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SENATE DRS45321-LRf-105 (03/14)

Short Title: WC/2015 Omnibus Law Changes.

(Public)

Sponsors: Senator Lee (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT CLARIFYING THE AUTHORITY AND DUTIES OF INDUSTRIAL
3 COMMISSION FRAUD INVESTIGATORS AND MAKING TECHNICAL,
4 CONFORMING, AND OTHER CHANGES TO THE WORKERS' COMPENSATION
5 LAWS OF NORTH CAROLINA.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.(a)** Article 1 of Chapter 97 of the General Statutes is amended by
8 adding a new section to read:

9 "**§ 97-79.1. Authority of Industrial Commission fraud investigators; inspection of**
10 **records.**

11 (a) The Commission shall establish a Criminal Investigation Unit to operate as a law
12 enforcement agency for the enforcement of this Chapter. Members of the unit shall serve as
13 fraud investigators and must be sworn law enforcement officers duly appointed and certified by
14 the North Carolina Criminal Justice Education and Training Standards Commission.

15 (b) A fraud investigator employed by the Commission, who has sworn the oath
16 prescribed for a law enforcement officer, shall have the following authority:

17 (1) To make arrests and take other investigatory and enforcement actions for
18 both felonies and misdemeanors and to charge for infractions for violations
19 of the laws of the State, with the primary responsibility of enforcing the
20 Workers' Compensation Act.

21 (2) To act as a State law enforcement officer with jurisdiction throughout the
22 State.

23 (3) To serve and execute orders issued by the Commission in connection with
24 contempt proceedings. While serving and executing such an order, a fraud
25 investigator has the same authority and power possessed by a local law
26 officer or sheriff's deputy when executing an arrest warrant.

27 (4) To inspect records of business kept under G.S. 58-2-185 by insurance
28 companies, agents, or brokers doing any kind of business in this State
29 involving workers' compensation.

30 (c) Each insurance company, agent, or broker keeping records under G.S. 58-2-185
31 shall furnish copies of these records to the Commission's fraud investigators on demand, and
32 the original books of records shall be open to the inspection of the Commissioner when
33 demanding. Any person who refuses, on demand, to exhibit the records of business as provided
34 by this subsection or who knowingly makes a false statement in regard to the records when
35 demanding is guilty of a Class 1 misdemeanor."

36 **SECTION 1.(b)** G.S. 143-166.13 is amended by adding a new subdivision to read:



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1 "(20) Sworn State Law-Enforcement Officers with the power of arrest, Industrial
2 Commission Fraud Investigators, Department of Commerce."

3 **SECTION 2.** G.S. 97-88.2(b) reads as rewritten:

4 "(b) The Commission shall:

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

11 The Commission may employ sworn law enforcement officers ~~duly appointed and certified~~
12 ~~through the North Carolina Criminal Justice Education and Training Standards Commission~~
13 ~~pursuant to G.S. 97-79.1 to enforce the laws and~~ conduct the investigations mandated by this
14 ~~subsection.~~ section."

15 **SECTION 3.** G.S. 97-73(d) reads as rewritten:

16 "(d) Safety. – A fee in the amount set by the Industrial Commission is imposed on an
17 employer for whom the Industrial Commission provides an educational training program on
18 how to prevent or reduce accidents or injuries that result in workers' compensation claims or a
19 person for whom the Industrial Commission provides other educational services. The
20 Commission may set a reasonable fee imposed for a review of the safety rules. The fees are
21 departmental receipts."

22 **SECTION 4.** G.S. 97-87(c)(5) reads as rewritten

- 23 "(5) If any party disputes the decision of the Commission entered under
24 subdivision (c)(4) of this section, the party may appeal to the full
25 Commission within 10 days of the entry of the decision of the Commission.
26 The nonappealing party may file a response within 10 days of receiving
27 notice of appeal. The notice of appeal shall request one of the following:
28 a. The Commission reconsider the decision entered based on the record
29 and any additional evidence that parties submit with the notice and
30 response.
31 b. A de novo evidentiary hearing before the ~~full~~ Commission."

32 **SECTION 5.** G.S. 97-87(c)(7) reads as rewritten:

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

- 40 ...
41 (7) If a notice of appeal is given under sub-subdivision (c)(5)a. of this section,
42 the Commission shall issue its decision within 10 days of the filing of the
43 response under subdivision (c)(5)b. of this section. If a notice of appeal is
44 given under sub-subdivision (c)(5) of this section, the Commission shall
45 either (i) conduct an evidentiary hearing and issue its decision on the appeal
46 within 90 days of the filing of the ~~response-response,~~ or when a response is
47 due if no response is filed, under subdivision (c)(5) of this section or (ii)
48 deny the request for the evidentiary hearing and issue its decision within 10
49 days of the filing of the response under subdivision (c)(5) of this section.
50 Further appeals are governed by G.S. 97-86."

51 **SECTION 6.** G.S. 97-92(d) reads as rewritten:

1 "(d) The said report shall contain the name, nature, and location of the business of the
2 employer and name, age, sex, ~~and wages-wages, if available,~~ and occupation of the injured
3 employee, and shall state the date and hour of the accident causing injury, the nature and cause
4 of the injury, and such other information as may be required by the Commission."

5 **SECTION 7.** G.S. 97-101 reads as rewritten:

6 "**§ 97-101. Collection of fines and penalties.**

7 The Industrial Commission shall have the power by civil action brought in its own name to
8 enforce the collection of any fines or penalties provided by this Article, ~~and fines or penalties~~
9 ~~collected by the Commission shall become a part of the maintenance fund referred to in~~
10 ~~subsection (j) of G.S. 97-100.~~Article."

11 **SECTION 8.** G.S. 97-26.2 reads as rewritten:

12 "**§ 97-26.2. Reimbursement for prescription ~~drugs-drugs, prescribed over-the-counter~~**
13 **drugs, and professional pharmaceutical services.**

14 (a) The reimbursement for prescription ~~drugs-drugs, prescribed over-the-counter~~ drugs,
15 and professional pharmaceutical services shall be limited to no greater than ninety-five percent
16 (95%) of the average wholesale price (AWP) of the product, calculated on a per unit basis, as
17 of the date of dispensing.

18 (b) All of the following shall apply to the reimbursement for prescription drugs and
19 professional pharmaceutical services:

20 (1) A health care provider seeking reimbursement for ~~drugs dispensed by a~~
21 ~~physician~~ health care provider dispensed prescription drugs, prescribed
22 over-the-counter drugs, and pharmaceutical services shall include the
23 original manufacturer's National Drug Code (NDC) number, as assigned by
24 the United States Food and Drug Administration, on ~~the bills and reports~~
25 ~~required by this section.~~any billing documents or invoices issued.

26 (2) In no event may a ~~physician~~ health care provider receive reimbursement in
27 excess of ninety-five percent (95%) of the AWP of the drugs dispensed by a
28 ~~physician,~~ health care provider, as determined by reference to the original
29 manufacturer's NDC number.

30 (3) A repackaged NDC number may not be individually used on any billing
31 documents or invoices issued and will not be considered the original
32 manufacturer's NDC number. A repackaged NDC number may only appear
33 in conjunction with the manufacturer's NDC number. If a health care
34 provider seeking reimbursement for drugs dispensed by a ~~physician~~ health
35 care provider does not include the original manufacturer's NDC number on
36 ~~the bills and reports required by this section,~~ any billing documents or
37 invoices issued, reimbursement shall be limited to one hundred percent
38 (100%) of the AWP of the least expensive clinically equivalent drug,
39 calculated on a per unit basis.

40 (4) No outpatient provider, other than a licensed pharmacy, may receive
41 reimbursement for a Schedule II controlled substance, as defined in
42 G.S. 90-90, or a Schedule III controlled substance, as defined in G.S. 90-91,
43 or a Schedule IV controlled substance, as defined by G.S. 90-92, dispensed
44 in excess of an initial five-day supply, commencing upon the employee's
45 initial treatment following injury. Only the initial health care provider
46 providing the employee's initial treatment following injury may seek
47 reimbursement for dispensing controlled substances as described in this
48 section, and any subsequent dispensing of controlled substances by another
49 health care provider will be ineligible for reimbursement. Reimbursement
50 under this subdivision shall be made for the five-day supply at the rates
51 provided in this section.

1 (5) For purposes of this section, the term "clinically equivalent" means a drug
2 has chemical equivalents which, when administered in the same amounts,
3 will provide essentially the same therapeutic effect as measured by the
4 control of a symptom or disease."

5 **SECTION 9.** G.S. 97-200(a) reads as rewritten:

6 "(a) A self-insurer shall not utilize any claims adjuster unless the adjuster is licensed
7 under ~~G.S. 58-33-25~~. G.S. 58-33-26."

8 **SECTION 10.** This act is effective when it becomes law.