

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 980\*  
Committee Substitute Favorable 4/20/99  
Senate Judiciary II Committee Substitute Adopted 6/1/99

Short Title: Workers' Comp./Third Party Actions.

(Public)

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Sponsors:

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Referred to:

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April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW JUDICIAL DISCRETION IN DETERMINING THE AMOUNT  
OF SUBROGATION OF EMPLOYERS' LIENS IN ACTIONS AGAINST THIRD  
PARTIES UNDER THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-10.2(j) reads as rewritten:

"(j) Notwithstanding any other subsection in this section, in the event that a judgment is obtained ~~which is insufficient to compensate the subrogation claim of the Workers' Compensation Insurance Carrier, by the employee in an action against a third party,~~ or in the event that a settlement has been agreed upon by the employee and the third party, either party may apply to the resident superior court judge of the county in which the cause of action arose, where the injured employee resides or the presiding judge before whom the cause of action is pending, to determine the subrogation amount. After notice to the employer and the insurance carrier, after an opportunity to be heard by all interested parties, and with or without the consent of the employer, the judge shall determine, in his discretion, the amount, if any, of the employer's ~~lien-lien, whether based on accrued or prospective workers' compensation benefits,~~ and the amount of cost of the third-party litigation to be shared between the employee and employer. The judge shall

1 consider the anticipated amount of prospective compensation the employer or workers'  
2 compensation carrier is likely to pay to the employee in the future, the net recovery to  
3 plaintiff, the likelihood of the plaintiff prevailing at trial or on appeal, the need for  
4 finality in the litigation, and any other factors the court deems just and reasonable, in  
5 determining the appropriate amount of the employer's lien. If the matter is pending in the  
6 federal district court such determination may be made by a federal district court judge of  
7 that division."

8           Section 2. This act is effective when it becomes law and applies to judgments  
9 or settlements entered against third parties on or after that date pursuant to G.S. 97-10.2.