

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1993**

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**SENATE BILL 906**

Short Title: Workers' Comp. Reform.

(Public)

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Sponsors: Senators Daniel; Basnight, Conder, Warren, Plyler, Perdue, Hunt, Kaplan, Cochrane, Hoyle, Harris, Parnell, Sherron, Smith, Ward, Martin of Pitt, Blackmon, Speed, Hartsell, Albertson, Allran, Lee, Carpenter, Forrester, Codington, Kincaid, Edwards, Kerr, Soles, Speed, and Forrester.

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Referred to: Manufacturing and Labor.

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April 19, 1993

**A BILL TO BE ENTITLED**

1  
2 **AN ACT TO MAKE VARIOUS SUBSTANTIVE AMENDMENTS TO THE**  
3 **WORKERS' COMPENSATION ACT AND TO PROVIDE FOR THE**  
4 **TERMINATION OF A WORKERS' COMPENSATION INSURANCE POLICY**  
5 **WHEN THE EMPLOYER FAILS TO FULLY DISCLOSE CERTAIN**  
6 **INFORMATION.**

7       Whereas, the North Carolina Workers' Compensation Act was adopted in  
8 1929 to delicately balance the interests of employers and injured employees, relieving  
9 employees of the burden of proving fault for workplace injuries while providing  
10 medical care as long as needed and wage support during a healing period; and

11       Whereas, the North Carolina workers' compensation system worked well for  
12 the next 50 years providing fair, prompt benefits for injured employees at an affordable  
13 cost to employers; and

14       Whereas, beginning in the 1980s, court decisions liberalized the Workers'  
15 Compensation Act beyond its original intent, primarily in the realm of permanent  
16 disability cases; and

17       Whereas, these court decisions have led to a sharp increase in the number of  
18 permanent disability claims that cannot be justified by a corresponding increase in the  
19 severity of injuries and have led to expensive, time-consuming litigation over such  
20 issues as the degree of permanent disability and the expiration of temporary disability;  
21 and

1           Whereas, medical costs to employers pursuant to our workers' compensation  
2 system have increased at almost twice the national average for medical costs in general;  
3 and

4           Whereas, these pressures on the workers' compensation system have caused  
5 double digit increases in the cost of workers' compensation for North Carolina's  
6 employers for several consecutive years, the most recent and largest insurance rate  
7 increase being implemented by the North Carolina Rate Bureau over the objections of  
8 the Commissioner of Insurance, resulting in an average aggregate increase of almost  
9 150% in the last five years; and

10           Whereas, workers' compensation cost North Carolina's employers twice as  
11 much as it did a mere three years ago, up from \$500,000,000 in 1990 to \$1,000,000,000  
12 in 1993; and

13           Whereas, an increasing and unacceptable number of North Carolina  
14 employers, particularly small businesses, are unable to obtain workers' compensation  
15 coverage through normal, voluntary insurance markets, resulting in those employers  
16 having to attempt to self-fund their liability or to obtain insurance through the assigned  
17 risk plan and to pay a significant rate surcharge for their coverage; and

18           Whereas, the cost of coverage under the Workers' Compensation Act in North  
19 Carolina is rapidly becoming a substantial detriment to the ability of our State to attract  
20 new employers and for our State's employers to expand their employment, even forcing  
21 some employers to close or move to another state; and

22           Whereas, the time has come for the General Assembly to restore the Workers'  
23 Compensation Act so that it provides the balance and stability it enjoyed for more than  
24 50 years; Now, therefore,

25 The General Assembly of North Carolina enacts:

26           Section 1. G.S. 97-2(6) reads as rewritten:

27           "(6) Injury. – 'Injury and personal injury' ~~shall~~ mean only injury by accident  
28 arising out of and in the course of the employment, and shall not  
29 include a disease in any form, except where it results naturally and  
30 unavoidably from the accident. With respect to back injuries,  
31 however, where injury to the back arises out of and in the course of the  
32 employment and is the direct result of a specific ~~traumatic incident~~  
33 accident of the work assigned, 'injury by accident' shall be construed  
34 to include any disabling physical injury to the back arising out of and  
35 causally related to such ~~incident—accident.~~ Injury shall include  
36 breakage or damage to eyeglasses, hearing aids, dentures, or other  
37 prosthetic devices which function as part of the body; provided,  
38 however, that eyeglasses and hearing aids will not be replaced,  
39 repaired, or otherwise compensated for unless injury to them is  
40 incidental to a compensable injury. Injury or disease means only a  
41 work-related injury or disease that is the predominant cause of the  
42 disability and includes a consequence of a compensable injury when  
43 the compensable injury is the predominant cause of the consequential  
44 condition. Injury means an injury that combines with a preexisting

1 disease or condition to cause or prolong disability or a need for  
2 treatment to the extent the injury is and remains the predominant cause  
3 of the disability or need for the treatment. Injury does not include a  
4 worsened condition if the predominant cause of the worsened  
5 condition is an injury not occurring within the course and scope of  
6 employment. Injury, personal injury, or disease does not mean mental  
7 injury that is unaccompanied by physical injury."

8 Sec. 2. G.S. 97-2(9) reads as rewritten:

9 "(9) Disability—The term 'disability' means incapacity because of injury to  
10 earn the wages which the employee was receiving at the time of injury  
11 in the same or any other employment."

12 Sec. 3. G.S. 97-2(19) reads as rewritten:

13 "(19) Medical Compensation. —The term 'medical' Medical compensation'  
14 means medical, surgical, hospital, nursing, and rehabilitative  
15 services, and medicines, sick travel, and other treatment, including  
16 medical and surgical supplies, as may reasonably be required to effect  
17 a cure or give relief and for such additional time as, in the judgment of  
18 the Commission, will tend to lessen the period of disability; and any  
19 original artificial members as may reasonably be necessary at the  
20 end of the healing period."

21 Sec. 4. G.S. 97-2 is amended by adding the following new subdivisions:

22 "(20) Medically Stationary. — 'Medically stationary' means further  
23 recovery from or lasting improvement to an injury can no longer be  
24 reasonably anticipated after a certain date based upon reasonable  
25 medical probability as determined by an authorized health care  
26 provider. Medically stationary is not precluded when future  
27 medical maintenance is required that will not significantly improve  
28 the condition or there exists a possibility of improvement or  
29 deterioration resulting from the passage of time.

30 (21) Objective Findings. — 'Objective findings' means diagnostic  
31 evidence that is substantiated by clinical findings, including  
32 diagnostic evidence regarding range of motion, atrophy, muscle  
33 strength, and muscle spasm.

34 (22) Impairment. — 'Impairment' means an anatomical or functional  
35 abnormality existing after the date the employee becomes  
36 medically stationary as determined by a medically or scientifically  
37 demonstrable finding and based upon the third edition or the most  
38 recent subsequent edition of the American Medical Association's  
39 Guide to the Evaluation of Permanent Impairment or comparable  
40 publications of the American Medical Association.

41 (23) Permanent Partial Disability. — 'Permanent partial disability' means  
42 a condition whereby an employee, due to an injury, suffers a  
43 permanent physical impairment.

- 1           (24) Temporary Total Disability. – 'Temporary total disability' means  
2 the inability of the employee, due to an injury, to perform his duties  
3 prior to the injury becoming medically stationary.
- 4           (25) Permanent Total Disability. – 'Permanent total disability' means  
5 that the employee is physically unable to earn any wages in the  
6 same or other employment within North Carolina or nearby  
7 surrounding areas as a result of an injury not included in the  
8 schedule of injuries set forth in G.S. 97-31. Permanent total  
9 disability includes the loss of both hands, both arms, both feet, both  
10 legs, both eyes, or of any two thereof, absent conclusive proof to  
11 the contrary. In all other cases, permanent total disability means,  
12 if, as a result of an injury not included in the schedule of injuries  
13 set forth in G.S. 97-31, the employee is physically unable to earn  
14 any wages in the same or other employment within North Carolina  
15 or nearby surrounding areas as a result of the injury.
- 16           (26) Attending Physician. – 'Attending physician' means a doctor or  
17 physician who is primarily responsible for the treatment pursuant to  
18 this Article of an employee with an injury and who is:
- 19           a. A physician licensed to practice medicine or surgery by the  
20 State; or
- 21           b. A chiropractor licensed by the State.
- 22           (27) Palliative Care. – 'Palliative care' means care rendered to  
23 temporarily reduce or moderate the intensity of an otherwise  
24 medically stationary condition, as distinguished from care that is  
25 rendered to diagnose, heal, permanently alleviate, or eliminate an  
26 undesirable medical condition."

27           Sec. 5. Chapter 97 of the General Statutes is amended by adding a new  
28 section to read:

29 **"§ 97-9.1. Burden of proof.**

30           The employee has the burden of proving that an injury arose out of and in the course  
31 of employment and the burden of proving that the injury is established by medical  
32 evidence supported by objective findings. The employee claiming permanent total  
33 disability shall have the burden of proving a physical inability to earn any wages in the  
34 same or other employment."

35           Sec. 6. G.S. 97-10.1 reads as rewritten:

36 **"§ 97-10.1. Other rights and remedies against employer excluded.**

37           If (a) Except as provided in subsection (b) of this section, if the employee and the  
38 employer are subject to and have complied with the provisions of this Article, then the  
39 rights and remedies herein granted to the employee, ~~his~~ and the employee's dependents,  
40 next of kin, or personal representative shall exclude all other rights and remedies of the  
41 employee, ~~his~~ and the employee's dependents, next of kin, or personal representative as  
42 against the employer at common law or otherwise on account of or arising out of such  
43 injury or death.

1       (b) The only exception to the exclusive remedy provided in subsection (a) of this  
2 section is for an injury that results from an intentional tort by the employer. For the  
3 purposes of this Article, an intentional tort occurs only when an employer deliberately  
4 takes an action which subjects an employee to a substantially certain risk of death or  
5 serious injury under circumstances where the employer:

6           (1) Actually knows that by taking the particular action the specific  
7 event causing death or serious injury was substantially certain to  
8 occur; and

9           (2) Consciously and manifestly disregards this risk.

10 Whether an act constitutes an intentional tort and whether an employer acted with the  
11 requisite intent set forth in subdivisions (1) and (2) of this subsection are questions of  
12 law.

13       (c) Subject to subsection (d) of this section, this Article shall not prohibit any  
14 person from filing a claim as provided in this Article and simultaneously commencing a  
15 civil action seeking to recover damages from an employer for the injury or death.

16       (d) If any benefits payable under the provisions of G.S. 97-30, 97-31, or 97-38  
17 are accepted by an employee or an employee's dependents, next of kin, or personal  
18 representative, then the employee and employee's dependents, next of kin, or other  
19 personal representative shall forfeit any other rights or remedies, including, but not  
20 limited to, any statutory and common law claims against the employer, whether  
21 derivative or independent, relating in any way to the injury or death. Further, if an  
22 employee or an employee's dependents, next of kin, or personal representative files a  
23 civil action seeking to recover for such injury or death from an employer and fails to  
24 accept benefits payable under the provisions of this Article before the time when the  
25 jury is impaneled or evidence is first presented at the trial of the civil action, whichever  
26 occurs first, then the employee and employee's dependents, next of kin, or personal  
27 representative have elected to proceed outside this Article and shall forfeit any other  
28 rights and remedies, including all rights and remedies available under this Article,  
29 related to the injury or death. However, the provisions set forth in this subsection shall  
30 not affect compensation and benefits previously accepted by an employee that were paid  
31 pursuant to the provisions of G.S. 97-25 and G.S. 97-59, and any sums accepted by an  
32 employee or an employee's dependents, next of kin, or personal representative shall be  
33 offset against any amount for which the employer subsequently may be found liable for  
34 the injury, disease, or death in the civil action. Accordingly, evidence of payments  
35 made by an employer pursuant to G.S. 97-25 and G.S. 97-59 shall be admissible in the  
36 trial of any civil action, but shall be limited only to interpretations of this Article and  
37 benefits actually accepted by an employee.

38       (e) For purposes of this Article, the personal liability of an employee whose  
39 actions proximately cause the injury or death to another employee shall be determined  
40 according to the same standards as applied to the employer when the employee's actions  
41 arise out of and in the course of the employment."

42           Sec. 7. G.S. 97-12 reads as rewritten:

43       "**§ 97-12. Use of intoxicant or controlled substance; willful neglect; willful**  
44       **disobedience of statutory duty, safety regulation or rule.**

1 No compensation shall be payable if the injury or death to the employee was  
2 proximately caused by:

- 3 (1) ~~His~~The employee's intoxication, provided the intoxicant was not  
4 supplied by the employer or his agent in a supervisory capacity to  
5 the employee; or  
6 (2) ~~His~~The employee's being under the influence of any controlled  
7 substance listed in the North Carolina Controlled Substances Act,  
8 G.S. 90-86, **et seq.**, where such controlled substance was not by  
9 prescription by a practitioner; or  
10 (3) ~~His~~The employee's willful intention to injure or kill himself or  
11 another. When the injury or death is caused by the willful failure  
12 of the employer to comply with any statutory requirement or any  
13 lawful order of the Commission, compensation shall be increased  
14 ten percent (10%). When the injury or death is caused by the  
15 willful failure of the employee to use a safety appliance or perform  
16 a statutory duty or by the willful breach of any rule or regulation  
17 adopted by the employer ~~and approved by the Commission and~~  
18 brought to the knowledge of the employee prior to the injury  
19 compensation shall be reduced ten percent (10%).

20 The burden of proof shall be upon ~~him who claims~~the party claiming an exemption  
21 or forfeiture under this section."

22 Sec. 8. G.S. 97-17 reads as rewritten:

23 "**§ 97-17. Settlements allowed in accordance with Article.**

24 (a) ~~Nothing herein contained~~This Article shall not be construed so as to prevent  
25 settlements made by and between the employee and employer so long as the amount of  
26 compensation and the time and manner of payment are in accordance with the  
27 provisions of this Article. ~~A copy of such settlement agreement shall be filed by employer~~  
28 ~~with and approved by the Industrial Commission. Provided, however, that no party to any~~  
29 ~~agreement for compensation approved by the Industrial Commission shall thereafter be heard to~~  
30 ~~deny the truth of the matters therein set forth, unless it shall be made to appear to the~~  
31 ~~satisfaction of the Commission that there has been error due to fraud, misrepresentation, undue~~  
32 ~~influence or mutual mistake, in which event the Industrial Commission may set aside such~~  
33 ~~agreement.~~Any settlement shall constitute a final determination of liability for the  
34 injury and shall be binding on all parties.

35 (b) Parties mutually seeking to settle a claim under this Article shall file with the  
36 deputy assigned to the claim a Notice of Intent to Settle, together with the agreed terms  
37 of settlement. The deputy may, in the deputy's discretion, call an informal conference  
38 under G.S. 97-82.1. If requested by a party, the deputy shall call an informal conference  
39 under G.S. 97-82.1. The purpose of the informal conference shall be to determine  
40 whether the stated terms are understood by the employee and whether the stated terms  
41 are otherwise not prejudicial to the employee's interest. Unless a deputy calls for an  
42 informal conference, the settlement shall be deemed approved 60 days following  
43 submission of a Notice of Intent to Settle.

1       (c) Within 180 days from the date of the first payment of compensation, the  
2 employer may serve upon the employee an offer of settlement. If within 10 days after  
3 the service of the offer of settlement, the employee serves written notice that the offer is  
4 accepted, the employee shall file with the deputy a Notice of Intent to Settle as provided  
5 for in subsection (b) of this section. An offer of settlement not accepted within 10 days  
6 after its service shall be deemed withdrawn. Evidence of the offer shall not be  
7 admissible in a subsequent proceeding on the issue of compensability. If the award or  
8 judgment finally obtained by the employee is not more favorable than the offer of  
9 settlement, the employee shall pay the costs incurred by the employer in defense of the  
10 claim (excluding attorney fees) after the date the employer made the offer. The fact that  
11 an offer of settlement is made but not accepted does not preclude a subsequent  
12 settlement."

13           Sec. 9. G.S. 97-18 reads as rewritten:

14 **"§ 97-18. Prompt payment of compensation required; installments; notice to**  
15 **Commission; penalties.**

16       (a) Compensation under this Article shall be paid periodically, promptly and  
17 directly to the person entitled thereto unless otherwise specifically provided.

18       (b) The first installment of compensation payable ~~under the terms of an agreement~~  
19 by the employer shall become due on the fourteenth day after the employer has written  
20 or actual knowledge of the injury or death, on which date all compensation then due  
21 shall be ~~paid.~~ paid, or the employer shall notify the Commission and the employee in  
22 writing of its refusal to pay and advise the employee of the employee's right to request  
23 an informal conference under G.S. 97-82.1 and the means to obtain additional  
24 information from the Commission. ~~Thereafter compensation~~ Compensation shall be paid  
25 in installments weekly except where the Commission determines that payment in  
26 installments should be made monthly or at some other period.

27       (b1) In any claim for compensation in which the employer is uncertain whether the  
28 claim is compensable under this Article, or is uncertain of the extent of its liability  
29 under this Article, the employer may initiate compensation payments without prejudice  
30 and without admitting liability. Such payments may continue until such time as the  
31 employer decides to contest the claim or 180 days from the due date of the first payment  
32 of compensation, whichever shall first occur. The initiation of payment by the  
33 employer does not affect the right of the employer to continue to investigate or deny the  
34 compensability of the injury during this period. If, during this 180-day period during  
35 which compensation has been paid, the employer decides to contest the claim, the  
36 employer shall suspend payment of benefits and shall promptly notify the employee on  
37 a form prescribed by the Commission, stating the grounds upon which the employee's  
38 right to compensation or the extent of liability is contested. The employer shall furnish  
39 a copy to the Commission. If the employer does not contest the compensability of the  
40 injury in 180 days or less from the due date of the first payment of compensation, the  
41 employer waives the right to contest compensability. However, an employer may  
42 contest the claim after the 180-day period when the employer can show that evidence  
43 was discovered after that period that could not have been reasonably discovered earlier.

1 (c) The first installment of compensation payable under the terms of an award by  
2 the Commission, or under the terms of a judgment of the court upon an appeal from  
3 such an award, shall become due 14 days from the date of such an award or from the  
4 date of such a judgment of the court, on which date all compensation then due shall be  
5 paid. Thereafter compensation shall be paid in installments weekly, except where the  
6 Commission determines that payment in installments shall be made monthly or in some  
7 other manner. A payment becomes due within the meaning of this subsection the day  
8 following expiration of time for appeal of an award or judgment or after notice waiving  
9 right of appeal by all parties has been received by the Commission, whichever is sooner.  
10 Except that if the applicable time for appeal is longer than 14 days, then payment must  
11 be made within five days after it becomes due as herein defined.

12 (d) ~~Upon making the first payment, and upon suspension of payment for any~~  
13 ~~cause, the employer shall immediately notify the Commission, in accordance with the~~  
14 ~~form prescribed by the Commission, that payment of compensation has begun or has~~  
15 ~~been suspended, as the case may be. The employer's grounds for contesting the~~  
16 ~~employee's claim as specified in the notice under subsection (b1) of this section are the~~  
17 ~~only bases for the employer's defense on the issue of compensability in a subsequent~~  
18 ~~proceeding, unless the defense is based on newly discovered evidence that could not~~  
19 ~~reasonably have been discovered earlier.~~

20 (e) ~~If any installment of compensation payable in accordance with the terms of~~  
21 ~~an agreement approved by the Commission is not paid within 14-30 days after it~~  
22 ~~becomes due, as provided in subsection (b) of this section, or if any installment of~~  
23 ~~compensation payable in accordance with the terms of an award by the Commission is~~  
24 ~~not paid within 14 days after it becomes due, as provided in subsection (c) of this~~  
25 ~~section, there shall be added to such unpaid installment an amount equal to ten per~~  
26 ~~centum (10%) thereof, which shall be paid at the same time as, but in addition to, such~~  
27 ~~installment, unless such nonpayment is excused by the Commission after a showing by~~  
28 ~~the employer that owing to conditions over which he had no control such installment~~  
29 ~~could not be paid within the period prescribed for the payment.~~

30 (f) Within 16 days after final payment of compensation has been made, the  
31 employer shall send to the Commission a notice, in accordance with a form prescribed  
32 by the Commission, stating that such final payment has been made, the total amount of  
33 compensation paid, the name of the employee and of any other person to whom  
34 compensation has been paid, the date of the injury or death, and the date to which  
35 compensation has been paid. If the employer fails to so notify the Commission within  
36 such time, the Commission shall assess against such employer a civil penalty in the  
37 amount of twenty-five dollars (\$25.00).

38 (g) If any bill for services rendered under G.S. 97-25 by any provider of health  
39 care is not paid within 60 days after it has been approved by the Commission and  
40 returned to the responsible party, there shall be added to such unpaid bill an amount  
41 equal to ten per centum (10%) thereof, which shall be paid at the same time as, but in  
42 addition to, such medical bill, unless such late payment is excused by the Commission."

43 Sec. 10. Chapter 97 of the General Statutes is amended by adding a new  
44 section to read:



1 **"§ 97-18.1. Termination or modification of compensation benefits.**

2 (a) If the employer seeks to terminate or modify compensation benefits because  
3 the employee has returned to work or because the employer has reason to believe the  
4 employee has become medically stationary or has recovered sufficiently to return to  
5 work, the employer shall notify the employee of the employer's intent to terminate or  
6 modify benefits. This notice shall inform the employee of the employee's right to  
7 administrative review of the matter. The employer may suspend compensation 14 days  
8 following its notice to the employee unless the employee, within seven days of being  
9 notified, files a request for administrative review with the Commission disputing the  
10 employer's decision to suspend compensation.

11 (b) Within seven days after the request for administrative review is filed, the  
12 Commission shall promptly conduct a review of documentation submitted by the  
13 employer, together with any information submitted by the employee with the request for  
14 administrative review, and issue a decision within 14 days following the employer's  
15 notification of intent to terminate or modify compensation.

16 (c) Where the medical condition of the employee is in dispute, the Commission  
17 shall consider any medical reports based on examinations made within 15 days of the  
18 employer's notice of intent to terminate or modify compensation benefits and shall make  
19 its findings based on the weight of the evidence submitted. Where, however, either  
20 party has requested an examination by an independent medical examiner pursuant to  
21 G.S. 97-27, that examiner's opinion of the employee's recovery and ability to return to  
22 work is conclusive absent clear and convincing evidence to the contrary.

23 (d) If the Commission upholds the employer's decision to terminate or modify  
24 compensation benefits, the employee may request an informal conference pursuant to  
25 G.S. 97-82.1, which shall be scheduled within 14 days of the request. The employer  
26 shall not be required to continue payment of compensation following the Commission's  
27 determination upholding the employer's decision. If neither party requests review  
28 within seven days of the administrative decision, that decision shall constitute a final  
29 determination."

30 Sec. 11. G.S. 97-25 reads as rewritten:

31 **"§ 97-25. Medical treatment and supplies.**

32 (a) ~~Medical—~~Subject to subsection (e) of this section, G.S. 97-25.1, 97-25.2, and  
33 97-25.3, medical compensation shall be provided by the employer. ~~In case of a~~  
34 controversy arising between the employer and employee relative to the continuance of medical,  
35 surgical, hospital, or other treatment, the Industrial Commission may order such further  
36 treatments as may in the discretion of the Commission be necessary. ~~The Commission may at~~  
37 any time upon the request of an employee order a change of treatment and designate other  
38 treatment suggested by the injured employee subject to the approval of the Commission, and in  
39 such a case the expense thereof shall be borne by the employer upon the same terms and  
40 conditions as hereinbefore provided in this section for medical and surgical treatment and  
41 attendance.—The obligation of an employer to provide medical compensation is limited  
42 by and subject to the provisions regarding the modification of an award for change of  
43 condition as set forth in G.S. 97-47.

44 (b) In all cases of injury or disease, the employer or insurer has the right to select  
45 the attending physician. Upon written request to the insurer or to the employer's

1 authorized representative if the employer is self-insured, the employee may procure  
2 written permission to have the employee's own physician attend the employee. If such  
3 permission is neither granted nor refused within 20 days, the employer or insurance  
4 carrier shall be deemed to have waived any objection. Objection shall be in writing and  
5 shall be deposited in the mail or hand-delivered to the employee within 20 days. Any  
6 unauthorized medical expense is not the responsibility of the employee.

7 (c) The refusal of the employee to accept any medical, hospital, surgical or other  
8 treatment or rehabilitative procedure when ordered by the Industrial Commission shall  
9 bar said employee from further compensation until such refusal ceases, and no  
10 compensation shall at any time be paid for the period of suspension unless in the  
11 opinion of the Industrial Commission the circumstances justified the refusal, in which  
12 case, the Industrial Commission may order a change in the medical or hospital service.

13 ~~If in an emergency on account of the employer's failure to provide the medical or~~  
14 ~~other care as herein specified a physician other than provided by the employer is called~~  
15 ~~to treat the injured employee, the reasonable cost of such service shall be paid by the~~  
16 ~~employer if so ordered by the Industrial Commission.~~

17 ~~Provided, however, if he so desires, an injured employee may select a physician of~~  
18 ~~his own choosing to attend, prescribe and assume the care and charge of his case,~~  
19 ~~subject to the approval of the Industrial Commission.~~

20 (d) The employee, upon reasonable grounds, may petition the Industrial  
21 Commission for a change of physicians to be provided by the employer. The employee  
22 shall give notice to the employer or insurer of this request for a change of physicians to  
23 afford the employer the opportunity to fulfill its obligations under this section. The  
24 employer shall not be obligated to pay for the services obtained when notice was not  
25 given in accordance with this subsection.

26 (e) When the attending physician is a chiropractor, compensation for chiropractic  
27 treatment shall be provided by the employer for a period of 90 days from the initial  
28 treatment or for 30 office visits, whichever occurs first. A request for additional  
29 chiropractic treatment shall be submitted to the insurer at least 10 working days prior to  
30 delivery of the services and shall include documentation of the need for the services  
31 requested. When chiropractic treatment is expected to extend beyond 90 days from the  
32 date of the initial treatment, the request for additional services shall include a treatment  
33 plan, including a time schedule of measurable objectives, a projected termination date of  
34 treatment, and an estimated total cost of service. The Commission shall adopt rules  
35 governing the response to a request for additional chiropractic services and the review  
36 of a decision thereon."

37 Sec. 12. Chapter 97 of the General Statutes is amended by adding the  
38 following new sections:

39 **"§ 97-25.1. Palliative care.**

40 (a) After the employee has become medically stationary, palliative care is not  
41 compensable, except when:

- 42 (1) Provided to an employee who has been determined to have  
43 permanent total disability;

1           (2)     Necessary to monitor administration of prescription medication  
2                     required to maintain the employee in a medically stationary  
3                     condition; or

4           (3)     Necessary to monitor the status of a prosthetic device.

5       If the employee's attending physician determines that palliative care that would  
6       otherwise not be compensable under this section is appropriate to enable the employee  
7       to continue current employment, the attending physician shall request approval from the  
8       insurer or self-insured employer for such treatment. The request for palliative services  
9       shall include a treatment plan, including a time schedule or measuring objectives, a  
10       projected termination date of treatment, and an estimated total cost of services. If  
11       approval for palliative care is not granted, the attending physician may request approval  
12       from the Commission for such treatment. The Commission shall appoint an  
13       independent medical examiner pursuant to G.S. 97-27 to review the request for  
14       treatment.

15       (b)     The employer shall not be required to pay for palliative care that is not  
16       authorized pursuant to this section.

17       **"§ 97-25.2. Managed care.**

18       Any insurer may satisfy the requirements of G.S. 97-25 by entering into a preferred  
19       provider arrangement. Notwithstanding any other provision of this Article, if an insurer  
20       enters into a preferred provider arrangement for medical services that are compensable  
21       under this Article, those employees who are subject to the preferred provider  
22       arrangement shall receive medical care in the manner prescribed by the arrangement.  
23       However, immediate emergency medical treatment from a medical provider who is not  
24       a member of the managed-care organization shall be compensable. An employee shall  
25       exhaust the dispute resolution procedure of a managed-care organization prior to  
26       seeking compensation from the Commission on an issue related to the managed care or  
27       the choice of a physician.

28       **"§ 97-25.3. Preauthorization.**

29       (a)     An employee shall notify the insurer within five working days before hospital  
30       in-patient confinement or surgery, except in case of an emergency, in accordance with  
31       procedures prescribed by the Commission. When hospitalization or surgery is  
32       recommended, the insurer shall make a hospital confinement and surgery review and  
33       shall have reasonable opportunity to obtain an independent medical exam. A copy of  
34       the review shall be provided to the employee and attending physician in writing.  
35       Hospital and physician charges incurred without preauthorization pursuant to this  
36       section shall be reduced by fifty percent (50%). The employee shall not be liable for  
37       payment of the balance.

38       (b)     No health care provider may refer the employee to a diagnostic facility, pain  
39       program, work-hardening program, therapy center, or other facility without  
40       authorization from the insurer pursuant to this section except in cases of immediate  
41       medical emergency.

42       (c)     The Commission shall adopt rules specifying additional types of medical care  
43       requiring express preauthorization by the insurer. The Commission shall adopt rules

1 establishing a procedure for expedited resolution of any dispute over the denial of  
2 preauthorization by the insurer.

3 (d) When a health care provider of medical services or treatment makes referrals  
4 for medical services or treatment compensable under this Article to a health care  
5 provider or entity in which the health care provider making the referral has an  
6 investment interest, the referring provider shall, at the time of the referral, disclose that  
7 investment interest to the employee, the Commission, the employer, and the employer's  
8 insurer. The referring provider also shall file an annual disclosure statement with the  
9 Commission as provided by rules adopted by the Commission.

10 (e) Except in cases of medical emergency, the insurer shall not be liable for  
11 medical costs related to hospital in-patient confinement or surgery, chiropractic care, or  
12 physical or occupational therapy unless:

13 (1) The insurer or employer waives the right to request a second  
14 opinion from a physician approved by the insurer or the  
15 Commission no later than 14 days after the date of notification that  
16 any of these medical treatments is recommended; or

17 (2) The employee obtains a second opinion from a physician approved  
18 by the insurer or the Commission, and the second physician  
19 concurs with the attending physician's recommendation.

20 (f) The insurer or Commission may require an employee to submit to medical  
21 examinations to resolve any question about the appropriateness of medical treatment  
22 received or recommended. The Commission shall require a physical examination only  
23 after the insurer has attempted and failed to receive the permission of the employee.

24 (g) The insurer shall pay for any physical examination required under subsections  
25 (e) and (f) of this section.

26 (h) An employee who, without good cause, fails or refuses to appear at the time  
27 scheduled for a physical examination under subsections (e) or (f) of this section shall  
28 have the employee's rights suspended as provided in G.S. 97-27(a).

29 (i) A health care provider shall not pursue a private claim against an employee  
30 for all or part of the costs of medical treatment provided to the employee by the provider  
31 unless the claim is finally adjudicated not to be compensable under this Article or unless  
32 the employee fails to comply with this section."

33 Sec. 13. G.S. 97-26 reads as rewritten:

34 **"§ 97-26. Liability—Fees allowed for medical treatment measured by average cost in**  
35 **community; treatment; malpractice of physician.**

36 ~~The pecuniary liability of the employer for medical, surgical, hospital service,~~  
37 ~~nursing services, medicines, sick travel or other treatment required when ordered by the~~  
38 ~~Commission, shall be limited to such charges as prevail in the same community for~~  
39 ~~similar treatment of injured persons of a like standard of living when such treatment is~~  
40 ~~paid for by the injured person, and the~~

41 (a) The Commission shall adopt a schedule of maximum fees for all services,  
42 procedures, and tasks. This schedule shall govern reimbursement of maximum fees to  
43 all health care providers under G.S. 97-25 and shall be in accordance with the  
44 following:

1           (1)     Maximum allowable fees shall be based on, and be equal to,  
2                     maximum fees payable under the State of North Carolina Teachers'  
3                     and State Employees' Comprehensive Major Medical Plan for  
4                     similar services, procedures, and tasks where such medical care is  
5                     provided and shall incorporate changes.

6           (2)     The fee schedule shall identify and define medical services,  
7                     procedures, and tasks in accordance with the codes contained in the  
8                     American Medical Association's Physicians' Current Procedural  
9                     Terminology (CPT), as modified, or in standard codes and  
10                    definitions produced by other recognized professional associations  
11                    for which CPT codes do not exist. The use of modifier codes shall  
12                    be strictly limited, the additional fee allowed for each modification  
13                    shall be provided in the fee schedule, and documentation indicating  
14                    the need for such modifiers shall be required. Services, procedures,  
15                    and tasks shall be billed using the most inclusive codes available;  
16                    and differing elements of a service, procedure, or task shall not be  
17                    billed individually when a single code is available describing the  
18                    complete service, procedure, or task.

19          (3)     Each surgical procedure shall provide for appropriate subsequent  
20                     care, including examinations, changes of dressings, and similar  
21                     services associated with post-surgery recovery, but the cost of such  
22                     care shall not be billed during the recovery period.

23          (b)     Unless the employer or insurer and a health care provider agree to a lesser  
24                     fee, the fees charged for treatment and care under this Article shall be the provider's  
25                     usual and customary fee for the treatment or service, or the fee for that treatment or  
26                     service under the Commission's schedule, whichever is less.

27          (c)     Health care providers shall submit charges to the employer within 30 days of  
28                     treatment or within 30 days after the end of the month during which multiple treatments  
29                     were provided. If the employer disputes a part of a provider's bill, it shall pay the  
30                     uncontested portion of the bill and shall resolve disputes regarding the balance of  
31                     medical charges in accordance with this section. Health care providers shall not charge  
32                     for diagnostic tests previously conducted by other providers, unless a change in patient  
33                     condition has occurred or the quality of the prior test is doubted. The Commission shall  
34                     adopt rules establishing reasonable requirements for reports and records to be made  
35                     available to other health care providers to prevent unnecessary duplication of tests and  
36                     examinations.

37          (d)     The Commission shall promulgate rules governing treatment. Neither the  
38                     employer, its insurer, nor the employee shall be responsible for reimbursing a health  
39                     care provider whose treatment of the injured employee exceed in frequency treatment  
40                     plans adopted by the Commission.

41          (e)     The employer shall not be liable in damages for malpractice by a physician or  
42                     surgeon furnished by him pursuant to the provisions of this section, but the  
43                     consequences of any such malpractice shall be deemed part of the injury resulting from  
44                     the accident, and shall be compensated for as such.

1       (f) A hospital provider's fees charged for treatment and services shall be the  
2 usual and customary fee for the same treatment or service, or the fee adopted by the  
3 Commission under this section, whichever is less. The Commission's schedule of  
4 maximum fees shall govern reimbursement to all hospitals for services, treatment, and  
5 care under this Article."

6               Sec. 14. G.S. 97-27 reads as rewritten:

7 **"§ 97-27. Medical examination; facts not privileged; refusal to be examined**  
8 **suspends compensation; autopsy.**

9       (a) After an injury, and so long as he claims compensation, the employee, if so  
10 requested by his employer or ordered by the Industrial Commission, shall, subject to the  
11 provisions of subsection ~~(b)~~, ~~(b)~~ and subsection (c) of this section, submit himself to  
12 examination, at reasonable times and places, by a duly qualified physician or surgeon  
13 designated and paid by the employer or the Industrial Commission. The employee shall  
14 have the right to have present at such examination any duly qualified physician or  
15 surgeon provided and paid by him. Notwithstanding the provisions of G.S. 8-53, no fact  
16 communicated to or otherwise learned by any physician or surgeon or hospital or  
17 hospital employee who may have attended or examined the employee, or who may have  
18 been present at any examination, shall be privileged in any workers' compensation case  
19 with respect to a claim pending for hearing before the Industrial Commission. If the  
20 employee refuses to submit himself to or in any way obstructs such examination  
21 requested by and provided for by the employer, his right to compensation and his right  
22 to take or prosecute any proceedings under this Article shall be suspended until such  
23 refusal or objection ceases, and no compensation shall at any time be payable for the  
24 period of obstruction, unless in the opinion of the Industrial Commission the  
25 circumstances justify the refusal or obstruction. The employer, or the Industrial  
26 Commission, shall have the right in any case of death to require an autopsy at the  
27 expense of the party requesting the same.

28       (b) ~~In those cases arising under this Article in which there is a question as to the~~  
29 ~~percentage of permanent disability suffered by an employee, if any employee, required~~  
30 ~~to submit to a physical examination under the provisions of subsection (a) is dissatisfied~~  
31 ~~with such examination or the report thereof, he shall be entitled to have another~~  
32 ~~examination by a duly qualified physician or surgeon licensed and practicing in North~~  
33 ~~Carolina or by a duly qualified physician or surgeon licensed to practice in South~~  
34 ~~Carolina, Georgia, Virginia and Tennessee provided said nonresident physician or~~  
35 ~~surgeon shall have been approved by the North Carolina Industrial Commission and his~~  
36 ~~name placed on the Commission's list of approved nonresident physicians and surgeons,~~  
37 ~~designated by him and paid by the employer or the Industrial Commission in the same~~  
38 ~~manner as physicians designated by the employer or the Industrial Commission are~~  
39 ~~paid. Provided, however, that all travel expenses incurred in obtaining said examination~~  
40 ~~shall be paid by said employee. The employer shall have the right to have present at~~  
41 ~~such examination a duly qualified physician or surgeon provided and paid by him.~~  
42 dispute as to the extent, nature, or cause of disability or death, or a dispute as to whether  
43 the employee is medically stationary, the attending physician who has provided the  
44 primary care shall make a determination on medical issues as provided in this section.

1 If either party disputes the attending physician's findings, the parties may select an  
2 independent medical examiner by mutual agreement. If the parties are unable to  
3 mutually agree on the selection of an independent medical examiner, the Commission  
4 shall assign a panel of three independent medical examiners.

5 (c) When the injured employee becomes medically stationary, the attending  
6 physician shall determine a medical impairment rating based on the most recent edition  
7 of the American Medical Association Guide to the Evaluation of Permanent  
8 Impairment. For purposes of determining levels of medical impairment, the physician  
9 shall not render a medical impairment rating based on chronic pain unless there is an  
10 anatomic or physiologic correlation to the pain. Anatomic or physiologic correlation  
11 shall be based on objective findings. If either party disputes the attending physician's  
12 findings of medical impairment, the parties may select an independent medical  
13 examiner by mutual agreement. If the parties are unable to mutually agree on the  
14 selection of an independent medical examiner, the Commission shall assign a panel of  
15 three independent medical examiners.

16 (d) When a panel of independent medical examiners has been assigned to a case  
17 under subsection (b) or subsection (c) of this section, the parties shall be notified  
18 immediately. The employee shall select one independent medical examiner from the  
19 panel within five days after notification. The employer may, no later than three days  
20 after notification of the employee's selection, reject the employee's selection of the  
21 independent medical examiner, in which case the employee's first choice of an  
22 independent medical examiner is removed from the panel, and the employee shall select  
23 one of the two remaining independent medical examiners. The findings of the  
24 independent medical examiner under subsection (b) or subsection (c) of this section  
25 shall be final, absent a showing of clear and convincing evidence to the contrary. No  
26 hearing to contest the findings of the independent medical examiner shall be conducted  
27 until the findings of the independent medical examiner have been filed with the  
28 Commission.

29 (e) No fact communicated to or otherwise learned by any physician or surgeon  
30 who may have attended or examined the employee, or who may have been present at  
31 any examination, shall be privileged, either in hearings provided for by this Article or  
32 any action at law.

33 (f) The Commission shall certify independent medical examiners to assist the  
34 Commission. The Commission shall, in certifying, recertifying, or decertifying an  
35 independent medical examiner, consider the qualifications, training, impartiality, and  
36 commitment of the health care provider to providing quality medical care at a  
37 reasonable cost. The Commission shall require, at a minimum, that independent  
38 medical examiners:

- 39 (1) Have specialized workers' compensation training or experience  
40 with the procedures of North Carolina Workers' Compensation Act;
- 41 (2) Be licensed to practice medicine or surgery under Article 1 of  
42 Chapter 90 of the General Statutes; and
- 43 (3) Be board certified."

44 Sec. 15. G.S. 97-29 reads as rewritten:

1 **"§ 97-29. Compensation rates for total ~~incapacity-~~disability.**

2 (a) Except as hereinafter otherwise provided, where the ~~incapacity for work~~  
3 ~~resulting from the injury is total,~~ employee sustains a temporary total disability, the  
4 employer shall pay or cause to be paid, as hereinafter provided, to the injured employee  
5 during ~~such total~~ the continuance of disability until the employee becomes medically  
6 stationary, a weekly compensation equal to sixty-six and two-thirds percent (66 2/3%)  
7 of his average weekly wages, but not more than the amount established annually to be  
8 effective October 1 as provided herein, nor less than thirty dollars (\$30.00) per week.

9 Temporary total disability benefits shall continue until any one of the following first  
10 occurs:

- 11 (1) The employee becomes medically stationary;
- 12 (2) The employee returns to regular or modified employment;
- 13 (3) The attending physician gives the employee a written release to  
14 return to regular employment; or
- 15 (4) The attending physician gives the employee a written release to  
16 return to modified employment, this employment is offered to the  
17 employee in writing, and the employee fails to begin the  
18 employment.

19 If the employee returns to work pursuant to the provisions of this subsection, the  
20 employer shall continue to provide medical care. In no case shall the period covered by  
21 such compensation be greater than 300 weeks from the date of injury. In no case may  
22 the period covered by the compensation provided by this subsection and G.S. 97-30  
23 exceed an aggregate total of 300 weeks.

24 (b) Where the injured employee sustains a permanent total disability, the  
25 employer shall pay, or cause to be paid to the injured employee during the permanent  
26 total disability, a weekly compensation equal to sixty-six and two-thirds percent (66  
27 2/3%) of the employee's average weekly wages, but not more than the amount  
28 established annually, to be effective October 1 as provided herein, nor less than thirty  
29 dollars (\$30.00) per week.

30 ~~In~~ Except as provided in G.S. 97-42.2, in cases of total and permanent total disability,  
31 compensation, including medical compensation, shall be paid for by the employer  
32 during the lifetime of the injured employee. If death results from the injury then the  
33 employer shall pay compensation in accordance with the provisions of G.S. 97-38.

34 (c) The weekly compensation payment for members of the North Carolina  
35 national guard and the North Carolina State guard shall be the maximum amount  
36 established annually in accordance with the last paragraph of this section per week as  
37 fixed herein. The weekly compensation payment for deputy sheriffs, or those acting in  
38 the capacity of deputy sheriffs, who serve upon a fee basis, shall be thirty dollars  
39 (\$30.00) a week as fixed herein.

40 An officer or member of the State Highway Patrol shall not be awarded any weekly  
41 compensation under the provisions of this section for the first two years of any  
42 incapacity resulting from an injury by accident arising out of and in the course of the  
43 performance by him of his official duties if, during such incapacity, he continues to be



1 an officer or member of the State Highway Patrol, but he shall be awarded any other  
2 benefits to which he may be entitled under the provisions of this Article.

3 (d) Notwithstanding any other provision of this Article, on July 1 of each year, a  
4 maximum weekly benefit amount shall be computed. The amount of this maximum  
5 weekly benefit shall be derived by obtaining the average weekly insured wage in  
6 accordance with G.S. 96-8(22), by multiplying such average weekly insured wage by  
7 1.10, and by rounding such figure to its nearest multiple of two dollars (\$2.00), and this  
8 said maximum weekly benefit shall be applicable to all injuries and claims arising on  
9 and after January 1 following such computation. Such maximum weekly benefit shall  
10 apply to all provisions of this Chapter and shall be adjusted July 1 and effective January  
11 1 of each year as herein provided."

12 Sec. 16. G.S. 97-30 reads as rewritten:

13 "**§ 97-30. ~~Partial incapacity.~~ Temporary partial disability.**

14 ~~Except as otherwise provided in G.S. 97-31, where the incapacity for work resulting from~~  
15 ~~the injury is partial, If prior to the date that the employee becomes medically stationary,~~  
16 ~~an injured employee's attending physician releases the employee to return to work and~~  
17 ~~the employer offers work at less than the employee's preinjury wage or the injured~~  
18 ~~employee accepts other employment at less than the employee's preinjury wage, the~~  
19 ~~employer shall pay, or cause to be paid, as hereinafter provided, to the injured employee~~  
20 ~~during such disability, until the employee becomes medically stationary, a weekly~~  
21 ~~compensation equal to sixty-six and two-thirds percent (66 2/3%) of the difference~~  
22 ~~between his average weekly wages before the injury and the average weekly wages~~  
23 ~~which he is able to earn thereafter, but not more than the amount established annually to~~  
24 ~~be effective October 1 as provided in G.S. 97-29 a week, and in no case shall the period~~  
25 ~~covered by such compensation be greater than 300 weeks from the date of injury. In~~  
26 ~~case the temporary partial disability begins after a period of total disability, the latter~~  
27 ~~period shall be deducted from the maximum period herein allowed for temporary partial~~  
28 ~~disability. An officer or member of the State Highway Patrol shall not be awarded any~~  
29 ~~weekly compensation under the provisions of this section for the first two years of any~~  
30 ~~incapacity resulting from an injury by accident arising out of and in the course of the~~  
31 ~~performance by him of his official duties if, during such incapacity, he continues to be~~  
32 ~~an officer or member of the State Highway Patrol, but he shall be awarded any other~~  
33 ~~benefits to which he may be entitled under the provisions of this Article. In no case~~  
34 ~~shall the period covered by such compensation be greater than 300 weeks from the date~~  
35 ~~of injury. In no case may the period covered by the compensation provided by this~~  
36 ~~section and G.S. 97-29 exceed an aggregate total of 300 weeks.~~"

37 Sec. 17. G.S. 97-31 reads as rewritten:

38 "**§ 97-31. Schedule of injuries; rate and period of compensation.**

39 ~~In cases included by the following schedule the compensation in each case shall be~~  
40 ~~paid for disability during the healing period and in addition the disability shall be~~  
41 ~~deemed to continue for the period specified, and shall be in lieu of all other~~  
42 ~~compensation, including disfigurement, to wit:~~

43 (a) In case of injury resulting in permanent physical impairment, and the  
44 employee has an injury enumerated in the following schedule, the injured employee

1 shall be limited to compensation for the period calculated in subsection (b) of this  
2 section and shall not be eligible for compensation for disfigurement or for compensation  
3 under G.S. 97-29(b):

- 4 (1) For the loss of a thumb, sixty-six and two-thirds percent (66 2/3%)  
5 of the average weekly wages during 75 weeks.
- 6 (2) For the loss of a first finger, commonly called the index finger,  
7 sixty-six and two-thirds percent (66 2/3%) of the average weekly  
8 wages during 45 weeks.
- 9 (3) For the loss of a second finger, sixty-six and two-thirds percent (66  
10 2/3%) of the average weekly wages during 40 weeks.
- 11 (4) For the loss of a third finger, sixty-six and two-thirds percent (66  
12 2/3%) of the average weekly wages during 25 weeks.
- 13 (5) For the loss of a fourth finger, commonly called the little finger,  
14 sixty-six and two-thirds percent (66 2/3%) of the average weekly  
15 wages during 20 weeks.
- 16 (6) The loss of the first phalange of the thumb or any finger shall be  
17 considered to be equal to the loss of one half of such thumb or  
18 finger, and the compensation shall be for one half of the periods of  
19 time above specified.
- 20 (7) The loss of more than one phalange shall be considered the loss of  
21 the entire finger or thumb: Provided, however, that in no case shall  
22 the amount received for more than one finger exceed the amount  
23 provided in this schedule for the loss of a hand.
- 24 (8) For the loss of a great toe, sixty-six and two-thirds percent (66  
25 2/3%) of the average weekly wages during 35 weeks.
- 26 (9) For the loss of one of the toes other than a great toe, sixty-six and  
27 two-thirds percent (66 2/3%) of the average weekly wages during  
28 10 weeks.
- 29 (10) The loss of the first phalange of any toe shall be considered to be  
30 equal to the loss of one half of such toe, and the compensation shall  
31 be for one half of the periods of time above specified.
- 32 (11) The loss of more than one phalange shall be considered as the loss  
33 of the entire toe.
- 34 (12) For the loss of a hand, sixty-six and two-thirds percent (66 2/3%)  
35 of the average weekly wages during 200 weeks.
- 36 (13) For the loss of an arm, sixty-six and two-thirds percent (66 2/3%)  
37 of the average weekly wages during 240 weeks.
- 38 (14) For the loss of a foot, sixty-six and two-thirds percent (66 2/3%) of  
39 the average weekly wages during 144 weeks.
- 40 (15) For the loss of a leg, sixty-six and two-thirds percent (66 2/3%) of  
41 the average weekly wages during 200 weeks.
- 42 (16) For the loss of an eye, sixty-six and two-thirds percent (66 2/3%) of  
43 the average weekly wages during 120 weeks.

- 1 (17) The loss of both hands, or both arms, or both feet, or both legs, or  
2 both eyes, or any two thereof, shall constitute total and permanent  
3 disability, to be compensated according to the provisions of G.S.  
4 97-29. The employee shall have a vested right in a minimum  
5 amount of compensation for the total number of weeks of benefits  
6 provided under this section for each member involved. ~~When an~~  
7 ~~employee dies from any cause other than the injury for which he is~~  
8 ~~entitled to compensation, payment of the minimum amount of~~  
9 ~~compensation shall be payable as provided in G.S. 97-37.~~
- 10 (18) For the complete loss of hearing in one ear, sixty-six and two-thirds  
11 percent (66 2/3%) of the average weekly wages during 70 weeks;  
12 for the complete loss of hearing in both ears, sixty-six and two-  
13 thirds percent (66 2/3%) of the average weekly wages during 150  
14 weeks.
- 15 (19) Total loss of use of a member or loss of vision of an eye shall be  
16 considered as equivalent to the loss of such member or eye. The  
17 compensation for partial loss of or for partial loss of use of a  
18 member or for partial loss of vision of an eye or for partial loss of  
19 hearing shall be such proportion of the periods of payment above  
20 provided for total loss as such partial loss bears to total loss, except  
21 that in cases where there is eighty-five per centum (85%), or more,  
22 loss of vision in any eye, this shall be deemed 'industrial blindness'  
23 and compensated as for total loss of vision of such eye.
- 24 (20) The weekly compensation payments referred to in this section shall  
25 all be subject to the same limitations as to maximum and minimum  
26 as set out in G.S. 97-29.
- 27 (21) In case of serious facial or head disfigurement, the Industrial  
28 Commission shall award proper and equitable compensation not to  
29 exceed twenty thousand dollars (\$20,000). In case of enucleation  
30 where an artificial eye cannot be fitted and used, the Industrial  
31 Commission may award compensation as for serious facial  
32 disfigurement.
- 33 (22) In case of serious bodily disfigurement for which no compensation  
34 is payable under any other subdivision of this section, but  
35 excluding the disfigurement resulting from permanent loss or  
36 permanent partial loss of use of any member of the body for which  
37 compensation is fixed in the schedule contained in this section, the  
38 Industrial Commission may award proper and equitable  
39 compensation not to exceed ten thousand dollars (\$10,000).
- 40 (23) For the total loss of use of the back, sixty-six and two-thirds  
41 percent (66 2/3%) of the average weekly wages during 300 weeks.  
42 The compensation for partial loss of use of the back shall be such  
43 proportion of the periods of payment herein provided for total loss  
44 as such partial loss bears to total loss, except that in cases where

1                   there is seventy-five per centum (75%) or more loss of use of the  
2                   back, in which event the injured employee shall be deemed to have  
3                   suffered 'total industrial disability' and compensated as for total  
4                   loss of use of the back.

5                   (24) In case of the loss of or permanent injury to any important external  
6                   or internal organ or part of the body for which no compensation is  
7                   payable under any other subdivision of this section, the Industrial  
8                   Commission may award proper and equitable compensation not to  
9                   exceed twenty thousand dollars (\$20,000).

10                  (b) The period covered by the benefits provided by this section, G.S. 97-29, and  
11 G.S. 97-30 may not exceed a total of 350 weeks. This limitation shall not apply if the  
12 percentage of permanent physical impairment is greater than or equal to eighty percent  
13 (80%)."

14                  Sec. 18. Chapter 97 of the General Statutes is amended by adding a new  
15 section to read:

16 **"§ 97-42.1. Coordination of benefits.**

17                  Social Security Act retirement benefits or benefits received from a pension plan to  
18 the extent the pension plan is funded by the employer shall be credited against the  
19 amount of an award when either weekly or lump-sum payments are made to the  
20 employee as a result of liability under this Article. The employee shall provide the  
21 employer or insurer with proper authorization to secure the amount to which the  
22 employee is entitled under the Social Security Act."

23                  Sec. 19. G.S. 97-44 reads as rewritten:

24 **"§ 97-44. Lump sums.**

25                  ~~Whenever any weekly payment has been continued for not less than six weeks, the~~  
26 ~~liability therefor may, in unusual cases, where the Industrial Commission deems it to be~~  
27 ~~to the best interest of the employee or his dependents, or where it will prevent undue~~  
28 ~~hardships on the employer or his insurance carrier, without prejudicing the interests of~~  
29 ~~the employee or his dependents, be redeemed, in whole or in part, by the payment by~~  
30 ~~the employer of a lump sum which shall be fixed by the Commission, but in no case to~~  
31 ~~exceed the uncommuted value of the future installments which may be due under this~~  
32 ~~Article.~~

33                  (a) A settlement may not provide for payment of any benefits in a lump-sum  
34 except as provided in subsection (b) of this section.

35                  (b) The employee may elect to commute the remainder of medical compensation  
36 and benefits received under G.S. 97-31 to which the employee is entitled if the  
37 employee has returned to work for at least three months and is earning at least eighty  
38 percent (80%) of the employee's preinjury average weekly wage. If the employee elects  
39 to commute these benefits, the employee shall not receive any additional income  
40 benefits for the compensable injury. The Commission, however, in its discretion, may  
41 at any time in the case of a minor who has received permanently disabling injuries  
42 either partial or total provide that he be compensated, in whole or in part, by the  
43 payment of a lump sum, the amount of which shall be fixed by the Commission, but in

1 no case to exceed the uncommuted value of the future installments which may be due  
2 under this Article."

3 Sec. 20. G.S. 97-47 reads as rewritten:

4 **"§ 97-47. Change of condition; modification of award.**

5 ~~Upon~~ Subject to G.S. 97-18.1, upon its own motion or upon the application of any  
6 party in interest on the grounds of a change in condition, the Industrial Commission  
7 may review any award, and on such review may make an award ending, diminishing, or  
8 increasing the medical compensation or compensation previously awarded, subject to  
9 the maximum or minimum provided in this Article, and shall immediately send to the  
10 parties a copy of the award. ~~No such review shall affect such award as regards any moneys~~  
11 ~~paid but no~~ No such review shall be made after two years from the date of the last  
12 payment of medical compensation or compensation pursuant to an award under this  
13 Article, except that in cases in which only medical or other treatment bills are paid, no  
14 such review shall be made after 12 months from the date of the last payment of bills for  
15 medical or other treatment, paid pursuant to this Article. Medical compensation or  
16 compensation that has been paid pursuant to the provisions of this Article prior to  
17 review shall not be affected by review or modification of an award under this section.  
18 Payment of medical compensation for palliative care under G.S. 97-25.1 shall not all the  
19 time allowed for reviewing an award based upon a change of condition."

20 Sec. 21. G.S. 97-54 reads as rewritten:

21 **"§ 97-54. 'Disablement' defined.**

22 The term 'disablement' as used in this Article as applied to cases of asbestosis and  
23 silicosis means the event of becoming actually incapacitated because of asbestosis or  
24 silicosis to earn, in the same or any other employment, the wages which the employee  
25 was receiving at the time of his last injurious exposure to asbestosis or ~~silicosis; but in all~~  
26 ~~other cases of occupational disease 'disablement' shall be equivalent to 'disability' as defined in~~  
27 ~~G.S. 97-2(9)-silicosis."~~

28 Sec. 22. G.S. 97-55 reads as rewritten:

29 ~~"§ 97-55. The term 'disability' as used in this Article means the state of being~~  
30 ~~incapacitated as the term is used in defining 'disablement' in G.S. 97-54."~~

31 Sec. 23. G.S. 97-79 reads as rewritten:

32 **"§ 97-79. Offices and supplies; deputies with power to subpoena witnesses and to**  
33 **take testimony; meetings; hearings.**

34 (a) The Commission shall be provided with adequate offices in which the records  
35 shall be kept and its official business transacted during regular business hours; it shall  
36 also be provided with necessary office furniture, stationery, and other supplies.

37 (b) ~~The~~ From a list of qualified candidates compiled by the advisory committee,  
38 the Commission may appoint deputies who shall have the same power to issue  
39 subpoenas, administer oaths, conduct hearings, hold persons, firms or corporations in  
40 contempt as provided in Chapter 5A of the General Statutes, take evidence, and enter  
41 orders, opinions, and awards based thereon as is possessed by the members of the  
42 Commission, and such deputy or deputies shall be subject to the State Personnel  
43 System. Deputies shall be attorneys licensed to practice in this State and shall have a  
44 minimum of three years experience as attorneys.

1 (c) The Commission or any member thereof may hold sessions at any place  
2 within the State as may be deemed necessary by the Commission.

3 (d) Hearings before the Commission shall be open to the public and shall be  
4 stenographically reported, and the Commission is authorized to contract for the  
5 reporting of such hearings. The Commission shall by regulation provide for the  
6 preparation of a record of the hearings and other proceedings.

7 (e) The North Carolina Industrial Commission, or any member thereof, or any  
8 deputy is authorized by appropriate order, to make additional parties plaintiff or  
9 defendant in any proceeding pending before the North Carolina Industrial Commission  
10 when it is made to appear that such new party is either a necessary party or a proper  
11 party to a final determination of the proceeding.

12 (f) The Commission shall create an ombudsman program to assist unrepresented  
13 claimants, employers, and other parties, to enable them to protect their rights under this  
14 Article. The ombudsman shall meet with, or otherwise provide information to injured  
15 employees, investigate complaints, and communicate with employer's insurance  
16 carriers, and physicians at the request of the claimant. Assistance provided under this  
17 subsection shall not include representing the claimant in a compensation hearing, but  
18 may include, if requested by the claimant, the filing on the claimant's behalf of a Notice  
19 of Request for Informal Conference under G.S. 97-82.1."

20 Sec. 24. Chapter 97 of the General Statutes is amended by adding the  
21 following new sections:

22 "**§ 97-79.1. Advisory committee.**

23 (a) The Advisory Committee for Improvement of the Workers' Compensation  
24 Act is created. This Committee shall consist of seven members appointed by the  
25 Governor for terms of five years or until successors are appointed and qualify after the  
26 five-year term is due to expire. One member shall be an attorney experienced in the  
27 practice of representing claimants, one member shall be an attorney experienced in the  
28 practice of representing defendants, one member shall be a representative of industry,  
29 one member shall be a representative of labor, one member shall be a representative of  
30 the general public, one member shall be a workers' compensation insurer, and one  
31 member shall be a health care provider. A chair shall be elected by the Committee. The  
32 Committee shall meet at least quarterly to consider improvements in the Workers'  
33 Compensation Act and monitor the effectiveness of existing law. Recommendations for  
34 changes in the law shall be made annually to the General Assembly. Committee  
35 members shall serve without compensation, but shall receive subsistence, per diem, and  
36 travel expenses pursuant to G.S. 138-5 and G.S. 138-6.

37 (b) The advisory committee shall establish minimum standards for the position of  
38 a deputy. The advisory committee shall interview those applicants for the position of  
39 deputy who successfully meets the minimum qualifications. The advisory committee,  
40 after completing the interviews, shall rank the applicants as to their qualifications for the  
41 position. The personal interviews shall be used to determine the applicant's suitability  
42 for the position, especially with regard to the applicant's objectivity.

43 (c) If two or more positions are available, the advisory committee shall forward  
44 to the Commission the names of the most qualified applicants, as determined by the

1 advisory committee, equal to at least one and one-half times but not more than three  
 2 times the number of positions available. If only one position is available, the advisory  
 3 committee shall submit the names of the two most qualified applicants to the  
 4 Commission. The Commission shall appoint a deputy to each available position.

5 **"§ 97-79.2. Evaluation of deputies.**

6 (a) The Advisory Committee for Improvement of the Workers' Compensation  
 7 Act shall evaluate the performance of each deputy at least once every two years. The  
 8 evaluation shall be based upon at least the following considerations:

- 9 (1) Rate of affirmance by the Commission of the deputy's opinions and  
 10 orders.
- 11 (2) Productivity, including disposing of cases within reasonable time  
 12 deadlines.
- 13 (3) Manner in which hearings are conducted.
- 14 (4) Knowledge of rules of evidence as demonstrated by transcripts of  
 15 the hearings.
- 16 (5) Knowledge of the law.
- 17 (6) Evidence of any demonstrable bias against particular defendants,  
 18 claimants, or attorneys.

19 (b) Upon completing an evaluation under this section, the advisory committee  
 20 shall submit a written report, including any supporting documentation, to the  
 21 Commission regarding that evaluation. The evaluation may include recommendations  
 22 with regard to one or more of the following:

- 23 (1) Promotion.
- 24 (2) Suspension.
- 25 (3) Removal.
- 26 (4) Additional training or education.

27 (c) The Commission shall respond in writing to the advisory committee  
 28 regarding the action taken in response to the recommendations of the Committee."

29 Sec. 25. G.S. 97-82 reads as rewritten:

30 **"§ 97üto be submitted to Commission on prescribed forms for approval.**

31 ~~If after seven days after the date of the injury, or at any time in case of death, the~~  
 32 ~~employer and the injured employee or his dependents reach an agreement in regard to~~  
 33 ~~compensation under this Article, a memorandum of the agreement in the form~~  
 34 ~~prescribed by the Industrial Commission, accompanied by a full and complete medical~~  
 35 ~~report, shall be filed with and approved by the Commission; otherwise such agreement~~  
 36 ~~shall be voidable by the employee or his dependents.~~

37 ~~If approved by the Commission, thereupon the memorandum shall for all purposes be~~  
 38 ~~enforceable by the court's decree as hereinafter specified."~~

39 Sec. 26. Chapter 97 of the General Statutes is amended by adding the  
 40 following new section:

41 **"§ 97-82.1. Informal conferences.**

42 (a) Initial Claims for Compensation. –

- 43 (1) For any claim for compensation under G.S. 97-18 where the right  
 44 to compensation or the amount of compensation is in dispute, the

1                   claimant or employer shall file with the Commission a Notice of  
2                   Request for Informal Conference at the same time the employer  
3                   under G.S. 97-18 notifies the Commission that it is contesting the  
4                   claim.

5           (2)       Upon receipt of a Notice of Request for Informal Conference, the  
6                   Commission shall set a date for the informal conference to be  
7                   conducted by the ombudsman no later than 14 days from its receipt  
8                   and shall notify the parties promptly of the date and time of the  
9                   informal conference. At the time an informal conference is  
10                  scheduled, the Commission shall schedule a hearing within 60 days  
11                  of the date of the informal conference.

12       (b)       Termination or Modification of Award. – In any proceeding to terminate or  
13       modify an award of compensation, a party dissatisfied with the Commission's  
14       administrative determination pursuant to G.S. 97-18.1 may request an informal  
15       conference as provided under G.S. 97-18.1 and subsection (c) of this section.

16       (c)       Informal Conference; Proceedings. –

17           (1)       In any informal conference under this section, the ombudsman  
18                   shall consider the statements of both parties, together with any  
19                   medical reports, witnesses' statements, or any other relevant  
20                   evidence. The conference shall not be considered a hearing under  
21                   this Article, and shall not require the representation of either party  
22                   by an attorney. An informal conference may be held by telephone  
23                   conference call. The county commissioners of each of the counties  
24                   shall provide a suitable place for the ombudsman to conduct  
25                   informal conferences in the county seat of such county so long as  
26                   the provision of such a suitable place does not interfere with the  
27                   normal use of county facilities.

28           (2)       After the informal conference, the ombudsman shall reduce any  
29                   recommendations to writing and, if the parties accept such  
30                   recommendations, the recommendations shall constitute a final  
31                   determination of liability for the injury and shall be binding on all  
32                   parties, unless either party makes an application for a hearing under  
33                   G.S. 97-83 within 14 days after the informal conference.

34           (3)       The ombudsman shall not postpone any informal conference if one  
35                   party fails to attend, unless both parties agree to a postponement."

36       Sec. 27. G.S. 97-83 reads as rewritten:

37       "**§ 97-83. ~~In event of disagreement, Commission is to make award after hearing.~~**

38       ~~If the employer and the injured employee or his dependents fail to reach an~~  
39       ~~agreement, in regard to compensation under this Article within 14 days after the~~  
40       ~~employee has knowledge of the injury or death, or if they have reached such an~~  
41       ~~agreement which has been signed and filed with the Commission, and compensation has~~  
42       ~~been paid or is due in accordance therewith, and the parties thereto then disagree as to~~  
43       ~~the continuance of any weekly payment under such agreement, If, following an informal~~  
44       ~~conference under G.S. 97-82.1, a dispute continues to exist, either party may make~~



1 application within 14 days after an informal conference pursuant to G.S. 97-82.1, to the  
2 Industrial Commission for a hearing in regard to the matters at issue, and for a ruling  
3 thereon. The county commissioners of each of the counties shall provide a suitable place  
4 for the Industrial Commission to conduct hearings in the county seat of such county so  
5 long as the provision of such a suitable place does not interfere with the normal use of  
6 county facilities.

7 Immediately after such application has been received the Commission ~~shall set the~~  
8 ~~date of a hearing, which shall be held so soon as practicable,~~ shall notify the parties at issue  
9 of the time and place of ~~such hearing.~~ the hearing that was scheduled in accordance with  
10 G.S. 97-82.1(a). The hearing or hearings shall be held in the city or county where the  
11 injury occurred, unless otherwise authorized by the Industrial Commission."

12 Sec. 28. G.S. 97-84 reads as rewritten:

13 **"§ 97-84. Determination of disputes by ~~Commission or deputy.~~**

14 ~~The Commission or any of its members.~~ The deputy shall hear the parties at issue and  
15 their representatives and witnesses, and shall determine the dispute in a summary  
16 manner. The award, together with a statement of the findings of fact, rulings of law, and  
17 other matters pertinent to the questions at issue shall be filed with the record of the  
18 proceedings, within 180 days of the close of the hearing record unless time is extended  
19 for good cause by the Commission, and a copy of the award shall immediately be sent  
20 to the parties in dispute. The parties may be heard by a deputy, in which event the hearing  
21 shall be conducted in the same way and manner prescribed for hearings which are conducted by  
22 a member of the Industrial Commission, and said deputy shall proceed to a complete  
23 determination of the matters in dispute, file his written opinion within 180 days of the close of  
24 the hearing record unless time is extended for good cause by the Commission, and the deputy  
25 shall cause to be issued an award pursuant to such determination. The decision of the  
26 Commission shall be based on the greater weight of credible evidence as contained in  
27 the record. For purposes of this section, 'greater weight of credible evidence' means  
28 evidence that, when weighted against evidence in opposition, will produce in the mind  
29 of the trier of fact a firm conviction as to each essential element of the claim."

30 Sec. 29. G.S. 97-85 reads as rewritten:

31 **"§ 97-85. Review of award.**

32 If application is made to the Commission within 15 days from the date when notice  
33 of the award shall have been given, the full Commission shall review the award, and, if  
34 good ground be shown therefor, reconsider the evidence, receive further evidence,  
35 rehear the parties or their representatives, and, if proper, amend the award: ~~Provided,~~  
36 ~~however, when application is made for review of an award, and such an award has been heard~~  
37 ~~and determined by a commissioner of the North Carolina Industrial Commission, the~~  
38 ~~commissioner who heard and determined the dispute in the first instance, as specified by G.S.~~  
39 ~~97-84, shall be disqualified from sitting with the full Commission on the review of such award,~~  
40 ~~and the chairman of the Industrial Commission shall designate a deputy commissioner to take~~  
41 ~~such commissioner's place in the review of the particular award. The deputy commissioner so~~  
42 ~~designated, along with the two other commissioners, shall compose the full Commission upon~~  
43 ~~review. Provided further, the chairman of the Industrial Commission shall have the authority to~~  
44 ~~designate a deputy commissioner to take the place of a commissioner on the review of any~~  
45 ~~case, in which event the deputy commissioner so designated shall have the same authority and~~

1 ~~duty as does the commissioner whose place he occupies on such review.~~ award. Unless both  
2 parties request oral argument, the review shall be based on the record."

3 Sec. 30. G.S. 97-87 reads as rewritten:

4 **"§ 97-87. Filing agreements ~~approved by Commission or awards; judgment in~~  
5 ~~accordance therewith; discharge or restoration of lien.~~**

6 Any party in interest may file in the superior court of the county in which the injury  
7 occurred ~~a certified copy of a memorandum of agreement approved by the Commission, or of~~  
8 an order or decision of the Commission, or of an award of the Commission unappealed  
9 from or of an award of the Commission affirmed upon appeal, whereupon said court  
10 shall render judgment in accordance therewith, and notify the parties. Such judgment  
11 shall have the same effect, and all proceedings in relation thereto shall thereafter be the  
12 same, as though said judgment had been rendered in a suit duly heard and determined  
13 by said court: Provided, if the judgment debtor shall file a certificate duly issued by the  
14 Industrial Commission showing compliance with G.S. 97-83 with the clerk of the  
15 superior court in the county or counties where such judgment is docketed, then such  
16 clerk shall make upon the judgment roll an entry showing the filing of such certificate  
17 which shall operate as a discharge of the lien of the said judgment, and no execution  
18 shall be issued thereon; provided, further, that if at any time there is default in the  
19 payment of any installment due under the award set forth in said judgment the court  
20 may, upon application for cause and after 10 days' notice to judgment debtor, order the  
21 lien of such judgment restored, and execution may be immediately issued thereon for  
22 past due installments and for future installments as they may become due."

23 Sec. 31. Chapter 97 of the General Statutes is amended by adding the  
24 following two new sections to read:

25 **"§ 97-88.2. Penalty for misrepresentation.**

26 (a) Any person who willfully makes any false or misleading statement or  
27 representation for the purpose of obtaining or assisting another to obtain any benefit or  
28 payment under this Article shall be guilty of a Class I felony and, upon conviction, shall  
29 be punished by a fine not to exceed ten thousand dollars (\$10,000), imprisonment not to  
30 exceed five years, or both. The court may order restitution.

31 (b) The Commission shall refer all cases of suspected fraud and all violations  
32 related to workers' compensation claims against insurers or self-funded employers to the  
33 Department of Insurance to:

34 (1) Perform investigations and refer possible criminal violations to the  
35 appropriate prosecutorial authorities;

36 (2) Conduct administrative violation proceedings; and

37 (3) Assess and collect penalties and restitution.

38 (c) Penalties collected under subsection (a) of this section shall be paid to the  
39 Department of Insurance for the costs of performing its duties under subsection (b) of  
40 this section.

41 (d) The Commission shall not be liable in a civil action for any action made in  
42 good faith under this section, including the identification and referral of a person for  
43 investigation and prosecution for an alleged administrative violation or criminal offense.  
44 Any person, including, but not limited to, an employer, an insurer, and an employee of

1 an insurer, who in good faith comes forward with information under this section, shall  
 2 not be liable in a civil action.

3 (e) The Commission shall report annually to the General Assembly on the  
 4 number and disposition of investigations involving claimants, employers, attorneys,  
 5 medical providers, and vocational rehabilitation providers.

6 **"§ 97-88.3. Penalty for health care providers.**

7 (a) Any health care provider who willfully or intentionally undertakes the  
 8 following acts is subject to an administrative penalty not to exceed ten thousand dollars  
 9 (\$10,000):

- 10 (1) Submitting charges for health care that was not furnished;  
 11 (2) Administering improper, unreasonable, or medically unnecessary  
 12 treatment or services;  
 13 (3) Failing or refusing to timely file required reports or records;  
 14 (4) Making unnecessary referrals;  
 15 (5) Failing to disclose an interest as required by this Article;  
 16 (6) Violating the Commission's treatment guidelines;  
 17 (7) Violating any rules adopted by the Commission; or  
 18 (8) Failing to comply with any provision of this Article.

19 (b) A health care provider who charges or otherwise holds an employee  
 20 financially responsible for the cost of any services provided for a compensable injury  
 21 under this Article is guilty of a misdemeanor.

22 (c) Any person, including, but not limited to, an employer, an insurer, and an  
 23 employee of an insurer, who in good faith comes forward with information under this  
 24 section, shall not be liable in a civil action.

25 (d) Information relating to possible violations under this section shall be reported  
 26 to the Commission which shall refer the same to the appropriate licensing or regulatory  
 27 board or authority for the health care provider involved."

28 Sec. 32. G.S. 97-89 reads as rewritten:

29 **"§ 97 unnecessary examinations; expenses; fees.**

30 ~~The Commission or any member thereof may, upon the application of either party,~~  
 31 ~~or upon its own motion, appoint a disinterested and duly qualified physician or surgeon~~  
 32 ~~to make any necessary medical examination of the employee, and to testify in respect~~  
 33 ~~thereto. Said physician or surgeon shall be allowed traveling expenses and a reasonable~~  
 34 ~~fee to be fixed by the Commission. The fees and expenses of such physician or surgeon~~  
 35 ~~shall be paid by the employer."~~

36 Sec. 33. G.S. 97-90 reads as rewritten:

37 **"§ 97-90. Legal and medical fees to be approved by Commission; misdemeanor to**  
 38 **receive fees unapproved by Commission, or to solicit employment in**  
 39 **adjusting claims; agreement for fee or compensation.**

40 (a) Fees for attorneys and physicians and charges of hospitals for medical  
 41 compensation under this Article shall be subject to the approval of the Commission; but  
 42 no physician or hospital or other medical facilities shall be entitled to collect fees from  
 43 an employer or insurance carrier until he has made the reports required by the Industrial  
 44 Commission in connection with the case. Unless otherwise provided by the rules,

1 schedules, or orders of the Commission, a request for a specific prior approval to charge  
2 shall be submitted to the Commission for each such fee or charge.

3 (b) Any person (i) who receives any fee, other consideration, or any gratuity on  
4 account of services so rendered, unless such consideration or gratuity is approved by the  
5 Commission or such court, or (ii) who makes it a business to solicit employment for a  
6 lawyer or for himself in respect of any claim or award for compensation, shall be guilty  
7 of a misdemeanor, and upon conviction thereof shall, for each offense, be punished by a  
8 fine of not more than five hundred dollars (\$500.00) or by imprisonment not to exceed  
9 one year, or by both such fine and imprisonment.

10 (c) ~~If an attorney has an agreement for fee or compensation under this Article, he  
11 shall file a copy or memorandum thereof with the hearing officer or Commission prior  
12 to the conclusion of the hearing. If the agreement is not considered unreasonable, the  
13 hearing officer or Commission shall approve it at the time of rendering decision. If the  
14 agreement is found to be unreasonable by the hearing officer or Commission, the  
15 reasons therefor shall be given and what is considered to be reasonable fee allowed. If  
16 within five days after receipt of notice of such fee allowance, the attorney shall file  
17 notice of appeal to the full Commission, the full Commission shall hear the matter and  
18 determine whether or not the attorney's agreement as to a fee or the fee allowed is  
19 unreasonable. If the full Commission is of the opinion that such agreement or fee  
20 allowance is unreasonable and so finds, then the attorney may, by filing written notice  
21 of appeal within 10 days after receipt of such action by the full Commission, appeal to  
22 the resident judge of the superior court or the judge holding the courts of the district of  
23 or in the county in which the cause of action arose or in which the claimant resides; and  
24 upon such appeal said judge shall consider the matter and determine in his discretion the  
25 reasonableness of said agreement or fix the fee and direct an order to the Commission  
26 following his determination therein. The Commission shall, within 20 days after receipt  
27 of notice of appeal from its action concerning said agreement or allowance, transmit its  
28 findings and reasons as to its action concerning such agreement or allowance to the  
29 judge of the superior court designated in the notice of appeal. In all other cases where  
30 there is no agreement for fee or compensation, the attorney or claimant may, by filing  
31 written notice of appeal within five days after receipt of notice of action of the full  
32 Commission with respect to attorneys' fees, appeal to the resident judge of the superior  
33 court or the judge holding the courts of the district of the county in which the cause  
34 arose or in which the claimant resides; and upon such appeal said judge shall consider  
35 the matter of such fee and determine in his discretion the attorneys' fees to be allowed in  
36 the cause. The Commission shall, within 20 days after notice of appeal has been filed,  
37 transmit its findings and reasons as to its action concerning such fee or compensation to  
38 the judge of the superior court designated in the notice of appeal; provided that the  
39 Commission shall in no event have any jurisdiction over any attorneys' fees in any third-  
40 party action.~~

41 The Industrial Commission in determining an allowance of attorney fees shall  
42 examine the record to determine the services rendered. Neither the employer nor its  
43 carrier shall be liable for any part of the fee to be paid to the claimant's attorney. The  
44 fees shall be allowed only on the amount of compensation disputed. The factors to be

1 considered by the Industrial Commission in determining an allowance of attorney fees  
2 shall include, but not necessarily be limited to: The nature, scope, and quality of the  
3 attorneys' services; the level of skill and competence required of the attorney in  
4 rendering the services; the results achieved; the experience and skill level of the  
5 attorney; and the contingent nature of the case. In the order making the allowance of  
6 attorney fees, the Industrial Commission shall set forth findings sufficient to support the  
7 amount approved.

8 The Commission may reduce the attorneys' fee to an amount commensurate with the  
9 services performed, or may deny or reduce an attorney's fee upon proof of solicitation of  
10 employment.

11 (c1) No attorneys' fee in any case involving benefits under this Article shall be  
12 paid until the fee is approved by the Industrial Commission. Any contract for the  
13 payment of attorneys' fees other than as provided in this section is void. The motion for  
14 approval of an attorney fee allowance shall be submitted within 30 days following a  
15 final determination of the last appealable order of the Industrial Commission.

16 (d) Provided, that nothing contained in this section shall prevent the collection of  
17 such reasonable fees of physicians and charges for hospitalization as may be recovered  
18 in an action, or embraced in settlement of a claim, against a third-party tort-feasor as  
19 described in G.S. 97-10.

20 (e) The fees provided for in subsection (a) of this section shall be approved by  
21 the Commission no later than June 1 of the year in which the Commission exercises its  
22 authority under subsection (a) of this section, but shall not become effective until July 1  
23 following such approval.

24 (f) For purposes of this section, 'benefits secured' means benefits obtained as a  
25 result of the claimant's attorneys' legal services rendered in connection with the claim  
26 for benefits, to the extent that the amount of benefits secured is in excess of any offer of  
27 settlement filed pursuant to G.S. 97-17, if that offer of settlement was filed prior to the  
28 attorneys' involvement in the claim for benefits."

29 Sec. 34. G.S. 97-91 reads as rewritten:

30 **"§ 97-91. Commission to determine all questions.**

31 All questions arising under this Article ~~if not settled by agreements of the parties~~  
32 ~~interested therein, with the approval of the Commission,~~ shall be determined by the  
33 Commission, except as otherwise herein provided."

34 Sec. 35. G.S. 97-98 reads as rewritten:

35 **"§ 97-98. Policy must contain agreement promptly to pay benefits; continuance of**  
36 **obligation of insurer in event of default.**

37 No policy of insurance against liability arising under this Article shall be issued  
38 unless it contains the agreement of the insurer that it will promptly pay to the person  
39 entitled to same all benefits conferred by this Article, and all installments of the  
40 compensation that may be ~~awarded or agreed upon,~~ awarded, and that the obligation shall  
41 not be affected by any default of the insured after the injury or by any default in giving  
42 notice required by ~~such the~~ policy or otherwise. ~~Such~~ The agreement shall be construed  
43 to be a direct promise by the insurer to the person entitled to compensation enforceable  
44 in ~~his name-~~ the name of the person."

1           Sec. 36. G.S. 58-36-1(5) reads as rewritten:

2           "(5) It is the duty of every insurer that writes workers' compensation  
3 insurance in this State and is a member of the Bureau, as defined in  
4 this section and G.S. 58-36-5 to insure and accept any workers'  
5 compensation insurance risk that has been certified to be 'difficult  
6 to place' by any fire and casualty insurance agent who is licensed in  
7 this State. When any such risk is called to the attention of the  
8 Bureau by receipt of an application with an estimated or deposit  
9 premium payment and it appears that the risk is in good faith  
10 entitled to such coverage, the Bureau will bind coverage for 30  
11 days and will designate a member who must issue a standard  
12 workers' compensation policy of insurance that contains the usual  
13 and customary provisions found in those policies. Coverage will  
14 be bound at 12:01 A.M. on the first day following the postmark  
15 time and date on the envelope in which the application is mailed  
16 including the estimated annual or deposit premium, or the  
17 expiration of existing coverage, whichever is later. If there should  
18 be no postmark, coverage will be effective 12:01 A.M. on the date  
19 of receipt by the Bureau unless a later date is requested. Those  
20 applications hand delivered to the Bureau will be effective as of  
21 12:01 A.M. of the date following receipt by the Bureau unless a  
22 later date is requested. The designated carrier may request of the  
23 Bureau certification of the State Department of Labor that the  
24 insured is complying with the laws, rules, and regulations of that  
25 Department. The certification must be finished within 30 days by  
26 the State Department of Labor unless extension of time is granted  
27 by agreement between the Bureau and the State Department of  
28 Labor. The Bureau will make and adopt such rules as are  
29 necessary to carry this section into effect, subject to final approval  
30 of the Commissioner. As a prerequisite to the transaction of  
31 workers' compensation insurance in this State, every member of the  
32 Bureau that writes such insurance must file with the Bureau written  
33 authority permitting the Bureau to act in its behalf, as provided in  
34 this section, and an agreement to accept risks that are assigned to  
35 the member by the Bureau, as provided in this section.

36           Failure or refusal by any assigned employer risk to make full disclosure to the  
37 Bureau, servicing carrier, or insurer writing a policy of information regarding the  
38 employer's true ownership, change of ownership, operations, or payroll; or any other  
39 failure to disclose fully any records pertaining to workers' compensation insurance shall  
40 be sufficient grounds for the Bureau to authorize the termination of the policy of that  
41 employer."

42           Sec. 37. The North Carolina Rate Bureau and its member companies are  
43 directed to cooperate fully with the Commissioner of Insurance in conducting a  
44 thorough and complete study of the methods and costs of assigning "difficult to place"

1 workers' compensation insurance risks under G.S. 58-36-1(5). Such study shall be  
2 completed and the Commissioner shall report on the same to the Joint Legislative  
3 Commission on Governmental Operations by March 1, 1994, for consideration of any  
4 needed legislation in the 1994 Regular Session of the 1993 General Assembly. The  
5 report of the Commissioner, and the study preceding the same, shall examine such  
6 things as, but not be limited to, the criteria used for assigning a workers' compensation  
7 risk, the qualifications of and the compensation paid to insurers which service risks  
8 assigned under that statute, safety and loss prevention services provided to risks so  
9 assigned, the acquisition expenses paid by the Rate Bureau and its member insurers to  
10 insurance agents placing risks through such assignments, and the equities of both  
11 member insurers and self-funded employers sharing in any possible losses sustained by  
12 that assigned risk plan. The study and report of the Commissioner may, in his  
13 discretion, also address the procedures and methodology for insurance rate making  
14 under Article 36 of Chapter 58 of the North Carolina General Statutes.

15           Sec. 38. This act becomes effective January 1, 1994.