

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H

3

HOUSE BILL 1045
Committee Substitute Favorable 4/18/01
Third Edition Engrossed 4/23/01

Short Title: Restore Workers' Comp. Stability.

(Public)

Sponsors:

Referred to:

April 10, 2001

A BILL TO BE ENTITLED

AN ACT TO RESTORE STABILITY UNDER THE WORKERS' COMPENSATION ACT BY OVERTURNING THE CASE DECIDED BY THE 2000 COURT OF APPEALS OF NORTH CAROLINA ENTITLED HANSEN V. CRYSTAL FORD-MERCURY, INC., BY PROVIDING THAT INSURERS THAT PROVIDE HEALTH BENEFIT PLANS, DISABILITY INCOME PLANS, OR ANY OTHER HEALTH INSURANCE ARE NOT REAL PARTIES IN INTEREST IN ANY PROCEEDING OR SETTLEMENT UNDER THE WORKERS' COMPENSATION ACT AND PROHIBITING INSURERS THAT PROVIDE HEALTH BENEFIT PLANS FROM OFFSETTING AGAINST PROVIDER REIMBURSEMENT ANY CHARGE FOR MEDICAL SERVICES UNLESS THE SPECIFIC MEDICAL CHARGES WERE FOUND TO BE COMPENSABLE ACCORDING TO A FINAL ADJUDICATION UNDER THE WORKERS' COMPENSATION ACT OR A SETTLEMENT AGREEMENT UNDER THE ACT APPROVED BY THE NORTH CAROLINA INDUSTRIAL COMMISSION.

The General Assembly of North Carolina enacts:

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

"§ 97-90.1. Insurers that provide employee's health benefit plans, disability income plans, or any other health insurance plans.

An insurer that covers an employee under a health benefit plan as defined in G.S. 58-3-167, a disability income plan, or any other health insurance plan is not a real party in interest and shall not intervene or participate in any proceeding or settlement agreement under this Article to determine whether a claim is compensable under this Article or to seek reimbursement for medical payments under its plan. The insurer that covers an employee under a health benefit plan as defined in G.S. 58-3-167 or any other health insurance plan may seek reimbursement from the employee, employer, or carrier that is liable or responsible for the specific medical charge according to a final

1 adjudication of the claim under this Article or an order of the Commission approving a
2 settlement agreement entered into under this Article for health plan payments for that
3 specific medical charge."

4 **SECTION 2.** G.S. 97-17 reads as rewritten:

5 "**§ 97-17. Settlements allowed in accordance with Article.**

6 (a) Nothing herein contained shall be construed so as to This Article does not
7 prevent settlements made by and between the employee and employer so long as the
8 amount of compensation and the time and manner of payment are in accordance with
9 the provisions of this Article. A copy of ~~such a~~ settlement agreement shall be filed by
10 the employer with and approved by the Industrial Commission: Provided, however, that
11 ~~no~~ Commission. No party to any agreement for compensation approved by the Industrial
12 Commission shall ~~thereafter be heard to deny the truth of the matters therein set~~
13 ~~forth,~~ contained in the settlement agreement, unless it shall be made to appear the party is
14 able to show to the satisfaction of the Commission that there has been error due to
15 fraud, misrepresentation, undue influence or mutual mistake, in which event the
16 Industrial Commission may set aside ~~such the~~ agreement. Except as provided in this
17 subsection, the decision of the Commission to approve a settlement agreement is final
18 and is not subject to review or collateral attack.

19 (b) The Commission shall not approve a settlement agreement under this section,
20 unless all of the following conditions are satisfied:

- 21 (1) The settlement agreement is deemed by the Commission to be fair,
22 just, and in the best interest of all of the parties.
- 23 (2) The settlement agreement contains a list of all of the known medical
24 expenses of the employee related to the injury to the date of the
25 settlement agreement, including medical expenses that the employer or
26 carrier disputes, and a list of medical expenses, if any, that will be paid
27 by the employer under the settlement agreement.
- 28 (3) The settlement agreement contains a finding that the positions of all of
29 the parties to the agreement are reasonable as to the payment of
30 medical expenses.

31 (c) In determining whether the positions of all of the parties to the agreement are
32 reasonable as to the payment of medical expenses under subdivision (3) of subsection
33 (b) of this section, the Commission shall consider all of the following:

- 34 (1) Whether the employer admitted or reasonably denied the employee's
35 claim for compensation.
- 36 (2) The amount of all of the known medical expenses of the employee
37 related to the injury to the date of the settlement agreement, including
38 medical expenses that the employer or carrier disputes.
- 39 (3) The need for finality in the litigation.

40 (d) Nothing in this section shall be construed to limit the application of G.S. 44-
41 49 and G.S. 44-50 to funds in compensation for settlement under this section."

42 **SECTION 3.** G.S. 97-92(b) reads as rewritten:

1 "(b) The records of the ~~Commission~~,Commission that are not awards under G.S.
2 97-84 and that are not reviews of awards under G.S. 97-85, insofar as they refer to
3 accidents, injuries, and settlements are not public records under G.S. 132-1 and shall not
4 be open to the public, but only to the parties satisfying the Commission of their interest
5 in such records and the right to inspect them, and to State and federal agencies pursuant
6 to G.S. 97-81."

7 **SECTION 4.** G.S. 58-51-5(a) is amended by adding a new subdivision to
8 read:

9 "(8) It contains no provision excluding from coverage claims that are
10 subject to the Workers' Compensation Act, Article 1 of Chapter 97 of
11 the General Statutes, unless the exclusion extends to only specific
12 medical charges for which the employee, employer, or carrier is liable
13 or responsible according to a final adjudication of the claim under that
14 Article or an order of the North Carolina Industrial Commission
15 approving a settlement agreement entered into under that Article."

16 **SECTION 5.** Article 50 of Chapter 58 of the General Statutes is amended by
17 adding a new section to read:

18 **"§ 58-50-57. Offsets against provider reimbursement for workers' compensation**
19 **payments forbidden.**

20 (a) An insurer that provides a health benefit plan as defined in G.S. 58-3-167
21 shall not offset or reverse a health plan payment against a provider reimbursement for
22 other medical charges unless the health plan payment was for a specific medical charge
23 for which the employee, employer, or carrier is liable or responsible according to a final
24 adjudication of the claim under the Workers' Compensation Act, Article 1 of Chapter 97
25 of the General Statutes or an order of the North Carolina Industrial Commission
26 approving a settlement agreement entered into under that Article.

27 (b) No contract between an insurer that provides a health benefit plan as defined
28 in G.S. 58-3-167 and a medical provider shall contain a provision that authorizes the
29 insurer to offset or reverse a health plan payment against a provider reimbursement for
30 other medical charges unless the health plan payment was for a specific medical charge
31 for which the employee, employer, or carrier is liable or responsible according to a final
32 adjudication of the claim under the Workers' Compensation Act, Article 1 of Chapter 97
33 of the General Statutes or an order of the North Carolina Industrial Commission
34 approving a settlement agreement entered into under that Article."

35 **SECTION 6.** The North Carolina Industrial Commission shall adopt any
36 rules needed to implement this act.

37 **SECTION 7.** This act is effective when it becomes law.