before the fourteenth day after it has
24 written or actual notice of the injury or death, or within such reasonable additional time as the
25 Commission may allow, and advise the employee in writing of its refusal to pay compensation
26 on a form prescribed by the Commission. This notification shall (i) include the name of the
27 employee, the name of the employer, the date of the alleged injury or death, the insurer on the
28 risk, if any, and a detailed statement of the grounds upon which the right to compensation is
29 denied, and (ii) advise the employee of the employee's right to request a hearing pursuant to
30 G.S. 97-83. If the employer or insurer, in good faith, is without sufficient information to admit
31 the employee's right to compensation, the employer or insurer may deny the employee's right to
32 compensation.

33 (d) In any claim for compensation in which the employer or insurer is uncertain on
34 reasonable grounds whether the claim is compensable or whether it has liability for the claim
35 under this Article, the employer or insurer may initiate compensation payments without
36 prejudice and without admitting liability. The initial payment shall be accompanied by a form
37 prescribed by and filed with the Commission, stating that the payments are being made without
38 prejudice. Payments made pursuant to this subsection may continue until the employer or
39 insurer contests or accepts liability for the claim or 90 days from the date the employer has
40 written or actual notice of the injury or death, whichever occurs first, unless an extension is
41 granted pursuant to this section. Prior to the expiration of the 90-day period, the employer or
42 insurer may upon reasonable grounds apply to the Commission for an extension of not more
43 than 30 days. The initiation of payment does not affect the right of the employer or insurer to
44 continue to investigate or deny the compensability of the claim or its liability therefor during
45 this period. If at any time during the 90-day period or extension thereof, the employer or insurer
46 contests the compensability of the claim or its liability therefor, it may suspend payment of
47 compensation and shall promptly notify the Commission and the employee on a form
48 prescribed by the Commission. The employer or insurer must provide on the prescribed form a
49 detailed statement of its grounds for denying compensability of the claim or its liability
50 therefor. If the employer or insurer does not contest the compensability of the claim or its
51 liability therefor within 90 days from the date it first has written or actual notice of the injury or

1 death, or within such additional period as may be granted by the Commission, it waives the
2 right to contest the compensability of and its liability for the claim under this Article. However,
3 the employer or insurer may contest the compensability of or its liability for the claim after the
4 90-day period or extension thereof when it can show that material evidence was discovered
5 after that period that could not have been reasonably discovered earlier, in which event the
6 employer or insurer may terminate or suspend compensation subject to the provisions of G.S.
7 97-18.1.

8 (e) The first installment of compensation payable under the terms of an award by the
9 Commission, or under the terms of a judgment of the court upon an appeal from such an award,
10 shall become due 10 days from the day following expiration of the time for appeal from the
11 award or judgment or the day after notice waiving the right of appeal by all parties has been
12 received by the Commission, whichever is sooner. Thereafter compensation shall be paid in
13 installments weekly, except where the Commission determines that payment in installments
14 shall be made monthly or in some other manner.

15 (f) The employer's or insurer's grounds for contesting the employee's claim or its
16 liability therefor as specified in the notice suspending compensation under subsection (d) of
17 this section are the only bases for the employer's or insurer's defense on the issue of
18 compensability in a subsequent proceeding, unless the defense is based on newly discovered
19 material evidence that could not reasonably have been discovered prior to the notice
20 suspending compensation.

21 (g) If any installment of compensation is not paid within 14 days after it becomes due,
22 there shall be added to such unpaid installment an amount equal to ten per centum (10%)
23 thereof, which shall be paid at the same time as, but in addition to, such installment, unless
24 such nonpayment is excused by the Commission after a showing by the employer that owing to
25 conditions over which he had no control such installment could not be paid within the period
26 prescribed for the payment.

27 (h) Within 16 days after final payment of compensation has been made, the employer or
28 insurer shall send to the Commission and the employee a notice, in accordance with a form
29 prescribed by the Commission, stating that such final payment has been made, the total amount
30 of compensation paid, the name of the employee and of any other person to whom
31 compensation has been paid, the date of the injury or death, and the date to which
32 compensation has been paid. If the employer or insurer fails to so notify the Commission or the
33 employee within such time, the Commission shall assess against such employer or insurer a
34 civil penalty in the amount of twenty-five dollars (\$25.00). The clear proceeds of civil penalties
35 assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in
36 accordance with G.S. 115C-457.2.

37 (i) If any bill for services rendered under G.S. 97-25 by any provider of health care is
38 not paid within 60 days after it has been approved by the Commission and returned to the
39 responsible party, or within 60 days after it was properly submitted, in accordance with the
40 provisions of this Article, to an insurer or managed care organization responsible for direct
41 reimbursement pursuant to G.S. 97-26(g), there shall be added to such unpaid bill an amount
42 equal to ten per centum (10%) thereof, which shall be paid at the same time as, but in addition
43 to, such medical bill, unless such late payment is excused by the Commission.

44 (j) The employer or insurer shall promptly investigate each injury reported or known to
45 the employer and at the earliest practicable time shall admit or deny the employee's right to
46 compensation or commence payment of compensation as provided in subsections (b), (c), or (d)
47 of this section. When an employee files a claim for compensation with the Commission, the
48 Commission may order reasonable sanctions against an employer or insurer which does not,
49 within 30 days following notice from the Commission of the filing of a claim, or within such
50 reasonable additional time as the Commission may allow, do one of the following:

- 1 (1) Notify the Commission and the employee in writing that it is admitting the
2 employee's right to compensation and, if applicable, satisfy the requirements
3 for payment of compensation under subsection (b) of this section.
- 4 (2) Notify the Commission and the employee that it denies the employee's right
5 to compensation consistent with subsection (c) of this section.
- 6 (3) Initiate payments without prejudice and without liability and satisfy the
7 requirements of subsection (d) of this section.

8 For purposes of this subsection, reasonable sanctions shall not prohibit the employer or insurer
9 from contesting the compensability of or its liability for the claim.

10 (k) In addition to any other methods for reinstatement of compensation available under
11 the Act, whenever the employer or insurer has admitted the employee's right to compensation,
12 or liability has been established, the employee may move for reinstatement of compensation on
13 a form prescribed by the Commission. If the employer or insurer contests the employee's
14 request for reinstatement, the matter shall be scheduled on a preemptive basis. This subsection
15 shall not apply to a request for a review of an award on the grounds of a change in condition
16 pursuant to G.S. 97-47. (1929, c. 120, s. 181/2; 1967, c. 1229, s. 2; 1979, c. 249, ss. 1, 2; c.
17 599; 1993 (Reg. Sess., 1994), c. 679, s. 3.1; 1998-215, s. 114; 2005-448, s. 4; 2006-264, s.
18 91.7; 2011-287, s. 5.)
19

20 **§ 97-18.1. Termination or suspension of compensation benefits.**

21 (a) Payments of compensation pursuant to an award of the Commission shall continue
22 until the terms of the award have been fully satisfied.

23 (b) An employer may terminate payment of compensation for total disability being paid
24 pursuant to G.S. 97-29 when the employee has returned to work for the same or a different
25 employer, subject to the provisions of G.S. 97-32.1, or when the employer contests a claim
26 pursuant to G.S. 97-18(d) within the time allowed thereunder. The employer shall promptly
27 notify the Commission and the employee, on a form prescribed by the Commission, of the
28 termination of compensation and the availability of trial return to work and additional
29 compensation due the employee for any partial disability.

30 (c) An employer seeking to terminate or suspend compensation being paid pursuant to
31 G.S. 97-29 for a reason other than those specified in subsection (b) of this section shall notify
32 the employee and the employee's attorney of record in writing of its intent to do so on a form
33 prescribed by the Commission. A copy of the notice shall be filed with the Commission. This
34 form shall contain the reasons for the proposed termination or suspension of compensation, be
35 supported by available documentation, and inform the employee of the employee's right to
36 contest the termination or suspension by filing an objection in writing with the Commission
37 within 14 days of the date the employer's notice is filed with the Commission or within such
38 additional reasonable time as the Commission may allow.

39 (d) If the employee fails to object to the employer's notice of proposed termination or
40 suspension within the time provided, the Commission may enter an appropriate order
41 terminating or suspending the compensation if it finds that there is a sufficient basis under this
42 Article for this action. If the employee files a timely objection to the employer's notice, the
43 Commission shall conduct an informal hearing by telephone with the parties or their counsel. If
44 either party objects to conducting the hearing by telephone, the Commission may conduct the
45 hearing in person in Raleigh or at another location selected by the Commission. The parties
46 shall be afforded an opportunity to state their position and to submit documentary evidence at
47 the informal hearing. The employer may waive the right to an informal hearing and proceed to
48 the formal hearing. The informal hearing, whether by telephone or in person, shall be
49 conducted only on the issue of termination or suspension of compensation and shall be
50 conducted within 25 days of the receipt by the Commission of the employer's notice to the
51 employee unless this time is extended by the Commission for good cause. The Commission

1 shall issue a decision on the employer's application for termination of compensation within five
2 days after completion of the informal hearing. The decision shall (i) approve the application,
3 (ii) disapprove the application, or (iii) state that the Commission is unable to reach a decision
4 on the application in an informal hearing, in which event the Commission shall schedule a
5 formal hearing pursuant to G.S. 97-83 on the employer's application for termination of
6 compensation. Compensation may be terminated or suspended by the employer following an
7 informal hearing only if its application is approved. If the Commission was unable to reach a
8 decision in the informal hearing, the employee's compensation shall continue pending a
9 decision by the Commission in the formal hearing. The Commission's decision in the informal
10 hearing is not binding in subsequent hearings.

11 The employer or the employee may request a formal hearing pursuant to G.S. 97-83 on the
12 Commission's decision approving or denying the employer's application for termination of
13 compensation. A formal hearing under G.S. 97-83 ordered or requested pursuant to this section
14 shall be a hearing de novo on the employer's application for termination or suspension of
15 compensation and may be scheduled by the Commission on a preemptive basis.

16 (e) At an informal hearing on the issue of termination or suspension of compensation,
17 and at any subsequent hearing, the Commission may address related issues regarding the
18 selection of medical providers or treatment under G.S. 97-25, subject to exhaustion of the
19 dispute resolution procedures of a managed care organization pursuant to G.S. 97-25.2. (1993
20 (Reg. Sess., 1994), c. 679, ss. 3.6, 10.9.)

21
22 **§ 97-19. Liability of principal contractors; certificate that subcontractor has complied**
23 **with law; right to recover compensation of those who would have been liable;**
24 **order of liability.**

25 Any principal contractor, intermediate contractor, or subcontractor who shall sublet any
26 contract for the performance of any work without requiring from such subcontractor or
27 obtaining from the Industrial Commission a certificate, issued by a workers' compensation
28 insurance carrier, or a certificate of compliance issued by the Department of Insurance to a
29 self-insured subcontractor, stating that such subcontractor has complied with G.S. 97-93 hereof,
30 shall be liable, irrespective of whether such subcontractor has regularly in service fewer than
31 three employees in the same business within this State, to the same extent as such subcontractor
32 would be if he were subject to the provisions of this Article for the payment of compensation
33 and other benefits under this Article on account of the injury or death of any employee of such
34 subcontractor due to an accident arising out of and in the course of the performance of the work
35 covered by such subcontract. If the principal contractor, intermediate contractor or
36 subcontractor shall obtain such certificate at the time of subletting such contract to
37 subcontractor, he shall not thereafter be held liable to any employee of such subcontractor for
38 compensation or other benefits under this Article.

39 Any principal contractor, intermediate contractor, or subcontractor paying compensation or
40 other benefits under this Article, under the foregoing provisions of this section, may recover the
41 amount so paid from any person, persons, or corporation who independently of such provision,
42 would have been liable for the payment thereof.

43 Every claim filed with the Industrial Commission under this section shall be instituted
44 against all parties liable for payment, and said Commission, in its award, shall fix the order in
45 which said parties shall be exhausted, beginning with the immediate employer.

46 The principal or owner may insure any or all of his contractors and their employees in a
47 blanket policy, and when so insured such contractor's employees will be entitled to
48 compensation benefits regardless of whether the relationship of employer and employee exists
49 between the principal and the contractor. (1929, c. 120, s. 19; 1941, c. 358, s. 1; 1945, c. 766;
50 1973, c. 1291, s. 10; 1979, c. 247, s. 2; 1987, c. 729, s. 4; 1989, c. 637; 1991, c. 703, s. 7; 1993
51 (Reg. Sess., 1994), c. 679, s. 10.6; 1995, c. 517, s. 36; 1995 (Reg. Sess., 1996), c. 555, s. 1.)

1
2 **§ 97-19.1. Truck, tractor, or truck tractor trailer driver's status as employee or**
3 **independent contractor.**

4 (a) An individual in the interstate or intrastate carrier industry who operates a truck,
5 tractor, or truck tractor trailer licensed by a governmental motor vehicle regulatory agency may
6 be an employee or an independent contractor under this Article dependent upon the application
7 of the common law test for determining employment status.

8 Any principal contractor, intermediate contractor, or subcontractor, irrespective of whether
9 such contractor regularly employs three or more employees, who contracts with an individual
10 in the interstate or intrastate carrier industry who operates a truck, tractor, or truck tractor trailer
11 licensed by the United States Department of Transportation and who has not secured the
12 payment of compensation in the manner provided for employers set forth in G.S. 97-93 for
13 himself personally and for his employees and subcontractors, if any, shall be liable as an
14 employer under this Article for the payment of compensation and other benefits on account of
15 the injury or death of the independent contractor and his employees or subcontractors due to an
16 accident arising out of and in the course of the performance of the work covered by such
17 contract.

18 (b) Notwithstanding subsection (a) of this section, a principal contractor, intermediate
19 contractor, or subcontractor shall not be liable as an employer under this Article for the
20 payment of compensation on account of the injury or death of the independent contractor if the
21 principal contractor, intermediate contractor, or subcontractor (i) contracts with an independent
22 contractor who is an individual licensed by the United States Department of Transportation and
23 (ii) the independent contractor personally is operating the vehicle solely pursuant to that
24 license.

25 (c) The principal contractor, intermediate contractor, or subcontractor may insure any
26 and all of his independent contractors and their employees or subcontractors in a blanket
27 policy, and when insured, the independent contractors, subcontractors, and employees will be
28 entitled to compensation benefits under the blanket policy.

29 A principal contractor, intermediate contractor, or subcontractor may include in the
30 governing contract with an independent contractor in the interstate or intrastate carrier industry
31 who operates a truck, tractor, or truck tractor trailer licensed by a governmental motor vehicle
32 regulatory agency an agreement for the independent contractor to reimburse the cost of
33 covering that independent contractor under the principal contractor's, intermediate contractor's,
34 or subcontractor's coverage of his business. (2003-235, s. 1; 2006-26, s. 1; 2006-259, s. 19.)
35

36 **§ 97-20. Priority of compensation claims against assets of employer.**

37 All rights of compensation granted by this Article shall have the same preference or priority
38 for the whole thereof against the assets of the employer as is allowed by law for any unpaid
39 wages for labor. (1929, c. 120, s. 20.)
40

41 **§ 97-21. Claims unassignable and exempt from taxes and debts; agreement of employee**
42 **to contribute to premium or waive right to compensation void; unlawful**
43 **deduction by employer.**

44 No claim for compensation under this Article shall be assignable, and all compensation and
45 claims therefor shall be exempt from all claims of creditors and from taxes.

46 No agreement by an employee to pay any portion of premium paid by his employer to a
47 carrier or to contribute to a benefit fund or department maintained by such employer for the
48 purpose of providing compensation or medical services and supplies as required by this Article
49 shall be valid, and any employer who makes a deduction for such purpose from the pay of any
50 employee entitled to the benefits of this Article shall be guilty of a Class 3 misdemeanor and
51 upon conviction thereof shall be punished only by a fine of not more than five hundred dollars

1 (\$500.00). No agreement by an employee to waive his right to compensation under this
2 Chapter shall be valid. (1929, c. 120, s. 21; 1993, c. 539, s. 677; 1994, Ex. Sess., c. 24, s.
3 14(c).)
4

5 **§ 97-22. Notice of accident to employer.**

6 Every injured employee or his representative shall immediately on the occurrence of an
7 accident, or as soon thereafter as practicable, give or cause to be given to the employer a
8 written notice of the accident, and the employee shall not be entitled to physician's fees nor to
9 any compensation which may have accrued under the terms of this Article prior to the giving of
10 such notice, unless it can be shown that the employer, his agent or representative, had
11 knowledge of the accident, or that the party required to give such notice had been prevented
12 from doing so by reason of physical or mental incapacity, or the fraud or deceit of some third
13 person; but no compensation shall be payable unless such written notice is given within 30 days
14 after the occurrence of the accident or death, unless reasonable excuse is made to the
15 satisfaction of the Industrial Commission for not giving such notice and the Commission is
16 satisfied that the employer has not been prejudiced thereby. (1929, c. 120, s. 22.)
17

18 **§ 97-23. What notice is to contain; defects no bar; notice personally or by registered
19 letter or certified mail.**

20 The notice provided in the foregoing section [G.S. 97-22] shall state in ordinary language
21 the name and address of the employee, the time, place, nature, and cause of the accident, and of
22 the resulting injury or death; and shall be signed by the employee or by a person on his behalf,
23 or, in the event of his death, by any one or more of his dependents, or by a person in their
24 behalf.

25 No defect or inaccuracy in the notice shall be a bar to compensation unless the employer
26 shall prove that his interest was prejudiced thereby, and then only to such extent as the
27 prejudice.

28 Said notice shall be given personally to the employer or any of his agents upon whom a
29 summons in civil action may be served under the laws of the State, or may be sent by registered
30 letter or certified mail addressed to the employer at his last known residence or place of
31 business. (1929, c. 120, s. 23; 1959, c. 863, s. 1.)
32

33 **§ 97-24. Right to compensation barred after two years; destruction of records.**

34 (a) The right to compensation under this Article shall be forever barred unless (i) a
35 claim or memorandum of agreement as provided in G.S. 97-82 is filed with the Commission or
36 the employee is paid compensation as provided under this Article within two years after the
37 accident or (ii) a claim or memorandum of agreement as provided in G.S. 97-82 is filed with
38 the Commission within two years after the last payment of medical compensation when no
39 other compensation has been paid and when the employer's liability has not otherwise been
40 established under this Article. The provisions of this subsection shall not limit the time
41 otherwise allowed for the filing of a claim for compensation for occupational disease in G.S.
42 97-58, but in no event shall the time for filing a claim for compensation for occupational
43 disease be less than the times provided herein for filing a claim for an injury by accident.

44 (b) If any claim for compensation is hereafter made upon the theory that such claim or
45 the injury upon which said claim is based is within the jurisdiction of the Industrial
46 Commission under the provisions of this Article, and if the Commission, or the appellate courts
47 on appeal, shall adjudge that such claim is not within the Article, the claimant, or if he dies, his
48 personal representative, shall have one year after the rendition of a final judgment in the case
49 within which to commence an action at law.

50 (c) When all claims and reports required by this Article have been filed, and the cases
51 and records of which they are a part have been closed by proper reports, receipts, awards or

1 orders, these records, may after five years in the discretion of the Commission, with and by the
2 authorization and approval of the Department of Cultural Resources, be destroyed by burning
3 or otherwise. (1929, c. 120, s. 24; 1933, c. 449, s. 2; 1945, c. 766; 1955, c. 1026, s. 12; 1973, c.
4 476, s. 48; c. 1060, s. 1; 1991, c. 703, s. 8; 1993 (Reg. Sess., 1994), c. 679, s. 3.4.)
5

6 **§ 97-25. Medical treatment and supplies.**

7 Medical compensation shall be provided by the employer.

8 Upon the written request of the employee to the employer, the employer may agree to
9 authorize and pay for a second opinion examination with a duly qualified physician licensed to
10 practice in North Carolina, or licensed in another state if agreed to by the parties or ordered by
11 the Commission. If, within 14 calendar days of the receipt of the written request, the request is
12 denied or the parties, in good faith, are unable to agree upon a health care provider to perform a
13 second opinion examination, the employee may request that the Industrial Commission order a
14 second opinion examination. The expense thereof shall be borne by the employer upon the
15 same terms and conditions as provided in this section for medical compensation.

16 Provided, however, if the employee so desires, an injured employee may select a health
17 care provider of the employee's own choosing to attend, prescribe, and assume the care and
18 charge of the employee's case subject to the approval of the Industrial Commission. In addition,
19 in case of a controversy arising between the employer and the employee, the Industrial
20 Commission may order necessary treatment. In order for the Commission to grant an
21 employee's request to change treatment or health care provider, the employee must show by a
22 preponderance of the evidence that the change is reasonably necessary to effect a cure, provide
23 relief, or lessen the period of disability. When deciding whether to grant an employee's request
24 to change treatment or health care provider, the Commission may disregard or give less weight
25 to the opinion of a health care provider from whom the employee sought evaluation, diagnosis,
26 or treatment before the employee first requested authorization in writing from the employer,
27 insurer, or Commission.

28 The refusal of the employee to accept any medical compensation when ordered by the
29 Industrial Commission shall bar the employee from further compensation until such refusal
30 ceases, and no compensation shall at any time be paid for the period of suspension unless in the
31 opinion of the Industrial Commission the circumstances justified the refusal. Any order issued
32 by the Commission suspending compensation pursuant to G.S. 97-18.1 shall specify what
33 action the employee should take to end the suspension and reinstate the compensation.

34 If in an emergency on account of the employer's failure to provide medical compensation, a
35 physician other than provided by the employer is called to treat the injured employee, the
36 reasonable cost of such service shall be paid by the employer if so ordered by the Industrial
37 Commission. (1929, c. 120, s. 25; 1931, c. 274, s. 4; 1933, c. 506; 1955, c. 1026, s. 2; 1973, c.
38 520, s. 1; 1991, c. 703, s. 3; 1997-308, s. 1; 1999-150, s. 1; 2005-448, s. 6.2; 2011-287, s. 6.)
39

40 **§ 97-25.1. Limitation of duration of medical compensation.**

41 The right to medical compensation shall terminate two years after the employer's last
42 payment of medical or indemnity compensation unless, prior to the expiration of this period,
43 either: (i) the employee files with the Commission an application for additional medical
44 compensation which is thereafter approved by the Commission, or (ii) the Commission on its
45 own motion orders additional medical compensation. If the Commission determines that there
46 is a substantial risk of the necessity of future medical compensation, the Commission shall
47 provide by order for payment of future necessary medical compensation. (1993 (Reg. Sess.,
48 1994), c. 679, s. 2.5.)
49

50 **§ 97-25.2. Managed care organizations.**

1 The requirements of G.S. 97-25 may be satisfied by contracting with a managed care
2 organization. Notwithstanding any other provision of this Article, if an employer or carrier
3 contracts with a managed care organization for medical services pursuant to this Article, those
4 employees who are covered by the contract with the managed care organization shall receive
5 medical services for a condition for which the employer has accepted liability or authorized
6 treatment under this Article in the manner prescribed by the contract and in accordance with the
7 managed care organization's certificate of authority; provided that the contract complies with
8 rules adopted by the Commission, consistent with this Article, governing managed care
9 organizations. An employee must exhaust all dispute resolution procedures of a managed care
10 organization before applying to the Commission for review of any issue related to medical
11 services compensable under this Article. Once application to the Commission has been made,
12 the employee shall be entitled to an examination by a duly qualified physician or surgeon in the
13 same manner as provided by G.S. 97-27.

14 If an employee's medical services are provided through a managed care organization
15 pursuant to this section, subject to the rules of the managed care organization, the employee
16 shall select the attending physician from those physicians who are members of the managed
17 care organization's panel, and may subsequently change attending physicians once within the
18 group of physicians who are members of the managed care organization's panel without
19 approval from the employer or insurer. Additional changes in the attending physician or any
20 change to a physician or examination by a physician not a member of the insurer's managed
21 care organization's panel shall only be made pursuant to the organization's contract or upon
22 reasonable grounds by order of the Commission. (1993 (Reg. Sess., 1994), c. 679, s. 2.1.)
23

24 **§ 97-25.3. Preauthorization.**

25 (a) An insurer may require preauthorization for inpatient admission to a hospital,
26 inpatient admission to a treatment center, and inpatient or outpatient surgery. The insurer's
27 preauthorization requirement must adhere to the following standards:

- 28 (1) The insurer may require no more than 10 days advance notice of the
29 inpatient admission or surgery.
- 30 (2) The insurer must respond to a request for preauthorization within two
31 business days of the request.
- 32 (3) The insurer shall review the need for the inpatient admission or surgery and
33 may require the employee to submit to an independent medical examination
34 as provided in G.S. 97-27(a). This examination must be completed and the
35 insurer must make its determination on the request for preauthorization
36 within seven days of the date of the request unless this time is extended by
37 the Commission for good cause.
- 38 (4) The insurer shall document its review findings and determination in writing
39 and shall provide a copy of the findings and determination to the employee
40 and the employee's attending physician, and, if applicable, to the hospital or
41 treatment center.
- 42 (5) The insurer shall authorize the inpatient admission or surgery when it
43 requires the employee to submit to a medical examination as provided in
44 G.S. 97-27(a) and the examining physician concurs with the original
45 recommendation for the inpatient admission or surgery. The insurer shall
46 also authorize the inpatient admission or surgery when the employee obtains
47 a second opinion from a physician approved by the insurer or the
48 Commission, and the second physician concurs with the original
49 recommendation for the inpatient admission or surgery. However, the
50 insurer shall not be required by this subdivision to authorize the inpatient

1 admission or surgery if it denies liability under this Article for the particular
2 medical condition for which the services are sought.

3 (6) Except as provided in subsection (c) of this section, the insurer may reduce
4 its reimbursement of the provider's eligible charges under this Article by up
5 to fifty percent (50%) if the insurer has notified the provider in writing of its
6 preauthorization requirement and the provider failed to timely obtain
7 preauthorization. The employee shall not be liable for the balance of the
8 charges.

9 (7) The insurer shall adhere to all other procedures for preauthorization
10 prescribed by the Commission.

11 (b) An insurer may not impose a preauthorization requirement for the following:

12 (1) Emergency services;

13 (2) Services rendered in the diagnosis or treatment of an injury or illness for
14 which the insurer has not admitted liability or authorized payment for
15 treatment pursuant to this Article; and

16 (3) Services rendered in the diagnosis and treatment of a specific medical
17 condition for which the insurer has not admitted liability or authorized
18 payment for treatment although the insurer admits the employee has suffered
19 a compensable injury or illness.

20 (c) The Commission may, upon reasonable grounds, upon the request of the employee
21 or provider, authorize treatment for which preauthorization is otherwise required by this section
22 but was not obtained if the Commission determines that the treatment is or was reasonably
23 required to effect a cure or give relief.

24 (d) The Commission may adopt procedures governing the use of preauthorization
25 requirements and expeditious review of preauthorization denials.

26 (e) A managed care organization may impose preauthorization requirements consistent
27 with the provisions of Chapter 58 of the General Statutes.

28 (f) A provider that refuses to treat an employee for other than an emergency medical
29 condition because preauthorization has not been obtained shall be immune from liability in any
30 civil action for the refusal to treat the employee because of lack of preauthorization. (1993
31 (Reg. Sess., 1994), c. 679, s. 2.2.)

32
33 **§ 97-25.4. Utilization guidelines for medical treatment.**

34 (a) The Commission may adopt utilization rules and guidelines, consistent with this
35 Article, for medical care and medical rehabilitation services, other than those services provided
36 by managed care organizations pursuant to G.S. 97-25.2, including, but not limited to,
37 necessary palliative care, physical therapy treatment, psychological therapy, chiropractic
38 services, medical rehabilitation services, and attendant care. The Commission's rules and
39 guidelines shall ensure that injured employees are provided the services and care intended by
40 this Article and that medical costs are adequately contained. In developing the rules and
41 guidelines, the Commission may consider, among other factors, the practice guidelines adopted
42 by the boards and associations representing medical and rehabilitation professionals.

43 (b) Palliative care rules or guidelines adopted by the Commission may require that the
44 provider (i) supply to the employer a treatment plan, including a schedule of measurable
45 objectives, a projected termination date for treatment, and an estimated cost of services, and (ii)
46 obtain preauthorization from the employer, not inconsistent with the provisions of G.S.
47 97-25.3. (1993 (Reg. Sess., 1994), c. 679, s. 2.4.)

48
49 **§ 97-25.5. Utilization guidelines for vocational and other rehabilitation.**

50 The Commission may adopt utilization rules and guidelines, consistent with this Article, for
51 vocational rehabilitation services and other types of rehabilitation services. In developing the

1 rules and guidelines, the Commission may consider, among other factors, the practice and
2 treatment guidelines adopted by professional rehabilitation associations and organizations.
3 (1993 (Reg. Sess., 1994), c. 679, s. 2.4.)
4

5 **§ 97-25.6. Reasonable access to medical information.**

6 (a) Notwithstanding any provision of G.S. 8-53 to the contrary, and because discovery
7 is limited pursuant to G.S. 97-80, it is the policy of this State to protect the employee's right to a
8 confidential physician-patient relationship while allowing the parties to have reasonable access
9 to all relevant medical information, including medical records, reports, and information
10 necessary to the fair and swift administration and resolution of workers' compensation claims,
11 while limiting unnecessary communications with and administrative requests to health care
12 providers.

13 (b) As used in this section, "relevant medical information" means any medical record,
14 report, or information that is:

- 15 (1) restricted to the particular evaluation, diagnosis, or treatment of the injury or
16 disease for which compensation, including medical compensation, is sought;
- 17 (2) reasonably related to the injury or disease for which the employee claims
18 compensation; or
- 19 (3) related to an assessment of the employee's ability to return to work as a
20 result of the particular injury or disease.

21 (c) Relevant medical information shall be requested and provided subject to the
22 following provisions:

- 23 (1) Medical records. – An employer is entitled, without the express
24 authorization of the employee, to obtain the employee's medical records
25 containing relevant medical information from the employee's health care
26 providers. In a claim in which the employer is not paying medical
27 compensation to a health care provider from whom the medical records are
28 sought, or in a claim denied pursuant to G.S. 97-18(c), the employer shall
29 provide the employee with contemporaneous written notice of the request for
30 medical records. The employer shall provide the employee with a copy of
31 any records received in response to this request within 30 days of its receipt
32 by the employer.
- 33 (2) Written communications with health care providers. – An employer may
34 communicate with the employee's authorized health care provider in writing,
35 without the express authorization of the employee, to obtain relevant
36 medical information not available in the employee's medical records. The
37 employer shall provide the employee with contemporaneous written notice
38 of the written communication. The employer may request the following
39 additional information:
 - 40 a. The diagnosis of the employee's condition;
 - 41 b. The appropriate course of treatment;
 - 42 c. The anticipated time that the employee will be out of work;
 - 43 d. The relationship, if any, of the employee's condition to the
44 employment;
 - 45 e. Work restrictions resulting from the condition;
 - 46 f. The kind of work for which the employee may be eligible;
 - 47 g. The anticipated time the employee will be restricted; and
 - 48 h. Any permanent impairment as a result of the condition.

49 The employer shall provide a copy of the health care provider's response to
50 the employee within 10 business days of its receipt by the employer.

1 (3) Oral communications with health care providers. – An employer may
2 communicate with the employee's authorized health care provider by oral
3 communication to obtain relevant medical information not contained in the
4 employee's medical records, not available through written communication,
5 and not otherwise available to the employer, subject to the following:

6 a. The employer must give the employee prior notice of the purpose of
7 the intended oral communication and an opportunity for the
8 employee to participate in the oral communication at a mutually
9 convenient time for the employer, employee, and health care
10 provider.

11 b. The employer shall provide the employee with a summary of the
12 communication with the health care provider within 10 business days
13 of any oral communication in which the employee did not
14 participate.

15 (d) Additional Information Submitted by the Employer. – Notwithstanding subsection
16 (c) of this section, an employer may submit additional relevant medical information not already
17 contained in the employee's medical records to the employee's authorized health care provider
18 and may communicate in writing with the health care provider about the additional information
19 in accordance with the following procedure:

20 (1) The employer shall first notify the employee in writing that the employer
21 intends to communicate additional information about the employee to the
22 employee's health care provider. The notice shall include the employer's
23 proposed written communication to the health care provider and the
24 additional information to be submitted.

25 (2) The employee shall have 10 business days from the postmark or verifiable
26 facsimile or electronic mail either to consent or object to the employer's
27 proposed written communication.

28 (3) Upon consent of the employee or in the absence of the employee's timely
29 response, the employer may submit the additional information directly to the
30 health care provider.

31 (4) Upon making a timely objection, the employee may request a protective
32 order to prevent the written communication, in which case the employer
33 shall refrain from communicating with the health care provider until the
34 Commission has ruled upon the employee's request. In deciding whether to
35 allow the submission of additional information to the health care provider, in
36 part or in whole, the Commission shall determine whether the proposed
37 written communication and additional information are pertinent to and
38 necessary for the fair and swift administration and resolution of the workers'
39 compensation claim and whether there is an alternative method to discover
40 the information. If the Industrial Commission determines that any party has
41 acted unreasonably by initiating or objecting to the submission of additional
42 information to the health care provider, the Commission may assess costs
43 associated with any proceeding, including reasonable attorneys' fees and
44 deposition costs, against the offending party.

45 (e) Any medical records or reports that reflect evaluation, diagnosis, or treatment of the
46 particular injury or disease for which compensation is sought or are reasonably related to the
47 injury or disease for which the employee seeks compensation that are in the possession of a
48 party shall be furnished to the requesting party by the opposing party when requested in
49 writing, except for records or reports generated by a retained expert.

50 (f) Upon motion by an employee or the health care provider from whom medical
51 records, reports, or information are sought, or with whom oral communication is sought, or

1 upon its own motion, for good cause shown, the Commission may make any order which
2 justice requires to protect an employee, health care provider, or other person from unreasonable
3 annoyance, embarrassment, oppression, or undue burden or expense.

4 (g) Other forms of communication with a health care provider may be authorized by
5 order of the Industrial Commission issued upon a showing that the information sought is
6 necessary for the administration of the employee's claim and is not otherwise reasonably
7 obtainable under this section.

8 (h) The employer may communicate with the health care provider to request medical
9 bills or a response to a pending written request, or about nonsubstantive administrative matters
10 without the express authorization of the employee.

11 (i) The Commission shall establish annually an appropriate medical fee to compensate
12 health care providers for time spent communicating with the employer or employee. Each party
13 shall bear its own costs for said communication.

14 (j) No cause of action shall arise and no health care provider shall incur any liability as
15 a result of the release of medical records, reports, or information pursuant to this Article.

16 (k) For purposes of this section, the term "employer" means the employer, the
17 employer's attorney, and the employer's insurance carrier or third-party administrator; and the
18 term "employee" means the employee, legally appointed guardian, or any attorney representing
19 the employee. (2005-448, s. 6.1; 2011-287, s. 7.)
20

21 **§ 97-26. Fees allowed for medical treatment; malpractice of physician.**

22 (a) Fee Schedule. – The Commission shall adopt a schedule of maximum fees for
23 medical compensation, except as provided in subsection (b) of this section, and shall
24 periodically review the schedule and make revisions pursuant to the provisions of this Article.

25 The fees adopted by the Commission in its schedule shall be adequate to ensure that (i)
26 injured workers are provided the standard of services and care intended by this Chapter, (ii)
27 providers are reimbursed reasonable fees for providing these services, and (iii) medical costs
28 are adequately contained.

29 Prior to adoption of a fee schedule, the Commission shall publish notice of its intent to
30 adopt the schedule in the North Carolina Register and hold a public hearing. The published
31 notice shall include the location, date and time of the public hearing, the proposed effective
32 date of the fee schedule, the period of time during which the Commission will receive written
33 comments on the proposed schedule, and the person to whom comments and questions should
34 be directed. In addition to publication in the North Carolina Register, the notice may be mailed
35 to parties who have requested notice of the fee schedule hearing. The public hearing shall be
36 held no earlier than 15 days after the publication of the notice. The Commission shall receive
37 written comments for at least 30 days or until the date of the public hearing, whichever is later,
38 after which the Commission may adopt the fee schedule.

39 The Commission may consider any and all reimbursement systems and plans in establishing
40 its fee schedule, including, but not limited to, the State Health Plan for Teachers and State
41 Employees (hereinafter, "State Plan"), Blue Cross and Blue Shield, and any other private or
42 governmental plans. The Commission may also consider any and all reimbursement
43 methodologies, including, but not limited to, the use of current procedural terminology ("CPT")
44 codes, diagnostic-related groupings ("DRGs"), per diem rates, capitated payments, and
45 resource-based relative-value system ("RBRVS") payments. The Commission may consider
46 statewide fee averages, geographical and community variations in provider costs, and any other
47 factors affecting provider costs.

48 An appeal from a decision of the Commission establishing a fee schedule, by any party
49 aggrieved thereby, shall be to the North Carolina Court of Appeals. The decision of the
50 Commission shall be affirmed if supported by substantial evidence. For the purposes of the
51 appeal, the Commission is a party.

1 (b) Hospital Fees. – Each hospital subject to the provisions of this subsection shall be
2 reimbursed the amount provided for in this subsection unless it has agreed under contract with
3 the insurer, managed care organization, employer (or other payor obligated to reimburse for
4 inpatient hospital services rendered under this Chapter) to accept a different amount or
5 reimbursement methodology.

6 Except as otherwise provided herein, payment for medical treatment and services rendered
7 to workers' compensation patients by a hospital shall be a reasonable fee determined by the
8 Commission. Effective September 16, 2001, through June 30, 2002, the fee shall be the
9 following amount unless the Commission adopts a different fee schedule in accordance with
10 the provisions of this section:

- 11 (1) For inpatient hospital services, the amount that the hospital would have
12 received for those services as of June 30, 2001. The payment shall not be
13 more than a maximum of one hundred percent (100%) of the hospital's
14 itemized charges as shown on the UB-92 claim form nor less than the
15 minimum percentage for payment of inpatient DRG claims that was in effect
16 as of June 30, 2001.
- 17 (2) For outpatient hospital services and any other services that were reimbursed
18 as a discount off of charges under the State Plan as of June 30, 2001, the
19 amount calculated by the Commission as a percentage of the hospital
20 charges for such services. The percentage applicable to each hospital shall be
21 the percentage used by the Commission to determine outpatient rates for
22 each hospital as of June 30, 2001.
- 23 (3) For any other services, a reasonable fee as determined by the Industrial
24 Commission.

25 Notwithstanding any other provisions of law, the Commission's determination of payment
26 rates under this subsection shall:

- 27 (1) Comply with the procedures for adoption of a fee schedule established in
28 G.S. 97-26(a);
- 29 (2) Include publication of the proposed payment rate, and a summary of the data
30 and calculations on which the rate is based at least 90 days before the
31 proposed effective date;
- 32 (3) Be subject to the declaratory ruling provisions of G.S. 150B-4; and
- 33 (4) Be deemed to constitute a final permanent rule under Article 2A of Chapter
34 150B for purposes of judicial review under Article 4 of that Chapter.

35 A hospital's itemized charges on the UB-92 claim form for workers' compensation services
36 shall be the same as itemized charges for like services for all other payers.

37 (c) Maximum Reimbursement for Providers Under Subsection (a). – Each health care
38 provider subject to the provisions of subsection (a) of this section shall be reimbursed the
39 amount specified under the fee schedule unless the provider has agreed under contract with the
40 insurer or managed care organization to accept a different amount or reimbursement
41 methodology. In any instance in which neither the fee schedule nor a contractual fee applies,
42 the maximum reimbursement to which a provider under subsection (a) is entitled under this
43 Article is the usual, customary, and reasonable charge for the service or treatment rendered. In
44 no event shall a provider under subsection (a) charge more than its usual fee for the service or
45 treatment rendered.

46 (d) Information to Commission. – Each health care provider seeking reimbursement for
47 medical compensation under this Article shall provide the Commission information requested
48 by the Commission for the development of fee schedules and the determination of appropriate
49 reimbursement.

50 (e) When Charges Submitted. – Health care providers shall submit charges to the
51 insurer or managed care organization within 30 days of treatment, within 30 days after the end

1 of the month during which multiple treatments were provided, or within such other reasonable
2 period of time as allowed by the Commission. If an insurer or managed care organization
3 disputes a portion of a health care provider's bill, it shall pay the uncontested portion of the bill
4 and shall resolve disputes regarding the balance of the charges in accordance with this Article
5 or its contractual arrangement.

6 (f) Repeating Diagnostic Tests. – A health care provider shall not authorize a
7 diagnostic test previously conducted by another provider, unless the health care provider has
8 reasonable grounds to believe a change in patient condition may have occurred or the quality of
9 the prior test is doubted. The Commission may adopt rules establishing reasonable
10 requirements for reports and records to be made available to other health care providers to
11 prevent unnecessary duplication of tests and examinations. A health care provider that violates
12 this subsection shall not be reimbursed for the costs associated with administering or analyzing
13 the test.

14 (g) Direct Reimbursement. – The Commission may adopt rules to allow insurers and
15 managed care organizations to review and reimburse charges for medical compensation without
16 submitting the charges to the Commission for review and approval.

17 (g1) Administrative Simplification. – The applicable administrative standards for code
18 sets, identifiers, formats, and electronic transactions to be used in processing electronic medical
19 bills under this Article shall comply with 45 C.F.R. § 162. The Commission shall adopt rules to
20 require electronic medical billing and payment processes, to standardize the necessary medical
21 documentation for billing adjudication, to provide for effective dates and compliance, and for
22 further implementation of this subsection.

23 (h) Malpractice. – The employer shall not be liable in damages for malpractice by a
24 physician or surgeon furnished by him pursuant to the provisions of this section, but the
25 consequences of any such malpractice shall be deemed part of the injury resulting from the
26 accident, and shall be compensated for as such.

27 (i) Resolution of Dispute. – The employee or health care provider may apply to the
28 Commission by motion or for a hearing to resolve any dispute regarding the payment of
29 charges for medical compensation in accordance with this Article. (1929, c. 120, s. 26; 1955, c.
30 1026, s. 3; 1993 (Reg. Sess., 1994), c. 679, s. 2.3; 1995 (Reg. Sess., 1996), c. 548, s. 1;
31 1997-145, s. 1; 2001-410, s. 3; 2001-413, s. 8.2(a); 2005-448, s. 5; 2007-323, s. 28.22A(o);
32 2007-345, s. 12; 2011-287, s. 8.)
33

34 **§ 97-26.1. Fees for medical records and reports; expert witnesses.**

35 The Commission may establish maximum fees for the following when related to a claim
36 under this Article: (i) the searching, handling, copying, and mailing of medical records, (ii) the
37 preparation of medical reports and narratives, and (iii) the presentation of expert testimony in a
38 Commission proceeding. (1993 (Reg. Sess., 1994), c. 679, s. 5.6.)
39

40 **§ 97-27. Medical examination; facts not privileged; refusal to be examined suspends 41 compensation; other medical opinions; autopsy.**

42 (a) After an injury, and so long as the employee claims compensation, the employee, if
43 so requested by his or her employer or ordered by the Industrial Commission, shall submit to
44 independent medical examinations, at reasonable times and places, by a duly qualified
45 physician who is licensed and practicing in North Carolina and is designated and paid by the
46 employer or the Industrial Commission, even if the employee's claim has been denied pursuant
47 to G.S. 97-18(c). The independent medical examination shall be subject to the following
48 provisions:

- 49 (1) The injured employee has the right to have present at the independent
50 medical examination any physician provided and paid by the employee.

- 1 (2) Notwithstanding the provisions of G.S. 8-53, no fact communicated to or
2 otherwise learned by any physician who may have attended or examined the
3 employee, or who may have been present at any examination, shall be
4 privileged with respect to a claim before the Industrial Commission.
- 5 (3) Notwithstanding the provisions of G.S. 97-25.6 to the contrary, an employer
6 or its agent shall be allowed to openly communicate either orally or in
7 writing with an independent medical examiner chosen by the employer
8 regardless of whether the examiner physically examined the employee.
- 9 (4) If the examiner physically examined the employee, the employer must
10 produce the examiner's report to the employee within 10 business days of
11 receipt by the employer, along with a copy of all documents and written
12 communication sent to the independent medical examiner pertaining to the
13 employee.
- 14 (5) If the employee refuses to submit to or in any way obstructs an independent
15 medical examination requested and provided by the employer, the
16 employee's right to compensation and to take or prosecute any proceedings
17 under this Article shall be suspended pursuant to G.S. 97-18.1 until the
18 refusal or objection ceases, and no compensation shall at any time be
19 payable for the period of obstruction, unless in the opinion of the Industrial
20 Commission the circumstances justify the refusal or obstruction. When the
21 employer seeks to suspend compensation under this subdivision, it shall not
22 be necessary for the employer to have first obtained an order compelling the
23 employee to submit to the proposed independent medical examination. Any
24 order issued by the Commission suspending compensation pursuant to G.S.
25 97-18.1 shall specify what action the employee should take to end the
26 suspension and reinstate the compensation.

27 (b) In any case arising under this Article in which the employee is dissatisfied with the
28 percentage of permanent disability as provided by G.S. 97-31 and determined by the authorized
29 health care provider, the employee is entitled to have another examination solely on the
30 percentage of permanent disability provided by a duly qualified physician of the employee's
31 choosing who is licensed to practice in North Carolina, or licensed in another state if agreed to
32 by the parties or ordered by the Commission, and designated by the employee. That physician
33 shall be paid by the employer in the same manner as health care providers designated by the
34 employer or the Industrial Commission are paid. The Industrial Commission must either
35 disregard or give less weight to the opinions of the duly qualified physician chosen by the
36 employee pursuant to this subsection on issues outside the scope of the G.S. 97-27(b)
37 examination. No fact that is communicated to or otherwise learned by any physician who
38 attended or examined the employee, or who was present at any examination, shall be privileged
39 with respect to a claim before the Industrial Commission.

40 (c) The employer, or the Industrial Commission, has the right in any case of death to
41 require an autopsy at its expense. (1929, c. 120, s. 27; 1959, c. 732; 1969, c. 135; 1973, c. 520,
42 s. 2; 1977, c. 511; 1991, c. 636, s. 3; 2011-287, s. 9.)
43

44 **§ 97-28. Seven-day waiting period; exceptions.**

45 No compensation, as defined in G.S. 97-2(11), shall be allowed for the first seven calendar
46 days of disability resulting from an injury, except the benefits provided for in G.S. 97-25.
47 Provided however, that in the case the injury results in disability of more than 21 days, the
48 compensation shall be allowed from the date of the disability. Nothing in this section shall
49 prevent an employer from allowing an employee to use paid sick leave, vacation or annual
50 leave, or disability benefits provided directly by the employer during the first seven calendar
51 days of disability. (1929, c. 120, s. 28; 1983, c. 599; 1987, c. 729, s. 5.)

1
2 **§ 97-29. Rates and duration of compensation for total incapacity.**

3 (a) When an employee qualifies for total disability, the employer shall pay or cause to
4 be paid, as hereinafter provided by subsections (b) through (d) of this section, to the injured
5 employee a weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of his
6 average weekly wages, but not more than the amount established annually to be effective
7 January 1 as provided herein, nor less than thirty dollars (\$30.00) per week.

8 (b) When a claim is compensable pursuant to G.S. 97-18(b), paid without prejudice
9 pursuant to G.S. 97-18(d), agreed by the parties pursuant to G.S. 97-82, or when an employee
10 proves by a preponderance of the evidence that the employee is unable to earn the same wages
11 the employee had earned before the injury, either in the same or other employment, the
12 employee qualifies for temporary total disability subject to the limitations noted herein. The
13 employee shall not be entitled to compensation pursuant to this subsection greater than 500
14 weeks from the date of first disability unless the employee qualifies for extended compensation
15 under subsection (c) of this section.

16 (c) An employee may qualify for extended compensation in excess of the 500-week
17 limitation on temporary total disability as described in subsection (b) of this section only if (i)
18 at the time the employee makes application to the Commission to exceed the 500-week
19 limitation on temporary total disability as described in subsection (b) of this section, 425 weeks
20 have passed since the date of first disability and (ii) pursuant to the provisions of G.S. 97-84,
21 unless agreed to by the parties, the employee shall prove by a preponderance of the evidence
22 that the employee has sustained a total loss of wage-earning capacity. If an employee makes
23 application for extended compensation pursuant to this subsection and is awarded extended
24 compensation by the Commission, the award shall not be stayed pursuant to G.S. 97-85 or G.S.
25 97-86 until the full Commission or an appellate court determines otherwise. Upon its own
26 motion or upon the application of any party in interest, the Industrial Commission may review
27 an award for extended compensation in excess of the 500-week limitation on temporary total
28 disability described in subsection (b) of this section, and, on such review, may make an award
29 ending or continuing extended compensation. When reviewing a prior award to determine if the
30 employee remains entitled to extended compensation, the Commission shall determine if the
31 employer has proven by a preponderance of the evidence that the employee no longer has a
32 total loss of wage-earning capacity. When an employee is receiving full retirement benefits
33 under section 202(a) of the Social Security Act, after attainment of retirement age, as defined in
34 section 216(l) of the Social Security Act, the employer may reduce the extended compensation
35 by one hundred percent (100%) of the employee's retirement benefit. The reduction shall
36 consist of the employee's primary benefit paid pursuant to section 202(a) of the Social Security
37 Act but shall not include any dependent or auxiliary benefits paid pursuant to any other section
38 of the Social Security Act, if any, or any cost-of-living increases in benefits made pursuant to
39 section 215(i) of the Social Security Act.

40 (d) An injured employee may qualify for permanent total disability only if the employee
41 has one or more of the following physical or mental limitations resulting from the injury:

- 42 (1) The loss of both hands, both arms, both feet, both legs, both eyes, or any two
43 thereof, as provided by G.S. 97-31(17).
44 (2) Spinal injury involving severe paralysis of both arms, both legs, or the trunk.
45 (3) Severe brain or closed head injury as evidenced by severe and permanent:
46 a. Sensory or motor disturbances;
47 b. Communication disturbances;
48 c. Complex integrated disturbances of cerebral function; or
49 d. Neurological disorders.
50 (4) Second-degree or third-degree burns to thirty-three percent (33%) or more of
51 the total body surface.

1 An employee who qualifies for permanent total disability pursuant to this subsection shall
2 be entitled to compensation, including medical compensation, during the lifetime of the injured
3 employee, unless the employer shows by a preponderance of the evidence that the employee is
4 capable of returning to suitable employment as defined in G.S. 97-2(22). Provided, however,
5 the termination or suspension of compensation because the employee is capable of returning to
6 suitable employment as defined in G.S. 97-2(22) does not affect the employee's entitlement to
7 medical compensation. An employee who qualifies for permanent total disability under
8 subdivision (1) of this subsection is entitled to lifetime compensation, including medical
9 compensation, regardless of whether or not the employee has returned to work in any capacity.
10 In no other case shall an employee be eligible for lifetime compensation for permanent total
11 disability.

12 (e) An employee shall not be entitled to benefits under this section or G.S. 97-30 and
13 G.S. 97-31 at the same time.

14 (f) Where an employee can show entitlement to compensation pursuant to this section
15 or G.S. 97-30 and a specific physical impairment pursuant to G.S. 97-31, the employee shall
16 not collect benefits concurrently pursuant to both this section or G.S. 97-30 and G.S. 97-31, but
17 rather is entitled to select the statutory compensation which provides the more favorable
18 remedy.

19 (g) The weekly compensation payment for members of the North Carolina National
20 Guard and the North Carolina State Defense Militia shall be the maximum amount established
21 annually in accordance with the last paragraph of this section per week as fixed herein. The
22 weekly compensation payment for deputy sheriffs, or those acting in the capacity of deputy
23 sheriffs, who serve upon a fee basis, shall be thirty dollars (\$30.00) a week as fixed herein.

24 (h) An officer or member of the State Highway Patrol shall not be awarded any weekly
25 compensation under the provisions of this section for the first two years of any incapacity
26 resulting from an injury by accident arising out of and in the course of the performance by him
27 of his official duties if, during such incapacity, he continues to be an officer or member of the
28 State Highway Patrol, but he shall be awarded any other benefits to which he may be entitled
29 under the provisions of this Article.

30 (i) Notwithstanding any other provision of this Article, on July 1 of each year, a
31 maximum weekly benefit amount shall be computed. The amount of this maximum weekly
32 benefit shall be derived by obtaining the average weekly insured wage in accordance with G.S.
33 96-8(22), by multiplying such average weekly insured wage by 1.10, and by rounding such
34 figure to its nearest multiple of two dollars (\$2.00), and this said maximum weekly benefit shall
35 be applicable to all injuries and claims arising on and after January 1 following such
36 computation. Such maximum weekly benefit shall apply to all provisions of this Chapter and
37 shall be adjusted July 1 and effective January 1 of each year as herein provided.

38 (j) If death results from the injury or occupational disease, then the employer shall pay
39 compensation in accordance with the provisions of G.S. 97-38. (1929, c. 120, s. 29; 1939, c.
40 277, s. 1; 1943, c. 502, s. 3; c. 543; c. 672, s. 2; 1945, c. 766; 1947, c. 823; 1949, c. 1017; 1951,
41 c. 70, s. 1; 1953, c. 1135, s. 1; c. 1195, s. 2; 1955, c. 1026, s. 5; 1957, c. 1217; 1963, c. 604, s.
42 1; 1967, c. 84, s. 1; 1969, c. 143, s. 1; 1971, c. 281, s. 1; c. 321, s. 1; 1973, c. 515, s. 1; c. 759,
43 s. 1; c. 1103, s. 1; c. 1308, ss. 1, 2; 1975, c. 284, s. 4; 1979, c. 244; 1981, c. 276, s. 2; c. 378, s.
44 1; c. 421, s. 3; c. 521, s. 2; c. 920, s. 1; 1987, c. 729, s. 6; 1991, c. 703, s. 4; 1999-456, s. 33(d);
45 2009-281, s. 1; 2011-287, s. 10.)

46
47 **§ 97-29.1. Increase in payments in cases for total and permanent disability occurring**
48 **prior to July 1, 1973.**

49 In all cases of total and permanent disability occurring prior to July 1, 1973, weekly
50 compensation payments shall be increased effective July 1, 1977, to an amount computed by
51 multiplying the number of calendar years prior to July 1, 1973, that the case arose by five

1 percent (5%). Payments made by the employer or its insurance carrier by reason of such
2 increase in weekly benefits may be deducted by such employer or insurance carrier from the
3 tax levied on such employer or carrier pursuant to G.S. 105-228.5 or G.S. 97-100. Every
4 employer or insurance carrier claiming such deduction or credit shall verify such claim to the
5 Secretary of Revenue or the Industrial Commission by affidavit or by such other method as
6 may be prescribed by the Secretary of Revenue or the Industrial Commission. (1977, c. 651.)
7

8 **§ 97-30. Partial incapacity.**

9 Except as otherwise provided in G.S. 97-31, where the incapacity for work resulting from
10 the injury is partial, the employer shall pay, or cause to be paid, as hereinafter provided, to the
11 injured employee during such disability, a weekly compensation equal to sixty-six and
12 two-thirds percent ($66 \frac{2}{3}\%$) of the difference between his average weekly wages before the
13 injury and the average weekly wages which he is able to earn thereafter, but not more than the
14 amount established annually to be effective January 1 as provided in G.S. 97-29 a week, and in
15 no case shall the employee receive more than 500 weeks of payments under this section. Any
16 weeks of payments made pursuant to G.S. 97-29 shall be deducted from the 500 weeks of
17 payments available under this section. An officer or member of the State Highway Patrol shall
18 not be awarded any weekly compensation under the provisions of this section for the first two
19 years of any incapacity resulting from an injury by accident arising out of and in the course of
20 the performance by him of his official duties if, during such incapacity, he continues to be an
21 officer or member of the State Highway Patrol, but he shall be awarded any other benefits to
22 which he may be entitled under the provisions of this Article. (1929, c. 120, s. 30; 1943, c.
23 502, s. 4; 1947, c. 823; 1951, c. 70, s. 2; 1953, c. 1195, s. 3; 1955, c. 1026, s. 6; 1957, c. 1217;
24 1963, c. 604, s. 2; 1967, c. 84, s. 2; 1969, c. 143, s. 2; 1971, c. 281, s. 2; 1973, c. 515, s. 2; c.
25 759, s. 2; 1981, c. 276, s. 1; 2011-287, s. 11.)
26

27 **§ 97-31. Schedule of injuries; rate and period of compensation.**

28 In cases included by the following schedule the compensation in each case shall be paid for
29 disability during the healing period and in addition the disability shall be deemed to continue
30 for the period specified, and shall be in lieu of all other compensation, including disfigurement,
31 to wit:

- 32 (1) For the loss of a thumb, sixty-six and two-thirds percent ($66 \frac{2}{3}\%$) of the
33 average weekly wages during 75 weeks.
- 34 (2) For the loss of a first finger, commonly called the index finger, sixty-six and
35 two-thirds percent ($66 \frac{2}{3}\%$) of the average weekly wages during 45 weeks.
- 36 (3) For the loss of a second finger, sixty-six and two-thirds percent ($66 \frac{2}{3}\%$) of
37 the average weekly wages during 40 weeks.
- 38 (4) For the loss of a third finger, sixty-six and two-thirds percent ($66 \frac{2}{3}\%$) of
39 the average weekly wages during 25 weeks.
- 40 (5) For the loss of a fourth finger, commonly called the little finger, sixty-six
41 and two-thirds percent ($66 \frac{2}{3}\%$) of the average weekly wages during 20
42 weeks.
- 43 (6) The loss of the first phalange of the thumb or any finger shall be considered
44 to be equal to the loss of one half of such thumb or finger, and the
45 compensation shall be for one half of the periods of time above specified.
- 46 (7) The loss of more than one phalange shall be considered the loss of the entire
47 finger or thumb: Provided, however, that in no case shall the amount
48 received for more than one finger exceed the amount provided in this
49 schedule for the loss of a hand.
- 50 (8) For the loss of a great toe, sixty-six and two-thirds percent ($66 \frac{2}{3}\%$) of the
51 average weekly wages during 35 weeks.

- 1 (9) For the loss of one of the toes other than a great toe, sixty-six and two-thirds
2 percent (66 2/3%) of the average weekly wages during 10 weeks.
- 3 (10) The loss of the first phalange of any toe shall be considered to be equal to
4 the loss of one half of such toe, and the compensation shall be for one half of
5 the periods of time above specified.
- 6 (11) The loss of more than one phalange shall be considered as the loss of the
7 entire toe.
- 8 (12) For the loss of a hand, sixty-six and two-thirds percent (66 2/3%) of the
9 average weekly wages during 200 weeks.
- 10 (13) For the loss of an arm, sixty-six and two-thirds percent (66 2/3%) of the
11 average weekly wages during 240 weeks.
- 12 (14) For the loss of a foot, sixty-six and two-thirds percent (66 2/3%) of the
13 average weekly wages during 144 weeks.
- 14 (15) For the loss of a leg, sixty-six and two-thirds percent (66 2/3%) of the
15 average weekly wages during 200 weeks.
- 16 (16) For the loss of an eye, sixty-six and two-thirds percent (66 2/3%) of the
17 average weekly wages during 120 weeks.
- 18 (17) The loss of both hands, or both arms, or both feet, or both legs, or both eyes,
19 or any two thereof, shall constitute total and permanent disability, to be
20 compensated according to the provisions of G.S. 97-29. The employee shall
21 have a vested right in a minimum amount of compensation for the total
22 number of weeks of benefits provided under this section for each member
23 involved. When an employee dies from any cause other than the injury for
24 which he is entitled to compensation, payment of the minimum amount of
25 compensation shall be payable as provided in G.S. 97-37.
- 26 (18) For the complete loss of hearing in one ear, sixty-six and two-thirds percent
27 (66 2/3%) of the average weekly wages during 70 weeks; for the complete
28 loss of hearing in both ears, sixty-six and two-thirds percent (66 2/3%) of the
29 average weekly wages during 150 weeks.
- 30 (19) Total loss of use of a member or loss of vision of an eye shall be considered
31 as equivalent to the loss of such member or eye. The compensation for
32 partial loss of or for partial loss of use of a member or for partial loss of
33 vision of an eye or for partial loss of hearing shall be such proportion of the
34 periods of payment above provided for total loss as such partial loss bears to
35 total loss, except that in cases where there is eighty-five per centum (85%),
36 or more, loss of vision in any eye, this shall be deemed "industrial blindness"
37 and compensated as for total loss of vision of such eye.
- 38 (20) The weekly compensation payments referred to in this section shall all be
39 subject to the same limitations as to maximum and minimum as set out in
40 G.S. 97-29.
- 41 (21) In case of serious facial or head disfigurement, the Industrial Commission
42 shall award proper and equitable compensation not to exceed twenty
43 thousand dollars (\$20,000). In case of enucleation where an artificial eye
44 cannot be fitted and used, the Industrial Commission may award
45 compensation as for serious facial disfigurement.
- 46 (22) In case of serious bodily disfigurement for which no compensation is
47 payable under any other subdivision of this section, but excluding the
48 disfigurement resulting from permanent loss or permanent partial loss of use
49 of any member of the body for which compensation is fixed in the schedule
50 contained in this section, the Industrial Commission may award proper and
51 equitable compensation not to exceed ten thousand dollars (\$10,000).

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

9 (24) In case of the loss of or permanent injury to any important external or
10 internal organ or part of the body for which no compensation is payable
11 under any other subdivision of this section, the Industrial Commission may
12 award proper and equitable compensation not to exceed twenty thousand
13 dollars (\$20,000). (1929, c. 120, s. 31; 1931, c. 164; 1943, c. 502, s. 2; 1955,
14 c. 1026, s. 7; 1957, c. 1221; c. 1396, ss. 2, 3; 1963, c. 424, ss. 1, 2; 1967, c.
15 84, s. 3; 1969, c. 143, s. 3; 1973, c. 515, s. 3; c. 759, s. 3; c. 761, ss. 1, 2;
16 1975, c. 164, s. 1; 1977, c. 892, s. 1; 1979, c. 250; 1987, c. 729, ss. 7, 8.)
17

18 **§ 97-31.1. Effective date of legislative changes in benefits.**

19 Every act of the General Assembly that changes the benefits enumerated in this Chapter
20 shall become law no later than June 1 and shall have an effective date of no earlier than January
21 1 of the year after which it is ratified. (1981, c. 521, s. 3; 1995, c. 20, s. 11.)
22

23 **§ 97-32. Refusal of injured employee to accept suitable employment as suspending
24 compensation.**

25 If an injured employee refuses suitable employment as defined by G.S. 97-2(22), the
26 employee shall not be entitled to any compensation at any time during the continuance of such
27 refusal, unless in the opinion of the Industrial Commission such refusal was justified. Any
28 order issued by the Commission suspending compensation pursuant to G.S. 97-18.1 on the
29 ground of an unjustified refusal of an offer of suitable employment shall specify what actions
30 the employee should take to end the suspension and reinstate the compensation. Nothing in this
31 Article prohibits an employer from contacting the employee directly about returning to suitable
32 employment with contemporaneous notice to the employee's counsel, if any. (1929, c. 120, s.
33 32; 2011-287, s. 12.)
34

35 **§ 97-32.1. Trial return to work.**

36 Notwithstanding the provisions of G.S. 97-32, an employee may attempt a trial return to
37 work for a period not to exceed nine months. During a trial return to work period, the employee
38 shall be paid any compensation which may be owed for partial disability pursuant to G.S.
39 97-30. If the trial return to work is unsuccessful, the employee's right to continuing
40 compensation under G.S. 97-29 shall be unimpaired unless terminated or suspended thereafter
41 pursuant to the provisions of this Article. (1993 (Reg. Sess., 1994), c. 679, s. 4.1.)
42

43 **§ 97-32.2. Vocational rehabilitation.**

44 (a) In a compensable claim, the employer may engage vocational rehabilitation services
45 at any point during a claim, regardless of whether the employee has reached maximum medical
46 improvement to include, among other services, a one-time assessment of the employee's
47 vocational potential. If the employee (i) has not returned to work or (ii) has returned to work
48 earning less than seventy-five percent (75%) of the employee's average weekly wages and is
49 receiving benefits pursuant to G.S. 97-30, the employee may request vocational rehabilitation
50 services, including education and retraining in the North Carolina community college or
51 university systems so long as the education and retraining are reasonably likely to substantially

1 increase the employee's wage-earning capacity following completion of the education or
2 retraining program. Provided, however, the seventy-five percent (75%) threshold is for the
3 purposes of qualification for vocational rehabilitation benefits only and shall not impact a
4 decision as to whether a job is suitable per G.S. 97-2(22). The expense of vocational
5 rehabilitation services provided pursuant to this section shall be borne by the employer in the
6 same manner as medical compensation.

7 (b) Vocational rehabilitation services shall be provided by either a qualified or
8 conditional rehabilitation professional approved by the Industrial Commission. Unless the
9 parties mutually agree to a vocational rehabilitation professional, the employer may make the
10 initial selection. At any point during the vocational rehabilitation process, either party may
11 request that the Industrial Commission order a change of vocational rehabilitation professional
12 for good cause.

13 (c) Vocational rehabilitation services shall include a vocational assessment and the
14 formulation of an individualized written rehabilitation plan with the goal of substantially
15 increasing the employee's wage-earning capacity, and subject to the following provisions:

16 (1) When performing a vocational assessment, the vocational rehabilitation
17 professional should evaluate the employee's medical and vocational
18 circumstances, the employee's expectations and specific requests for
19 vocational training, benefits expected from vocational services, and other
20 information significant to the employee's employment potential. The
21 assessment should also involve a face-to-face interview between the
22 employee and the vocational rehabilitation professional to identify the
23 specific type and sequence of appropriate services. If, at any point during
24 vocational rehabilitation services, the vocational rehabilitation professional
25 determines that the employee will not benefit from vocational rehabilitation
26 services, the employer may terminate said services unless the Commission
27 orders otherwise.

28 (2) Following assessment, and after receiving input from the employee, the
29 vocational rehabilitation professional shall draft an individualized written
30 rehabilitation plan. The plan should be individually tailored to the employee
31 based on the employee's education, skills, experience, and aptitudes, with
32 appropriate recommendations for vocational services, which may include
33 appropriate retraining, education, or job placement. The plan may be
34 changed or updated by mutual consent at any time during rehabilitation
35 services. A written plan is not necessary if the vocational rehabilitation
36 professional has been retained to perform a one-time assessment.

37 (d) Specific vocational rehabilitation services may include, but are not limited to,
38 vocational assessment, vocational exploration, sheltered workshop or community supported
39 employment training, counseling, job analysis, job modification, job development and
40 placement, labor market survey, vocational or psychometric testing, analysis of transferable
41 skills, work adjustment counseling, job seeking skills training, on-the-job training, or training
42 or education through the North Carolina community college or university systems.

43 (e) Vocational rehabilitation services may be terminated by agreement of the parties or
44 by order of the Commission.

45 (f) Job placement activities may commence after completion of an individualized
46 written rehabilitation plan. Return-to-work options should be considered, with order of priority
47 given to returning the employee to suitable employment with the current employer, returning
48 the employee to suitable employment with a new employer, and, if appropriate, formal
49 education or vocational training to prepare the employee for suitable employment with the
50 current employer or a new employer.

1 (g) The refusal of the employee to accept or cooperate with vocational rehabilitation
2 services when ordered by the Industrial Commission shall bar the employee from further
3 compensation until such refusal ceases, and no compensation shall at any time be paid for the
4 period of suspension, unless in the opinion of the Industrial Commission the circumstances
5 justified the refusal. Any order issued by the Commission suspending compensation per G.S.
6 97-18.1 shall specify what action the employee should take to end the suspension and reinstate
7 the compensation. (2011-287, s. 13.)
8

9 **§ 97-33. Prorating in event of earlier disability or injury.**

10 If any employee is an epileptic, or has a permanent disability or has sustained a permanent
11 injury in service in the United States Army or Navy, or in another employment other than that
12 in which he received a subsequent permanent injury by accident, such as specified in G.S.
13 97-31, he shall be entitled to compensation only for the degree of disability which would have
14 resulted from the later accident if the earlier disability or injury had not existed. (1929, c. 120,
15 s. 33; 1975, c. 832; 2011-183, s. 127(b).)
16

17 **§ 97-34. Employee receiving an injury when being compensated for former injury.**

18 If an employee receives an injury for which compensation is payable, while he is still
19 receiving or entitled to compensation for a previous injury in the same employment, he shall
20 not at the same time be entitled to compensation for both injuries, unless the later injury be a
21 permanent injury such as specified in G.S. 97-31; but he shall be entitled to compensation for
22 that injury and from the time of that injury which will cover the longest period and the largest
23 amount payable under this Article. (1929, c. 120, s. 34.)
24

25 **§ 97-35. How compensation paid for two injuries; employer liable only for subsequent
26 injury.**

27 If any employee receives a permanent injury as specified in G.S. 97-31 after having
28 sustained another permanent injury in the same employment, he shall be entitled to
29 compensation for both injuries, but the total compensation shall be paid by extending the period
30 and not by increasing the amount of weekly compensation, and in no case exceeding 500
31 weeks.

32 If an employee has previously incurred permanent partial disability through the loss of a
33 hand, arm, foot, leg, or eye, and by subsequent accident incurs total permanent disability
34 through the loss of another member, the employer's liability is for the subsequent injury only.
35 (1929, c. 120, s. 35.)
36

37 **§ 97-36. Accidents taking place outside State; employees receiving compensation from
38 another state.**

39 Where an accident happens while the employee is employed elsewhere than in this State
40 and the accident is one which would entitle him or his dependents or next of kin to
41 compensation if it had happened in this State, then the employee or his dependents or next of
42 kin shall be entitled to compensation (i) if the contract of employment was made in this State,
43 (ii) if the employer's principal place of business is in this State, or (iii) if the employee's
44 principal place of employment is within this State; provided, however, that if an employee or
45 his dependents or next of kin shall receive compensation or damages under the laws of any
46 other state nothing herein contained shall be construed so as to permit a total compensation for
47 the same injury greater than is provided for in this Article. (1929, c. 120, s. 36; 1963, c. 450, s.
48 2; 1967, c. 1229, s. 3; 1973, c. 1059; 1991, c. 284.)
49

50 **§ 97-37. Where injured employee dies before total compensation is paid.**

1 When an employee receives or is entitled to compensation under this Article for an injury
2 covered by G.S. 97-31 and dies from any other cause than the injury for which he was entitled
3 to compensation, payment of the unpaid balance of compensation shall be made: First, to the
4 surviving whole dependents; second, to partial dependents, and, if no dependents, to the next of
5 kin as defined in the Article; if there are no whole or partial dependents or next of kin as
6 defined in the Article, then to the personal representative, in lieu of the compensation the
7 employee would have been entitled to had he lived.

8 Provided, however, that if the death is due to a cause that is compensable under this Article,
9 and the dependents of such employee are awarded compensation therefor, all right to unpaid
10 compensation provided by this section shall cease and determine. (1929, c. 120, s. 37; 1947, c.
11 823; 1971, c. 322.)
12

13 **§ 97-38. Where death results proximately from compensable injury or occupational**
14 **disease; dependents; burial expenses; compensation to aliens; election by**
15 **partial dependents.**

16 If death results proximately from a compensable injury or occupational disease and within
17 six years thereafter, or within two years of the final determination of disability, whichever is
18 later, the employer shall pay or cause to be paid, subject to the provisions of other sections of
19 this Article, weekly payments of compensation equal to sixty-six and two-thirds percent (66
20 2/3%) of the average weekly wages of the deceased employee at the time of the accident, but
21 not more than the amount established annually to be effective October 1 as provided in G.S.
22 97-29, nor less than thirty dollars (\$30.00), per week, and burial expenses not exceeding ten
23 thousand dollars (\$10,000), to the person or persons entitled thereto as follows:

- 24 (1) Persons wholly dependent for support upon the earnings of the deceased
25 employee at the time of the accident shall be entitled to receive the entire
26 compensation payable share and share alike to the exclusion of all other
27 persons. If there be only one person wholly dependent, then that person shall
28 receive the entire compensation payable.
- 29 (2) If there is no person wholly dependent, then any person partially dependent
30 for support upon the earnings of the deceased employee at the time of the
31 accident shall be entitled to receive a weekly payment of compensation
32 computed as hereinabove provided, but such weekly payment shall be the
33 same proportion of the weekly compensation provided for a whole
34 dependent as the amount annually contributed by the deceased employee to
35 the support of such partial dependent bears to the annual earnings of the
36 deceased at the time of the accident.
- 37 (3) If there is no person wholly dependent, and the person or all persons
38 partially dependent is or are within the classes of persons defined as "next of
39 kin" in G.S. 97-40, whether or not such persons or such classes of persons
40 are of kin to the deceased employee in equal degree, and all so elect, he or
41 they may take, share and share alike, the commuted value of the amount
42 provided for whole dependents in (1) above instead of the proportional
43 payment provided for partial dependents in (2) above; provided, that the
44 election herein provided may be exercised on behalf of any infant partial
45 dependent by a duly qualified guardian; provided, further, that the Industrial
46 Commission may, in its discretion, permit a parent or person standing in loco
47 parentis to such infant to exercise such option in its behalf, the award to be
48 payable only to a duly qualified guardian except as in this Article otherwise
49 provided; and provided, further, that if such election is exercised by or on
50 behalf of more than one person, then they shall take the commuted amount
51 in equal shares.

1 When weekly payments have been made to an injured employee before
2 his death, the compensation to dependents shall begin from the date of the
3 last of such payments. Compensation payments due on account of death
4 shall be paid for a period of 500 weeks from the date of the death of the
5 employee; provided, however, after said 500-week period in case of a widow
6 or widower who is unable to support herself or himself because of physical
7 or mental disability as of the date of death of the employee, compensation
8 payments shall continue during her or his lifetime or until remarriage and
9 compensation payments due a dependent child shall be continued until such
10 child reaches the age of 18.

11 Compensation payable under this Article to aliens not residents (or about
12 to become nonresidents) of the United States or Canada, shall be the same in
13 amounts as provided for residents, except that dependents in any foreign
14 country except Canada shall be limited to surviving spouse and child or
15 children, or if there be no surviving spouse or child or children, to the
16 surviving father or mother. (1929, c. 120, s. 38; 1943, c. 163; c. 502, s. 5;
17 1947, c. 823; 1951, c. 70, s. 3; 1953, c. 53, s. 1; 1955, c. 1026, s. 8; 1957, c.
18 1217; 1963, c. 604, s. 3; 1967, c. 84, s. 4; 1969, c. 143, s. 4; 1971, c. 281, s.
19 3; 1973, c. 515, s. 4; c. 759, s. 4; c. 1308, ss. 3, 4; c. 1357, ss. 1, 2; 1977, c.
20 409; 1981, c. 276, s. 1; c. 378, s. 1; c. 379; 1983, c. 772, s. 1; 1987, c. 729, s.
21 9; 1997-301, s. 1; 2001-232, s. 1; 2011-287, s. 14.)

22
23 **§ 97-39. Widow, widower, or child to be conclusively presumed to be dependent; other**
24 **cases determined upon facts; division of death benefits among those wholly**
25 **dependent; when division among partially dependent.**

26 A widow, a widower and/or a child shall be conclusively presumed to be wholly dependent
27 for support upon the deceased employee. In all other cases questions of dependency, in whole
28 or in part shall be determined in accordance with the facts as the facts may be at the time of the
29 accident, but no allowance shall be made for any payment made in lieu of board and lodging or
30 services, and no compensation shall be allowed unless the dependency existed for a period of
31 three months or more prior to the accident. If there is more than one person wholly dependent,
32 the death benefit shall be divided among them, the persons partly dependent, if any, shall
33 receive no part thereof. If there is no one wholly dependent, and more than one person partially
34 dependent, the death benefit shall be divided among them according to the relative extent of
35 their dependency.

36 The widow, or widower and all children of deceased employees shall be conclusively
37 presumed to be dependents of deceased and shall be entitled to receive the benefits of this
38 Article for the full periods specified herein. (1929, c. 120, s. 39.)

39
40 **§ 97-40. Commutation and payment of compensation in absence of dependents; "next of**
41 **kin" defined; commutation and distribution of compensation to partially**
42 **dependent next of kin; payment in absence of both dependents and next of kin.**

43 Subject to the provisions of G.S. 97-38, if the deceased employee leaves neither whole nor
44 partial dependents, then the compensation which would be payable under G.S. 97-38 to whole
45 dependents shall be commuted to its present value and paid in a lump sum to the next of kin as
46 herein defined. For purposes of this section and G.S. 97-38, "next of kin" shall include only
47 child, father, mother, brother or sister of the deceased employee, including adult children or
48 adult brothers or adult sisters of the deceased, but excluding a parent who has willfully
49 abandoned the care and maintenance of his or her child and who has not resumed its care and
50 maintenance at least one year prior to the first occurring of the majority or death of the child
51 and continued its care and maintenance until its death or majority. For all such next of kin who

1 are neither wholly nor partially dependent upon the deceased employee and who take under this
2 section, the order of priority among them shall be governed by the general law applicable to the
3 distribution of the personal estate of persons dying intestate. In the event of exclusion of a
4 parent based on abandonment, the claim for compensation benefits shall be treated as though
5 the abandoning parent had predeceased the employee. For all such next of kin who were also
6 partially dependent on the deceased employee but who exercise the election provided for partial
7 dependents by G.S. 97-38, the general law applicable to the distribution of the personal estate
8 of persons dying intestate shall not apply and such person or persons upon the exercise of such
9 election, shall be entitled, share and share alike, to the compensation provided in G.S. 97-38 for
10 whole dependents commuted to its present value and paid in a lump sum.

11 If the deceased employee leaves neither whole dependents, partial dependents, nor next of
12 kin as hereinabove defined, then no compensation shall be due or payable on account of the
13 death of the deceased employee, except that the employer shall pay or cause to be paid the
14 burial expenses of the deceased employee not exceeding ten thousand dollars (\$10,000) to the
15 person or persons entitled thereto. (1929, c. 120, s. 40; 1931, c. 274, s. 5; c. 319; 1945, c. 766;
16 1953, c. 53, s. 2; c. 1135, s. 2; 1963, c. 604, s. 4; 1965, c. 419; 1967, c. 84, s. 5; 1971, c. 1179;
17 1981, c. 379; 1987, c. 729, s. 10; 2001-232, s. 3.1; 2011-287, s. 15.)

18 § 97-40.1. Second Injury Fund.

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

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

27 (b) The Industrial Commission shall disburse moneys from the Second Injury Fund in
28 unusual cases of second injuries as follows:

- 29 (1) To pay additional compensation in cases of second injuries referred to in
30 G.S. 97-33; provided, however, that the original injury and the subsequent
31 injury were each at least twenty percent (20%) of the entire member; and,
32 provided further, that such additional compensation, when added to the
33 compensation awarded under said section, shall not exceed the amount
34 which would have been payable for both injuries had both been sustained in
35 the subsequent accident.
- 36 (2) To pay additional compensation to an injured employee who has sustained
37 permanent total disability in the manner referred to in the second paragraph
38 of G.S. 97-35, which shall be in addition to the compensation awarded under
39 said section; provided, however, that such additional compensation, when
40 added to the compensation awarded under said section, shall not exceed the
41 compensation for permanent total disability as provided for in G.S. 97-29.
- 42 (3) To pay compensation and medical expense in cases of permanent and total
43 disability resulting from an injury to the brain or spinal cord in the manner
44 and to the extent hereinafter provided.

45 The additional compensation and treatment expenses herein provided for shall be paid out
46 of the Second Injury Fund exclusively and only to the extent to which the assets of such fund
47 shall permit.

48 (c) In addition to payments for the purposes hereinabove set forth, the Industrial
49 Commission may, in its discretion, make payments from said fund for the following purposes
50 and under the following conditions:
51

- 1 (1) In any case in which total and permanent disability due to paralysis or loss of
2 mental capacity has resulted from an injury to the brain or spinal cord, the
3 Industrial Commission may, in its discretion enter an award and pay
4 compensation and reasonable and necessary medical, nursing, hospital,
5 institutional, equipment, and other treatment expenses from the Second
6 Injury Fund during the life of the injured employee in cases where the injury
7 giving rise to such disability occurred prior to July 1, 1953, and the last
8 payment of compensation has been made subsequent to January 1, 1941.
9 Such compensation and medical expense shall be paid only from April 4,
10 1947, and after the employer's liability for compensation and treatment
11 expense has ended, and in every case in which the injury resulting in
12 paralysis due to injury to the spinal cord occurred subsequent to April 4,
13 1947, and prior to July 1, 1953, the liability of the employer and his
14 insurance carrier to pay compensation and medical expense during the life of
15 the injured employee shall not be affected by this section.
- 16 (2) When compensation is allowed from the fund in any case under subdivision
17 (1) of subsection (c), the Commission may in its discretion authorize
18 payment of medical, nursing, hospital, equipment, and other treatment
19 expenses incurred prior to the date compensation is allowed and after the
20 employer's liability has ended if funds are reasonably available in the Second
21 Injury Fund for such purpose after paying claims in cases of second injuries
22 as specified in G.S. 97-33 and 97-35. Should the fund be insufficient to pay
23 both compensation and treatment expenses, then the said expenses may, in
24 the discretion of the Commission, be paid first and compensation thereafter
25 according to the reasonable availability of funds in the fund. (1953, c. 1135,
26 s. 2; 1957, c. 1396, s. 4; 1963, c. 450, s. 3; 1977, c. 457; 1991, c. 703, s. 11;
27 1993 (Reg. Sess., 1994), c. 679, s. 6.1.)

28
29 **§ 97-41. Repealed by Session Laws 1973, c. 1308, s. 5.**

30
31 **§ 97-42. Deduction of payments.**

32 Payments made by the employer to the injured employee during the period of his disability,
33 or to his dependents, which by the terms of this Article were not due and payable when made,
34 may, subject to the approval of the Commission be deducted from the amount to be paid as
35 compensation. Provided, that in the case of disability such deductions shall be made by
36 shortening the period during which compensation must be paid, and not by reducing the
37 amount of the weekly payment. Unless otherwise provided by the plan, when payments are
38 made to an injured employee pursuant to an employer-funded salary continuation, disability or
39 other income replacement plan, the deduction shall be calculated from payments made by the
40 employer in each week during which compensation was due and payable, without any
41 carry-forward or carry-back of credit for amounts paid in excess of the compensation rate in
42 any given week. (1929, c. 120, s. 42; 1993 (Reg. Sess., 1994), c. 679, s. 3.7.)

43
44 **§ 97-42.1. Credit for unemployment benefits.**

45 If an injured employee has received unemployment benefits under the Employment
46 Security Law for any week with respect to which he is entitled to workers' compensation
47 benefits for temporary total or permanent and total disability, the employment benefits paid for
48 such weeks may be deducted from the award to be paid as compensation. If an injured
49 employee has received unemployment benefits for any week with respect to which he is
50 entitled to workers' compensation benefits for partial disability as provided in G.S. 97-30, the
51 unemployment benefits paid for such weeks may be deducted from the award to be paid only to

1 the extent that the sum of the unemployment benefits and workers' compensation payable for
2 such week exceeds two-thirds of the injured employee's average weekly wages as determined
3 by the Commission in accordance with G.S. 97-2(5). Benefits payable under G.S. 97-31 for
4 permanent partial disability or other permanent injury shall not be subject to reduction because
5 of the receipt of unemployment benefits. (1985, c. 616, s. 1.)
6

7 **§ 97-43. Commission may prescribe monthly or quarterly payments.**

8 The Industrial Commission, upon application of either party, may, in its discretion, having
9 regard to the welfare of the employee and the convenience of the employer, authorize
10 compensation to be paid monthly or quarterly instead of weekly. (1929, c. 120, s. 43.)
11

12 **§ 97-44. Lump sums.**

13 Whenever any weekly payment has been continued for not less than six weeks, the liability
14 therefor may, in unusual cases, where the Industrial Commission deems it to be to the best
15 interest of the employee or his dependents, or where it will prevent undue hardships on the
16 employer or his insurance carrier, without prejudicing the interests of the employee or his
17 dependents, be redeemed, in whole or in part, by the payment by the employer of a lump sum
18 which shall be fixed by the Commission, but in no case to exceed the uncommuted value of the
19 future installments which may be due under this Article. The Commission, however, in its
20 discretion, may at any time in the case of a minor who has received permanently disabling
21 injuries either partial or total provide that he be compensated, in whole or in part, by the
22 payment of a lump sum, the amount of which shall be fixed by the Commission, but in no case
23 to exceed the uncommuted value of the future installments which may be due under this
24 Article. (1929, c. 120, s. 44; 1963, c. 450, s. 4; 1975, c. 255.)
25

26 **§ 97-45. Reducing to judgment outstanding liability of insurance carriers withdrawing
27 from State.**

28 Upon the withdrawal of any insurance carrier from doing business in the State that has any
29 outstanding liability under the Workers' Compensation Act, the Insurance Commissioner shall
30 immediately notify the North Carolina Industrial Commission, and thereupon the said North
31 Carolina Industrial Commission shall issue an award against said insurance carrier and
32 commute the installments due the injured employee or employees, and immediately have said
33 award docketed in the superior court of the county in which the claimant resides, and the said
34 North Carolina Industrial Commission shall then cause suit to be brought on said judgment in
35 the state of the residence of any such insurance carrier, and the proceeds from said judgment
36 after deducting the cost, if any, of the proceeding, shall be turned over to the injured employee,
37 or employees, taking from such employee, or employees, the proper receipt in satisfaction of
38 his claim. (1933, c. 474; 1979, c. 714, s. 2.)
39

40 **§ 97-46. Lump sum payments to trustee; receipt to discharge employer.**

41 Whenever the Industrial Commission deems it expedient any lump sum, subject to the
42 provisions of G.S. 97-44, shall be paid by the employer to some suitable person or corporation
43 appointed by the superior court in the county wherein the accident occurred, as trustee, to
44 administer the same for the benefit of the person entitled thereto, in the manner provided by the
45 Commission. The receipt of such trustee for the amount as paid shall discharge the employer or
46 anyone else who is liable therefor. (1929, c. 120, s. 45.)
47

48 **§ 97-47. Change of condition; modification of award.**

49 Upon its own motion or upon the application of any party in interest on the grounds of a
50 change in condition, the Industrial Commission may review any award, and on such review
51 may make an award ending, diminishing, or increasing the compensation previously awarded,

1 subject to the maximum or minimum provided in this Article, and shall immediately send to the
2 parties a copy of the award. No such review shall affect such award as regards any moneys paid
3 but no such review shall be made after two years from the date of the last payment of
4 compensation pursuant to an award under this Article, except that in cases in which only
5 medical or other treatment bills are paid, no such review shall be made after 12 months from
6 the date of the last payment of bills for medical or other treatment, paid pursuant to this Article.
7 (1929, c. 120, s. 46; 1931, c. 274, s. 6; 1947, c. 823; 1973, c. 1060, s. 2.)
8

9 **§ 97-47.1. Payment without prejudice; limitations period.**

10 When the employer has paid compensation without prejudice but timely contested liability
11 as provided in G.S. 97-18(d), the right, if any, to further indemnity compensation and medical
12 compensation shall terminate two years after the employer's last payment of medical or
13 indemnity compensation, whichever last occurs, unless the employee files with the
14 Commission a claim for further compensation prior to the expiration of this period. (1993 (Reg.
15 Sess., 1994), c. 679, s. 3.5.)
16

17 **§ 97-48. Receipts relieving employer; payment to minors; when payment of claims to**
18 **dependents subsequent in right discharges employer.**

19 (a) Whenever payment of compensation is made to a widow or widower for her or his
20 use, or for her or his use and the use of the child or children, the written receipt thereof of such
21 widow or widower shall acquit the employer: Provided, however, that in order to protect the
22 interests of minors or incompetents the Industrial Commission may at its discretion change the
23 terms of any award with respect to whom compensation for the benefit of such minors or
24 incompetents shall be paid.

25 (b) Whenever payment is made to any person 18 years of age or over, the written
26 receipt of such person shall acquit the employer.

27 (c) Payment of death benefits by an employer in good faith to a dependent subsequent
28 in right to another or other dependents shall protect and discharge the employer, unless and
29 until such dependent or dependents prior in right shall have given notice of his or their claims.
30 In case the employer is in doubt as to the respective rights of rival claimants, he may apply to
31 the Industrial Commission to decide between them.

32 (d) A minor employee under the age of 18 years may sign agreements and receipts for
33 payments of compensation for temporary total disability, and such agreements and receipts
34 executed by such minor shall acquit the employer. Where the injury results in a permanent
35 disability and the sum to be paid does not exceed five hundred dollars (\$500.00) the minor
36 employee may execute agreements and sign receipts and such agreements and receipts shall
37 acquit the employer; provided, that when deemed necessary the Commission may require the
38 signature of a parent or person standing in place of a parent. (1929, c. 120, s. 47; 1931, c. 274,
39 s. 7; 1945, c. 766.)
40

41 **§ 97-49. Benefits of mentally incompetent or minor employees under 18 may be paid to a**
42 **trustee, etc.**

43 If an injured employee is mentally incompetent or is under 18 years of age at the time when
44 any right or privilege accrues to him under this Article, his guardian, trustee or committee may
45 in his behalf claim and exercise such right or privilege. (1929, c. 120, s. 48.)
46

47 **§ 97-50. Limitation as against minors or mentally incompetent.**

48 No limitation of time provided in this Article for the giving of notice or making claim under
49 this Article shall run against any person who is mentally incompetent, or a minor dependent, as
50 long as he has no guardian, trustee, or committee. (1929, c. 120, s. 49.)
51

1 **§ 97-51. Joint employment; liabilities.**

2 Whenever an employee, for whose injury or death compensation is payable under this
3 Article, shall at the time of the injury be in joint service of two or more employers subject to
4 this Article, such employers shall contribute to the payment of such compensation in proportion
5 to their wages liability to such employee; provided, however, that nothing in this section shall
6 prevent any reasonable arrangement between such employers for a different distribution as
7 between themselves of the ultimate burden of compensation. (1929, c. 120, s. 50.)
8

9 **§ 97-52. Occupational disease made compensable; "accident" defined.**

10 Disablement or death of an employee resulting from an occupational disease described in
11 G.S. 97-53 shall be treated as the happening of an injury by accident within the meaning of the
12 North Carolina Workers' Compensation Act and the procedure and practice and compensation
13 and other benefits provided by said act shall apply in all such cases except as hereinafter
14 otherwise provided. The word "accident," as used in the Workers' Compensation Act, shall not
15 be construed to mean a series of events in employment, of a similar or like nature, occurring
16 regularly, continuously or at frequent intervals in the course of such employment, over
17 extended periods of time, whether such events may or may not be attributable to fault of the
18 employer and disease attributable to such causes shall be compensable only if culminating in an
19 occupational disease mentioned in and compensable under this Article: Provided, however, no
20 compensation shall be payable for asbestosis and/or silicosis as hereinafter defined if the
21 employee, at the time of entering into the employment of the employer by whom compensation
22 would otherwise be payable, falsely represented himself in writing as not having previously
23 been disabled or laid off because of asbestosis or silicosis. (1935, c. 123; 1979, c. 714, s. 2.)
24

25 **§ 97-53. (See editor's note on condition precedent) Occupational diseases enumerated;**
26 **when due to exposure to chemicals.**

27 The following diseases and conditions only shall be deemed to be occupational diseases
28 within the meaning of this Article:

- 29 (1) Anthrax.
- 30 (2) Arsenic poisoning.
- 31 (3) Brass poisoning.
- 32 (4) Zinc poisoning.
- 33 (5) Manganese poisoning.
- 34 (6) Lead poisoning. Provided the employee shall have been exposed to the
35 hazard of lead poisoning for at least 30 days in the preceding 12 months'
36 period; and, provided further, only the employer in whose employment such
37 employee was last injuriously exposed shall be liable.
- 38 (7) Mercury poisoning.
- 39 (8) Phosphorus poisoning.
- 40 (9) Poisoning by carbon bisulphide, menthanol, naphtha or volatile halogenated
41 hydrocarbons.
- 42 (10) Chrome ulceration.
- 43 (11) Compressed-air illness.
- 44 (12) Poisoning by benzol, or by nitro and amido derivatives of benzol
45 (dinitrolbenzol, anilin, and others).
- 46 (13) Any disease, other than hearing loss covered in another subdivision of this
47 section, which is proven to be due to causes and conditions which are
48 characteristic of and peculiar to a particular trade, occupation or
49 employment, but excluding all ordinary diseases of life to which the general
50 public is equally exposed outside of the employment.

- 1 (14) Epitheliomatous cancer or ulceration of the skin or of the corneal surface of
2 the eye due to tar, pitch, bitumen, mineral oil, or paraffin, or any compound,
3 product, or residue of any of these substances.
- 4 (15) Radium poisoning or disability or death due to radioactive properties of
5 substances or to roentgen rays, X rays or exposure to any other source of
6 radiation; provided, however, that the disease under this subdivision shall be
7 deemed to have occurred on the date that disability or death shall occur by
8 reason of such disease.
- 9 (16) Blisters due to use of tools or appliances in the employment.
- 10 (17) Bursitis due to intermittent pressure in the employment.
- 11 (18) Miner's nystagmus.
- 12 (19) Bone felon due to constant or intermittent pressure in employment.
- 13 (20) Synovitis, caused by trauma in employment.
- 14 (21) Tenosynovitis, caused by trauma in employment.
- 15 (22) Carbon monoxide poisoning.
- 16 (23) Poisoning by sulphuric, hydrochloric or hydrofluoric acid.
- 17 (24) Asbestosis.
- 18 (25) Silicosis.
- 19 (26) Psittacosis.
- 20 (27) Undulant fever.
- 21 (28) Loss of hearing caused by harmful noise in the employment. The following
22 rules shall be applicable in determining eligibility for compensation and the
23 period during which compensation shall be payable:
 - 24 a. The term "harmful noise" means sound in employment capable of
25 producing occupational loss of hearing as hereinafter defined. Sound
26 of an intensity of less than 90 decibels, A scale, shall be deemed
27 incapable of producing occupational loss of hearing as defined in this
28 section.
 - 29 b. "Occupational loss of hearing" shall mean a permanent sensorineural
30 loss of hearing in both ears caused by prolonged exposure to harmful
31 noise in employment. Except in instances of preexisting loss of
32 hearing due to disease, trauma, or congenital deafness in one ear, no
33 compensation shall be payable under this subdivision unless
34 prolonged exposure to harmful noise in employment has caused loss
35 of hearing in both ears as hereinafter provided.
 - 36 c. No compensation benefits shall be payable for temporary total or
37 temporary partial disability under this subdivision and there shall be
38 no award for tinnitus or a psychogenic hearing loss.
 - 39 d. An employer shall become liable for the entire occupational hearing
40 loss to which his employment has contributed, but if previous
41 deafness is established by a hearing test or other competent evidence,
42 whether or not the employee was exposed to harmful noise within six
43 months preceding such test, the employer shall not be liable for
44 previous loss so established, nor shall he be liable for any loss for
45 which compensation has previously been paid or awarded and the
46 employer shall be liable only for the difference between the percent
47 of occupational hearing loss determined as of the date of disability as
48 herein defined and the percentage of loss established by the
49 preemployment and audiometric examination excluding, in any
50 event, hearing losses arising from nonoccupational causes.

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- e. In the evaluation of occupational hearing loss, only the hearing levels at the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second shall be considered. Hearing losses for frequencies below 500 and above 3,000 cycles per second are not to be considered as constituting compensable hearing disability.
 - f. The employer liable for the compensation in this section shall be the employer in whose employment the employee was last exposed to harmful noise in North Carolina during a period of 90 working days or parts thereof, and an exposure during a period of less than 90 working days or parts thereof shall be held not to be an injurious exposure; provided, however, that in the event an insurance carrier has been on the risk for a period of time during which an employee has been injuriously exposed to harmful noise, and if after insurance carrier goes off the risk said employee has been further exposed to harmful noise, although not exposed for 90 working days or parts thereof so as to constitute an injurious exposure, such carrier shall, nevertheless, be liable.
 - g. The percentage of hearing loss shall be calculated as the average, in decibels, of the thresholds of hearing for the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second. Pure tone air conduction audiometric instruments, properly calibrated according to accepted national standards such as American Standards Association, Inc., (ASA), International Standards Organization (ISO), or American National Standards Institute, Inc., (ANSI), shall be used for measuring hearing loss. If more than one audiogram is taken, the audiogram having the lowest threshold will be used to calculate occupational hearing loss. If the losses of hearing average 15 decibels (26 db if ANSI or ISO) or less in the four frequencies, such losses of hearing shall not constitute any compensable hearing disability. If the losses of hearing average 82 decibels (93 db if ANSI or ISO) or more in the four frequencies, then the same shall constitute and be total or one hundred percent (100%) compensable hearing loss. In measuring hearing impairment, the lowest measured losses in each of the four frequencies shall be added together and divided by four to determine the average decibel loss. For each decibel of loss exceeding 15 decibels (26 db if ANSI or ISO) an allowance of one and one-half percent (1 1/2%) shall be made up to the maximum of one hundred percent (100%) which is reached at 82 decibels (93 db if ANSI or ISO). In determining the binaural percentage of loss, the percentage of impairment in the better ear shall be multiplied by five. The resulting figure shall be added to the percentage of impairment in the poorer ear, and the sum of the two divided by six. The final percentage shall represent the binaural hearing impairment.
 - h. There shall be payable for total occupational loss of hearing in both ears 150 weeks of compensation, and for partial occupational loss of hearing in both ears such proportion of these periods of payment as such partial loss bears to total loss.
 - i. No claim for compensation for occupational hearing loss shall be filed until after six months have elapsed since exposure to harmful noise with the last employer. The last day of such exposure shall be

1 the date of disability. The regular use of employer-provided
2 protective devices capable of preventing loss of hearing from the
3 particular harmful noise where the employee works shall constitute
4 removal from exposure to such particular harmful noise.

5 j. No consideration shall be given to the question of whether or not the
6 ability of an employee to understand speech is improved by the use
7 of a hearing aid. The North Carolina Industrial Commission may
8 order the employer to provide the employee with an original hearing
9 aid if it will materially improve the employee's ability to hear.

10 k. No compensation benefits shall be payable for the loss of hearing
11 caused by harmful noise after October 1, 1971, if employee fails to
12 regularly utilize employer-provided protection device or devices,
13 capable of preventing loss of hearing from the particular harmful
14 noise where the employee works.

15 (29) **(See editor's note on condition precedent)** Infection with smallpox,
16 infection with vaccinia, or any adverse medical reaction when the infection
17 or adverse reaction is due to the employee receiving in employment
18 vaccination against smallpox incident to the Administration of Smallpox
19 Countermeasures by Health Professionals, section 304 of the Homeland
20 Security Act, Pub. L. No. 107-296 (Nov. 25, 2002) (to be codified at 42
21 U.S.C. § 233(p)), or when the infection or adverse medical reaction is due to
22 the employee being exposed to another employee vaccinated as described in
23 this subdivision.

24 Occupational diseases caused by chemicals shall be deemed to be due to exposure of an
25 employee to the chemicals herein mentioned only when as a part of the employment such
26 employee is exposed to such chemicals in such form and quantity, and used with such
27 frequency as to cause the occupational disease mentioned in connection with such chemicals.
28 (1935, c. 123; 1949, c. 1078; 1953, c. 1112; 1955, c. 1026, s. 10; 1957, c. 1396, s. 6; 1963, c.
29 553, s. 1; c. 965; 1971, c. 547, s. 1; c. 1108, s. 1; 1973, c. 760, ss. 1, 2; 1975, c. 718, s. 4; 1987,
30 c. 729, ss. 11, 12; 1991, c. 703, s. 10; 2003-169, s. 2.)

31
32 **§ 97-54. "Disablement" defined.**

33 The term "disablement" as used in this Article as applied to cases of asbestosis and silicosis
34 means the event of becoming actually incapacitated because of asbestosis or silicosis to earn, in
35 the same or any other employment, the wages which the employee was receiving at the time of
36 his last injurious exposure to asbestosis or silicosis; but in all other cases of occupational
37 disease "disablement" shall be equivalent to "disability" as defined in G.S. 97-2(9). (1935, c.
38 123; 1955, c. 525, s. 1.)

39
40 **§ 97-55. "Disability" defined.**

41 The term "disability" as used in this Article means the state of being incapacitated as the
42 term is used in defining "disablement" in G.S. 97-54. (1935, c. 123.)

43
44 **§ 97-56. Limitation on compensable diseases.**

45 The provisions of this Article shall apply only to cases of occupational disease in which the
46 last exposure in an occupation subject to the hazards of such diseases occurred on or after
47 March 26, 1935. (1935, c. 123.)

48
49 **§ 97-57. Employer liable.**

50 In any case where compensation is payable for an occupational disease, the employer in
51 whose employment the employee was last injuriously exposed to the hazards of such disease,

1 and the insurance carrier, if any, which was on the risk when the employee was so last exposed
2 under such employer, shall be liable.

3 For the purpose of this section when an employee has been exposed to the hazards of
4 asbestosis or silicosis for as much as 30 working days, or parts thereof, within seven
5 consecutive calendar months, such exposure shall be deemed injurious but any less exposure
6 shall not be deemed injurious; provided, however, that in the event an insurance carrier has
7 been on the risk for a period of time during which an employee has been injuriously exposed to
8 the hazards of asbestosis or silicosis, and if after insurance carrier goes off the risk said
9 employee is further exposed to the hazards of asbestosis or silicosis, although not so exposed
10 for a period of 30 days or parts thereof so as to constitute a further injurious exposure, such
11 carrier shall, nevertheless, be liable. (1935, c. 123; 1945, c. 762; 1957, c. 1396, s. 7.)
12

13 **§ 97-58. Time limit for filing claims.**

14 (a) Repealed by Session Laws 1987, c. 729, s. 13.

15 (b) The report and notice to the employer as required by G.S. 97-22 shall apply in all
16 cases of occupational disease except in case of asbestosis, silicosis, or lead poisoning. The time
17 of notice of an occupational disease shall run from the date that the employee has been advised
18 by competent medical authority that he has same.

19 (c) The right to compensation for occupational disease shall be barred unless a claim be
20 filed with the Industrial Commission within two years after death, disability, or disablement as
21 the case may be. Provided, however, that the right to compensation for radiation injury,
22 disability or death shall be barred unless a claim is filed within two years after the date upon
23 which the employee first suffered incapacity from the exposure to radiation and either knew or
24 in the exercise of reasonable diligence should have known that the occupational disease was
25 caused by his present or prior employment. (1935, c. 123; 1945, c. 762; 1955, c. 525, s. 6;
26 1963, c. 553, s. 2; 1973, c. 1060, s. 3; 1981, c. 734, s. 1; 1987, c. 729, s. 13.)
27

28 **§ 97-59. Employer to pay for treatment.**

29 Medical compensation shall be paid by the employer in cases in which awards are made for
30 disability or damage to organs as a result of an occupational disease after bills for same have
31 been approved by the Industrial Commission.

32 In case of a controversy arising between the employer and employee relative to the
33 continuance of medical, surgical, hospital or other treatment, the Industrial Commission may
34 order such further treatments as may in the discretion of the Commission be necessary. (1935,
35 c. 123; 1945, c. 762; 1973, c. 1061; 1981, c. 339; 1991, c. 703, s. 5.)
36

37 **§ 97-60:** Repealed by Session Laws 2003-284, s. 10.33(a), effective July 1, 2003.
38

39 **§ 97-61. Rewritten as §§ 97-61.1 to 97-61.7.**

40
41 **§ 97-61.1. First examination of and report on employee having asbestosis or silicosis.**

42 When the Industrial Commission is advised by an employer or employee that an employee
43 has or allegedly has asbestosis or silicosis, the employee, when ordered by the Industrial
44 Commission, shall submit to X rays and a physical examination by the advisory medical
45 committee or other designated qualified physician who is not a member of the advisory medical
46 committee. The employer shall pay the expenses connected with the examination by the
47 advisory medical committee or other designated qualified physician who is not a member of the
48 advisory medical committee in such amounts as shall be directed by the Industrial Commission.
49 Within 30 days after the completion of the examination, the advisory medical committee or
50 other designated qualified physician shall submit a written report to the Industrial Commission
51 setting forth:

- 1 (1) The X rays and clinical procedures used.
- 2 (2) Whether or not the claimant has contracted asbestosis or silicosis.
- 3 (3) The advisory medical committee's or designated qualified physician's
- 4 opinion expressed in percentages of the impairment of the employee's ability
- 5 to perform normal labor in the same or any other employment.
- 6 (4) Any other matter deemed pertinent.

7 When a competent physician certifies to the Industrial Commission that the employee's
8 physical condition is such that his movement to the place of examination ordered by the
9 Industrial Commission as herein provided in G.S. 97-61.1, 97-61.3 and 97-61.4 would be
10 harmful or injurious to the health of the employee, the Industrial Commission shall cause the
11 examination of the employee to be made by the advisory medical committee or other
12 designated qualified physician as herein provided at some place in the vicinity of the residence
13 of the employee suitable for the purposes of making such examination. (1935, c. 123; 1945, c.
14 762; 1955, c. 525, s. 2; 1973, c. 476, s. 128; 1989, c. 727, s. 219(15); 1997-443, s. 11A.37;
15 2003-284, s. 10.33(b).)

16
17 **§ 97-61.2. Filing of first report; right of hearing; effect of report as testimony.**

18 The advisory medical committee shall file its report in triplicate with the Industrial
19 Commission, which shall send one copy thereof to the claimant and one copy thereof to the
20 employer by registered mail or certified mail. Unless within 30 days from receipt of the copy of
21 said report the claimant and employer, or either of them, shall request the Industrial
22 Commission in writing to set the case for hearing for the purpose of examining and
23 cross-examining the members of the advisory medical committee respecting the report of said
24 committee, and for the purpose of introducing additional testimony, said report shall become a
25 part of the record of the case and shall be accepted by the Industrial Commission as expert
26 medical testimony to be considered as such and in connection with all the evidence in the case
27 in arriving at its decision. (1935, c. 123; 1945, c. 762; 1955, c. 525, s. 2; 1963, c. 450, s. 5.)
28

29 **§ 97-61.3. Second examination and report.**

30 As soon as practicable after the expiration of one year following the initial examination by
31 the advisory medical committee and when ordered by the Industrial Commission, the employee
32 shall again appear before the advisory medical committee, at least one of whom shall conduct
33 the examination, and the member or members of the advisory medical committee conducting
34 the examination shall forward the X rays and findings to the member or members of the
35 committee not present for the physical examination. Within 30 days after the completion of the
36 examination, the advisory medical committee shall make a written report to the Industrial
37 Commission signed by all of its members, setting forth any change since the first report in the
38 employee's condition which is due to asbestosis or silicosis, said report to be filed in triplicate
39 with the Industrial Commission, which shall send one copy thereof to the claimant, and one
40 copy to the employer by registered mail or certified mail. The claimant and employer, or either
41 of them, shall have the right only at the final hearing provided for in G.S. 97-61.4 to examine or
42 cross-examine the members of the advisory medical committee respecting the second report of
43 the committee. (1935, c. 123; 1945, c. 762; 1955, c. 525, s. 2; 1959, c. 863, s. 2.)
44

45 **§ 97-61.4. Third examination and report.**

46 As soon as practicable after the expiration of two years from the first examination and when
47 ordered by the Industrial Commission, the employee shall appear before the advisory medical
48 committee, or at least two of them, for final X rays and physical examination. Upon completion
49 of this examination and within 30 days, the advisory medical committee shall make a written
50 report setting forth:

- 51 (1) The X rays and clinical procedures used by the committee.

- 1 (2) To what extent, if any, has the damage to the employee's lungs due to
2 asbestosis or silicosis changed since the first examination.
- 3 (3) The opinion of the committee, expressed in percentages, with respect to the
4 extent of impairment of the employee's ability to earn in the same or any
5 other employment the wages which the employee was receiving at the time
6 of his last injurious exposure to asbestosis or silicosis.
- 7 (4) Any other matter deemed pertinent by the committee.

8 Said report shall be filed in triplicate with the Industrial Commission which shall send one
9 copy thereof to the claimant and one copy to the employer by registered mail or certified mail.
10 (1935, c. 123; 1945, c. 762; 1955, c. 525, s. 2; 1959, c. 863, s. 3.)

11
12 **§ 97-61.5. Hearing after first examination and report; removal of employee from**
13 **hazardous occupation; compensation upon removal from hazardous**
14 **occupation.**

15 (a) After the employer and employee have received notice of the first committee report,
16 the Industrial Commission, unless it has already approved an agreement between the employer
17 and employee, shall set the matter for hearing at a time and place to be decided by it, to hear
18 any controverted questions, determine if and to whom liability attaches, and where appropriate,
19 file a written opinion with its findings of fact and conclusions of law and cause its award to be
20 issued thereon, all of which shall be subject to modification as provided in G.S. 97-61.6.

21 (b) If the Industrial Commission finds at the first hearing that the employee has either
22 asbestosis or silicosis or if the parties enter into an agreement to the effect that the employee
23 has silicosis or asbestosis, it shall by order remove the employee from any occupation which
24 exposes him to the hazards of asbestosis or silicosis, and if the employee thereafter engages in
25 any occupation which exposes him to the hazards of asbestosis or silicosis without having
26 obtained the written approval of the Industrial Commission as provided in G.S. 97-61.7, neither
27 he, his dependents, personal representative nor any other person shall be entitled to any
28 compensation for disablement or death resulting from asbestosis or silicosis; provided, that if
29 the employee is removed from the industry the employer shall pay or cause to be paid as in this
30 subsection provided to the employee affected by such asbestosis or silicosis a weekly
31 compensation equal to sixty-six and two-thirds percent (66 2/3%) of his average weekly wages
32 before removal from the industry, but not more than the amount established annually to be
33 effective October 1 as provided in G.S. 97-29 or less than thirty dollars (\$30.00) a week, which
34 compensation shall continue for a period of 104 weeks. Payments made under this subsection
35 shall be credited on the amounts payable under any final award in the cause entered under G.S.
36 97-61.6. (1935, c. 123; 1945, c. 762; 1955, c. 525, s. 2; c. 1354; 1957, c. 1217; c. 1396, s. 8;
37 1963, c. 604, s. 6; 1967, c. 84, s. 7; 1969, c. 143, s. 6; 1971, c. 281, s. 5; 1973, c. 515, s. 6; c.
38 759, s. 5; 1981, c. 276, s. 1; c. 378, s. 1.)

39
40 **§ 97-61.6. Hearing after third examination and report; compensation for disability and**
41 **death from asbestosis or silicosis.**

42 After receipt by the employer and employee of the advisory medical committee's third
43 report, the Industrial Commission, unless it has approved an agreement between the employee
44 and employer, shall set a final hearing in the cause, at which it shall receive all competent
45 evidence bearing on the cause, and shall make a final disposition of the case, determining what
46 compensation, if any, the employee is entitled to receive in addition to the 104 weeks already
47 received.

48 Where the incapacity for work resulting from asbestosis or silicosis is found to be total, the
49 employer shall pay, or cause to be paid, to the injured employee during such total disability a
50 weekly compensation in accordance with G.S. 97-29.

1 When the incapacity for work resulting from asbestosis or silicosis is partial, the employer
2 shall pay, or cause to be paid, to the affected employee, a weekly compensation equal to
3 sixty-six and two-thirds percent (66 2/3%) of the difference between his average weekly wages
4 at the time of his last injurious exposure, and the average weekly wages which he is able to
5 earn thereafter, but not more than the amount established annually to be effective October 1 as
6 provided in G.S. 97-29, a week, and provided that the total compensation so paid shall not
7 exceed a period of 196 weeks, in addition to the 104 weeks for which the employee has already
8 been compensated.

9 Provided, however, should death result from asbestosis or silicosis within two years from
10 the date of last exposure, or should death result from asbestosis or silicosis, or from a secondary
11 infection or diseases developing from asbestosis or silicosis within 350 weeks from the date of
12 last exposure and while the employee is entitled to compensation for disablement due to
13 asbestosis or silicosis, either partial or total, then in either of these events, the employer shall
14 pay, or cause to be paid compensation in accordance with G.S. 97-38.

15 Provided further that if the employee has asbestosis or silicosis and dies from any other
16 cause, the employer shall pay, or cause to be paid by one of the methods set forth in G.S. 97-38
17 compensation for any remaining portion of the 104 weeks specified in G.S. 97-61.5 for which
18 the employee has not previously been paid compensation, and in addition shall pay
19 compensation for such number of weeks as the percentage of disability of the employee bears
20 to 196 weeks. If the employee was totally disabled as a result of asbestosis or silicosis,
21 compensation shall be paid for any remaining portion of the 104 weeks specified in G.S.
22 97-61.5 for which the employee has not previously been paid compensation, and in addition
23 shall be paid for an additional 300 weeks. (1935, c. 123; 1945, c. 762; 1955, c. 525, s. 2; c.
24 1354; 1957, c. 1271; 1963, c. 604, s. 7; 1965, c. 907; 1967, c. 84, s. 8; 1969, c. 143, s. 7; 1971,
25 c. 281, s. 6; c. 631; 1973, c. 515, s. 7; c. 759, s. 6; c. 1308, ss. 6, 7; 1979, c. 246; 1981, c. 276, s.
26 1.)
27

28 **§ 97-61.7. Waiver of right to compensation as alternative to forced change of occupation.**

29 An employee who has been compensated under the terms of G.S. 97-61.5(b) as an
30 alternative to forced change of occupation, may, subject to the approval of the Industrial
31 Commission, waive in writing his right to further compensation for any aggravation of his
32 condition that may result from his continuing in an occupation exposing him to the hazards of
33 asbestosis or silicosis, in which case payment of all compensation awarded previous to the date
34 of the waiver as approved by the Industrial Commission shall bar any further claims by the
35 employee, or anyone claiming through him, provided, that in the event of total disablement or
36 death as a result of asbestosis or silicosis with which the employee was so affected,
37 compensation shall nevertheless be payable, but in no case, whether for disability or death or
38 both, for a longer period than 100 weeks in addition to the 104 weeks already paid. Such
39 written waiver must be filed with the Industrial Commission, and the Commission shall keep a
40 record of each waiver, which record shall be open to the inspection of any interested person.
41 (1935, c. 123; 1945, c. 762; 1955, c. 525, s. 2.)
42

43 **§ 97-62. "Silicosis" and "asbestosis" defined.**

44 The word "silicosis" shall mean the characteristic fibrotic condition of the lungs caused by
45 the inhalation of dust of silica or silicates. "Asbestosis" shall mean a characteristic fibrotic
46 condition of the lungs caused by the inhalation of asbestos dust. (1935, c. 123.)
47

48 **§ 97-63. Period necessary for employee to be exposed.**

49 Compensation shall not be payable for disability or death due to silicosis and/or asbestosis
50 unless the employee shall have been exposed to the inhalation of dust of silica or silicates or
51 asbestos dust in employment for a period of not less than two years in this State, provided no

1 part of such period of two years shall have been more than 10 years prior to the last exposure.
2 (1935, c. 123.)
3

4 **§ 97-64. General provisions of act to control as regards benefits.**

5 Except as herein otherwise provided, in case of disablement or death from silicosis and/or
6 asbestosis, compensation shall be payable in accordance with the provisions of the North
7 Carolina Workers' Compensation Act. (1935, c. 123; 1979, c. 714, s. 2.)
8

9 **§ 97-65. Reduction of rate where tuberculosis develops.**

10 In case of disablement or death due primarily from silicosis and/or asbestosis and
11 complicated with tuberculosis of the lungs compensation shall be payable as hereinbefore
12 provided, except that the rate of payments may be reduced one sixth. (1935, c. 123.)
13

14 **§ 97-66. Claim where benefits are discontinued.**

15 Where compensation payments have been made and discontinued, and further
16 compensation is claimed, the claim for further compensation shall be made within two years
17 after the last payment in all cases of occupational disease, provided, that claims for further
18 compensation for asbestosis or silicosis shall be governed by the final award as set forth in G.S.
19 97-61.6. (1935, c. 123; 1945, c. 762; 1955, c. 525, s. 3; 1987, c. 729, s. 14.)
20

21 **§ 97-67. Postmortem examinations; notice to next of kin and insurance carrier.**

22 Upon the filing of a claim for death from an occupational disease where in the opinion of
23 the Industrial Commission a postmortem examination is necessary to accurately ascertain the
24 cause of death, such examination shall be ordered by the Industrial Commission. A full report
25 of such examination shall be certified to the Industrial Commission. The surviving spouse or
26 next kin and the employer or his insurance carrier, if their identity and whereabouts can be
27 reasonably ascertained, shall be given reasonable notice of the time and place of such
28 postmortem examination, and, if present at such examination, shall be given an opportunity to
29 witness the same. Any such person may be present at and witness such examination either in
30 person or through a duly authorized representative. If such examination is not consented to by
31 the surviving husband or wife or next of kin, all right to compensation shall cease. (1935, c.
32 123.)
33

34 **§ 97-68. Controverted medical questions.**

35 The Industrial Commission may at its discretion refer to the advisory medical committee
36 controverted medical questions arising out of occupational disease claims other than asbestosis
37 or silicosis. (1935, c. 123; 1955, c. 525, s. 4.)
38

39 **§ 97-69. Examination by advisory medical committee; inspection of medical reports.**

40 The advisory medical committee, upon reference to it of a case of occupational disease
41 shall notify the employee, or, in case he is dead, his dependents or personal representative, and
42 his employer to appear before the advisory medical committee at a time and place stated in the
43 notice. If the employee be living, he shall appear before the advisory medical committee at the
44 time and place specified then or thereafter and he shall submit to such examinations including
45 clinical and X-ray examinations as the advisory medical committee may require. The
46 employee, or, if he be dead, the claimant and the employer shall be entitled to have present at
47 all such examinations, a physician admitted to practice medicine in the State who shall be given
48 every reasonable facility for observing every such examination whose services shall be paid for
49 by the claimant or by the employer who engaged his services. If a physician admitted to
50 practice medicine in the State shall certify that the employee is physically unable to appear at
51 the time and place designated by the advisory medical committee, such committee may, upon

1 the advice of the Industrial Commission, and on notice to the employer, change the place
2 and/or time of the examination so as to reasonably facilitate the examination of the employee,
3 and in any such case the employer shall furnish transportation and provide for other reasonably
4 necessary expenses incidental to necessary travel. The claimant and the employer shall produce
5 to the advisory medical committee all reports of medical and X-ray examinations which may be
6 in their respective possession or control showing the past or present condition of the employee
7 to assist the advisory medical committee in reaching its conclusions. Provided that this section
8 shall not apply to a living employee who has contracted asbestosis or silicosis. (1935, c. 123;
9 1955, c. 525, s. 5.)

10
11 **§ 97-70. Report of committee to Industrial Commission.**

12 The advisory medical committee, shall, as soon as practicable after it has completed its
13 consideration of a case, report to the Industrial Commission its opinion regarding all medical
14 questions involved in the case. The advisory medical committee shall include in its report a
15 statement of what, if any, physician or physicians were present at the examination on behalf of
16 the claimant or employer and what, if any, medical reports and X rays were produced by or on
17 behalf of the claimant or employer. (1935, c. 123.)

18
19 **§ 97-71. Filing report; right of hearing on report.**

20 The advisory medical committee shall file its report in triplicate with the Industrial
21 Commission, which shall send one copy thereof to the claimant and one copy to the employer
22 by registered mail. Unless within 30 days from receipt of the copy of said report the claimant
23 and/or employer shall request the Industrial Commission in writing to set the case for further
24 hearing for the purpose of examining and/or cross-examining the members of the advisory
25 medical committee respecting the report of said committee, said report shall become a part of
26 the record of the case and shall be accepted by the Industrial Commission as expert medical
27 testimony to be considered as such in connection with all the evidence in the case in arriving at
28 its decision. (1935, c. 123.)

29
30 **§ 97-72. Appointment of advisory medical committee; terms of office; duties and**
31 **functions; salaries and expenses.**

32 (a) There shall be an advisory medical committee consisting of three members, who
33 shall be licensed physicians in good professional standing and peculiarly qualified in the
34 diagnosis or treatment of occupational diseases. They shall be appointed by the Industrial
35 Commission with the approval of the Governor, and one of them shall be designated as
36 chairman of the committee by the Industrial Commission. The members of committee shall be
37 appointed to serve terms as follows: one for a term of two years, one for a term of four years,
38 and one for a term of six years. Upon the expiration of each term as above mentioned the
39 Industrial Commission shall appoint a successor for a term of six years. The function of the
40 committee shall be to conduct examinations and make reports as required by G.S. 97-61.1
41 through 97-61.6 and 97-68 through 97-71, and to assist in any postmortem examinations
42 provided for in G.S. 97-67 when so directed by the Industrial Commission. Members of the
43 committee shall devote to the duties of the office so much of their time as may be required in
44 the conducting of examinations with reasonable promptness, and they shall attend hearings as
45 scheduled by the Industrial Commission when their attendance is desired for the purpose of
46 examining and cross-examining them respecting any report or reports made by them.

47 (b) Repealed by Session Laws 2003-284, s. 10.33(c), effective July 1, 2003.

48 (c) Notwithstanding any other provision of this Article, the Industrial Commission, in
49 its discretion, may designate a qualified physician who is not a member of the advisory medical
50 committee to perform an examination of an employee who has filed a claim for benefits for
51 asbestosis or silicosis. This physician shall file his reports in the same manner a member of the

1 advisory medical committee files reports; and these reports shall be deemed reports of the
2 advisory medical committee. (1935, c. 123; 1955, c. 525, s. 7; 1981, c. 562, s. 2; 1989, c. 439;
3 1991, c. 481, s. 1; 1997-443, s. 11A.38; 1997-508, s. 1; 2003-284, s. 10.33(c).)

4
5 **§ 97-73. Fees.**

6 (a) Claims. – The Industrial Commission may establish by rule a schedule of fees for
7 examinations conducted, reports made, documents filed, and agreements reviewed under this
8 Article. The fees shall be collected in accordance with rules adopted by the Industrial
9 Commission.

10 (b), (c) Repealed by Session Laws 2003-284, s. 10.33(d), effective July 1, 2003.

11 (d) Safety. – A fee in the amount set by the Industrial Commission is imposed on an
12 employer for whom the Industrial Commission provides an educational training program on
13 how to prevent or reduce accidents or injuries that result in workers' compensation claims or a
14 person for whom the Industrial Commission provides other educational services. The fees are
15 departmental receipts. (1935, c. 123; 1955, c. 525, s. 8; 1991, c. 481, s. 2; 1991 (Reg. Sess.,
16 1992), c. 1039, s. 2; 1997-443, s. 11A.39; 2003-284, s. 10.33(d); 2005-276, s. 45.1(a);
17 2009-451, s. 14.16(a).)

18
19 **§ 97-74. Expense of hearings taxed as costs in compensation cases; fees collected directed**
20 **to general fund.**

21 In hearings arising out of claims for disability and/or death resulting from occupational
22 diseases the Industrial Commission shall tax as a part of the costs in cases in which
23 compensation is awarded a reasonable allowance for the services of members of the advisory
24 medical committee attending such hearings and reasonable allowances for the services of
25 members of the advisory medical committee for making investigations in connection with all
26 claims for compensation on account of occupational diseases, including uncontested cases, as
27 well as contested cases, and whether or not hearings shall have been conducted in connection
28 therewith. All such charges, fees and allowances to be collected by the Industrial Commission
29 shall be paid into the general fund of the State treasury to constitute a fund out of which to pay
30 the expenses of the advisory medical committee. (1935, c. 123.)

31
32 **§§ 97-75, 97-76:** Repealed by Session Laws 2003-284, s. 10.33(f), effective July 1, 2003.

33
34 **§ 97-77. North Carolina Industrial Commission created; members appointed by**
35 **Governor; terms of office; chairman.**

36 (a) There is hereby created a commission to be known as the North Carolina Industrial
37 Commission, consisting of six commissioners who shall devote their entire time to the duties of
38 the Commission. The Governor shall appoint the members of the Commission for terms of six
39 years. Three commissioners shall be persons who, on account of their previous vocations,
40 employment or affiliations, can be classed as representatives of employers. Three
41 commissioners shall be persons who, on account of their previous vocations, employment or
42 affiliations, can be classed as representatives of employees. No person may serve more than
43 two terms on the Commission, including any term served prior to the effective date of this
44 section. In calculating the number of terms served, a partial term that is less than three years in
45 length shall not be included.

46 (a1) Appointments of commissioners are subject to confirmation by the General
47 Assembly by joint resolution. The names of commissioners to be appointed by the Governor
48 shall be submitted by the Governor to the General Assembly for confirmation by the General
49 Assembly on or before March 1 of the year of expiration of the term. If the Governor fails to
50 timely submit nominations, the General Assembly shall appoint to fill the succeeding term
51 upon the joint recommendation of the President Pro Tempore of the Senate and the Speaker of

1 the House of Representatives in accordance with G.S. 120-121 not inconsistent with this
2 section.

3 In case of death, incapacity, resignation, or any other vacancy in the office of any
4 commissioner prior to the expiration of the term of office, a nomination to fill the vacancy for
5 the remainder of the unexpired term shall be submitted by the Governor within four weeks after
6 the vacancy arises to the General Assembly for confirmation by the General Assembly. If the
7 Governor fails to timely nominate a person to fill the vacancy, the General Assembly shall
8 appoint a person to fill the remainder of the unexpired term upon the joint recommendation of
9 the President Pro Tempore of the Senate and the Speaker of the House of Representatives in
10 accordance with G.S. 120-121 not inconsistent with this section. If a vacancy arises or exists
11 pursuant to this subsection when the General Assembly is not in session, and the appointment is
12 deemed urgent by the Governor, the commissioner may be appointed and serve on an interim
13 basis pending confirmation by the General Assembly. For the purpose of this subsection, the
14 General Assembly is not in session only (i) prior to convening of the Regular Session, (ii)
15 during any adjournment of the Regular Session for more than 10 days, and (iii) after sine die
16 adjournment of the Regular Session.

17 No person while in office as a commissioner may be nominated or appointed on an interim
18 basis to fill the remainder of an unexpired term, or to a full term that commences prior to the
19 expiration of the term that the commissioner is serving.

20 (b) One member, to be designated by the Governor, shall act as chairman. The chairman
21 shall be the chief judicial officer and the chief executive officer of the Industrial Commission;
22 such authority shall be exercised pursuant to the provisions of Chapter 126 of the General
23 Statutes and the rules and policies of the State Personnel Commission. Notwithstanding the
24 provisions of this Chapter, the chairman shall have such authority as is necessary to direct and
25 oversee the Commission. The chairman may delegate any duties and responsibilities as may be
26 necessary to ensure the proper management of the Industrial Commission. Notwithstanding the
27 provisions of this Chapter, Chapter 143A, and Chapter 143B of the General Statutes, the
28 chairman may hire or fire personnel and transfer personnel within the Industrial Commission.

29 The Governor may designate one vice-chairman from the remaining commissioners. The
30 vice-chairman shall assume the powers of the chairman upon request of the chairman or when
31 the chairman is absent for 24 hours or more. The authority delegated to the vice-chairman shall
32 be relinquished immediately upon the return of the chairman or at the request of the chairman.
33 (1929, c. 120, s. 51; 1931, c. 274, s. 8; 1991, c. 264, s. 1; 1993, c. 399, s. 3; 1993 (Reg. Sess.,
34 1994), c. 769, s. 28.15(a); 2011-287, ss. 16, 17.)

35
36 **§ 97-77.1. Expired.**
37

38 **§ 97-78. Salaries and expenses; administrator, executive secretary, deputy**
39 **commissioners, and other staff assistance; annual report.**

40 (a) The salary of each commissioner shall be the same as that fixed from time to time
41 for district attorneys except that the commissioner designated as chair shall receive one
42 thousand five hundred dollars (\$1,500) additional per annum.

43 (b) The Commission may appoint an administrator whose duties shall be prescribed by
44 the Commission, and who shall be subject to the State Personnel System. The Commission may
45 appoint an executive secretary whose duties shall be prescribed by the Commission, and who
46 shall be subject to the State Personnel System and who, upon entering upon his duties, shall
47 give bond in such sum as may be fixed by the Commission. The Commission may also employ
48 such clerical or other assistance as it may deem necessary, and fix the compensation of its staff,
49 except that the salaries of the administrator and the executive secretary shall be fixed by
50 subsection (b1) of this section. The compensation of Commission staff shall be in keeping with
51 the compensation paid to the persons employed to do similar work in other State departments.

1 (b1) The salary of the administrator shall be ninety percent (90%) of the salary of a
2 commissioner. The salary of the executive secretary shall be ninety percent (90%) of the salary
3 of a commissioner.

4 (b2) The Chairman of the Industrial Commission shall designate one deputy
5 commissioner as chief deputy commissioner. The salary of the chief deputy commissioner shall
6 be ninety percent (90%) of the salary of a commissioner.

7 (b3) The salary of deputy commissioners shall be based upon years of experience as a
8 deputy commissioner as follows:

9 (1) Seventy-five percent (75%) of the salary of a commissioner, with three years
10 of experience or less.

11 (2) Seventy-seven percent (77%) of the salary of a commissioner, with more
12 than three but less than seven years of experience.

13 (3) Eighty percent (80%) of the salary of a commissioner, with seven or more
14 but less than 10 years of experience.

15 (4) Eighty-three percent (83%) of the salary of a commissioner, with 10 or more
16 but less than 12 years of experience.

17 (5) Eighty-five percent (85%) of the salary of a commissioner, with 12 or more
18 years experience.

19 (b4) In lieu of merit and other incremental raises, the administrator, executive secretary,
20 chief deputy commissioner, and deputy commissioners shall receive longevity pay on the same
21 basis as is provided to other employees subject to the State Personnel Act.

22 (c) The members of the Commission and its assistants shall be entitled to receive from
23 the State their actual and necessary expenses while traveling on the business of the
24 Commission, but such expenses shall be certified by the person who incurred the same, and
25 shall be approved by the chairman of the Commission before payment is made.

26 (d) All salaries and expenses of the Commission shall be audited and paid out of the
27 State treasury, in the manner prescribed for similar expenses in other departments or branches
28 of the State service, and to defray such salaries and expenses a sufficient appropriation shall be
29 made under the General Appropriation Act as made to other departments, commissions and
30 agencies of the State government.

31 (e) No later than October 1 of each year, the Commission shall publish annually for free
32 distribution a report of the administration of this Article, together with such recommendations
33 as the Commission deems advisable. No later than October 1 of each year, the Commission
34 shall submit this report to the Joint Legislative Commission on Governmental Operations.

35 (f) No later than April 1, 2008, the Commission shall prepare and implement a strategic
36 plan for accomplishing all of the following:

37 (1) Tracking compliance with the provisions of G.S. 97-18(b), (c), and (d), and
38 establishing a procedure to enforce compliance with the requirements of
39 these subsections.

40 (2) Expeditiously resolving requests for, or disputes involving, medical
41 compensation under G.S. 97-25, including selection of a physician, change
42 of physician, the specific treatment involved, and the provider of such
43 treatment.

44 (g) The Commission shall demonstrate its success in implementing its strategic plan
45 under subsection (f) of this section by including all of the following in its annual report under
46 subsection (e) of this section:

47 (1) The total number of claims made during the preceding calendar year, the
48 total number of claims in which compliance was not timely made, and, for
49 each claim, the date the claim was filed, the date by which compliance was
50 required, the date of actual compliance, and any sanctions or other remedial
51 action imposed by the Commission.

- 1 (2) The total number of requests for, and disputes involving, medical
2 compensation under G.S. 97-25 in which final disposition was not made
3 within 45 days of the filing of the motion with the Commission, and, for
4 each such request or dispute, the date the motion or other initial pleading
5 was filed, the date on which final disposition was made and, where
6 reasonably ascertainable, the date on which any ordered medical treatment
7 was actually provided. (1929, c. 120, s. 52; 1931, c. 274, s. 9; 1941, c. 358,
8 s. 2; 1947, c. 823; 1957, c. 541, s. 6; 1971, c. 527, s. 1; c. 1147, s. 1; 1983, c.
9 717, s. 20; 1983 (Reg. Sess., 1984), c. 1034, s. 164; 1997-443, s. 33.4;
10 1998-212, s. 28.18(a); 2005-276, s. 29.20(b); 2007-323, ss. 13.4A(a), (b).)

11
12 **§ 97-78.1. Standards of judicial conduct to apply to commissioners and deputy**
13 **commissioners.**

14 The Code of Judicial Conduct for judges of the General Court of Justice and the procedure
15 for discipline of judges in Article 30 of Chapter 7A of the General Statutes shall apply to
16 commissioners and deputy commissioners. Commissioners and deputy commissioners shall be
17 liable for impeachment for the causes and in the manner provided for judges of the General
18 Court of Justice in Chapter 123 of the General Statutes. (2011-287, s. 18.)

19
20 **§ 97-79. Offices and supplies; deputies with power to subpoena witnesses and to take**
21 **testimony; meetings; hearings.**

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

25 (b) The Commission may appoint deputies who shall have the same power as members
26 of the Commission pursuant to G.S. 97-80 and the same power to take evidence, and enter
27 orders, opinions, and awards based thereon as is possessed by the members of the Commission.
28 The deputies shall be subject to the State Personnel System.

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

31 (d) Hearings before the Commission shall be open to the public and shall be
32 stenographically reported, and the Commission is authorized to contract for the reporting of
33 such hearings. The Commission shall by regulation provide for the preparation of a record of
34 the hearings and other proceedings. Notwithstanding the provisions of this subsection, informal
35 hearings conducted pursuant to the provisions of G.S. 97-18.1, whether by telephone or in
36 person, shall not be open to the public nor stenographically reported unless the Commission
37 orders otherwise.

38 (e) The Commission, or any member thereof, or any deputy is authorized by
39 appropriate order, to make additional parties plaintiff or defendant in any proceeding pending
40 before the Commission when it is made to appear that such new party is either a necessary
41 party or a proper party to a final determination of the proceeding.

42 (f) The Commission shall create an ombudsman program to assist unrepresented
43 claimants, employers, and other parties, to enable them to protect their rights under this Article.
44 In addition to other duties assigned by the Commission, the ombudsman shall meet with, or
45 otherwise provide information to, injured employees, investigate complaints, and communicate
46 with employers' insurance carriers and physicians at the request of the claimant. Assistance
47 provided under this subsection shall not include representing the claimant in a compensation
48 hearing. (1929, c. 120, s. 53; 1931, c. 274, s. 10; 1951, c. 1059, s. 7; 1955, c. 1026, s. 11; 1971,
49 c. 527, s. 2; c. 1147, s. 2; 1981 (Reg. Sess., 1982), c. 1243, s. 1; 1993 (Reg. Sess., 1994), c. 679,
50 s. 5.2.)
51

1 **§ 97-80. Rules and regulations; subpoena of witnesses; examination of books and records;**
2 **depositions; costs.**

3 (a) The Commission shall adopt rules, in accordance with Article 2A of Chapter 150B
4 of the General Statutes and not inconsistent with this Article, for carrying out the provisions of
5 this Article.

6 Processes, procedure, and discovery under this Article shall be as summary and simple as
7 reasonably may be.

8 (b) The Commission or any member thereof, or any person deputized by it, shall have
9 the power, for the purpose of this Article, to tax costs against the parties, to administer or cause
10 to have administered oaths, to preserve order at hearings, to compel the attendance and
11 testimony of witnesses, and to compel the production of books, papers, records, and other
12 tangible things.

13 (c) The Commission may order parties to participate in mediation, under rules
14 substantially similar to those approved by the Supreme Court for use in the Superior Court
15 division, except the Commission shall determine the manner in which payment of the costs of
16 the mediated settlement conference is assessed.

17 (d) The Commission may order testimony to be taken by deposition and any party to a
18 proceeding under this Article may, upon application to the Commission, which application
19 shall set forth the materiality of the evidence to be given, cause the depositions of witnesses
20 residing within or without the State to be taken, the costs to be taxed as other costs by
21 Commission. Depositions ordered by the Commission upon application of a party shall be
22 taken after giving the notice and in the manner prescribed by law for depositions in action at
23 law, except that they shall be directed to the Commission, the commissioner, or the deputy
24 commissioner before whom the proceedings may be pending.

25 (e) A subpoena may be issued by the Commission and served in accordance with G.S.
26 1A-1, Rule 45. Upon a motion, the Commission may quash a subpoena if it finds that the
27 evidence the production of which is required does not relate to a matter in issue, the subpoena
28 does not describe with sufficient particularity the evidence the production of which is required,
29 or for any other reason sufficient in law the subpoena may be quashed. Each witness who
30 appears in obedience to such subpoena of the Commission shall receive for attendance the fees
31 and mileage for witnesses in civil cases in courts of the county where the hearing is held.

32 (f) The Commission may by rule provide for and limit the use of interrogatories and
33 other forms of discovery, and it may provide reasonable sanctions for failure to comply with a
34 Commission order compelling discovery.

35 (g) The Commission or any member or deputy thereof shall have the same power as a
36 judicial officer pursuant to Chapter 5A of the General Statutes to hold a person in civil
37 contempt, as provided thereunder, for failure to comply with an order of the Commission,
38 Commission member, or deputy. A person held in civil contempt may appeal in the manner
39 provided for appeals pursuant to G.S. 97-85 and G.S. 97-86. The provisions of G.S. 5A-24 shall
40 not apply to appeals pursuant to this subsection.

41 (h) The Commission or any member or deputy thereof shall also have the same power
42 as a judicial officer pursuant to Chapter 5A of the General Statutes to punish for criminal
43 contempt, subject to the limitations thereunder, (i) for wilful behavior committed during the
44 sitting of the commissioner or deputy commissioner and directly tending to interrupt the
45 proceedings; (ii) for wilful disobedience of a lawful order of the Commission or a member or
46 deputy thereof; or (iii) for wilful refusal to be sworn or affirmed as a witness, or, when so
47 sworn or affirmed, wilful refusal to answer any legal and proper question when refusal is not
48 legally justified. The Commission or any member or deputy thereof may issue an order of arrest
49 as provided by G.S. 15A-305 when authorized by G.S. 5A-16 in connection with contempt
50 proceedings. When the commissioner or deputy commissioner chooses not to proceed
51 summarily pursuant to G.S. 5A-14, the proceedings shall be before a district court judge, and

1 venue lies throughout the district where the order was issued directing the person charged to
2 appear. A person found in criminal contempt may appeal in the manner provided for appeals in
3 criminal actions to the superior court of the district in which the order of contempt was issued,
4 and the appeal is by hearing de novo before a superior court judge. (1929, c. 120, s. 54; 1977,
5 cc. 456, 505; 1981 (Reg. Sess., 1982), c. 1243, s. 2; 1993, c. 321, s. 25(b); c. 399, s. 1; 1993
6 (Reg. Sess., 1994), c. 679, ss. 5.3, 5.4; 1995, c. 358, s. 8(a), (b); c. 437, s. 6(a), (b); c. 467, s.
7 5(a), (b); c. 507, ss. 25.13, 27.8(o); c. 509, s. 48; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b);
8 2011-287, s. 19.)
9

10 **§ 97-81. Blank forms and literature; statistics; safety provisions; accident reports; studies**
11 **and investigations and recommendations to General Assembly; to cooperate**
12 **with other agencies for prevention of injury.**

13 (a) The Commission shall prepare and cause to be printed, and upon request furnish,
14 free of charge to any employee or employer, such blank forms and literature as it shall deem
15 requisite to facilitate or prompt the efficient administration of this Article. The Commission
16 may authorize the use of electronic submission of forms and other means of transmittal of
17 forms and notices when it deems appropriate.

18 (b) The Commission shall tabulate the accident reports received from employers in
19 accordance with G.S. 97-92 and shall publish the same in the annual report of the Commission
20 and as often as it may deem advisable, in such detailed or aggregate form as it may deem best.
21 The name of the employer or employee shall not appear in such publications, and the
22 employers' reports shall be private records of the Commission, and shall not be open for public
23 inspection except for the inspection of the parties directly involved, and only to the extent of
24 such interest, and except for inspection by the Department of Labor and other State or federal
25 agencies pursuant to subsections (d) and (e) of this section. These reports shall not be used as
26 evidence against any employer in any suit at law brought by any employee for the recovery of
27 damages.

28 (c) The Commission shall make studies and investigations with respect to safety
29 provisions and the causes of injuries in employments covered by this Article, and shall from
30 time to time make to the General Assembly and to employers and carriers such
31 recommendations as it may deem proper as to the best means of preventing such injuries.

32 (d) In making such studies and investigations the Commission shall:

- 33 (1) Cooperate with any agency of the United States charged with the duty of
34 enforcing any law securing safety against injury in any employment covered
35 by this Article, or with any State agency engaged in enforcing any laws to
36 assure safety for employees, and
- 37 (2) Permit any such agency to have access to the records of the Commission.

38 In carrying out the provisions of this section the Commission or any officer or employee of
39 the Commission is authorized to enter at any reasonable time upon any premises, tracks, wharf,
40 dock, or other landing place, or to enter any building, where an employment covered by this
41 Article is being carried on, and to examine any tool, appliance, or machinery used in such
42 employment.

43 (e) The Commission shall, upon written request from the Commissioner of Labor,
44 provide from the Commission's records the following information from claims filed by
45 employees, and from employer reports of injury to an employee required by G.S. 97-92:

- 46 (1) Name and business address of the employer;
- 47 (2) Type of business of the employer;
- 48 (3) Date the accident, illness, or injury occurred;
- 49 (4) Nature of the injury or disease reported; and
- 50 (5) Whether compensation for disability or medical expenses was paid to the
51 injured employee.

1 Information provided to the Commissioner of Labor pursuant to this subsection, and to
2 other State and federal agencies pursuant to subsection (d) of this section, shall be private and
3 exempt from public inspection to the same extent that records of the Commission are so
4 exempt. (1929, c. 120, s. 55; 1991 (Reg. Sess., 1992), c. 894, s. 2; 1993 (Reg. Sess., 1994), c.
5 679, s. 10.2.)

6
7 **§ 97-82. Memorandum of agreement between employer and employee to be submitted to**
8 **Commission on prescribed forms for approval; direct payment as award.**

9 (a) If the employer and the injured employee or his dependents reach an agreement in
10 regard to compensation under this Article, they may enter into a memorandum of the agreement
11 in the form prescribed by the Commission.

12 An agreement, however, shall be incorporated into a memorandum of agreement in regard
13 to compensation: (i) for loss or permanent injury, disfigurement, or permanent and total
14 disability under G.S. 97-31, (ii) for death from a compensable injury or occupational disease
15 under G.S. 97-38, or (iii) when compensation under this Article is paid or payable to an
16 employee who is incompetent or under 18 years of age.

17 The memorandum of agreement, accompanied by the material medical and vocational
18 records, shall be filed with and approved by the Commission; otherwise such agreement shall
19 be voidable by the employee or his dependents.

20 (b) If approved by the Commission, a memorandum of agreement shall for all purposes
21 be enforceable by the court's decree as hereinafter specified. Payment pursuant to G.S.
22 97-18(b), or payment pursuant to G.S. 97-18(d) when compensability and liability are not
23 contested prior to expiration of the period for payment without prejudice, shall constitute an
24 award of the Commission on the question of compensability of and the insurer's liability for the
25 injury for which payment was made. Compensation paid in these circumstances shall constitute
26 payment of compensation pursuant to an award under this Article. (1929, c. 120, s. 56; 1993
27 (Reg. Sess., 1994), c. 679, s. 3.2; 2005-448, s. 7.)

28
29 **§ 97-83. Commission is to make award after hearing.**

30 If the employer and the injured employee or his dependents fail to reach an agreement in
31 regard to benefits under this Article within 14 days after the employer has written or actual
32 notice of the injury or death, or upon the arising of a dispute under this Article, either party may
33 make application to the Commission for a hearing in regard to the matters at issue, and for a
34 ruling thereon.

35 Immediately after such application has been received the Commission shall set the date of a
36 hearing, which shall be held as soon as practicable and shall notify the parties at issue of the
37 time and place of such hearing. The hearing or hearings shall be held in the city or county
38 where the injury occurred, unless otherwise authorized by the Commission. (1929, c. 120, s. 57;
39 1955, c. 1026, s. 121/2; 1977, c. 743; 1993 (Reg. Sess., 1994), c. 679, s. 3.3.)

40
41 **§ 97-83.1. Facilities for hearings; security.**

42 The senior resident superior court judge shall provide suitable facilities for the conduct of
43 hearings under this Article in the county or counties within the judge's district at the time the
44 Commission schedules hearings therein. The senior resident superior court judge shall, to the
45 extent the judge determines necessary and practicable, provide or arrange for security at
46 Commission hearings upon the request of a member or deputy of the Commission. (1993 (Reg.
47 Sess., 1994), c. 679, s. 5.7.)

48
49 **§ 97-84. Determination of disputes by Commission or deputy.**

50 The Commission or any of its members shall hear the parties at issue and their
51 representatives and witnesses, and shall determine the dispute in a summary manner. The

1 Commission shall decide the case and issue findings of fact based upon the preponderance of
2 the evidence in view of the entire record. The award, together with a statement of the findings
3 of fact, rulings of law, and other matters pertinent to the questions at issue shall be filed with
4 the record of the proceedings, within 180 days of the close of the hearing record unless time is
5 extended for good cause by the Commission, and a copy of the award shall immediately be sent
6 to the parties in dispute. The parties may be heard by a deputy, in which event the hearing shall
7 be conducted in the same way and manner prescribed for hearings which are conducted by a
8 member of the Industrial Commission, and said deputy shall proceed to a complete
9 determination of the matters in dispute, file his written opinion within 180 days of the close of
10 the hearing record unless time is extended for good cause by the Commission, and the deputy
11 shall cause to be issued an award pursuant to such determination. (1929, c. 120, s. 58; 1951, c.
12 1059, s. 7; 1987, c. 729, s. 15; 2011-287, s. 20.)
13

14 **§ 97-85. Review of award.**

15 If application is made to the Commission within 15 days from the date when notice of the
16 award shall have been given, the full Commission shall review the award, and, if good ground
17 be shown therefor, reconsider the evidence, receive further evidence, rehear the parties or their
18 representatives, and, if proper, amend the award: Provided, however, when application is made
19 for review of an award, and such an award has been heard and determined by a commissioner
20 of the North Carolina Industrial Commission, the commissioner who heard and determined the
21 dispute in the first instance, as specified by G.S. 97-84, shall be disqualified from sitting with
22 the full Commission on the review of such award, and the chairman of the Industrial
23 Commission shall designate a deputy commissioner to take such commissioner's place in the
24 review of the particular award. The deputy commissioner so designated, along with the two
25 other commissioners, shall compose the full Commission upon review. Provided further, the
26 chairman of the Industrial Commission shall have the authority to designate a deputy
27 commissioner to take the place of a commissioner on the review of any case, in which event the
28 deputy commissioner so designated shall have the same authority and duty as does the
29 commissioner whose place he occupies on such review. (1929, c. 120, s. 59; 1963, c. 402;
30 1977, cc. 390, 431.)
31

32 **§ 97-86. Award conclusive as to facts; appeal; certified questions of law.**

33 The award of the Industrial Commission, as provided in G.S. 97-84, if not reviewed in due
34 time, or an award of the Commission upon such review, as provided in G.S. 97-85, shall be
35 conclusive and binding as to all questions of fact; but either party to the dispute may, within 30
36 days from the date of such award or within 30 days after receipt of notice to be sent by
37 registered mail or certified mail of such award, but not thereafter, appeal from the decision of
38 said Commission to the Court of Appeals for errors of law under the same terms and conditions
39 as govern appeals from the superior court to the Court of Appeals in ordinary civil actions. The
40 procedure for the appeal shall be as provided by the rules of appellate procedure.

41 The Industrial Commission of its own motion may certify questions of law to the Court of
42 Appeals for decision and determination by said Court. In case of an appeal from the decision of
43 the Commission, or of a certification by said Commission of questions of law, to the Court of
44 Appeals, said appeal or certification shall operate on a supersedeas except as provided in G.S.
45 97-86.1, and no employer shall be required to make payment of the award involved in said
46 appeal or certification until the questions at issue therein shall have been fully determined in
47 accordance with the provisions of this Article. If the employer is a noninsurer, then the appeal
48 of such employer shall not act as a supersedeas and the plaintiff in such case shall have the
49 same right to issue execution or to satisfy the award from the property of the employer pending
50 the appeal as obtains to the successful party in an action in the superior court.

1 When any party to an appeal from an award of the Commission is unable, by reason of his
2 poverty, to make the deposit or to give the security required by law for said appeal, any
3 member of the Commission or any deputy commissioner shall enter an order allowing said
4 party to appeal from the award of the Commission without giving security therefor. The party
5 appealing from the judgment shall, within 30 days from the filing of the appeal from the award,
6 make an affidavit that he is unable by reason of his poverty to give the security required by law.
7 The request shall be passed upon and granted or denied by a member of the Commission or
8 deputy commissioner within 20 days from receipt of the affidavit specified above. (1929, c.
9 120, s. 60; 1947, c. 823; 1957, c. 1396, s. 9; 1959, c. 863, s. 4; 1967, c. 669; 1971, c. 1189;
10 1975, c. 391, s. 15; 1977, c. 521, s. 1; 1993 (Reg. Sess., 1994), c. 679, s. 10.5; 1995 (Reg. Sess.,
11 1996), c. 552, s. 1.)
12

13 **§ 97-86.1. Payment of award pending appeal in certain cases.**

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

22 (b) In any claim under the provisions of this Chapter where it is conceded by all parties
23 that the employee's claim is a compensable one and the amount is not disputed and where the
24 only issue is which employer or employers, carrier or carriers are liable, the Commission may,
25 where an appeal from a hearing commissioner or the full Commission is taken by one or more
26 parties, order payment made to the employee pending outcome of the case on appeal. The order
27 of payment shall contain the provision that if the employer or carrier ordered to pay is not
28 ultimately liable for the amount paid, the employer or carrier will be reimbursed by the
29 employer or carrier ultimately held liable.

30 (c) No payment made pursuant to the provisions of this section shall in any manner
31 operate as an admission of liability or estoppel to deny liability by an employer or carrier.

32 (d) In any claim under the provisions of this Chapter wherein one employer or carrier
33 has made payments to the employee or his dependents pending a final disposition of the claim
34 and it is determined that different or additional employers or carriers are liable, the
35 Commission may order any employers or carriers determined liable to make repayment in full
36 or in part to any employer or carrier which has made payments to the employee or his
37 dependents. (1977, c. 521, s. 2.)
38

39 **§ 97-86.2. Interest on awards after hearing.**

40 In any workers' compensation case in which an order is issued either granting or denying an
41 award to the employee and where there is an appeal resulting in an ultimate award to the
42 employee, the insurance carrier or employer shall pay interest on the final award or unpaid
43 portion thereof from the date of the initial hearing on the claim, until paid at the legal rate of
44 interest provided in G.S. 24-1. If interest is paid it shall not be a part of, or in any way increase
45 attorneys' fees, but shall be paid in full to the claimant. (1981, c. 242, s. 1; 1985, c. 598; 1987,
46 c. 729, s. 16.)
47

48 **§ 97-87. Judgments on awards.**

49 (a) As used in this section, "award" includes the following:

- 50 (1) A form filed, or an award arising, under G.S. 97-18(b), 97-18(d), or
51 97-82(b).

- 1 (2) A memorandum of agreement approved by the Commission.
- 2 (3) An order or decision of the Commission.
- 3 (4) An award of the Commission from which there has been no appeal.
- 4 (5) An award of the Commission affirmed on appeal.

5 (b) When an award or portion of an award provides for a sum certain or for a sum that
6 can by computation be made certain, and that sum is due and payable as of the date of the
7 award, a judgment may be docketed as provided in subsection (d) of this section, in an amount
8 equal to that sum.

9 (c) When an award or portion of an award provides for periodic payments to be made
10 on or after the date of the award, a judgment may be docketed as provided in subsection (d) of
11 this section, in an amount equal to the sum stated in any Certificate of Accrued Arrearages that
12 is issued by the Commission under this subsection. If any payment that has accrued after the
13 date of the award, or after the date specified in the most recent Certificate of Accrued
14 Arrearages issued under this subsection, is not received by the claimant when due, the
15 following procedure is available for obtaining a Certificate of Accrued Arrearages:

- 16 (1) The claimant may file with the Commission a Statement of Accrued
17 Arrearages, on a form approved by the Commission, and shall serve a copy
18 on all parties against whom judgment is sought and their attorney of record.
- 19 (2) Any party against whom judgment is sought may, within 15 days of the date
20 of service of a Statement of Accrued Arrearages, file with the Commission
21 proof of any payments that have been made or other responsive pleadings.
- 22 (3) If no proof or other responsive pleading is filed within 15 days of the date of
23 service of the Statement, the Commission shall immediately issue a
24 Certificate of Accrued Arrearages.
- 25 (4) If proof of payment or other responsive pleading is filed, the Commission
26 shall, within seven days, either issue a Certificate of Accrued Arrearages that
27 shall state the sum of payments due or decline to issue a Certificate of
28 Accrued Arrearages. The Commission shall notify the claimant, the party
29 against whom judgment is sought, and their attorney of record of the
30 Commission's decision.
- 31 (5) If any party disputes the decision of the Commission entered under
32 subdivision (c)(4) of this section, the party may appeal to the full
33 Commission within 10 days of the entry of the decision of the Commission.
34 The nonappealing party may file a response within 10 days of receiving
35 notice of appeal. The notice of appeal shall request one of the following:
 - 36 a. The Commission reconsider the decision entered based on the record
37 and any additional evidence that parties submit with the notice and
38 response.
 - 39 b. A de novo evidentiary hearing before the full Commission.
- 40 (6) The Commission shall grant the request for an evidentiary hearing under
41 sub-subdivision (c)(5)b. of this section if a material issue of fact exists
42 whose resolution is necessary to determine the appeal.
- 43 (7) If a notice of appeal is given under sub-subdivision (c)(5)a. of this section,
44 the Commission shall issue its decision within 10 days of the filing of the
45 response under subdivision (c)(5)b. of this section. If a notice of appeal is
46 given under sub-subdivision (c)(5) of this section, the Commission shall
47 either conduct an evidentiary hearing and issue its decision on the appeal
48 within 90 days of the filing of the response under subdivision (c)(5) of this
49 section or deny the request for the evidentiary hearing and issue its decision
50 within 10 days of the filing of the response under subdivision (c)(5) of this
51 section. Further appeals are governed by G.S. 97-86.

- 1 (8) Each award and each Certificate of Accrued Arrearages shall include the
2 following information:
3 a. The names and addresses of the parties.
4 b. The sum of all principal amounts that have accrued and remain
5 unpaid since the date of the award or since the date of the most recent
6 prior Certificate of Accrued Arrearages.
7 c. The total of any interest that has accrued on the award, as of the date
8 of the Certificate of Accrued Arrearages, since the date of the award
9 or since the date of the most recent prior Certificate of Accrued
10 Arrearages.
11 d. Any costs, penalties, or monetary sanctions included in the award.

12 (d) Any party in interest may file a certified copy of an award described in subsection
13 (b) of this section, or of a Certificate of Accrued Arrearages, in the office of the clerk of
14 superior court of the county in which the defendant has a place of business or has property, or
15 in which an injury occurred, or in Wake County. An award shall be accompanied by the party's
16 affidavit stating that the award has become final and the time for making the first payment
17 under the award has expired.

18 (e) Promptly after a certified copy of an award or of a Certificate of Accrued
19 Arrearages is filed, the clerk shall docket and index a judgment as provided in Chapter 1 of the
20 General Statutes. The principal amount in the award or in the Certificate of Accrued Arrearages
21 shall bear interest at the judgment rate from the date the judgment is docketed. The judgment
22 may be enforced in the same manner as a judgment docketed under Chapter 1 of the General
23 Statutes.

24 (f) The filing of an award, or of a Certificate of Accrued Arrearages, for docketing as a
25 judgment under this section shall be treated as a civil action for record-keeping purposes. The
26 amount in which the judgment is docketed shall determine the amount of the costs to be
27 collected at the time of filing and assessed pursuant to G.S. 7A-305.

28 (g) Nothing in this section shall be construed to limit the Commission's authority to
29 impose any other remedy provided by law. (1929, c. 120, s. 61; 2001-477, s. 1.)
30

31 **§ 97-88. Expenses of appeals brought by insurers.**

32 If the Industrial Commission at a hearing on review or any court before which any
33 proceedings are brought on appeal under this Article, shall find that such hearing or
34 proceedings were brought by the insurer and the Commission or court by its decision orders the
35 insurer to make, or to continue payments of benefits, including compensation for medical
36 expenses, to the injured employee, the Commission or court may further order that the cost to
37 the injured employee of such hearing or proceedings including therein reasonable attorney's fee
38 to be determined by the Commission shall be paid by the insurer as a part of the bill of costs.
39 (1929, c. 120, s. 62; 1931, c. 274, s. 11; 1971, c. 500.)
40

41 **§ 97-88.1. Attorney's fees at original hearing.**

42 If the Industrial Commission shall determine that any hearing has been brought, prosecuted,
43 or defended without reasonable ground, it may assess the whole cost of the proceedings
44 including reasonable fees for defendant's attorney or plaintiff's attorney upon the party who has
45 brought or defended them. (1979, c. 268, s. 1.)
46

47 **§ 97-88.2. Penalty for fraud.**

48 (a) Any person who willfully makes a false statement or representation of a material
49 fact for the purpose of obtaining or denying any benefit or payment, or assisting another to
50 obtain or deny any benefit or payment under this Article, shall be guilty of a Class 1
51 misdemeanor if the amount at issue is less than one thousand dollars (\$1,000). Violation of this

1 section is a Class H felony if the amount at issue is one thousand dollars (\$1,000) or more. The
2 court may order restitution.

3 (a1) When a person is convicted under subsection (a) of this section, the Commission
4 may enter such orders as necessary to ensure that the person convicted does not benefit from
5 the unlawful conduct.

6 (b) The Commission shall:

- 7 (1) Perform investigations regarding all cases of suspected fraud and all
8 violations related to workers' compensation claims, by or against insurers or
9 self-funded employers, and refer possible criminal violations to the
10 appropriate prosecutorial authorities;
- 11 (2) Conduct administrative violation proceedings; and
- 12 (3) Assess and collect civil penalties and restitution.

13 The Commission may employ sworn law enforcement officers duly appointed and certified
14 through the North Carolina Criminal Justice Education and Training Standards Commission to
15 conduct the investigations mandated by this subsection.

16 (c) Any person who threatens an employee with criminal prosecution under the
17 provisions of subsection (a) of this section for the purpose of coercing or attempting to coerce
18 the employee into agreeing to compensation or agreeing to forgo compensation under this
19 Article shall be guilty of a Class H felony.

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

26 (e) The Commission shall report annually to the General Assembly on the number and
27 disposition of investigations involving claimants, employers, insurance company officials,
28 officials of third-party administrators, insurance agents, attorneys, health care providers, and
29 vocational rehabilitation providers. (1993 (Reg. Sess., 1994), c. 679, s. 7.1; 1995, c. 507, s.
30 25(a); 1997-353, s. 1; 2005-448, s. 8; 2007-358, s. 1.)

31 32 **§ 97-88.3. Penalty for health care providers.**

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

- 36 (1) Submitting charges for health care that was not furnished;
- 37 (2) Fraudulently administering, providing, and attempting to collect for
38 inappropriate or unnecessary treatment or services; or
- 39 (3) Violating the provisions of Article 28 of Chapter 90 of the General Statutes.

40 A penalty assessed by the Commission for a violation of subdivision (3) of this subsection
41 is in addition to penalties assessed under G.S. 90-407.

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

- 45 (1) Failing or refusing to timely file required reports or records;
- 46 (2) Making unnecessary referrals; and
- 47 (3) Knowingly violating this Article or rules promulgated hereunder, including
48 treatment guidelines, with intention to deceive or to gain improper advantage
49 of a patient, employee, insurer, or the Commission.

1 (c) A health care provider who knowingly charges or otherwise holds an employee
2 financially responsible for the cost of any services provided for a compensable injury under this
3 Article is guilty of a Class 1 misdemeanor.

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

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

10 (f) A hospital that relies in good faith on a written order of a physician in performing
11 health care services shall not be subject to an administrative penalty in violation of this section.
12 (1993 (Reg. Sess., 1994), c. 679, s. 7.2.)
13

14 **§ 97-89. Commission may appoint qualified physician to make necessary examinations;
15 expenses; fees.**

16 The Commission or any member thereof may, upon the application of either party, or upon
17 its own motion, appoint a disinterested and duly qualified physician or surgeon to make any
18 necessary medical examination of the employee, and to testify in respect thereto. Said
19 physician or surgeon shall be allowed traveling expenses and a reasonable fee to be fixed by
20 the Commission. The fees and expenses of such physician or surgeon shall be paid by the
21 employer. (1929, c. 120, s. 63; 1931, c. 274, s. 12; 1973, c. 520, s. 3.)
22

23 **§ 97-90. Legal and medical fees to be approved by Commission; misdemeanor to receive
24 fees unapproved by Commission, or to solicit employment in adjusting claims;
25 agreement for fee or compensation.**

26 (a) Fees for attorneys and charges of health care providers for medical compensation
27 under this Article shall be subject to the approval of the Commission; but no physician or
28 hospital or other medical facilities shall be entitled to collect fees from an employer or
29 insurance carrier until he has made the reports required by the Commission in connection with
30 the case. Except as provided in G.S. 97-26(g), a request for a specific prior approval to charge
31 shall be submitted to the Commission for each such fee or charge.

32 (b) Any person (i) who receives any fee, other consideration, or any gratuity on account
33 of services so rendered, unless such consideration or gratuity is approved by the Commission or
34 the court, as provided in subsection (c), or (ii) who makes it a business to solicit employment
35 for a lawyer or for himself in respect of any claim or award for compensation, shall be guilty of
36 a Class 1 misdemeanor.

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

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

17 The Commission, in determining an allowance of attorneys' fees, shall examine the record
18 to determine the services rendered. The factors which may be considered by the Commission in
19 allowing a reasonable fee include, but are not limited to, the time invested, the amount
20 involved, the results achieved, whether the fee is fixed or contingent, the customary fee for
21 similar services, the experience and skill level of the attorney, and the nature of the attorney's
22 services.

23 In making the allowance of attorneys' fees, the Commission shall, upon its own motion or
24 that of an interested party, set forth findings sufficient to support the amount approved.

25 The Commission may deny or reduce an attorney's fees upon proof of solicitation of
26 employment in violation of the Rules of Professional Conduct of the North Carolina State Bar.

27 (d) Provided, that nothing contained in this section shall prevent the collection of such
28 reasonable fees of physicians and charges for hospitalization as may be recovered in an action,
29 or embraced in settlement of a claim, against a third-party tort-feasor as described in G.S.
30 97-10.2.

31 (e) A health care provider shall not pursue a private claim against an employee for all
32 or part of the costs of medical treatment provided to the employee by the provider unless the
33 employee's claim or the treatment is finally adjudicated not to be compensable or the employee
34 fails to request a hearing after denial of liability by the employer. Notwithstanding subsequent
35 denial of liability or adjudication that the condition treated was not compensable, the insurer
36 shall be liable as provided in G.S. 97-26 to providers whose services have been authorized by
37 the insurer or employer. The statute of limitations applicable to a provider's claim for payment
38 shall be tolled during the period the compensability of a claim or liability for particular
39 treatment remains an issue in a compensation case. (1929, c. 120, s. 64; 1955, c. 1026, s. 4;
40 1959, cc. 1268, 1307; 1973, c. 520, s. 4; 1981, c. 521, s. 4; 1991, c. 703, s. 6; 1993, c. 539, s.
41 680; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 679, s. 9.1.)

42
43 **§ 97-90.1. Insurers that provide employee's health benefit plans, disability income plans,**
44 **or any other health insurance plans as real parties in interest; reimbursement.**

45 An insurer that covers an employee under a health benefit plan as defined in G.S. 58-3-167,
46 a disability income plan, or any other health insurance plan is not a real party in interest and
47 shall not intervene or participate in any proceeding or settlement agreement under this Article
48 to determine whether a claim is compensable under this Article or to seek reimbursement for
49 medical payments under its plan. The insurer that covers an employee under a health benefit
50 plan as defined in G.S. 58-3-167 or any other health insurance plan may seek reimbursement
51 from the employee, employer, or carrier that is liable or responsible for the specific medical

1 charge according to a final adjudication of the claim under this Article or an order of the
2 Commission approving a settlement agreement entered into under this Article for health plan
3 payments for that specific medical charge. Upon the admission or adjudication that a claim is
4 compensable, the party or parties liable shall notify in writing any known health benefit plan
5 covering the employee of the admission or adjudication. (2001-216, s. 1; 2001-487, s. 102(b).)
6

7 **§ 97-91. Commission to determine all questions.**

8 All questions arising under this Article if not settled by agreements of the parties interested
9 therein, with the approval of the Commission, shall be determined by the Commission, except
10 as otherwise herein provided. (1929, c. 120, s. 65.)
11

12 **§ 97-92. Employer's record and report of accidents; records of Commission not open to**
13 **public; supplementary report upon termination of disability; penalty for**
14 **refusal to make report; when insurance carrier liable.**

15 (a) Every employer shall hereafter keep a record of all injuries, fatal or otherwise,
16 received by his employees in the course of their employment on blanks approved by the
17 Commission. Within five days after the occurrence and knowledge thereof as provided in G.S.
18 97-22 of an injury to an employee, causing his absence from work for more than one day or
19 charges for medical compensation exceeding the amount set by the Commission, a report
20 thereof shall be made in writing and mailed or transmitted to the Commission in the form
21 approved by the Commission for this purpose.

22 (b) The records of the Commission that are not awards under G.S. 97-84 and that are
23 not reviews of awards under G.S. 97-85, insofar as they refer to accidents, injuries, and
24 settlements are not public records under G.S. 132-1 and shall not be open to the public, but only
25 to the parties satisfying the Commission of their interest in such records and the right to inspect
26 them, and to State and federal agencies pursuant to G.S. 97-81.

27 (c) Upon the termination of the disability of the injured employee, or if the disability
28 extends beyond a period of 60 days, then, also, at the expiration of such period the employer
29 shall make a supplementary report to the Commission on blanks to be procured from the
30 Commission for the purpose.

31 (d) The said report shall contain the name, nature, and location of the business of the
32 employer and name, age, sex, and wages and occupation of the injured employee, and shall
33 state the date and hour of the accident causing injury, the nature and cause of the injury, and
34 such other information as may be required by the Commission.

35 (e) Any employer who refuses or neglects to make the report required by this section
36 shall be liable for a penalty of not less than five dollars (\$5.00) and not more than twenty-five
37 dollars (\$25.00) for each refusal or neglect. The fine herein provided may be assessed by the
38 Commission in an open hearing, with the right of review and appeal as in other cases. In the
39 event the employer has transmitted the report to the insurance carrier for transmission by such
40 insurance carrier to the Industrial Commission, the insurance carrier willfully neglecting or
41 failing to transmit the report shall be liable for the said penalty.

42 (f) Any bill, report, application, and document of every nature and kind, which is
43 required or permitted by Commission rules to be transmitted to the Commission by electronic
44 media or is recorded among the Commission records on computer disk, optical disk, microfilm,
45 or similar media and which is produced or reproduced in written form in the normal course of
46 business or is certified as a true and accurate copy of the data recorded at the Commission in
47 the normal course of its business shall be treated as a signed original in all uses before the
48 Commission and as a duplicate within the meaning of Rule 1003 of the North Carolina Rules of
49 Evidence. (1929, c. 120, s. 66; 1945, c. 766; 1991, c. 703, s. 9; 1991 (Reg. Sess., 1992), c. 894,
50 s. 3; 1993 (Reg. Sess., 1994), c. 679, s. 10.8; 2001-216, s. 3; 2001-487, s. 102(b).)
51

1 **§ 97-93. Employers required to carry insurance or prove financial ability to pay for**
2 **benefits; employers required to post notice; self-insured employers regulated**
3 **by Commissioner of Insurance.**

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

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

9 (2) Repealed by Session Laws 1997-362, s. 5.

10 (3) Obtain a license from the Commissioner of Insurance under Article 5 of this
11 Chapter or under Article 47 of Chapter 58 of the General Statutes.

12 (b) through (d) Repealed by Session Laws 1997-362, s. 5.

13 (e) Every employer who is in compliance with the provisions of subsection (a) of this
14 section shall post in a conspicuous place in places of employment a notice stating that
15 employment by this employer is subject to the North Carolina Workers' Compensation Act and
16 stating whether the employer has a policy of insurance against liability or qualifies as a
17 self-insured employer. In the event the employer allows its insurance to lapse or ceases to
18 qualify as a self-insured employer, the employer shall, within five working days of this
19 occurrence, remove any notices indicating otherwise. (1929, c. 120, s. 67; 1943, c. 543; 1973,
20 c. 1291, s. 12; 1979, c. 345; 1983, c. 728; 1985, c. 119, s. 1; 1993, c. 120, ss. 1, 2; 1993 (Reg.
21 Sess., 1994), c. 679, s. 8.2; 1995, c. 193, s. 64; c. 471, s. 1; 1997-362, s. 5.)
22

23 **§ 97-94. Employers required to give proof that they have complied with preceding**
24 **section; penalty for not keeping liability insured; review; liability for**
25 **compensation; criminal penalties for failure to secure payment of**
26 **compensation.**

27 (a) Every employer subject to the compensation provisions of this Article shall file with
28 the Commission, in form prescribed by it, as often as the Commission determines to be
29 necessary, evidence of its compliance with the provisions of G.S. 97-93 and all other provisions
30 relating thereto.

31 (b) Any employer required to secure the payment of compensation under this Article
32 who refuses or neglects to secure such compensation shall be punished by a penalty of one
33 dollar (\$1.00) for each employee, but not less than fifty dollars (\$50.00) nor more than one
34 hundred dollars (\$100.00) for each day of such refusal or neglect, and until the same ceases;
35 and the employer shall be liable during continuance of such refusal or neglect to an employee
36 either for compensation under this Article or at law at the election of the injured employee.

37 The penalty herein provided may be assessed by the Industrial Commission
38 administratively, with the right to a hearing if requested within 30 days after notice of the
39 assessment of the penalty and the right of review and appeal as in other cases. Enforcement of
40 the penalty shall be made by the Office of the Attorney General. The clear proceeds of
41 penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture
42 Fund in accordance with G.S. 115C-457.2.

43 (c) Any employer required to secure the payment of compensation under this Article
44 who willfully fails to secure such compensation shall be guilty of a Class H felony. Any
45 employer required to secure the payment of compensation under this Article who neglects to
46 secure the payment of compensation shall be guilty of a Class 1 misdemeanor.

47 (d) Any person who, with the ability and authority to bring an employer in compliance
48 with G.S. 97-93, willfully fails to bring the employer in compliance, shall be guilty of a Class
49 H felony. Any person who, with the ability and authority to bring an employer in compliance
50 with G.S. 97-93, neglects to bring the employer in compliance, shall be guilty of a Class 1
51 misdemeanor. Any person who violates this subsection may be assessed a civil penalty by the

1 Commission in an amount up to one hundred percent (100%) of the amount of any
2 compensation due the employer's employees injured during the time the employer failed to
3 comply with G.S. 97-93.

4 (e) Notwithstanding the provisions of G.S. 97-101, the Commission may suspend
5 collection or remit all or part of any civil penalty imposed under this section on condition that
6 the employer or person pays the compensation due and complies with G.S. 97-93. (1929, c.
7 120, s. 68; 1945, c. 766; 1963, c. 499; 1973, c. 1291, s. 13; 1985, c. 119, s. 4; 1985 (Reg. Sess.,
8 1986), c. 1027, s. 54; 1987, c. 729, s. 17; 1993, c. 539, s. 681; 1994, Ex. Sess., c. 24, s. 14(c);
9 1993 (Reg. Sess., 1994), c. 679, s. 8.1; 1997-353, s. 2; 1998-215, s. 115.)

10
11 **§ 97-95. Actions against employers failing to effect insurance or qualify as self-insurer.**

12 As to every employer subject to the provisions of this Article who shall fail or neglect to
13 keep in effect a policy of insurance against compensation liability arising hereunder with some
14 insurance carrier as provided in G.S. 97-93, or who shall fail to qualify as a self-insurer as
15 provided in the Article, in addition to other penalties provided by this Article, such employer
16 shall be liable in a civil action which may be instituted by the claimant for all such
17 compensation as may be awarded by the Industrial Commission in a proceeding properly
18 instituted before said Commission, and such action may be brought by the claimant in the
19 county of his residence or in any county in which the defendant has any property in this State;
20 and in said civil action, ancillary remedies provided by law in civil actions of attachment,
21 receivership, and other appropriate ancillary remedies shall be available to plaintiff therein.
22 Said action may be instituted before the award shall be made by the Industrial Commission in
23 such case for the purpose of preventing the defendant from disposing of or removing from the
24 State of North Carolina for the purpose of defeating the payment of compensation any property
25 which the defendant may own in this State. In said action, after being instituted, the court may,
26 after proper amendment to the pleadings therein, permit the recovery of a judgment against the
27 defendant for the amount of compensation duly awarded by the North Carolina Industrial
28 Commission and subject any property seized in said action for payment of the judgment so
29 awarded. The institution of said action shall in no wise interfere with the jurisdiction of said
30 Industrial Commission in hearing and determining the claim for compensation in full accord
31 with the provisions of this Article. Nothing in this section shall be construed to limit or abridge
32 the rights of an employee as provided in subsection (b) of G.S. 97-94. (1941, c. 352.)

33
34 **§ 97-96: Repealed by Session Laws 1997-362, s. 7.**

35
36 **§ 97-97. Insurance policies must contain clause that notice to employer is notice to**
37 **insurer, etc.**

38 All policies insuring the payment of compensation under this Article must contain a clause
39 to the effect that, as between the employer and the insurer the notice to or acknowledgment of
40 the occurrence of the injury on the part of the insured employer shall be deemed notice or
41 knowledge as the case may be, on the part of the insurer; that jurisdiction of the insured for the
42 purposes of this Article shall be jurisdiction of the insurer, that the insurer shall in all things be
43 bound by and subject to the awards, judgments, or decrees rendered against such insured
44 employer, and that insolvency or bankruptcy of the employer and/or discharge therein shall not
45 relieve the insurer from the payment of compensation for disability or death sustained by an
46 employee during the life of such policy or contract. (1929, c. 120, s. 70.)

47
48 **§ 97-98. Policy must contain agreement promptly to pay benefits; continuance of**
49 **obligation of insurer in event of default.**

50 No policy of insurance against liability arising under this Article shall be issued unless it
51 contains the agreement of the insurer that it will promptly pay to the person entitled to same all

1 benefits conferred by this Article, and all installments of the compensation that may be
2 awarded or agreed upon, and that the obligation shall not be affected by any default of the
3 insured after the injury or by any default in giving notice required by such policy or otherwise.
4 Such agreement shall be construed to be a direct promise by the insurer to the person entitled to
5 compensation enforceable in his name. (1929, c. 120, s. 71.)
6

7 **§ 97-99. Law written into each insurance policy; form of policy to be approved by**
8 **Commissioner of Insurance; single catastrophe hazards.**

9 (a) Every policy for the insurance of the compensation in this Article, or against
10 liability therefor, shall be deemed to be made subject to the provisions of this Article. No
11 corporation, association or organization shall enter into any such policy of insurance unless its
12 form has been approved by the Commissioner of Insurance.

13 (b) This Article shall not apply to policies of insurance against loss from explosion of
14 boilers or flywheels or other similar single catastrophe hazards: Provided, that nothing in this
15 Article relieves an employer from liability for injury or death of an employee as a result of such
16 an explosion or catastrophe. (1929, c. 120, s. 72; 1943, c. 170; 1945, c. 381, s. 1; 1959, c. 863,
17 s. 5; 1967, c. 1218; 1993, c. 504, s. 31; 2001-241, s. 1.)
18

19 **§ 97-100. Rates for insurance; carrier to make reports for determination of solvency; tax**
20 **upon premium; wrongful or fraudulent representation of carrier punishable as**
21 **misdemeanor; notices.**

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

25 (b) Each insurance carrier shall report to the Commissioner of Insurance, in accordance
26 with rules adopted by the Commissioner of Insurance, for the purpose of determining the
27 solvency of the carrier and the adequacy of its rates; for this purpose the Commissioner of
28 Insurance may inspect the books and records of any insurance carrier, and examine its agents,
29 officers, and directors under oath.

30 (c) Every insurer under this Article, every employer carrying its own risk under G.S.
31 97-93, and every group of employers that has pooled the employers' liabilities under G.S. 97-93
32 is subject to the premiums tax levied in Article 8B of Chapter 105 of the General Statutes.

33 (d) through (f). Repealed by Session Laws 1995, c. 360, s. 1.

34 (g) Any person who acts or assumes to act as agent for any insurance carrier whose
35 authority to do business in this State has been suspended, while the suspension remains in
36 force, who neglects or refuses to comply with any of the provisions of this section, or who
37 willfully makes a false or fraudulent statement of the business or condition of any insurance
38 carrier, is guilty of a Class 2 misdemeanor.

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

44 (i) through (k). Repealed by Session Laws 1995, c. 360, s. 1. (1929, c. 120, s. 73; 1931,
45 c. 274, s. 13; 1947, c. 574; 1961, c. 833, s. 13; 1977, c. 828, s. 7; 1985, c. 119, s. 2; 1985 (Reg.
46 Sess., 1986), c. 928, s. 13; 1989, c. 647, s. 1; 1993, c. 539, s. 682; 1994, Ex. Sess., c. 24, s.
47 14(c); 1995, c. 360, s. 1(h).)
48

49 **§ 97-101. Collection of fines and penalties.**

50 The Industrial Commission shall have the power by civil action brought in its own name to
51 enforce the collection of any fines or penalties provided by this Article, and fines or penalties

1 collected by the Commission shall become a part of the maintenance fund referred to in
2 subsection (j) of G.S. 97-100. (1931, c. 274, s. 14.)

3

4 **§ 97-101.1. Commission may issue writs of habeas corpus.**

5 The Industrial Commission may issue a writ of habeas corpus ad testificandum under
6 Article 8 of Chapter 17 of the General Statutes although it is not a court of record. (1998-217, s.
7 31.1(a).)