

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 434

Short Title: Workers' Comp. Act Tech. Amendments.

(Public)

Sponsors: Senator Cooper.

Referred to: Manufacturing and Labor.

April 1, 1991

A BILL TO BE ENTITLED

AN ACT TO MAKE CERTAIN TECHNICAL AMENDMENTS TO THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-2 is amended by adding a new subdivision to read:

"(19) Medical Compensation. – The term 'medical compensation' means medical, surgical, hospital, nursing, and rehabilitative services; medicines; sick travel; 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."

Sec. 2. G.S. 97-10.2(f) reads as rewritten:

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

- a. First to the payment of actual court costs taxed by judgment.
- b. Second to the payment of the fee of the attorney representing the person making settlement or obtaining judgment, and except for the fee on the subrogation interest of the employer such fee

1 shall not be subject to the provisions of ~~§ 90 of this Chapter G.S.~~
2 97-90, but shall not exceed one third of the amount obtained or
3 recovered of the third party.

4 c. Third to the reimbursement of the employer for all benefits by
5 way of compensation or medical ~~treatment~~ compensation
6 expense paid or to be paid by the employer under award of the
7 Industrial Commission.

8 d. Fourth to the payment of any amount remaining to the
9 employee or his personal representative.

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

14 Sec. 3. G.S. 97-25 reads as rewritten:

15 **"§ 97-25. Medical treatment and supplies.**

16 ~~Medical, surgical, hospital, nursing services, medicines, sick travel, rehabilitation~~
17 ~~services, and other treatment including medical and surgical supplies as may reasonably~~
18 ~~be required to effect a cure or give relief and for such additional time as in the judgment~~
19 ~~of the Commission will tend to lessen the period of disability, and in addition thereto~~
20 ~~such original artificial members as may be reasonably necessary at the end of the~~
21 ~~healing period~~ Medical compensation shall be provided by the employer. In case of a
22 controversy arising between the employer and employee relative to the continuance of
23 medical, surgical, hospital, or other treatment, the Industrial Commission may order
24 such further treatments as may in the discretion of the Commission be necessary.

25 The Commission may at any time upon the request of an employee order a change of
26 treatment and designate other treatment suggested by the injured employee subject to
27 the approval of the Commission, and in such a case the expense thereof shall be borne
28 by the employer upon the same terms and conditions as hereinbefore provided in this
29 section for medical and surgical treatment and attendance.

30 The refusal of the employee to accept any medical, hospital, surgical or other
31 treatment or rehabilitative procedure when ordered by the Industrial Commission shall
32 bar said employee from further compensation until such refusal ceases, and no
33 compensation shall at any time be paid for the period of suspension unless in the
34 opinion of the Industrial Commission the circumstances justified the refusal, in which
35 case, the Industrial Commission may order a change in the medical or hospital service.

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

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

43 Sec. 4. G.S. 97-29 reads as rewritten:

44 **"§ 97-29. Compensation rates for total incapacity.**

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

7 In cases of total and permanent disability, compensation, including ~~reasonable and~~
8 ~~necessary nursing services, medicines, sick travel, medical, hospital, and other treatment~~
9 ~~or care of rehabilitative services~~ medical compensation, shall be paid for by the
10 employer during the lifetime of the injured employee. If death results from the injury
11 then the employer shall pay compensation in accordance with the provisions of G.S. 97-
12 38.

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

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

25 Notwithstanding any other provision of this Article, ~~beginning August 1, 1975, and on~~
26 ~~July 1 of each year thereafter, year,~~ a maximum weekly benefit amount shall be
27 computed. The amount of this maximum weekly benefit shall be derived by obtaining
28 the average weekly insured wage in accordance with G.S. 96-8(22), by multiplying such
29 average weekly insured wage by 1.10, and by rounding such figure to its nearest
30 multiple of two dollars (\$2.00), and this said maximum weekly benefit shall be
31 applicable to all injuries and claims arising on and after January 1 following such
32 computation. Such maximum weekly benefit shall apply to all provisions of this
33 Chapter ~~effective August 1, 1975,~~ and shall be adjusted July 1 and effective January 1 of
34 each year ~~thereafter~~ as herein provided."

35 Sec. 5. G.S. 97-59 reads as rewritten:

36 "**§ 97-59. Employer to pay for treatment.**

37 ~~Medical, surgical, hospital, nursing services, medicine, sick travel, rehabilitation~~
38 ~~services and other treatment as may reasonably be required to tend to lessen the period~~
39 ~~of disability or provide needed relief~~ Medical compensation shall be paid by the
40 employer in cases in which awards are made for disability or damage to organs as a
41 result of an occupational disease after bills for same have been approved by the
42 Industrial Commission.

43 In case of a controversy arising between the employer and employee relative to the
44 continuance of medical, surgical, hospital or other treatment, the Industrial Commission

1 may order such further treatments as may in the discretion of the Commission be
2 necessary."

3 Sec. 6. G.S. 97-90(a) reads as rewritten:

4 "(a) Fees for attorneys and physicians and charges of hospitals for ~~services and~~
5 ~~charges for nursing services, medicines and sick travel~~ medical compensation under this
6 Article shall be subject to the approval of the Commission; but no physician or hospital
7 or other medical facilities shall be entitled to collect fees from an employer or insurance
8 carrier until he has made the reports required by the Industrial Commission in
9 connection with the case. Unless otherwise provided by the rules, schedules, or orders
10 of the Commission, a request for a specific prior approval to charge shall be submitted
11 to the Commission for each such fee or charge."

12 Sec. 7. G.S. 97-19 reads as rewritten:

13 **"§ 97-19. Liability of principal contractors; certificate that subcontractor has**
14 **complied with law; right to recover compensation of those who would**
15 **have been liable; order of liability.**

16 Any principal contractor, intermediate contractor, or subcontractor who shall sublet
17 any contract for the performance of any work without requiring from such subcontractor
18 or obtaining from the Industrial Commission a certificate, issued by ~~the Industrial~~
19 ~~Commission, a workers' compensation insurance carrier, or a certificate of compliance~~
20 issued by the Department of Insurance to a self-insured subcontractor, stating that such
21 subcontractor has complied with G.S. 97-93 hereof, shall be liable, irrespective of
22 whether such subcontractor has regularly in service less than four employees in the
23 same business within this State, to the same extent as such subcontractor would be if he
24 were subject to the provisions of this Article for the payment of compensation and other
25 benefits under this Article on account of the injury or death of any such subcontractor,
26 any principal or partner of such subcontractor or any employee of such subcontractor
27 due to an accident arising out of and in the course of the performance of the work
28 covered by such subcontract. If the principal contractor, intermediate contractor or
29 subcontractor shall obtain such certificate at the time of subletting such contract to
30 subcontractor, he shall not thereafter be held liable to any such subcontractor, any
31 principal or partner of such subcontractor, or any employee of such subcontractor for
32 compensation or other benefits under this Article. If the subcontractor has no
33 employees and waives in writing his right to coverage under this section, the principal
34 contractor, intermediate contractor, or subcontractor subletting the contract shall not
35 thereafter be held liable for compensation or other benefits under this Article to said
36 subcontractor. Subcontractors who have no employees are not required to comply with
37 G.S. 97-93. ~~The Industrial Commission, upon demand shall furnish such certificate, and may~~
38 ~~charge therefor the cost thereof, not to exceed twenty five cents (25¢).~~

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

43 Every claim filed with the Industrial Commission under this section shall be
44 instituted against all parties liable for payment, and said Commission, in its award, shall

1 fix the order in which said parties shall be exhausted, beginning with the immediate
2 employer.

3 The principal or owner may insure any or all of his contractors and their employees
4 in a blanket policy, and when so insured such contractor's employees will be entitled to
5 compensation benefits regardless of whether the relationship of employer and employee
6 exists between the principal and the contractor."

7 Sec. 8. G.S. 97-24(b) reads as rewritten:

8 "(b) If any claim for compensation is hereafter made upon the theory that such
9 claim or the injury upon which said claim is based is within the jurisdiction of the
10 Industrial Commission under the provisions of this Article, and if the Commission, or
11 the ~~Supreme Court~~ appellate courts on appeal, shall adjudge that such claim is not within
12 the Article, the claimant, or if he dies, his personal representative, shall have one year
13 after the rendition of a final judgment in the case within which to commence an action
14 at law."

15 Sec. 9. G.S. 97-84 reads as rewritten:

16 "**§ 97-84. Determination of disputes by Commission or deputy.**

17 The Commission or any of its members shall hear the parties at issue and their
18 representatives and witnesses, and shall determine the dispute in a summary manner.
19 The award, together with a statement of the findings of fact, rulings of law, and other
20 matters pertinent to the questions at issue shall be filed with the record of the
21 proceedings, within 180 days of the close of the hearing record unless time is extended
22 for good cause by the Commission, and a copy of the award shall immediately be sent
23 to the parties in dispute. The parties may be heard by a deputy, in which event the
24 hearing shall be conducted in the same way and manner prescribed for hearings which
25 are conducted by a member of the Industrial Commission, and said deputy shall proceed
26 to a complete determination of the matters in dispute, file his written opinion within 180
27 days of the close of the hearing record unless time is extended for good cause by the
28 Commission, and the deputy shall cause to be issued an award pursuant to such
29 determination.

30 Orders, decisions, and awards made without detailed findings of fact, including
31 decisions on applications to approve agreements to pay compensation, to approve
32 medical bills, to approve the termination of compensation; applications for lump sum
33 payments; and applications to change the intervals of payments and to award attorneys'
34 fees, may be appealed for a hearing **de novo** before a Commissioner, a Deputy
35 Commissioner, or by the full Commission, in its discretion, if the matter involves
36 primarily a question of law. Such appeals shall be made in the manner set forth in G.S.
37 97-85."

38 Sec. 10. G.S. 97-92 is amended by adding a new subsection to read:

39 "(f) Any bill, report, application, and document of every nature and kind, which is
40 required or permitted by Commission rules to be transmitted to the Commission by
41 electronic media or is recorded among the Commission records on computer disk,
42 optical disk, microfilm, or similar media and which is produced or reproduced in written
43 form in the normal course of business or is certified as a true and accurate copy of the
44 data recorded at the Commission in the normal course of its business shall be treated as

1 a signed original in all uses before the Commission and as a duplicate within the
2 meaning of Rule 1003 of the North Carolina Rules of Evidence."

3 Sec. 11. G.S. 97-53(28) reads as rewritten:

4 **"§ 97-53. Occupational diseases enumerated; when due to exposure to chemicals.**

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

- 7 (1) Anthrax.
- 8 (2) Arsenic poisoning.
- 9 (3) Brass poisoning.
- 10 (4) Zinc poisoning.
- 11 (5) Manganese poisoning.
- 12 (6) Lead poisoning. Provided the employee shall have been exposed to
13 the hazard of lead poisoning for at least 30 days in the preceding 12
14 months' period; and, provided further, only the employer in whose
15 employment such employee was last injuriously exposed shall be
16 liable.
- 17 (7) Mercury poisoning.
- 18 (8) Phosphorus poisoning.
- 19 (9) Poisoning by carbon bisulphide, menthanol, naphtha or volatile
20 halogenated hydrocarbons.
- 21 (10) Chrome ulceration.
- 22 (11) Compressed-air illness.
- 23 (12) Poisoning by benzol, or by nitro and amido derivatives of benzol
24 (dinitrolbenzol, anilin, and others).
- 25 (13) Any disease, other than hearing loss covered in another subdivision
26 of this section, which is proven to be due to causes and conditions
27 which are characteristic of and peculiar to a particular trade,
28 occupation or employment, but excluding all ordinary diseases of
29 life to which the general public is equally exposed outside of the
30 employment.
- 31 (14) Epitheliomatous cancer or ulceration of the skin or of the corneal
32 surface of the eye due to tar, pitch, bitumen, mineral oil, or paraffin,
33 or any compound, product, or residue of any of these substances.
- 34 (15) Radium poisoning or disability or death due to radioactive properties
35 of substances or to roentgen rays, X rays or exposure to any other
36 source of radiation; provided, however, that the disease under this
37 subdivision shall be deemed to have occurred on the date that
38 disability or death shall occur by reason of such disease.
- 39 (16) Blisters due to use of tools or appliances in the employment.
- 40 (17) Bursitis due to intermittent pressure in the employment.
- 41 (18) Miner's nystagmus.
- 42 (19) Bone felon due to constant or intermittent pressure in employment.
- 43 (20) Synovitis, caused by trauma in employment.
- 44 (21) Tenosynovitis, caused by trauma in employment.

- 1 (22) Carbon monoxide poisoning.
2 (23) Poisoning by sulphuric, hydrochloric or hydrofluoric acid.
3 (24) Asbestosis.
4 (25) Silicosis.
5 (26) Psittacosis.
6 (27) Undulant fever.
7 (28) Loss of hearing caused by harmful noise in the employment. The
8 following rules shall be applicable in determining eligibility for
9 compensation and the period during which compensation shall be
10 payable:
- 11 a. The term 'harmful noise' means sound in employment capable
12 of producing occupational loss of hearing as hereinafter
13 defined. Sound of an intensity of less than 90 decibels, A scale,
14 shall be deemed incapable of producing occupational loss of
15 hearing as defined in this section.
 - 16 b. 'Occupational loss of hearing' shall mean a permanent
17 sensorineural loss of hearing in both ears caused by prolonged
18 exposure to harmful noise in employment. Except in instances
19 of preexisting loss of hearing due to disease, trauma, or
20 congenital deafness in one ear, no compensation shall be
21 payable under this subdivision unless prolonged exposure to
22 harmful noise in employment has caused loss of hearing in both
23 ears as hereinafter provided.
 - 24 c. No compensation benefits shall be payable for temporary total
25 or temporary partial disability under this subdivision and there
26 shall be no award for tinnitus or a psychogenic hearing loss.
 - 27 d. An employer shall become liable for the entire occupational
28 hearing loss to which his employment has contributed, but if
29 previous deafness is established by a hearing test or other
30 competent evidence, whether or not the employee was exposed
31 to harmful noise within six months preceding such test, the
32 employer shall not be liable for previous loss so established, nor
33 shall he be liable for any loss for which compensation has
34 previously been paid or awarded and the employer shall be
35 liable only for the difference between the percent of
36 occupational hearing loss determined as of the date of disability
37 as herein defined and the percentage of loss established by the
38 preemployment and audiometric examination excluding, in any
39 event, hearing losses arising from nonoccupational causes.
 - 40 e. In the evaluation of occupational hearing loss, only the hearing
41 levels at the frequencies of 500, 1,000, 2,000, and 3,000 cycles
42 per second shall be considered. Hearing losses for frequencies
43 below 500 and above 3,000 cycles per second are not to be
44 considered as constituting compensable hearing disability.

- 1 f. The employer liable for the compensation in this section shall
2 be the employer in whose employment the employee was last
3 exposed to harmful noise in North Carolina during a period of
4 90 working days or parts thereof, and an exposure during a
5 period of less than 90 working days or parts thereof shall be
6 held not to be an injurious exposure; provided, however, that in
7 the event an insurance carrier has been on the risk for a period
8 of time during which an employee has been injuriously exposed
9 to harmful noise, and if after insurance carrier goes off the risk
10 said employee has been further exposed to harmful noise,
11 although not exposed for 90 working days or parts thereof so as
12 to constitute an injurious exposure, such carrier shall,
13 nevertheless, be liable.
- 14 g. The percentage of hearing loss shall be calculated as the
15 average, in decibels, of the thresholds of hearing for the
16 frequencies of 500, 1,000, 2,000, and 3,000 cycles per second.
17 Pure tone air conduction audiometric instruments, properly
18 calibrated according to accepted national standards such as
19 American Standards Association, Inc., (ASA), International
20 Standards Organization (ISO), or American National Standards
21 Institute, Inc., (ANSI), shall be used for measuring hearing loss.
22 If more than one audiogram is taken, the audiogram having the
23 lowest threshold will be used to calculate occupational hearing
24 loss. If the losses of hearing average 15 decibels (26 db if ANSI
25 or ISO) or less in the ~~three~~-four frequencies, such losses of
26 hearing shall not constitute any compensable hearing disability.
27 If the losses of hearing average 82 decibels (93 db if ANSI or
28 ISO) or more in the ~~three~~-four frequencies, then the same shall
29 constitute and be total or one hundred percent (100%)
30 compensable hearing loss. In measuring hearing impairment,
31 the lowest measured losses in each of the ~~three~~-four frequencies
32 shall be added together and divided by ~~three~~-four to determine
33 the average decibel loss. For each decibel of loss exceeding 15
34 decibels (26 db if ANSI or ISO) an allowance of one and one-
35 half percent (1 1/2%) shall be made up to the maximum of one
36 hundred percent (100%) which is reached at 82 decibels (93 db
37 if ANSI or ISO). In determining the binaural percentage of loss,
38 the percentage of impairment in the better ear shall be
39 multiplied by five. The resulting figure shall be added to the
40 percentage of impairment in the poorer ear, and the sum of the
41 two divided by six. The final percentage shall represent the
42 binaural hearing impairment.
- 43 h. There shall be payable for total occupational loss of hearing in
44 both ears 150 weeks of compensation, and for partial

- 1 occupational loss of hearing in both ears such proportion of
2 these periods of payment as such partial loss bears to total loss.
- 3 i. No claim for compensation for occupational hearing loss shall
4 be filed until after six months have elapsed since exposure to
5 harmful noise with the last employer. The last day of such
6 exposure shall be the date of disability. The regular use of
7 employer-provided protective devices capable of preventing
8 loss of hearing from the particular harmful noise where the
9 employee works shall constitute removal from exposure to such
10 particular harmful noise.
- 11 j. No consideration shall be given to the question of whether or
12 not the ability of an employee to understand speech is improved
13 by the use of a hearing aid. The North Carolina Industrial
14 Commission may order the employer to provide the employee
15 with an original hearing aid if it will materially improve the
16 employee's ability to hear.
- 17 k. No compensation benefits shall be payable for the loss of
18 hearing caused by harmful noise after October 1, 1971, if
19 employee fails to regularly utilize employer-provided protection
20 device or devices, capable of preventing loss of hearing from
21 the particular harmful noise where the employee works.

22 Occupational diseases caused by chemicals shall be deemed to be due to exposure of
23 an employee to the chemicals herein mentioned only when as a part of the employment
24 such employee is exposed to such chemicals in such form and quantity, and used with
25 such frequency as to cause the occupational disease mentioned in connection with such
26 chemicals.”

27 Sec. 12. This act is effective upon ratification.