

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

2

SENATE BILL 263
Judiciary Committee Substitute Adopted 4/28/97

Short Title: Workers' Comp./Nonresident Aliens.

(Public)

Sponsors:

Referred to:

February 27, 1997

A BILL TO BE ENTITLED

1 AN ACT TO AMEND THE WORKERS' COMPENSATION ACT SO THAT
2 NONRESIDENT ALIENS RECEIVE COMPENSATION EQUAL TO THAT
3 RECEIVED BY OTHER WORKERS UNDER THE ACT.
4

5 The General Assembly of North Carolina enacts:

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

7 "**§ 97-38. Where death results proximately from compensable injury or**
8 **occupational disease; dependents; burial expenses; compensation to**
9 **aliens; election by partial dependents.**

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

- 1 (1) Persons wholly dependent for support upon the earnings of the deceased
2 employee at the time of the accident shall be entitled to receive the
3 entire compensation payable share and share alike to the exclusion of all
4 other persons. If there be only one person wholly dependent, then that
5 person shall receive the entire compensation payable.
- 6 (2) If there is no person wholly dependent, then any person partially
7 dependent for support upon the earnings of the deceased employee at
8 the time of the accident shall be entitled to receive a weekly payment of
9 compensation computed as hereinabove provided, but such weekly
10 payment shall be the same proportion of the weekly compensation
11 provided for a whole dependent as the amount annually contributed by
12 the deceased employee to the support of such partial dependent bears to
13 the annual earnings of the deceased at the time of the accident.
- 14 (3) If there is no person wholly dependent, and the person or all persons
15 partially dependent is or are within the classes of persons defined as
16 'next of kin' in G.S. 97-40, whether or not such persons or such classes
17 of persons are of kin to the deceased employee in equal degree, and all
18 so elect, he or they may take, share and share alike, the commuted value
19 of the amount provided for whole dependents in (1) above instead of the
20 proportional payment provided for partial dependents in (2) above;
21 provided, that the election herein provided may be exercised on behalf
22 of any infant partial dependent by a duly qualified guardian; provided,
23 further, that the Industrial Commission may, in its discretion, permit a
24 parent or person standing in loco parentis to such infant to exercise such
25 option in its behalf, the award to be payable only to a duly qualified
26 guardian except as in this Article otherwise provided; and provided,
27 further, that if such election is exercised by or on behalf of more than
28 one person, then they shall take the commuted amount in equal shares.

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

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

1 ~~insurance carrier shall commute all future installments of compensation to be paid to such aliens~~
2 ~~to their present value and payment of one half of such commuted amount to such aliens shall~~
3 ~~fully acquit the employer and the insurance carrier. mother."~~

4 Section 2. This act is effective when it becomes law and applies to all awards
5 for compensation under Chapter 97 of the General Statutes entered on or after that date.