

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 544*

Short Title: Protect and Put NC Back to Work. (Public)

Sponsors: Senators Brown, Apodaca, Davis; Bingham, Brock, Clary, East, Hise, Hunt, Preston, Rabon, Rucho, Stevens, and Tucker.

Referred to: Insurance.

April 12, 2011

A BILL TO BE ENTITLED

1 AN ACT PROTECTING AND PUTTING NORTH CAROLINA BACK TO WORK BY
2 REFORMING THE WORKERS' COMPENSATION ACT TO (1) DEFINE "SUITABLE
3 EMPLOYMENT" PERTAINING TO AN EMPLOYEE'S RETURN TO WORK WITHIN
4 RESTRICTIONS OR AFTER REACHING MAXIMUM IMPROVEMENT; (2) MAKE
5 WILLFUL MISREPRESENTATIONS GROUNDS FOR DISQUALIFICATION FROM
6 RECEIVING BENEFITS; (3) PROVIDE THAT PARTIES MAY REACH A SEPARATE
7 CONTEMPORANEOUS AGREEMENT TO RESOLVE ISSUES NOT COVERED BY
8 THE ACT; (4) CLARIFY THE RIGHTS AND RESPONSIBILITIES OF EMPLOYERS
9 AND EMPLOYEES REGARDING MEDICAL EXAMINATIONS, TREATMENT, AND
10 ACCESS TO MEDICAL INFORMATION; (5) CAP THE DURATION OF
11 COMPENSATION FOR TEMPORARY TOTAL DISABILITY; (6) EXTEND FROM
12 THREE HUNDRED TO FIVE HUNDRED THE NUMBER OF WEEKS AN INJURED
13 EMPLOYEE IS ELIGIBLE TO RECEIVE COMPENSATION FOR PARTIAL
14 INCAPACITY; (7) INCREASE THE DEATH BENEFIT AND BURIAL EXPENSE
15 ALLOWANCE; (8) REDUCE THE INDUSTRIAL COMMISSION FROM SEVEN TO
16 FIVE MEMBERS SUBJECT TO LEGISLATIVE CONFIRMATION; (9) PROVIDE
17 THAT COMMISSIONERS AND DEPUTY COMMISSIONERS ARE SUBJECT TO THE
18 CODE OF JUDICIAL STANDARDS; AND (10) REPEAL THE COMMISSION'S FULL
19 EXEMPTION FROM THE ADMINISTRATIVE PROCEDURE ACT, THEREBY
20 SUBJECTING THE COMMISSION TO RULE MAKING PURSUANT TO ARTICLE 2A
21 OF CHAPTER 150B OF THE GENERAL STATUTES AND REQUIRING THE
22 COMMISSION TO READOPT RULES PURSUANT TO THAT ARTICLE.

23 The General Assembly of North Carolina enacts:

24 **SECTION 1.** This act shall be known as the "Protecting and Putting North
25 Carolina Back to Work Act."

26 **SECTION 2.** G.S. 97-2 is amended by adding a new subsection to read:

27 **"§ 97-2. Definitions.**

28 When used in this Article, unless the context otherwise ~~requires~~—requires:

29 ...

30
31 (22) Suitable employment. – The term "suitable employment" means any
32 employment available that (i) prior to reaching maximum medical
33 improvement is within the employee's work restrictions including
34 rehabilitative employment approved by the employee's treating health care
35 provider or (ii) after reaching maximum medical improvement is
36 employment which the employee is capable of performing considering the



1 employee's education, physical limitations due to the injury, vocational
2 skills, and experience."

3 **SECTION 3.** Article 1 of Chapter 97 of the General Statutes is amended by adding
4 a new section to read:

5 **"§ 97-12.1. Willful misrepresentation in applying for employment.**

6 No compensation shall be allowed under this Article for injury by accident or occupational
7 disease if the employer proves that (i) at the time of hire or in the course of entering into
8 employment, (ii) at the time of receiving notice of the removal of conditions from a conditional
9 offer of employment, or (iii) during the course of a post-offer medical examination:

10 (1) The employee knowingly and willfully made a false representation as to the
11 employee's physical condition;

12 (2) The employer relied upon one or more false representations by the
13 employee, and the reliance was a substantial factor in the employer's
14 decision to hire the employee; and

15 (3) There was a causal connection between false representation by the employee
16 and the injury or occupational disease."

17 **SECTION 4.** G.S. 97-17 is amended by adding a new subsection to read:

18 "(e) Nothing in this section prevents the parties from reaching a separate
19 contemporaneous agreement resolving issues not covered by this Article."

20 **SECTION 5.** G.S. 97-25 reads as rewritten:

21 **"§ 97-25. Medical treatment and supplies.**

22 ~~Medical compensation shall be provided by the employer. In case of a controversy arising~~
23 ~~between the employer and employee relative to the continuance of medical, surgical, hospital,~~
24 ~~or other treatment, the Industrial Commission may order such further treatments as may in the~~
25 ~~discretion of the Commission be necessary.~~

26 The Industrial Commission may at any time upon the request of an employee order a
27 change of treatment and designate other treatment suggested by the injured employee subject to
28 the approval of the Commission, and in or health care provider and in such a case the expense
29 thereof shall be borne by the employer upon the same terms and conditions as hereinbefore
30 provided in this section for medical and surgical treatment and attendance. The Commission
31 must find that any change in treatment or health care provider is based upon clear and
32 convincing medical evidence. The Commission shall disregard any opinions of an unauthorized
33 health care provider who evaluated, diagnosed, or treated the employee before the employee's
34 request to change treatment or health care provider was filed with the Commission.

35 The refusal of the employee to accept any medical, hospital, surgical or other treatment or
36 rehabilitative procedure when ordered by the Industrial Commission shall bar ~~said~~ the
37 employee from further compensation until such the refusal ceases, and no compensation shall at
38 any time be paid for the period of suspension unless in the opinion of the Industrial
39 Commission the circumstances justified the refusal, in which case, the Industrial Commission
40 may order a change in the medical or hospital service.

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

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

48 **SECTION 6.** G.S. 97-25.6 reads as rewritten:

49 **"§ 97-25.6. Reasonable access to medical information.**

50 (a) It is the policy of this State that the parties have reasonable access to all medical
51 records, reports, and information that are pertinent to and necessary for the fair and swift

1 resolution of workers' compensation claims. Therefore, an employer is entitled, without the
2 express authorization of the employee, to obtain medical records of the employee and
3 communicate with an employee's health care providers if the requested medical records,
4 reports, and information are:

5 (1) Restricted to the particular evaluation, diagnosis, or treatment of the injury
6 or disease for which compensation, including medical compensation, is
7 sought;

8 (2) Reasonably related to the injury or diseases for which the employee claims
9 compensation; or

10 (3) Related to an assessment of the employee's ability to return to work or
11 perform suitable employment as a result of the particular injury or disease.

12 (b) A party may communicate with the employee's health care providers by written and
13 oral communication if the requesting party notifies the opposing party of the health care
14 provider's response within 15 calendar days. The employer shall make every reasonable effort
15 to limit unnecessary communication with the health care provider.

16 (c) Upon motion by an employee or the health care provider from whom medical
17 records, reports, or information are sought or upon its own motion, for good cause shown, the
18 Commission may make any order which justice requires to protect an employee, health care
19 provider, or other person from unreasonable annoyance, embarrassment, oppression, or undue
20 burden or expense.

21 (d) The provisions of this section shall not apply to communications concerning an
22 independent medical evaluation for the purpose of expert testimony.

23 (e) The Commission shall annually establish an appropriate medical fee to compensate
24 health care providers for time spent communicating with the employer or representatives of the
25 employee.

26 (f) No cause of action shall arise and no health care provider shall incur any liability as
27 a result of the release of medical records, reports, or information pursuant to this Article.

28 (g) Any medical records or reports that reflect evaluation, diagnosis, or treatment of the
29 particular injury or disease for which compensation is sought or is reasonably related to the
30 injury or disease for which the employee seeks compensation shall be furnished by the
31 employee to the employer when requested in writing by the employer.

32 (h) For purposes of this section, the term "employer" means the employer, the
33 employer's attorney, and the employer's insurance carrier or third-party administrator, and the
34 term "employee" means the employee, legally appointed guardian, or any attorney representing
35 the employee.

36 (i) Notwithstanding any provision of G.S. 8-53 to the contrary, and because discovery
37 is limited under G.S. 97-80, records obtained and communications conducted pursuant to this
38 section supersede the prohibition against ex parte communications, and privacy of medical
39 records in the custody of health care providers in matters or proceedings under this Article.

40 ~~Notwithstanding the provisions of G.S. 8-53, any law relating to the privacy of medical~~
41 ~~records or information, and the prohibition against ex parte communications at common law, an~~
42 ~~employer or insurer paying medical compensation to a provider rendering treatment under this~~
43 ~~Article may obtain records of the treatment without the express authorization of the employee.~~
44 ~~In addition, with written notice to the employee, the employer or insurer may obtain directly~~
45 ~~from a medical provider medical records of evaluation or treatment restricted to a current injury~~
46 ~~or current condition for which an employee is claiming compensation from that employer under~~
47 ~~this Article.~~

48 ~~Any medical records or reports, restricted to conditions related to the injury or illness for~~
49 ~~which the employee is seeking compensation, in the possession of the employee shall be~~
50 ~~furnished by the employee to the employer when requested in writing by the employer.~~

1 An employer or insurer paying compensation for an admitted claim or paying without
2 prejudice pursuant to G.S. 97-18(d) may communicate with an employee's medical provider in
3 writing, limited to specific questions promulgated by the Commission, to determine, among
4 other information, the diagnosis for the employee's condition, the reasonable and necessary
5 treatment, the anticipated time that the employee will be out of work, the relationship, if any, of
6 the employee's condition to the employment, the restrictions from the condition, the kind of
7 work for which the employee may be eligible, the anticipated time the employee will be
8 restricted, and the permanent impairment, if any, as a result of the condition. When these
9 questions are used, a copy of the written communication shall be provided to the employee at
10 the same time and by the same means as the communication is provided to the provider.

11 Other forms of communication with a medical provider may be authorized by (i) a valid
12 written authorization voluntarily given and signed by the employee, (ii) by agreement of the
13 parties, or (iii) by order of the Commission issued upon a showing that the information sought
14 is necessary for the administration of the employee's claim and is not otherwise reasonably
15 obtainable under this section or through other provisions for discovery authorized by the
16 Commission's rules. In adopting rules or authorizing employer communications with medical
17 providers, the Commission shall protect the employee's right to a confidential physician-patient
18 relationship while facilitating the release of information necessary to the administration of the
19 employee's claim.

20 Upon motion by an employee or provider from whom medical records or reports are sought
21 or upon its own motion, for good cause shown, the Commission may make any order which
22 justice requires to protect an employee or other person from unreasonable annoyance,
23 embarrassment, oppression, or undue burden or expense."

24 **SECTION 7.** G.S. 97-27 reads as rewritten:

25 **"§ 97-27. Medical examination; facts not privileged; refusal to be examined suspends**
26 **compensation; other medical opinions; autopsy.**

27 (a) After an injury, and so long as ~~he~~the employee claims compensation, the employee,
28 if so requested by his or her employer or ordered by the Industrial Commission, shall, subject to
29 the provisions of subsection (b), submit ~~himself to~~ an independent medical examination, at
30 reasonable times and places, by a ~~duly qualified physician or surgeon~~ physician who is
31 licensed and practicing in North Carolina and is designated and paid by the employer or the
32 Industrial Commission, even if the employee's claim has been denied pursuant to
33 G.S. 97-18(c).

34 (b) The injured employee shall have ~~has~~ the right to have present at ~~such the~~
35 independent medical examination any ~~duly qualified physician or surgeon~~ provided and paid by
36 ~~him the employee~~.

37 (c) Notwithstanding the provisions of G.S. 8-53, no fact communicated to or otherwise
38 learned by any physician ~~or surgeon or hospital or hospital employee~~ who may have attended
39 or examined the employee, or who may have been present at any examination, shall be
40 privileged in any workers' compensation case with respect to a claim pending for hearing
41 before the Industrial Commission.

42 (d) If the employee refuses to submit ~~himself to~~ or in any way obstructs ~~such the~~
43 examination requested by and provided for by the employer, ~~his the employee's~~ right to
44 compensation and ~~his~~ right to take or prosecute any proceedings under this Article shall be
45 suspended immediately until ~~such the~~ refusal or objection ceases, and no compensation shall at
46 any time be payable for the period of obstruction, unless in the opinion of the Industrial
47 Commission the circumstances justify the refusal or obstruction. ~~The employer, or the~~
48 Industrial Commission, shall have the right in any case of death to require an autopsy at the
49 expense of the party requesting the same.

50 (b) ~~In those cases arising under this Article in which there is a question as to the~~
51 ~~percentage of permanent disability suffered by an employee, if any employee, required to~~

1 submit to a physical examination under the provisions of subsection (a) is dissatisfied with such
2 examination or the report thereof, he shall be entitled to have another examination by a duly
3 qualified physician or surgeon licensed and practicing in North Carolina or by a duly qualified
4 physician or surgeon licensed to practice in South Carolina, Georgia, Virginia and Tennessee
5 provided said nonresident physician or surgeon shall have been approved by the North Carolina
6 Industrial Commission and his name placed on the Commission's list of approved nonresident
7 physicians and surgeons, designated by him and paid by the employer or the Industrial
8 Commission in the same manner as physicians designated by the employer or the Industrial
9 Commission are paid. Provided, however, that all travel expenses incurred in obtaining said
10 examination shall be paid by said employee. The employer shall have the right to have present
11 at such examination a duly qualified physician or surgeon provided and paid by him. No fact
12 communicated to or otherwise learned by any physician or surgeon who may have attended or
13 examined the employee, or who may have been present at any examination, shall be privileged,
14 either in hearings provided for by this Article or any action at law.

15 (e) In any case arising under this Article in which the employee is dissatisfied with the
16 percentage of permanent disability as provided by G.S. 97-31 and determined by the authorized
17 health care provider, the employee is entitled to another opinion solely on the issue of the
18 percentage of permanent disability provided by a duly qualified physician of the employee's
19 choosing who is licensed and practicing in North Carolina and designated by the employee.
20 That physician is paid by the employer in the same manner as health care providers designated
21 by the employer or the Industrial Commission are paid. The Industrial Commission shall
22 disregard any opinions of the duly qualified physician chosen by the employee other than the
23 physician's opinion on the percentage of permanent disability as described in G.S. 97-31. No
24 fact communicated to or otherwise learned by any physician who may have attended or
25 examined the employee, or who may have been present at any examination, shall be privileged,
26 either in hearings provided for by this Article or any action at law.

27 (f) The employer, or the Industrial Commission, has the right in any case of death to
28 require an autopsy at its expense."

29 **SECTION 8.** G.S. 97-29 reads as rewritten:

30 "**§ 97-29. ~~Compensation rates~~ Rates and duration of compensation for total incapacity.**

31 (a) ~~Except as hereinafter otherwise provided, where~~ Where the incapacity for work
32 resulting from the injury or occupational disease is total, the employer shall pay or cause to be
33 paid, as hereinafter provided, to the injured employee during such total disability a weekly
34 compensation equal to sixty-six and two-thirds percent (662/3%) of his average weekly wages,
35 but not more than the amount established annually to be effective October 1 as provided herein,
36 nor less than thirty dollars (\$30.00) per week.

37 (b) In cases of ~~temporary total and permanent~~ disability, compensation, including
38 medical compensation, shall be paid for by the employer ~~during the lifetime of the injured~~
39 ~~employee. If death results from the injury then the employer shall pay compensation in~~
40 ~~accordance with the provisions of G.S. 97-38, but in no case shall the period covered by the~~
41 ~~compensation be greater than 500 weeks from the date of the injury, except as provided by~~
42 ~~subsection (c) of this section. Where an employee can show both a disability pursuant to this~~
43 ~~section or G.S. 97-30 and a specific physical impairment pursuant to G.S. 97-31, regardless of~~
44 ~~whether the employee sustained multiple scheduled injuries as a result of the accident, the~~
45 ~~employee may not collect benefits pursuant to both this section or G.S. 97-30 and G.S. 97-31~~
46 ~~after reaching maximum medical improvement, but rather is entitled to select the statutory~~
47 ~~compensation which provides the more favorable remedy.~~

48 (c) In cases of total and permanent disability compensation, compensation including
49 medical compensation, shall be paid for by the employer during the lifetime of the injured
50 employee. If death results from the injury or occupational disease, then the employer shall pay
51 compensation in accordance with the provisions of G.S. 97-37. An injured employee is

1 presumed to be totally and permanently disabled and qualified for lifetime compensation only
2 if the injured employee has an injury consisting of one or more of the following:

- 3 (1) The loss of both hands, both arms, both feet, both legs, or both eyes as
4 provided by G.S. 97-31(17).
5 (2) Spinal injury involving severe paralysis of both arms, both legs, or the trunk.
6 (3) Severe brain or closed-head injury as evidenced by severe and permanent:
7 a. Sensory or motor disturbances;
8 b. Communication disturbances;
9 c. Complex integrated disturbances of cerebral function; or
10 d. Neurological disorders.
11 (4) Second-degree or third-degree burns of thirty-three percent (33%) or more of
12 the total body surface unless the employer shows that the employee is
13 capable of returning to suitable employment as defined in G.S. 97-2(22).

14 (d) The weekly compensation payment for members of the North Carolina National
15 Guard and the North Carolina State Defense Militia shall be the maximum amount established
16 annually in accordance with the last paragraph of this section per week as fixed herein. The
17 weekly compensation payment for deputy sheriffs, or those acting in the capacity of deputy
18 sheriffs, who serve upon a fee basis, shall be thirty dollars (\$30.00) a week as fixed herein.

19 (e) An officer or member of the State Highway Patrol shall not be awarded any weekly
20 compensation under the provisions of this section for the first two years of any incapacity
21 resulting from an injury by accident arising out of and in the course of the performance by him
22 of his official duties if, during such incapacity, he continues to be an officer or member of the
23 State Highway Patrol, but he shall be awarded any other benefits to which he may be entitled
24 under the provisions of this Article.

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

33 **SECTION 9.** G.S. 97-30 reads as rewritten:

34 "**§ 97-30. Partial incapacity.**

35 Except as otherwise provided in G.S. 97-31, where the incapacity for work resulting from
36 the injury is partial, the employer shall pay, or cause to be paid, as hereinafter provided, to the
37 injured employee during such disability, a weekly compensation equal to sixty-six and
38 two-thirds percent (66 2/3%) of the difference between his average weekly wages before the
39 injury and the average weekly wages which he is able to earn thereafter, but not more than the
40 amount established annually to be effective October 1 as provided in G.S. 97-29 a week, and in
41 no case shall the period covered by such compensation be greater than ~~300~~500 weeks from the
42 date of injury. In case the partial disability begins after a period of total disability, the latter
43 period shall be deducted from the maximum period herein allowed for partial disability. An
44 officer or member of the State Highway Patrol shall not be awarded any weekly compensation
45 under the provisions of this section for the first two years of any incapacity resulting from an
46 injury by accident arising out of and in the course of the performance by him of his official
47 duties if, during such incapacity, he continues to be an officer or member of the State Highway
48 Patrol, but he shall be awarded any other benefits to which he may be entitled under the
49 provisions of this Article."

50 **SECTION 10.** G.S. 97-32 reads as rewritten:

1 **"§ 97-32. Refusal of injured employee to accept suitable employment as suspending**
2 **compensation.**

3 If an injured employee refuses ~~employment procured for him suitable to his capacity he~~
4 suitable employment as defined by G.S. 97-2(22), the employee shall not be entitled to any
5 compensation at any time during the continuance of such refusal, unless in the opinion of the
6 Industrial Commission such refusal was justified. ~~Nothing in this Article prohibits an employer~~
7 from contacting the employee directly about returning to suitable employment."

8 **SECTION 11.** G.S. 97-38 reads as rewritten:

9 **"§ 97-38. Where death results proximately from compensable injury or occupational**
10 **disease; dependents; burial expenses; compensation to aliens; election by**
11 **partial dependents.**

12 If death results proximately from a compensable injury or occupational disease and within
13 six years thereafter, or within two years of the final determination of disability, whichever is
14 later, the employer shall pay or cause to be paid, subject to the provisions of other sections of
15 this Article, weekly payments of compensation equal to sixty-six and two-thirds percent (66
16 2/3%) of the average weekly wages of the deceased employee at the time of the accident, but
17 not more than the amount established annually to be effective October 1 as provided in
18 G.S. 97-29, nor less than thirty dollars (\$30.00), per week, and burial expenses not exceeding
19 ~~three thousand five hundred dollars (\$3,500), ten thousand dollars (\$10,000),~~ to the person or
20 persons entitled thereto as follows:

- 21 ...
- 22 (3) If there is no person wholly dependent, and the person or all persons
23 partially dependent is or are within the classes of persons defined as "next of
24 kin" in G.S. 97-40, whether or not such persons or such classes of persons
25 are of kin to the deceased employee in equal degree, and all so elect, he or
26 they may take, share and share alike, the commuted value of the amount
27 provided for whole dependents in (1) above instead of the proportional
28 payment provided for partial dependents in (2) above; provided, that the
29 election herein provided may be exercised on behalf of any infant partial
30 dependent by a duly qualified guardian; provided, further, that the Industrial
31 Commission may, in its discretion, permit a parent or person standing in loco
32 parentis to such infant to exercise such option in its behalf, the award to be
33 payable only to a duly qualified guardian except as in this Article otherwise
34 provided; and provided, further, that if such election is exercised by or on
35 behalf of more than one person, then they shall take the commuted amount
36 in equal shares.

37 When weekly payments have been made to an injured employee before
38 his death, the compensation to dependents shall begin from the date of the
39 last of such payments. Compensation payments due on account of death
40 shall be paid for a period of ~~400~~500 weeks from the date of the death of the
41 employee; provided, however, after said ~~400-week~~ 500-week period in case
42 of a widow or widower who is unable to support herself or himself because
43 of physical or mental disability as of the date of death of the employee,
44 compensation payments shall continue during her or his lifetime or until
45 remarriage and compensation payments due a dependent child shall be
46 continued until such child reaches the age of 18.

47 Compensation payable under this Article to aliens not residents (or about
48 to become nonresidents) of the United States or Canada, shall be the same in
49 amounts as provided for residents, except that dependents in any foreign
50 country except Canada shall be limited to surviving spouse and child or

1 children, or if there be no surviving spouse or child or children, to the
2 surviving father or mother."

3 **SECTION 12.** G.S. 97-77(a) reads as rewritten:

4 "(a) There is hereby created a commission to be known as the North Carolina Industrial
5 Commission, consisting of ~~seven~~five commissioners who shall devote their entire time to the
6 duties of the Commission. The Governor shall appoint the members of the ~~Commission, one for~~
7 ~~a term of two years, one for a term of four years, one for a term~~ Commission for terms of six
8 years. ~~Of the additional appointments made in 1994, one shall be for a term expiring June 30,~~
9 ~~1996, one for a term expiring June 30, 1998, and two for terms expiring June 30, 2000. Upon~~
10 ~~the expiration of each term as above mentioned, the Governor shall appoint a successor for a~~
11 ~~term of six years, and thereafter the term of office of each commissioner shall be six years. Not~~
12 ~~more than three~~ Two appointees ~~commissioners~~ shall be persons who, on account of their
13 previous vocations, employment or affiliations, can be classed as representatives of ~~employers,~~
14 ~~and not more than three employers.~~ Two appointees ~~commissioners~~ shall be persons who, on
15 account of their previous vocations, employment or affiliations, can be classed as
16 representatives of employees. No person may serve more than two terms on the Commission.
17 Service for any part of a term counts as a term. For the purpose of this paragraph, service prior
18 to its effective date shall be counted in the calculation."

19 **SECTION 13.** G.S. 97-77 is amended by adding a new subsection to read:

20 "(a1) Appointments of commissioners are subject to confirmation by the General
21 Assembly by joint resolution. The names of commissioners to be appointed by the Governor
22 shall be submitted by the Governor to the General Assembly for confirmation by the General
23 Assembly on or before March 1 of the year of expiration of the term. If the Governor fails to
24 timely submit nominations, the General Assembly shall appoint to fill the succeeding term
25 upon the joint recommendation of the President Pro Tempore of the Senate and the Speaker of
26 the House of Representatives in accordance with G.S. 120-121 not inconsistent with this
27 section.

28 In case of death, incapacity, resignation, or vacancy for any other reason in the office of any
29 commissioner prior to the expiration of the term of office, a nomination to fill the vacancy for
30 the remainder of the unexpired term shall be submitted by the Governor within four weeks after
31 the vacancy arises to the General Assembly for confirmation by the General Assembly. If the
32 Governor fails to timely nominate a person to fill the vacancy, the General Assembly shall
33 appoint to fill the remainder of the unexpired term upon the joint recommendation of the
34 President Pro Tempore of the Senate and the Speaker of the House of Representatives in
35 accordance with G.S. 120-121 not inconsistent with this section. If a vacancy arises or exists
36 pursuant to this subsection when the General Assembly is not in session, and the appointment is
37 deemed urgent by the Governor, the commissioner may be appointed and serve on an interim
38 basis pending confirmation by the General Assembly. For the purpose of this subsection, the
39 General Assembly is not in session only (i) prior to convening of the Regular Session, (ii)
40 during any adjournment of the Regular Session for more than 10 days, and (iii) after sine die
41 adjournment of the Regular Session.

42 No person while in office as a commissioner may be nominated or appointed on an interim
43 basis to fill the remainder of an unexpired term, or to a full term that commences prior to the
44 expiration of the term that the commissioner is serving."

45 **SECTION 14.** Article 1 of Chapter 97 of the General Statutes is amended by
46 adding a new section to read:

47 **§ 97-78.1. Standards of judicial conduct to apply to commissioners and deputy**
48 **commissioners.**

49 The standards of judicial conduct provided for judges in Article 30 of Chapter 7A of the
50 General Statutes shall apply to commissioners and deputy commissioners. Commissioners and
51 deputy commissioners shall be liable to impeachment for the causes and in the manner

1 provided for judges of the General Court of Justice in Chapter 123 of the General Statutes.
2 Commissioners and deputy commissioners shall not engage in any other employment, business,
3 profession, or vocation while in office."

4 **SECTION 15.** G.S. 97-80(a) reads as rewritten:

5 "(a) The Commission ~~may make~~ shall adopt rules, in accordance with Article 2A of
6 Chapter 150B of the General Statutes and not inconsistent with this Article, for carrying out the
7 provisions of this Article. ~~The Commission shall request the Office of State Budget and~~
8 ~~Management to prepare a fiscal note for a proposed new or amended rule that has a substantial~~
9 ~~economic impact, as defined in G.S. 150B-21.4(b1). The Commission shall not take final action~~
10 ~~on a proposed rule change that has a substantial economic impact until at least 60 days after the~~
11 ~~fiscal note has been prepared.~~

12 ~~Processes, procedure, and discovery under this Article shall be as summary and simple as~~
13 ~~reasonably may be."~~

14 **SECTION 16.** G.S. 97-84 reads as rewritten:

15 "**§ 97-84. Determination of disputes by Commission or deputy.**

16 The Commission or any of its members shall hear the parties at issue and their
17 representatives and witnesses, and shall determine the dispute in a summary manner. The
18 Commission shall decide the case and issue findings of fact based upon the preponderance of
19 the evidence in view of the entire record. The award, together with a statement of the findings
20 of fact, rulings of law, and other matters pertinent to the questions at issue shall be filed with
21 the record of the proceedings, within 180 days of the close of the hearing record unless time is
22 extended for good cause by the Commission, and a copy of the award shall immediately be sent
23 to the parties in dispute. The parties may be heard by a deputy, in which event the hearing shall
24 be conducted in the same way and manner prescribed for hearings which are conducted by a
25 member of the Industrial Commission, and said deputy shall proceed to a complete
26 determination of the matters in dispute, file his written opinion within 180 days of the close of
27 the hearing record unless time is extended for good cause by the Commission, and the deputy
28 shall cause to be issued an award pursuant to such determination."

29 **SECTION 17.(a)** G.S. 150B-1(c) reads as rewritten:

30 "(c) Full Exemptions. – This Chapter applies to every agency except:

- 31 (1) The North Carolina National Guard in exercising its court-martial
32 jurisdiction.
- 33 (2) The Department of Health and Human Services in exercising its authority
34 over the Camp Butner reservation granted in Article 6 of Chapter 122C of
35 the General Statutes.
- 36 (3) The Utilities Commission.
- 37 (4) ~~The Industrial Commission.~~
- 38 (5) The Employment Security Commission.
- 39 (6) The State Board of Elections in administering the HAVA Administrative
40 Complaint Procedure of Article 8A of Chapter 163 of the General Statutes.
- 41 (7) The North Carolina State Lottery.
- 42 (8) **(Expires June 30, 2012)** Except as provided in G.S. 150B-21.1B, any
43 agency with respect to contracts, disputes, protests, and/or claims arising out
44 of or relating to the implementation of the American Recovery and
45 Reinvestment Act of 2009 (Public Law 111-5)."

46 **SECTION 17.(b)** G.S. 150B-(1)(e) is amended by adding a new subdivision to
47 read:

48 "(e) Exemptions From Contested Case Provisions. – The contested case provisions of
49 this Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter.
50 The contested case provisions of this Chapter do not apply to the following:

51 ...

1 (18) The Industrial Commission."

2 **SECTION 17.(c)** The Industrial Commission shall adopt all rules contained in
3 Title 4 of Chapter 10 of the North Carolina Administrative Code as of the effective date of this
4 act in accordance with Article 2A of Chapter 150B of the General Statutes. Any existing rule
5 that has not been readopted by December 31, 2012, shall expire.

6 **SECTION 17.(d)** This section becomes effective May 1, 2011, and applies to
7 claims filed and to rule making commenced on or after that date.

8 **SECTION 18.** As of February 1, 2011, the terms of the seven members of the
9 Industrial Commission are as follows:

10 (1) One serves a term expiring April 30, 2011.

11 (2) Two serve terms expiring June 30, 2012.

12 (3) One serves a term expiring April 30, 2013.

13 (4) One serves a term expiring June 30, 2014.

14 (5) One serves a term expiring April 30, 2015.

15 (6) One serves a term expiring June 30, 2016.

16 The reduction from seven commissioners to five commissioners provided by Section 9 of this
17 act is effective by not filling the two offices that expire June 30, 2012, pursuant to subdivision
18 (2) of this section. The reduction from three commissioners to two in the employee and
19 employer categories of qualification and the qualifications of the fifth commissioner as
20 provided by G.S. 97-77(a) become effective July 1, 2012.

21 **SECTION 19.** This act is effective when it becomes law, with Sections 4, 5, 6, and
22 7 applying as to claims pending on or after that date. Sections 2, 3, 8, 9, 10, 11, and 16 of this
23 act become effective July 1, 2011, and apply to claims arising on or after that date.