

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 114\*

Short Title: Workers' Comp. Changes.

(Public)

Sponsors: Senators Martin of Guilford; and Jordan.

Referred to: Manufacturing and Labor.

February 10, 1993

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE STATUTE OF REPOSE FOR THE COLLECTION OF DEATH BENEFITS UNDER THE WORKERS' COMPENSATION ACT.

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

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

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

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

1           Sec. 2. This act is effective upon ratification and applies to deaths occurring  
2 on or after that date; provided that this act shall not be construed to revive a claim for  
3 benefits that has terminated prior to the effective date of this act.