

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S

1

SENATE BILL 978\*

Short Title: Workers Comp. Changes.

(Public)

Sponsors: Senators Plyler, Conder, Martin of Guilford, Smith, Plexico, and Sands; and Daniel.

Referred to: Judiciary II.

May 27, 1992

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE STATUTE OF REPOSE FOR THE COLLECTION OF DEATH BENEFITS UNDER THE WORKERS COMPENSATION ACT AND TO ALLOW AN ACTION AGAINST AN EMPLOYER FOR REMOVAL OF MACHINERY GUARDS THAT RESULTS IN INJURY TO THE EMPLOYEE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-38 reads as rewritten:

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

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

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

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

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

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

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

36 Compensation payable under this Article to aliens not residents (or about to become  
37 nonresidents) of the United States or Canada, shall be the same in amounts as provided  
38 for residents, except that dependents in any foreign country except Canada shall be  
39 limited to surviving wife and child or children, or if there be no surviving wife or child  
40 or children, to the surviving father or mother whom the employee has supported, either  
41 in whole or in part, for a period of one year prior to the date of the injury; provided, that  
42 the Commission may, in its discretion, or, upon application of the employer or insurance  
43 carrier shall commute all future installments of compensation to be paid to such aliens

1 to their present value and payment of one half of such commuted amount to such aliens  
2 shall fully acquit the employer and the insurance carrier."

3           Sec. 2. G.S. 95-138 is amended by adding a new subsection to read:

4           "(c) In addition to the penalties set forth herein, employers who cause the removal  
5 of safety guards from machinery covered by this Article, and an employee is injured as  
6 a result of the removal, shall be liable to the employee or its legal representative for all  
7 personal injury and damages suffered by the employee, its heirs, and dependents as a  
8 result of the guard removal. This action shall exist notwithstanding the provisions of  
9 G.S. 97-10.1, shall be supplemental to the provisions of Chapter 97 of the General  
10 Statutes, and shall be subject to the provisions of G.S. 97-10.2(e), in recognition of the  
11 remedial nature of this Article and the employer's accountability for the consequences of  
12 the violation of safety regulations adopted under this Article."

13           Sec. 3. This act is effective upon ratification and shall apply to causes of  
14 action arising on or after that date.