

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 185\*

Short Title: Machine Safety Guards.

(Public)

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Sponsors: Representatives Fitch, Barnes, Cunningham, H. Hunter, McLaughlin; Luebke, Warner, Oldham, Bowman, Kuczmariski, Colton, and Wright.

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Referred to: Judiciary III.

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February 18, 1993

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A CAUSE OF ACTION TO EMPLOYEES INJURED OR  
KILLED BY THE INTENTIONAL REMOVAL OF OR FAILURE TO INSTALL  
A MACHINE SAFETY GUARD.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-10.1 reads as rewritten:

**"§ 97-10.1. Other rights and remedies against employer excluded.**

(a) If the employee and the employer are subject to and have complied with the provisions of this Article, then the rights and remedies herein granted to the employee, his dependents, next of kin, or personal representative shall exclude all other rights and remedies of the employee, his dependents, next of kin, or representative as against the employer at common law or otherwise on account of such injury or death.

(b) Notwithstanding subsection (a), an employee, or his or her representative in the event of the employee's death, may bring an action at law for damages against the employer, subject to common law defenses, for injury or death proximately caused by the employer's removal of, or failure to install, a machine safety guard or safety device.

An employer is not liable under this subsection unless:

(1) The safety guard or safety device is required by the North Carolina Occupational Safety and Health Act or standards adopted thereunder, or the manufacturer designed, installed, required, or otherwise provided by specification for the safety guard or safety device and informed the employer of same; and

1           (2) The employer specifically authorized the removal of or failure to  
2           install the safety guard or safety device with knowledge that injury or  
3           death would likely result therefrom.

4           (c) An award for damages in a civil action brought pursuant to subsection (b)  
5           shall be reduced by the amount of compensation paid or payable under the provisions of  
6           this Chapter to the employee or the employee's estate. Subsection (b) shall not impair  
7           or repeal any other rights available to the employee or the employee's representative  
8           against the employer, co-employees, or third parties.

9           (d) For purposes of subsection (b):

10          (1) 'Employer' means an owner or a supervisor having managerial  
11          authority to direct and control the acts of employees.

12          (2) 'Removal' includes physical removal and any other act that is intended  
13          to and does render the safety guard or safety device inoperable, except  
14          (i) for purposes of repair or (ii) for effecting an improvement to the  
15          machine that renders the safety guard or safety device unnecessary for  
16          the protection of the operator.

17          (3) 'Specifically authorized' means an affirmative instruction issued by the  
18          employer prior to the time of the employee's physical injury or death,  
19          but does not mean any subsequent acquiescence in, or ratification of,  
20          removal of the safety guard or safety device."

21          Sec. 2. This act is effective upon ratification and shall apply to causes of  
22          action arising on or after that date.