

NORTH CAROLINA COURT OF APPEALS

MARY BETTS,)	
Employee,)	
Plaintiff, Appellant)	
)	
v)	<u>From the North Carolina</u>
)	<u>Industrial Commission</u>
NORTH CAROLINA DEPARTMENT)	<u>I.C. File No. X59367</u>
OF HEALTH AND HUMAN)	
SERVICES – CHERRY HOSPITAL,)	
Self-Insured Employer, and)	
)	
CCMSI,)	
Third-Party Administrator,)	
Defendants, Appellees.)	

AMICI CURIAE BRIEF ON BEHALF OF THE
NORTH CAROLINA ASSOCIATION OF DEFENSE ATTORNEYS,
NORTH CAROLINA ASSOCIATION OF SELF-INSURERS,
NORTH CAROLINA BEVERAGE ASSOCIATION,
NORTH CAROLINA FORESTRY ASSOCIATION,
NORTH CAROLINA HEALTHCARE ASSOCIATION,
NORTH CAROLINA RETAIL MERCHANTS ASSOCIATION,
NORTH CAROLINA PORK COUNCIL,
NORTH CAROLINA RESTAURANT AND LODGING ASSOCIATION,
NORTH CAROLINA HOME BUILDERS ASSOCIATION,
NATIONAL FEDERATION OF INDEPENDENT BUSINESS,
AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION,
NORTH CAROLINA CHAMBER LEGAL INSTITUTE,
INSURANCE FEDERATION OF NORTH CAROLINA,
NORTH CAROLINA AUTOMOBILE DEALERS ASSOCIATION, AND
EMPLOYERS COALITION OF NORTH CAROLINA

INDEX

TABLE OF CASES AND AUTHORITIES.....	ii
ISSUES PRESENTED	1
STATEMENT OF FACTS	2
ARGUMENT.....	2
 I. THE INDUSTRIAL COMMISSION CORRECTLY DEFINED “TOTAL LOSS OF WAGE-EARNING CAPACITY”	 2
A. WHY AND HOW THE 2011 REFORM ACT WAS ENACTED.....	 2
B. “TOTAL LOSS OF WAGE-EARNING CAPACITY” AS INTENDED UNDER N.C.G.S. § 97-29(C).....	 7
 CONCLUSION	 14
CERTIFICATE OF COMPLIANCE.....	16
CERTIFICATE OF SERVICE.....	17
APPENDIX	App 1-106
 North Carolina House of Representatives, Minutes for House Standing Committee on Insurance (April 5, 2011)	 App 1-49
 Richard Victor, <i>How Workers’ Compensation in North Carolina Compares to Other States</i> , WCRI, (April 5, 2011)	 App 27-49
 Press Release, Representative and Speaker Pro Tempore Dale Folwell, <i>Workers’ Compensation: Putting North Carolina Back to Work</i> (2011).....	 App 50-51
 House Bill 709 – First Edition, General Assembly of NC (Session 2011).....	 App 52-61
 North Carolina Senate, Minutes for Senate Insurance Committee (June 9, 2011)	 App 62-93
 2011 N.C. Session Law 287.....	 App 94-106

TABLE OF CASES AND AUTHORITIES

<i>Adams v. AVX Corp.</i> , 349 N.C. 676, 509 S.E.2d 411 (1998).....	12
<i>Blackmon v. NC Dep't of Corr.</i> , 343 N.C. 259, 470 S.E.2d 8 (1996).....	7
<i>Brown v. Brown</i> , 353 N.C. 220, 539 S.E.2d 621 (2000).....	10
<i>Correll v. Div. of Soc. Servs.</i> , 332 N.C. 141, 418 S.E.2d 232 (1992).....	7
<i>Derebery v. Pitt Co. Fire Marshall</i> , 318 N.C. 192, 347 S.E.2d 814 (1986).....	7
<i>Electric Supply Co. v. Swain Elec. Co.</i> , 328 N.C. 651, 403 S.E.2d 291 (1991).....	7
<i>Evans v. AT & T Techs.</i> , 332 N.C. 78, 418 S.E.2d 503 (1992).....	7
<i>Hilliard v. Apex Cabinet Co.</i> , 305 N.C. 593, 290 S.E.2d 682 (1982).....	8
<i>Hylar v. GTE Prod. Co.</i> , 333 N.C. 258, 425 S.E.2d 698 (1993).....	8
<i>Insulation Sys., Inc. v. Fisher</i> , 197 N.C. App. 386, 678 S.E.2d 357 (2009).....	10
<i>Lemons v. Boy Scouts of Am., Inc.</i> , 322 N.C. 271, 367 S.E.2d 655, <i>reh'g denied</i> , 322 N.C. 610, 370 S.E.2d 247 (1988)...	7
<i>Ray v. N.C. Dep't of Transp.</i> , 366 N.C. 1, 727 S.E.2d 675 (2012).....	10
<i>Russell v. Lowes Prod. Distrib.</i> , 108 N.C. App. 762, 425 S.E.2d 454 (1993).....	8
<i>Shelton v. Morehead Mem'l Hosp.</i> , 318 N.C. 76, 347 S.E.2d 824 (1986).....	7
<i>Smith Chapel Baptist Church v. City of Durham</i> , 350 N.C. 805, 517 S.E.2d 874 (1999).....	10
<i>State v. Fletcher</i> , 370 N.C. 313, 807 S.E.2d 528 (2017).....	10

<i>State v. James</i> , 371 N.C. 77, 813 S.E.2d 195 (2018).....	10
<i>State ex rel. Cobey v. Simpson</i> , 333 N.C. 81, 423 S.E.2d 759 (1992).....	10
<i>Stevenson v. City of Durham</i> , 281 N.C. 300, 188 S.E.2d 281 (1972)	9
N.C.G.S. § 97-2(9)	8
N.C.G.S. § 97-2(22) (2017)	11, 12, 13
N.C.G.S. § 97-18.1 (1994)	2
N.C.G.S. § 97-29 (2009)	2
N.C.G.S. § 97-29 (2013)	6, 7, 8, 9, 11, 12, 13
N.C. R. App. P. 28(i)	2
2011 N.C. Session Law 287	12
House Bill 709 – First Edition, General Assembly of NC (Session 2011)	5
Merriam-Webster, (2022), https://www.merriam- webster.com/dictionary/reform	10
Merriam-Webster, (2022), https://www.merriam- webster.com/dictionary/clarify	11
North Carolina House of Representatives, Minutes for House Standing Committee on Insurance (April 5, 2011)	3
North Carolina Senate, Minutes for Senate Insurance Committee (June 9, 2011)	6
Press Release, Representative and Speaker Pro Tempore Dale Folwell, <i>Workers’ Compensation: Putting North Carolina Back to Work</i> (2011).....	4
Richard Victor, <i>How Workers’ Compensation in North Carolina Compares to Other States</i> , WCRI, (April 5, 2011)	3

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ISSUES PRESENTED

- I. DID THE INDUSTRIAL COMMISSION CORRECTLY DEFINE “TOTAL LOSS OF WAGE-EARNING CAPACITY”?

STATEMENT OF FACTS

*Amici Curiae*¹ endorse the facts as set out in defendant-appellees' brief.

ARGUMENT

I. THE INDUSTRIAL COMMISSION CORRECTLY DEFINED "TOTAL LOSS OF WAGE-EARNING CAPACITY."

A. WHY AND HOW THE 2011 REFORM ACT WAS ENACTED.

Prior to 24 June 2011, N.C.G.S. § 97-29 provided as follows:

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

(b) In cases of total and permanent disability, compensation, including medical compensation, shall be paid for by the employer during the lifetime of the injured employee.

N.C.G.S. § 97-29 (2009). There was no cap on the receipt of temporary total disability (TTD) benefits. As a result, absent return to work, death or termination of benefits as otherwise provided under N.C.G.S. § 97-18.1, injured workers in North Carolina could conceivably receive lifetime benefits. This put North Carolina at a competitive disadvantage, particularly in comparison with surrounding states with caps on TTD benefits.

¹ Pursuant to Rule 28(i) of the North Carolina Rules of Appellate Procedure, *Amici Curiae* submit this brief in support of defendant-appellees. No person or entity, other than *Amici Curiae*, its members, or its counsel, directly or indirectly, wrote this brief or contributed money for its preparation.

On 5 April 2011, members of the North Carolina House of Representatives Standing Committee on Insurance viewed a PowerPoint presentation prepared by the Workers Compensation Research Institute (WCRI), an independent non-profit organization that provides objective information about public policy issues involving workers' compensation. Delivered by Dr. Richard A. Victor, Executive Director of WCRI, the presentation outlined WCRI's "major findings from its series of studies on the North Carolina workers' compensation system – focused on workers' outcomes and employers' costs." See North Carolina House of Representatives, Minutes for House Standing Committee on Insurance (April 5, 2011) (App pp 1-49); see also Richard Victor, *How Workers' Compensation in North Carolina Compares to Other States*, WCRI (April 5, 2011) (App 27-49). The findings illustrated that from 2006 to 2009, North Carolina had not only the highest total costs per claim out of the 16 states studied, but also the highest indemnity benefits paid per claim. During this time period, North Carolina was the second highest state for (1) frequency of lump sum settlements, (2) the dollar amount of lump sum settlements, (3) the number of lump sum settlements exceeding \$50,000, and (4) the duration of temporary disability payments. In addition, from 2003 to 2008, North Carolina's total costs per claim grew faster than the median state in the study and litigiousness also increased by approximately 10%. As a result of this study, WCRI determined that North Carolina's average cost per claim was 19-45% higher than the median state and cost reduction opportunities existed to bring North Carolina more in line with median states.

Among the attendees at the 5 April 2011 meeting were two Committee members, Representative and Speaker Pro Tempore Dale Folwell and Representative Jim Crawford. The following day, in an effort to address the significantly higher indemnity cost per claim in North Carolina compared to the rest of the country identified in the WCRI presentation, North Carolina House Bill (HB) 709 was filed by Representatives Folwell and Crawford, along with Representatives Dollar and Hager.

Representative Folwell also issued a press release echoing the information contained in the WCRI presentation. Therein, he notes that “TTD benefits are paid when a worker is TEMPORARILY unable to earn wages.” See Press Release, Representative and Speaker Pro Tempore Dale Folwell, *Workers’ Compensation: Putting North Carolina Back to Work* (2011) (App pp 50-51). As documented in the graph, while our surrounding states had caps on TTD benefits (South Carolina and Virginia at 500 weeks, and Tennessee and Georgia at 400 weeks), North Carolina’s current system provided for lifetime benefits. As a result, “North Carolina hurts its ability to compete by turning our workers’ comp system into a retirement system.” *Id.* Representative Folwell also cited to the results of a study conducted in February 2011 by National Research, Inc. in which participants were asked whether they agreed or disagreed with the following statement: “A person who is injured on the job should receive workers compensation for the remainder of their life, even if they are able to work at a different job.” Eighty-five percent of those polled disagreed, 66% of which “strongly disagree[d].” *Id.*

In the first edition of HB 709, a firm cap of 500 weeks was placed on the receipt of TTD benefits, with the only exception pertaining to cases of total and permanent disability. In exchange, HB 709 proposed increases in the benefits available to injured workers in other areas. Specifically, temporary partial disability benefits under N.C.G.S. § 97-30 were increased from 300 to 500 weeks, death benefits pursuant to N.C.G.S. § 97-38 were increased from 400 to 500 weeks, and burial expenses were increased from \$3,500.00 to \$10,000.00. *See* House Bill 709 – First Edition, General Assembly of NC (Session 2011) (App pp 52-61).

In response to objections to the proposed cap on TTD benefits, members representing both injured workers and the business community worked together over several months to negotiate the terms of HB 709 and create a balanced piece of legislation that benefited both employers and injured workers. As a result of this collaboration, HB 709 was revised to include a very limited exception to the 500-week cap on TTD benefits subject to a new burden of proof. The minutes to the 9 June 2011 meeting of the North Carolina Senate Insurance Committee reflect that this was a bipartisan compromise supported by all affected parties.

Paul Cooley, Advocates for Justice, spoke to endorse the bill. John McAllister, NC Chamber, spoke to endorse the bill. Andy Ellen, Retail Merchants, spoke to endorse the bill. Chip Baggett, NC Medical Society, spoke to endorse the bill. James Andrew, AFLCIO, spoke to endorse the bill. Rep. Hager spoke as a co-sponsor to endorse the bill. Senator Jackson made a motion for favorable report as to the House Committee Substitute Bill and the motion passed. The House Committee Substitute, summary, and press release from Representative Folwell is attached.

See North Carolina Senate, Minutes for Senate Insurance Committee (June 9, 2011) (App pp 62-93). Ultimately, HB 709 was passed almost unanimously by the NC House and Senate and signed into law on 24 June 2011 by Governor Perdue.

N.C.G.S. § 97-29, as currently written, states as follow:

(a) When an employee qualifies for total disability, the employer shall pay or cause to be paid, as hereinafter provided by subsections (b) through (d) of this section, to the injured employee a weekly compensation equal to sixty-six and two-thirds percent (662/3%) of his average weekly wages, but not more than the amount established annually to be effective January 1 as provided herein, nor less than thirty dollars (\$30.00) per week.

(b) When a claim is compensable pursuant to G.S. 97-18(b), paid without prejudice pursuant to G.S. 97-18(d), agreed by the parties pursuant to G.S. 97-82, or when a claim has been deemed compensable following a hearing pursuant to G.S. 97-84, the employee qualifies for temporary total disability subject to the limitations noted herein. The employee shall not be entitled to compensation pursuant to this subsection greater than 500 weeks from the date of first disability unless the employee qualifies for extended compensation under subsection (c) of this section.

(c) An employee may qualify for extended compensation in excess of the 500-week limitation on temporary total disability as described in subsection (b) of this section only if (i) at the time the employee makes application to the Commission to exceed the 500-week limitation on temporary total disability as described in subsection (b) of this section, 425 weeks have passed since the date of first disability and (ii) pursuant to the provisions of G.S. 97-84, unless agreed to by the parties, *the employee shall prove by a preponderance of the evidence that the employee has sustained a total loss of wage-earning capacity*. If an employee makes application for extended compensation pursuant to this subsection and is awarded extended compensation by the Commission, the award shall not be stayed pursuant to G.S. 97-85 or G.S. 97-86 until the full Commission or an appellate court determines otherwise. Upon its own motion or upon the application of any party in interest, the Industrial Commission may review an award for extended compensation in excess of the 500-week limitation on temporary total disability described in subsection (b) of this section, and, on such review, may make an award ending or continuing extended compensation. When reviewing a prior award to determine if the employee remains entitled to extended compensation, the Commission

shall determine if the employer has proven by a preponderance of the evidence that the employee no longer has a total loss of wage-earning capacity. When an employee is receiving full retirement benefits under section 202(a) of the Social Security Act, after attainment of retirement age, as defined in section 216(l) of the Social Security Act, the employer may reduce the extended compensation by one hundred percent (100%) of the employee's retirement benefit. The reduction shall consist of the employee's primary benefit paid pursuant to section 202(a) of the Social Security Act but shall not include any dependent or auxiliary benefits paid pursuant to any other section of the Social Security Act, if any, or any cost-of-living increases in benefits made pursuant to section 215(i) of the Social Security Act.

N.C.G.S. § 97-29 (2013) (emphasis added).

B. “TOTAL LOSS OF WAGE-EARNING CAPACITY” AS INTENDED UNDER N.C.G.S. § 97-29(C).

The primary rule of statutory construction is that the intent of the legislature controls the interpretation of a statute. *Blackmon v. NC Dep’t of Corr.*, 343 N.C. 259, 265, 470 S.E.2d 8, 11 (1996) (citing *Derebery v. Pitt Co. Fire Marshall*, 318 N.C. 192, 196, 347 S.E.2d 814, 817 (1986)).

Legislative intent controls the meaning of a statute; and in ascertaining this intent, a court must consider the act as a whole, weighing the language of the statute, its spirit, and that which the statute seeks to accomplish. The statute’s words should be given their natural and ordinary meaning unless the context requires them to be construed differently.

Shelton v. Morehead Memorial Hospital, 318 N.C. 76, 82, 347 S.E.2d 824, 828 (1986) (citations omitted), *quoted in Evans v. AT & T Technologies*, 332 N.C. 78, 86, 418 S.E.2d 503, 508–09 (1992). “Statutory interpretation properly begins with an examination of the plain words of the statute.” *Correll v. Division of Social Services*, 332 N.C. 141, 144, 418 S.E.2d 232, 235 (1992) (citing *Electric Supply Co. v. Swain Elec. Co.*, 328 N.C. 651, 656, 403 S.E.2d 291, 294 (1991)). If the language of the statute is clear and is not ambiguous, we must conclude that the legislature intended the statute to be implemented according to the plain meaning of its terms. *Id.* (citing *Lemons v. Boy*

Scouts of America, Inc., 322 N.C. 271, 276, 367 S.E.2d 655, 688, *reh'g denied*, 322 N.C. 610, 370 S.E.2d 247 (1988)).

Hylar v. GTE Prod. Co., 333 N.C. 258, 262, 425 S.E.2d 698, 701 (1993).

The intent behind subsection (c) of 97-29 was to curb the excessive indemnity costs in North Carolina by capping benefits at 500 weeks except in very limited circumstances. To achieve this, the plain language of N.C.G.S. § 97-29 creates two different standards by which an injured worker must prove disability. The first standard applies during the 500 weeks from first date of disability and requires the plaintiff to prove disability pursuant to N.C.G.S. § 97-2(9), *Hilliard v. Apex Cabinet Co.*, 305 N.C. 593, 290 S.E.2d 682 (1982) and *Russell v. Lowes Prod. Distribution*, 108 N.C. App. 762, 765, 425 S.E.2d 454, 457 (1993). In that scenario, once disability is proven, the burden shifts to the employer to prove that the employee is no longer disabled and is capable of returning to work. This is the 'competitive labor market' model of earning capacity discussed at length by plaintiff, which was in place prior to the enactment of HB 709, and which oftentimes resulted in lifetime benefits, prompting the instant legislation.

The second, new and different, standard applies to the post-500-week cap and requires the plaintiff to prove by a preponderance of evidence a "total loss of wage-earning capacity" in order to receive extended compensation under N.C.G.S. § 97-29(c). "Total loss of wage-earning capacity" has never previously been defined in the Workers' Compensation Act. This being an issue of first impression, the Full Commission properly followed the rules for statutory construction, and first examined the meaning of the plain words of N.C.G.S. § 97-29(c) to determine

legislative intent. The common meaning of the words, “total loss of wage-earning capacity,” being clear and unambiguous, is consistent with the Full Commission’s conclusion that plaintiff must prove a “complete destruction of the ability to earn wages.” (R p 70). This is the only definition which serves the purpose and intent of HB 709, and the Full Commission’s reliance on Webster’s Dictionary is in keeping with the principles of statutory construction and was not in error.

Plaintiff and the North Carolina Advocates for Justice (NCAJ) argue that the standards of disability pre- and post-500 weeks are identical. The NCAJ even contends that the use of two standards for determining disability pre- and post-500 weeks is “absurd.” (NCAJ Br pp 4, 16). However, if the standard of proof in both the pre- and post-500-week contexts is the same, as plaintiff and the NCAJ suggest, the cap on TTD benefits and the entirety of N.C.G.S. § 97-29(c) is rendered superfluous and redundant. If the intent was to maintain the status quo, there would have been no reason for the legislature to amend N.C.G.S. § 97-29 in any respect. This is illogical and cannot have been the intent of the legislature. *Stevenson v. City of Durham*, 281 N.C. 300, 303, 188 S.E.2d 281, 283 (1972) (“In seeking to discover and give effect to the legislative intent, an act must be considered as a whole, and none of its provisions shall be deemed useless or redundant if they can reasonably be considered as adding something to the act which is in harmony with its purpose.”). The language, spirit and objective of HB 709 was to bring North Carolina back in line with surrounding states and curb

excessive indemnity costs, while still protecting the injured worker. If the standard pre- and post-500 weeks is the same, that intent is ignored.

Plaintiff also argues that HB 709 was designed to clarify, not change, the law. However, the title of HB 709 sheds light on the purpose of the amendment, which is to say, change the substance of the law.

“Although the title given to a particular statutory provision is not controlling, it does shed some light on the legislative intent underlying the enactment of that provision.” *State v. Fletcher*, 370 N.C. 313, 807 S.E.2d 528, 539 (2017) (citing *Brown v. Brown*, 353 N.C. at 224, 539 S.E.2d at 623). “[E]ven when the language of a statute is plain, ‘the title of an act should be considered in ascertaining the intent of the legislature.’” *Ray v. N.C. Dep’t of Transp.*, 366 N.C. 1, 8, 727 S.E.2d 675, 681 (2012) (quoting *Smith Chapel Baptist Church v. City of Durham*, 350 N.C. 805, 812, 517 S.E.2d 874, 879 (1999) (citing *State ex rel. Cobey v. Simpson*, 333 N.C. 81, 90, 423 S.E.2d 759, 764 (1992))).

State v. James, 371 N.C. 77, 87, 813 S.E.2d 195, 203 (2018).

Plaintiff’s citation to *Insulation Sys., Inc. v. Fisher*, 197 N.C. App. 386, 678 S.E.2d 357 (2009) acknowledges the relevance of a bill’s title in determining legislative intent, however, no reference to the title of this bill is made within plaintiff’s brief, nor in the NCAJ brief. This omission is likely intentional, as the title of HB 709, An Act Protecting and Putting North Carolina Back to Work by *Reforming* the Workers’ Compensation Act, declares its purpose precisely.

Reform is defined as “to put or change into an improved form or condition,” “to amend or improve by change of form or removal of faults or abuses,” “to put an end to (an evil) by enforcing or introducing a better method or course of action,” and “to induce or cause to abandon evil ways.” Synonyms for reform include correct, rectify, remedy, redress, amend, and revise. Merriam-Webster, (2022),

<https://www.merriam-webster.com/dictionary/reform>. Neither brief in support of plaintiff's appeal contains the word "reform" or any iteration thereof. Conversely, clarify is defined as "to make understandable," and "to free of confusion." Merriam-Webster, (2022), <https://www.merriam-webster.com/dictionary/clarify>.

By using the word "reforming" in its title, the legislature sent a clear message that HB 709 was meant to change the Workers' Compensation Act, and not merely "clarify" it as suggested by plaintiff. That message is gleaned not only from the title and the plain meaning of the words as discussed above, but upon review of the statute as a whole, the legislative history, and the circumstances that led to its enactment. How can there be reform if there is no change in the manner or result? To hold as plaintiff would have this Court do, ignores the title and intent of HB 709 and N.C.G.S. § 97-29.

Plaintiff spends much of her brief focusing on the definition of "suitable employment" under N.C.G.S. § 97-2(22) and how there was no evidence an offer of employment was ever extended. The NCAJ likewise focuses on the availability of a real job to defeat a claim for extended compensation. However, this argument is wholly without merit. First, this argument ignores the fact that the decision below was based on the facts of the claim and a weighing of the expert medical and vocational opinions. The Full Commission, as the ultimate finder of fact and sole judge of credibility of the witnesses, unambiguously gave greater weight to the testimony and opinions rendered by Dr. Thompson and defendants' vocational expert, Pamela Harris. (R p 67). Based on these opinions, which are conclusive on

appeal, the Full Commission determined that plaintiff had not suffered a “total loss of wage-earning capacity” and denied her request for extended compensation. *See Adams v. AVX Corp.*, 349 N.C. 676, 680, 509 S.E.2d 411, 413 (1998).

Second, a simple comparison of the plain language of § 97-29(c) to § 97-29(d) highlights the legislature’s purposeful intent to place a greater burden on a plaintiff seeking extended compensation and to “discard the ‘competitive labor market’ model of earning capacity.” (P’s Br p 11). Subsection (d) outlines specific situations in which an injured employee may qualify for lifetime indemnity compensation due to a permanent total disability, “unless the employer shows by a preponderance of the evidence that the employee is capable of returning to suitable employment as defined in G.S. 97-2(22).” There is no reference to “suitable employment as defined by G.S. 97-2(22)” anywhere in subsection (c). The definition of suitable employment under N.C.G.S. § 97-2(22) was enacted simultaneously to N.C.G.S. § 97-29(c) in HB 709. *See* 2011 N.C. Session Law 287 (App pp 94-106). Had the legislature intended for an injured employee to receive extended compensation by showing that “suitable employment as defined by G.S. 97-2(22)” was not available, it could have specified accordingly. Likewise, had the legislature intended to require defendants to prove the availability of suitable employment under N.C.G.S. § 97-2(22) in order to terminate an award of extended compensation under subsection (c), it could have specified accordingly, just as it did in subsection (d). Instead, the plain language of N.C.G.S. § 97-29(c) states that when reviewing a prior determination on extended compensation, “the Commission shall determine if the employer has proven by a

preponderance of the evidence that the employee no longer had a total loss of wage-earning capacity.” N.C.G.S. § 97-29(c) (2013).

Plaintiff and NCAJ both acknowledge the principle of *in pari materia* and that a statute must be interpreted as a whole, and yet neither acknowledges the fact that N.C.G.S. § 97-2(22) is specifically referenced in N.C.G.S. § 97-29(d) but absent from N.C.G.S. § 97-29(c). The only reasonable interpretation of the legislature’s intent in enacting subsection (c), when truly construed *in pari materia* with subsection (d) and the remainder of HB 709, is that it meant to establish a different burden of proof with respect to receipt of extended compensation that the Full Commission correctly determined did not include an analysis of suitability from a competitive employment standpoint. (R p 69).

Finally, this argument is a red herring. In the pre-500-week context, suitable employment only comes into play once plaintiff first proves disability. By focusing on suitability and the availability of a real job, plaintiff and the NCAJ impermissibly shift the burden of proof to defendants despite the fact that the plain language of subsection (c) explicitly states that it is plaintiff that bears the burden of proving “by a preponderance of the evidence that the employee has sustained a total loss of wage-earning capacity” in order to receive extended compensation. N.C.G.S. § 97-29(c). Nowhere in plaintiff’s brief does she outline how she met her initial burden of proof, absent the testimony of her vocational expert, which was discounted by the Full Commission because her opinions were not consistent with plaintiff’s abilities and experience. (R p 67).

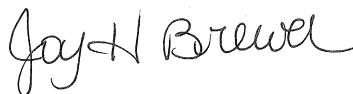
The Full Commission's definition of "total loss of wage-earning capacity" as "complete destruction of the ability to earn wages" is the only definition that comports with the intent of the legislature to curtail TTD payments made in North Carolina. This definition recognizes that concessions were made in HB 709 to increase partial disability and death benefits and incentivize returning to work in exchange for the cap on TTD benefits. This definition also respects the compromise between all North Carolina workers' compensation stakeholders to achieve balanced legislation that afforded benefits to everyone. If this Court holds as plaintiff and the NCAJ request, the business community would have made significant concessions but gained nothing in return.

CONCLUSION

For the reasons stated above, *Amici Curiae* respectfully request that the Full Commission Opinion and Award be AFFIRMED.

Respectfully submitted this the 19th day of August 2022.

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N.C. R. App. P. 33(b) Certification: I certify that all attorneys listed below have authorized me to list their names on this document as if they had personally signed it.



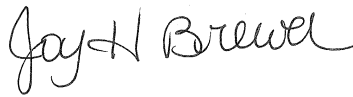
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CERTIFICATE OF COMPLIANCE

This is to certify that the foregoing document contains no more than 3,750 words as set forth in Rule 28(j) of the North Carolina Rules of Appellate Procedure.

This the 19th day of August 2022.

BREWER DEFENSE GROUP

A handwritten signature in cursive script that reads "Joy H. Brewer".

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing document was filed electronically (1) with the North Carolina Court of Appeals pursuant to Rule 26(a) of the North Carolina Rules of Appellate Procedure by use of the electronic filing site at www.ncappellatecourts.org, and (2) with Chair Philip A. Baddour, III with the North Carolina Industrial Commission via EDPF; and also served upon the counsel whose name and address appears below, by electronic mail.

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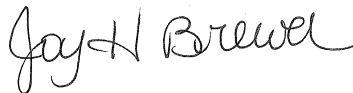
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This the 19th day of August 2022.

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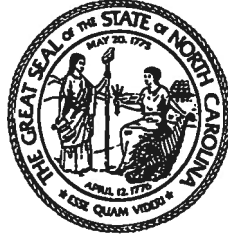
INDEX TO APPENDIX

North Carolina House of Representatives, Minutes for House Standing Committee on Insurance (April 5, 2011)	App 1-49
Richard Victor, <i>How Workers' Compensation in North Carolina Compares to Other States</i> , WCRI, (April 5, 2011)	App 27-49
Press Release, Representative and Speaker Pro Tempore Dale Folwell, <i>Workers' Compensation: Putting North Carolina Back to Work</i> (2011)	App 50-51
House Bill 709 – First Edition, General Assembly of NC (Session 2011)	App 52-61
North Carolina Senate, Minutes for Senate Insurance Committee (June 9, 2011)	App 62-93
2011 N.C. Session Law 287	App 94-106

2011-2012

**HOUSE
INSURANCE**

MINUTES



**NORTH CAROLINA HOUSE OF
REPRESENTATIVES**

2011 -2012 SESSION

HOUSE STANDING COMMITTEE ON INSURANCE

**REPRESENTATIVE JERRY C. DOCKHAM
CHAIRMAN**

REGINA IRWIN, COMMITTEE CLERK

HOUSE COMMITTEE ON INSURANCE
2011 – 2012 SESSION

<u>MEMBER</u>		<u>ASSISTANT</u>	<u>PHONE</u>	<u>OFFICE</u>	<u>SEAT</u>
DOCKHAM, Jerry	Chairman	Regina Irwin Committee Assistant	715-2526	2204	3
COLLINS, Jeff *	Vice-Chair	Marissa Farrell	733-5802	1006	65
MCELRAFT, Pat	Vice-Chair	Nancy Fox	733-6275	637	38
SETZER, Mitchell	Vice-Chair	Margaret Herring	733-4948	1206	13
BLUST, John		Betty Childress	733-5781	1229	25
BROWN, Larry		Zane Stilwell	733-5607	303	26
BRUBAKER, Harold "Bru"		Cindy Coley	715-4946	302	1
BRYANT, Angela		Karon Hardy	733-5878	542	102
BURR, Justin		Dina Long	733-5908	538	40
CRAWFORD, Jim		Linda Winstead	733-5824	1321	24
CURRENT, William		Wendy Miller	733-5809	418B	41
FAISON, Bill		Lavada Vitalis	715-3019	405	84
FLOYD, Elmer		Latasha McPhaul	733-5959	1311	114
FOLWELL, Dale		Paige Fitzgerald	733-5787	301F	99
GLAZIER, Rick		Carin Savel	733-5601	1021	92
GRAHAM, Charles *		Linda Laton	715-0875	1315	115
HAMILTON, Susi *		Ruth Merkle	733-5754	1319	117
HOWARD, Julia		Ernie Parker	733-5904	1106	2
HURLEY, Pat		Susan Whitehead	733-5865	532	44
INSKO, Verla		Gina Insko	733-7208	603	70
JACKSON, Darren		Angela McMillian	733-5974	1019	106
MCGUIRT, Frank *		Susanna Davis	715-3007	1015	101

JOHNSON, Linda	Diane Wraight	733-5861	301D	15
MILLS, Grey	Wanda Benson	733-5741	2221	50
MURRY, Tom *	Linda Sebastian	733-5602	2121	86
PIERCE, Garland	Mildred Alston	733-5803	1204	46
SHEPARD, Phillip *	Pamela Pate	715-9644	301N	98
STEEN, Fred	Chris Floyd	733-5881	305	27
STEVENS, Sarah	Julie Garrison	715-1883	416A	56
WAINWRIGHT, William	Blinda Edwards	733-5995	613	12
WARREN, Harry *	Shara Graham	733-5784	533	74
WILKINS, W. A. "Winkie"	Nancy Brantley	715-0850	1301	47
WRAY, Michael	Lisa Brown	733-5662	502	60

*New Members **

Tim Hovis
Bill Patterson
Kory Goldsmith
Committee Counsel
LOB – Room 545
Tel: 733-2578

**NORTH CAROLINA GENERAL ASSEMBLY
INSURANCE**

2011-2012 SESSION



**REP. DOCKHAM
CHAIRMAN**



**REP. COLLINS *
VICE - CHAIR**



**REP. MCELRAFT
VICE - CHAIR**



**REP. SETZER
VICE - CHAIR**



REP. BLUST



REP. BROWN



REP. BRUBAKER



REP. BRYANT



REP. BURR



REP. CRAWFORD



REP. CURRENT



REP. FAISON



REP. FLOYD



REP. FOLWELL



REP. GLAZIER



REP. GRAHAM *



REP. HAMILTON *



REP. HOWARD



REP. HURLEY

NORTH CAROLINA GENERAL ASSEMBLY

INSURANCE

2011-2012 SESSION



REP. INSKO



REP. JACKSON



REP. JOHNSON



REP. MILLS



REP. MURRY *



REP. PIERCE



REP. SHEPARD *



REP. STEEN



REP. STEVENS



REP. WAINWRIGHT



REP. WARREN *



REP. WILKINS



REP. WRAY

*New Members **

ATTENDANCE

HOUSE COMMITTEE ON INSURANCE

2011 - 2012

DATES	02-15-2011	02-22-2011	03-01-2011	03-29-2011	04-05-2011	04-12-2011	04-19-2011	04-26-2011	05-10-2011	05-17-2011	05-24-2011	05-31-2011	06-07-2011	06-14-2011	
DOCKHAM, Jerry Chair	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
BLUST, John	X	X	X	X	X	X	X	X		X	X	X			
BROWN, Larry		X		X	X	X	X	X	X	X	X	X			
BRUBAKER, Harold			X	X				X	X		X	X	X		
BRYANT, Angela	X	X	X	X	X	X	X	X	X			X			
BURR, Justin	X		X	X	X		X		X	X			X		
COLLINS, Jeff Vice-Chair		X	X	X	X	X	X	X	X	X	X	X	X		
CRAWFORD, Jim	X	X	X	X	X	X		X	X	X	X	X	X		
CURRENT, William	X	X	X	X	X	X	X	X	X		X	X		X	
FAISON, Bill	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
FLOYD, Elmer	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
FOLWELL, Dale	X	X	X	X	X	X	X	X	X			X		X	
GLAZIER, Rick		X	X	X	X	X	X		X	X	X			X	
GRAHAM, Charles			X	X		X	X	X				X		X	
HAMILTON, Susi	X	X	X	X	X	X	X	X	X			X		X	
HOWARD, Julia	X		X	X	X	X	X	X	X	X	X	X			
HURLEY, Pat	X	X	X	X	X	X	X	X	X		X	X	X	X	
INSKO, Verla	X	X	X	X		X	X	X	X	X	X	X	X	X	
JACKSON, Darren		X		X	X		X	X		X			X		
JOHNSON, Linda	X	X	X	X	X		X	X	X	X	X	X			
MCELRAFT, Pat Vice-Chair			X	X	X	X	X	X	X		X				
MCGUIRT, Frank				X	X	X	X	X		X	X	X	X	X	
MILLS, Grey	X	X	X	X	X	X	X	X	X	X			X		
MURRY, Tom	X	X	X	X	X	X	X	X	X	X	X			X	
PIERCE, Garland	X	X	X	X	X	X	X	X			X	X	X	X	
SETZER, Mitchell Vice-Chair						X	X		X	X				X	

SHEPARD, Phillip	X	X	X	X	X	X	X	X	X	X	X	X		X	
STEEN, Fred	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
STEVENS, Sarah	X	X	X	X	X	X	X	X	X	X	X			X	
WAINWRIGHT, William				X	X				X						
WARREN, Harry	X	X	X	X	X	X	X	X	X	X	X	X		X	
WILKINS, W. A. "Winkie"	X	X	X	X	X	X	X	X	X	X	X			X	
WRAY, Michael		X	X	X		X	X	X	X			X		X	

App 9
North Carolina General Assembly
Through House Committee on
Insurance

Date: 06/20/2011
Time: 10:44
Page: 001 of 002
Leg. Day: H-087/S-087

2011-2012 Biennium

Bill	Introducer	Short Title	Latest Action	In Date	Out Date
H0115	Dockham	NORTH CAROLINA HEALTH BENEFIT EXCHANGE.	*H Ref To Com On Rules and Operations of the Senate	03-30-11	05-10-11
H0138	Dockham	AMEND HEALTH INSURANCE RISK POOL STATUTES.	*HR Ch. SL 2011-58	02-21-11	03-02-11
H0155	Faison	MEDICAL MALPRACTICE INSURANCE COVERAGE.	H Ref to the Com on Insurance, if favorable, Commerce and Job Development	02-22-11	
H0161	Dollar	TRANSFER STATE HEALTH PLAN TO STATE TREASURER.	*H Re-ref Com On Appropriations	02-23-11	03-02-11
H0232	Spear	SAFE DRIVER INCENTIVE PLAN CHANGES.	*HF Failed 3rd Reading	03-07-11	06-07-11
H0244=	Murry	STATE HEALTH PLAN/ADD SCHOOLS.	*H Ref To Com On Insurance	03-08-11	06-07-11
H0298=	Dockham	INSURANCE AMENDMENTS.- AB	*H Pres. To Gov. 6/ 15/2011	03-10-11	04-27-11
H0299=	Dockham	SURPLUS LINES/PREMIUM TAX.-AB	*H Re-ref Com On Finance	03-10-11	04-27-11
H0373	Dockham	INSURANCE CHANGES TO PAYMENTS & GROUP LIFE.	*H Pres. To Gov. 6/ 16/2011	03-17-11	05-31-11
H0453	Dockham	ALLOW SALARY PROTECTION INSURANCE.	H Ratified	03-24-11	05-10-11
H0496	T. Moore	INSURANCE CO-PAYS FOR CHIROPRACTIC SERVICES.	*H Ref To Com On Insurance	03-29-11	
H0501	Glazier	CREDIT UNION OWNERSHIP OF INS. CO.	*H Pres. To Gov. 6/ 16/2011	03-30-11	05-18-11
75=	Dockham	SERVICE AGREEMENTS/ ALLOW RESERVE ACCOUNT.	*H Pres. To Gov. 6/ 16/2011	04-04-11	05-18-11
H0578=	Murry	STATE HEALTH PLAN/ ADDITIONAL CHANGES.	*HR Ch. SL 2011-96	04-04-11	04-27-11
H0617	Dockham	PORTABLE ELECTRONICS INSURANCE COVERAGE.	*H Pres. To Gov. 6/ 16/2011	04-06-11	05-18-11
H0664	K. Alexander	DISCLOSURE/GROUP LIFE INSURANCE.	*H Pres. To Gov. 6/ 16/2011	04-07-11	05-24-11
H0709=	Folwell	PROTECT AND PUT NC BACK TO WORK.	*H Pres. To Gov. 6/ 14/2011	04-11-11	04-12-11
H0709=	Folwell	PROTECT AND PUT NC BACK TO WORK.	*H Pres. To Gov. 6/ 14/2011	04-12-11	04-14-11
H0774	Rules, Calendar,	STUDY INSURANCE FOR CONTRACT GROWERS.	H Ref To Com On Agriculture/ Environment/ Natural Resources	04-07-11	05-31-11
H0820	McElraft	STUDY BEACH PLAN.	H Ref To Com On Insurance	04-07-11	
H0834=	Rhyne	REDUCE OVERPOPULATION OF REINSURANCE FACILITY.	H Ref To Com On Insurance	04-07-11	
S0265	Tom Apodaca	STATE HEALTH PLAN/ APPROPRIATIONS AND TRANSFER.	*H Read	03-28-11	03-29-11
S0321=	Tom Apodaca	SURPLUS LINES/PREMIUM	*HR Ch. SL 2011-120	05-09-11	05-12-11

'\$' indicates the bill is an appropriation bill.

A bold line indicates the bill is an appropriation bill.

'*' indicates that the text of the original bill was changed by some action.

'=' indicates that the original bill is identical to another bill.

North Carolina General Assembly
Through House Committee on
Insurance

Date: 06/20/2011
Time: 10:44
Page: 002 of 002
Day: H-087/S-087

2011-2012 Biennium

Bill	Introducer	Short Title	Latest Action	Leg.	In Date	Out Date
S0321=	Tom Apodaca	TAX.-AB SURPLUS LINES/PREMIUM	*HR Ch. SL 2011-120		05-12-11	05-18-11
\$ S0323=	Tom Apodaca	TAX.-AB STATE HLTH PLAN/ APPROPRIATIONS & TRANSFER LL.	*HR Ch. SL 2011-85		03-31-11	04-19-11
S0608=	Neal Hunt	HEALTH CARE SHARING ORGANIZATIONS.	HR Ch. SL 2011-103		05-03-11	05-24-11
S0647	Bob Rucho	MUTUAL INSURANCE HOLDING COMPANIES.	*H Ref To Com On Insurance		06-09-11	
S0656	Jim Davis	RIGHT TO CHOOSE PHYSICAL THERAPIST.	*H Ref To Com On Insurance		06-13-11	
S0702	Wesley Meredith	DIRECTOR AND OFFICER INSURANCE FOR TREASURER.	*H Pres. To Gov. 6/ 17/2011		06-08-11	06-14-11
S0738	Thom Goolsby	LIABILITY INSURANCE REQUIRED FOR ABC PERMITS.	*H Ref To Com On Insurance		06-13-11	
S0744	Thom Goolsby	TRANSPARENCY IN THE COST OF HEALTH CARE.	*H Ref To Com On Insurance		06-13-11	

'\$' indicates the bill is an appropriation bill.

A bold line indicates the bill is an appropriation bill.

'*' indicates that the text of the original bill was changed by some action.

'=' indicates that the original bill is identical to another bill.

MINUTES

HOUSE COMMITTEE ON INSURANCE

April 5, 2011

The House Committee on Insurance met in Room 1228 of the Legislative Building on April 5, 2011, at 1:00 pm. The following members were present: Representatives Dockham, Chair, Blust, Brown, Bryant, Burr, Collins, Crawford, Current, Faison, Floyd, Folwell, Glazier, Hamilton, Howard, Hurley, Jackson, Johnson, McElraft, McGuirt, Mills, Murry, Pierce, Shepard, Steen, Stevens, Wainwright, Warren, and Wilkins. Tim Hovis and Bill Patterson, Staff Counsels, were in attendance. A Visitor Registration list is attached and made part of these minutes. (Attachment I)

Representative Dockham, Chair, called the meeting to order at 1:00 pm. He introduced the pages and the Sergeant of Arms staff. (Attachment II)

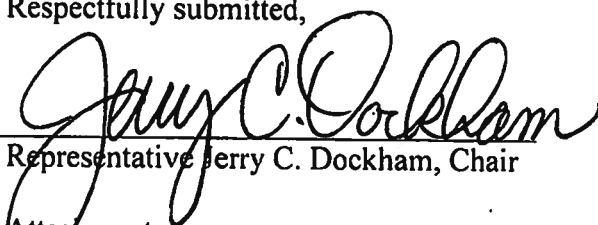
Chairman Dockham recognized Representative Folwell to introduce Dr. Richard A. Victor, Executive Director Workers Compensation Research Institute. (Attachment III)

Dr. Victor introduced himself and gave a PowerPoint presentation regarding the Workers Compensation Research Institute's major findings from its series of studies on the North Carolina workers' compensation system – focused on workers' outcomes and employers' costs. (Attachment IV)

Representative Dockham welcomed questions from the committee and discussion followed.

There being no further business, the Chair adjourned the meeting at 1:45 pm.

Respectfully submitted,


Representative Jerry C. Dockham, Chair
Attachments


Regina Irwin, Committee Assistant

AGENDA

HOUSE COMMITTEE ON INSURANCE

April 5, 2011

1:00 pm

Room 1228/1327

WELCOME AND OPENING REMARKS

Representative Jerry Dockham, Chairman

INTRODUCTIONS

Pages & Sargent at Arms

**Dr. Richard A. Victor, Executive Director Workers
Compensation Research Institute**

Carol Telles, Senior Analyst

Andrew Kenneally, Manager, Marketing & Communications

PRESENTATION

Dr. Victor, will present major findings from its series of studies on the North Carolina workers' compensation system – focused on workers' outcomes and employers' costs.

ADJOURNMENT

VISITOR REGISTRATION SHEET

INSURANCE

APRIL 5, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Paul Pully	NCAJ-
John McAlisto	NC Chamber
Elizabeth Robinson	NARALT
Udda Wike	
Megan Shaver	
Ed Pully	Workers in NC
Mark Doby	AGAINST REFORM REFORM, ^{work} NC COMP
Lane Wallace	502 Polk St, Raleigh, NC AM/MA
Whitney Wallace	opposed to WC reform
Krystal Draughn	against WC reform Bill
Matt Jacobs	Murphy-Brown LLC

VISITOR REGISTRATION SHEET

INSURANCE

APRIL 5, 2011

Name of Committee

Date

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FIRM OR AGENCY AND ADDRESS

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Clare D. Rogers	814 Monticello Rd Kendallville, NC 28923
Walter R. Nispor	4680 US Hwy 64 N Plymouth NC
Derwood Sadler	2795 Holly Springs Ch Rd Willinston NC 27892
Belinda Anderson	211 TRIMBLE TRAIL Southern Shores 27949
Branch W. Vincente	120 Twisted Tree Court Southern Shores, NC 27949 (Dave)
Rogers Limas Jr	Rogers P.O. Box 334 27970
Estev Small	1240 Bankwood Rd Rogers NC 27970
Rufus Haskin	4105 Piney Grove Ch Rd Vernonville 27846
Markham Arnold	P.O. Box 684 Plymouth NC 27962
Cleo P. Nispor	306 Downing Rd Rogers, NC 27970

VISITOR REGISTRATION SHEET

INSURANCE

APRIL 5, 2011

Name of Committee

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FIRM OR AGENCY AND ADDRESS

Mary Benton	injured worker
Sarah Davis	Protect NC Workers
Jody Roberts	protect NC workers
William Furlington	injury worker
Riccardo Neri	protect NC workers
Veronica Zeilfelder	protect NC workers
David L. Hemen	Protect Worker
Nathan Jackson Jr	Protect Worker
Harvey Thomas	Protect Worker
Raymond Manning	Protect worker
John Jernigan	Leonard Jernigan lawyer

VISITOR REGISTRATION SHEET

Name of Committee

Date

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FIRM OR AGENCY AND ADDRESS

TODD YOHO	TERNIGAN LOW FORM
Yony Vanelst	LOWE'S
CHARLOAN VANELST	LOWE'S
GERRIUS DAVIS	SHANKLE
RITA HOUSE	SHANKLE
EMORY JOHNSON	
ANTHONY MATARO	3000 ALICE FLAG LN INDIAN TRAIL NC
DAVID JACOBS	1547 ELIJAH RD. DRUM N.C. 28369
CLARA JACOBS	1547 ELIJAH RD. DRUM N.C. 28369
BRITTNEY SHANKLE	1227 Willow Bridge Ct Charlotte, NC 28216

VISITOR REGISTRATION SHEET

Name of Committee

Date

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NAME

FIRM OR AGENCY AND ADDRESS

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Bernard J. Cannon	116 Amanda Inn. Rockingham N.C 28379
TRAVIS PAYNE	P.O. Box 28186 RALEIGH NC 27611
Donald Rogavage	PFFPNC,
Diane Messner	PFFP
Kenneth H. Drum	7071 Maple Glen Dr. Catawba, NC 28037
DAVID Vtipil	311 Mizzard H Chy NC 27518
T. Baznik	8370 Primant. Blvd Raleigh NC 27612
Diana Menezes	115-1A Abington Ct. Cary NC 27513

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Charlene Shahan	OSP
THEO CAREW	6600 Wickliffe Dr Harrisburg, PA
JEFFREY A GALLAGHER	PFFPMC LOCAL 4249 Grad year
Jacqueline Craig	United Steelworkers Local 959
Alan Gray	USW Local 959
Richard OQuinn	SAW Ford, NC 27330 injured worker
Les Dutcher	8516 Peach Tree Dr Atlanta, GA injured worker
Alice Hudson	Grimes Tech Anderson Ashv
Paul Haul	2009 Fernwood Ct Henderson, NC 27536
David T Malbrough	DeMays Law Firm 1711 E. Morehead St - Charlotte, NC 28234

VISITOR REGISTRATION SHEET

HOUSE HEALTH & HUMAN SERVICES

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Timothy P. Pierce	5626 Davis Mill Rd Greensboro NC 27406
Lee Ray Smith	Hope Mills NC 28348 Sun Sparring Branch Rd
Maureen Geraughty	121 Cascade Ave, Winston-Salem 27127 Raleigh Professional Fire Fighters Assoc
Felipe Fierro	LOCAL 548 I.A.F.F.
Corey McGee	RALEIGH PROFESSIONAL FIRE FIGHTER ASSOC LOCAL 548
John Rehbeck	" "
John Romero	JACKSONVILLE ASSOC of Prof F/F Paramedics C-4249
John D. Foster	Charlotte Fire Fighters Local 660
Keith Wilder	Raleigh Professional Fire Fighters Association Local # 548

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

JACK Knight	STOKEDLE N.C.
MATT + DEAN E HALLINGS	ASTEBORO N.C.
Jasmine Roach	Younce + Vtipil, PA 3701 Lake Boone Trail, Suite 300 Raleigh NC 276
Carmella Williams	Younce + Vtipil, P.A.
Phyllis Reinhardt	455 Benjamin St & W Salisbury, N.C. 28147
George W. Reinhardt	455 BENJAMIN - TROTT LANE SALISBURY, N.C. 28147 - PERSONAL
Adrienne Wilkerson	156 Buchanan Lane Clanton, AL 27527
CHARLES B Hutchens	Yadkinville NC 27055 VOW
Melva T. Hutchens	Yadkinville N.C. VOW
Don. J. Loring Simmons	Ramapo, N.C.
Frederic B. Wilkerson	P.O. Box 3131 Henderson N.C. 27536

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

David Linn

Greenboro N.C.

Due to man fire

Marion B. Wright

Weyerhaeuser (retired)

Durham, N.C.

Andrew Kennedy

Workers Compensation

Research Institute (WERT)

Mike ZIGLAR

Guest of Rep Folwell (Freedom Works')

VISITOR REGISTRATION SHEET

INSURANCE

APRIL 5, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

<i>Pennell Lee</i>	<i>VOW</i>
<i>Michael W. Lee</i>	<i>VOW</i>
<i>DE Nelson</i>	<i>VOW</i>
<i>Rev. H. Nelson</i>	<i>VOW</i>
<i>Glen Gillette</i>	<i>Professional Firefighters and Paramedics of North Carolina</i>
<i>David Anders</i>	<i>" "</i>
<i>Jack Williams</i>	<i>VOW</i>
<i>Lu Ann Perna</i>	<i>Caroline State Strategies</i>
<i>Kathy Hanna</i>	
<i>NgVik</i>	
<i>Carle Markham</i>	

VISITOR REGISTRATION SHEET

INSURANCE

APRIL 5, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Shirley J. Briggs	
Don DeHart SR.	Durham, N.C.
Leslie Wickham Jr	Durham, N.C.
Shirley Goodman	Salisbury, NC
Victor Farah	Raleigh
Art Camm	Raleigh NC
Bill Wilson	ARRP
AnnaLiese Ralph	DK NC
Jennifer Cohen	IFNC
Grady Tegen	NMRS
Doug File	Salisbury N.C.

VISITOR REGISTRATION SHEET

INSURANCE

APRIL 5, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Tammy File	430 Scout Rd Salisbury, NC 28146
William Allen	544 E. 1st St. Winston-Salem, NC 27105
Sara Fender	IFNC
E. R. W. rod	2500 Garden Rd WST. NC 27107 Tenth Ave 391
David L. DeBerry	2201 1350 Holly Sp. Cl. 12D ²⁷⁸⁹⁻²
Maylene W rod	2500 Garden Rd WST. NC 27107
D.W. Gresham	1929 Old Blacksmith Rd, Bolton, NC 28
Alexis Clemmons	4140 Northwest Rd Kelton NC 28451
Leonard Gresham	USW Local 9-738 Riegelwood N.C. 28456
LARINDA DeBerry	3915 E Dallas Way Highpoint NC 27265 ²¹
Mildred Ann Brown	144 Oak Forest Drive Kernersville, North Carolina, 27284

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Amy Buchanan	Deuterma Law Group 317 S. Greene St Greensboro, NC 27401
Shannon Denner	Lee & Smith Attorneys At Law Firm Spartanburgh S.C.
Barry Decker	Wallace & Graham Salisbury, N.C.
Kenneth Thompson	
Booby Thompson	
Tom Swink	
Charlottesville Allen	Wallace & Graham Salisbury, NC 28144
Judy Allen	Wallace & Graham Salisbury, NC 28138
David Allen	Wallace & Graham Salisbury, NC 28138
Loretta Patrick	Wallace & Graham Salisbury, N.C.
Melinda Crumpler	Younce & Hipfl, P.A. 3701 Lake Anne Trail Ste 300 Raleigh, NC 27607

PLEASE PRINT

- App 26 -

ATTACHMENT

HOUSE PAGES

NAME OF COMMITTEE: INSURANCE DATE: APRIL 5, 2011

1. **NAME:** Amanda Keyser

County: Wake

Sponsor: Ingie

2. **NAME:** Sarah Cook

County: Johnston

Sponsor: Daughtry

3. **NAME:** _____

County: _____

Sponsor: _____

4. **NAME:** _____

County: _____

Sponsor: _____

5. **NAME:** _____

County: _____

Sponsor: _____

SERGEANTS-AT-ARMS

1. **Name:** Bill Mac Rae

2. **Name:** Reginald Sills

3. **Name:** Garland Shepherd

4. **Name:** _____

5. **Name:** _____

Dr. RICHARD A. VICTOR, Executive Director
Workers Compensation Research Institute

Dr. Victor has been the Executive Director of the Workers Compensation Research Institute (WCRI) since its inception in 1983.

The Institute, located in Cambridge, Massachusetts, is an independent, not-for-profit research organization providing high-quality objective information about public policy issues involving workers' compensation systems.

Dr. Victor is the author of numerous books and articles on worker's compensation issues.

Prior to working at the Institute, Dr. Victor spent seven years conducting research at The Rand Corporation in both Washington, D.C., and Santa Monica, California.

At Rand, he was a principal researcher at the Institute for Civil Justice.

Dr. Victor received his J.D. and Ph.D. (economics) degrees at the University of Michigan, where he was the George Humphrey Fellow in Law and Economic Policy.

How Workers' Compensation In North Carolina Compares To Other States

Testimony Before North Carolina House
Insurance Committee,
April 5, 2011

Today's Outline

How do NC workers fare?
Is NC a high cost state for employers?
Where are NC costs higher than typical?

About the Workers Compensation
Research Institute (WCRI)



High-level Summary For N. Carolina

Important worker outcomes were average,
except initial payment was slower

Employers' average premiums were in the
mid-range of states

Average cost per claim was 19–45% higher
than the median state

May suggest opportunities to reduce costs



High-level Summary For N. Carolina

Main areas where costs higher than typical

Hospital costs—both inpatient and outpatient

Surgery rates higher than most states

Average income benefits per claim

Frequency and size of lump-sum settlements

Hybrid income benefit system

Chiropractic care used more in other states

Increasing litigiousness



About WCRI

- Not-for-profit public policy research institute – since 1983, Cambridge, MA
- Funding from diverse membership dues
 - Employers, insurers, TPAs
 - State governments – US, Canada, Australia
 - Health care provider and managed care organizations
 - Several state labor organizations



About WCRI

- Not make recommendations nor take positions on issues studied
- Studies quality-assured by external peer reviewers
- Focused on benefit delivery system, not on insurance mechanism or pricing

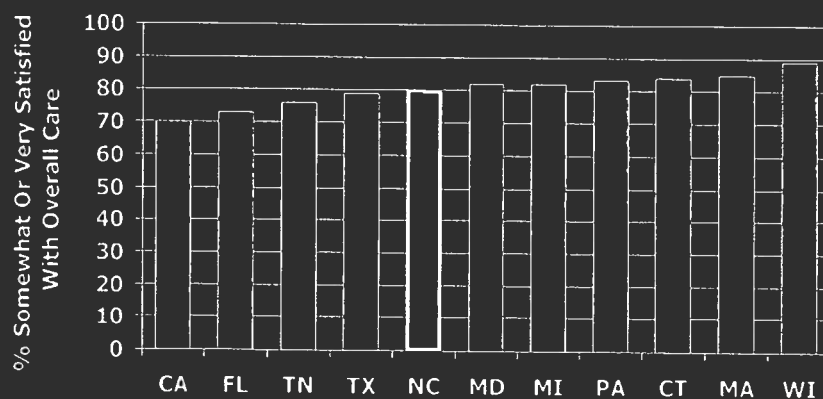


How Do NC Workers Fare?

- Satisfaction with healthcare was typical
- Recovery of health was typical
- Speed of return to work was average
- Access to care was average or below average
- First payment was slower than typical

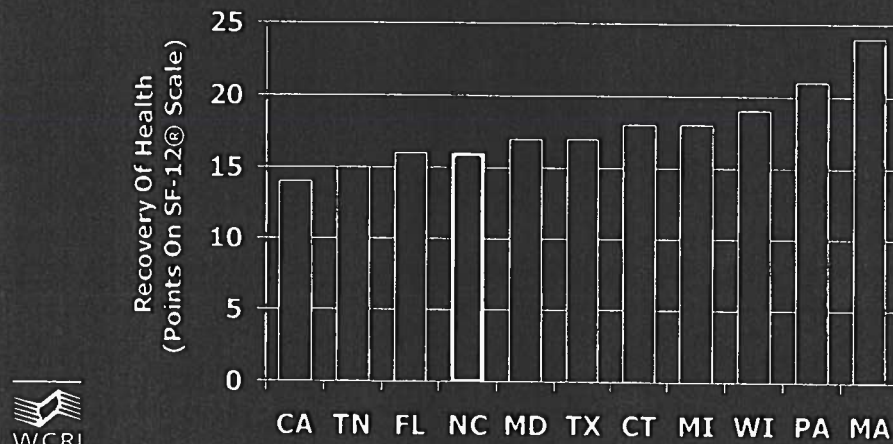


NC Workers Reported Typical Satisfaction With Healthcare



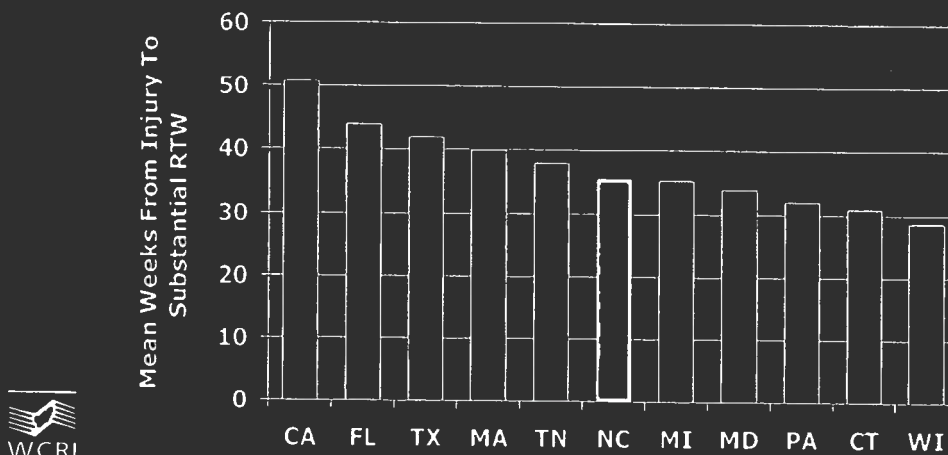
Source: Belton And Liu. 2010. *How Have Worker Outcomes And Medical Costs Changed In Wisconsin?*

*NC Workers' Recovery Of Health Typical Of States Studied



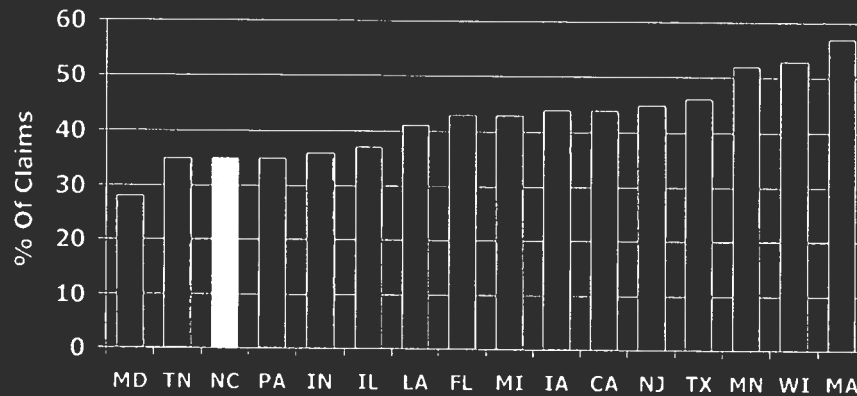
Source: Belton And Liu. 2010. *How Have Worker Outcomes And Medical Costs Changed In Wisconsin?*

NC Workers Reported Average Speed Of Return To Work



Source: Belton And Liu. 2010. *How Have Worker Outcomes And Medical Costs Changed In Wisconsin?*

NC Workers Received First Income Benefit Check Later Than Most States



2008 Claims With First Indemnity Payment Within 14 Days Of Payor Notice, At 12 Months Of Experience With > 7 Days Of Lost Time, Not Adjusted For Case Mix

Today's Outline

- : How do NC workers fare?
- : Is NC a high cost state for employers?
- : Where are NC costs higher than typical?



Employers' Average Premiums Were Mid-range Of States

Cost Metric	NC vs. Median State	# States Compared
Insurance Premium Rate	+3%	50 + D.C.
Cost Per Worker	+9%	46



NC Higher Cost Per Claim: Cost Reduction Opportunities Might Exist

Cost Metric	NC vs. Median State	# States Compared
Cost Per Worker	+9%	46
Insurance Premium Rate	+3%	50 + D.C.
Avg. Incurred Cost/Claim	+34%	46
Avg. Paid Cost/Claim	+19%	16
Avg. Paid Cost/Claim With > 7 Days Lost Time	+45%	16



Today's Outline

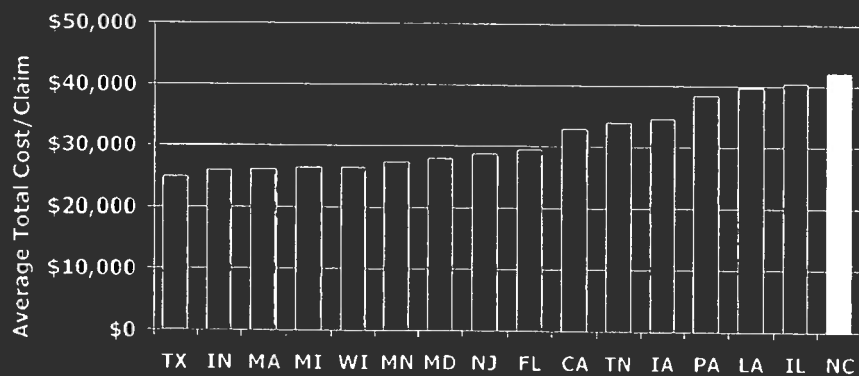
How do NC workers fare?

Is NC a high cost state for employers?

Where are NC costs higher than typical?

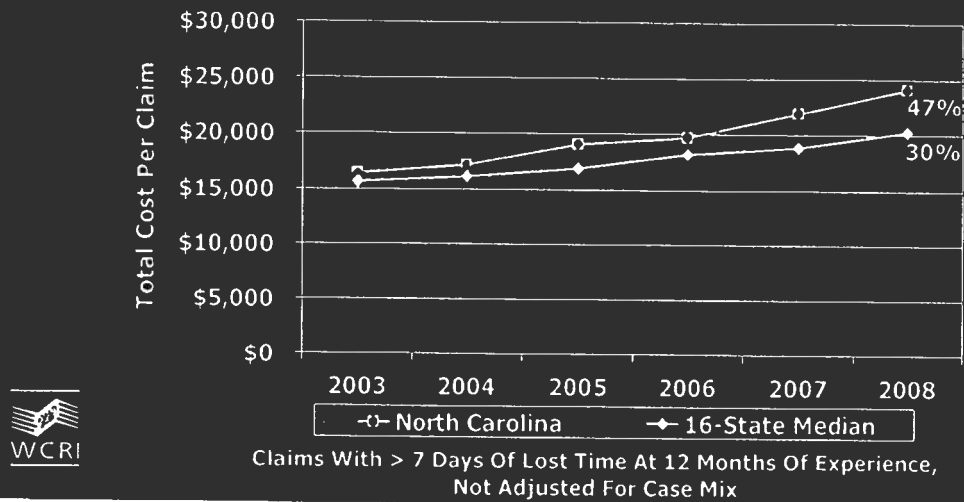


Total Costs Per Claim In NC Highest Of Study States

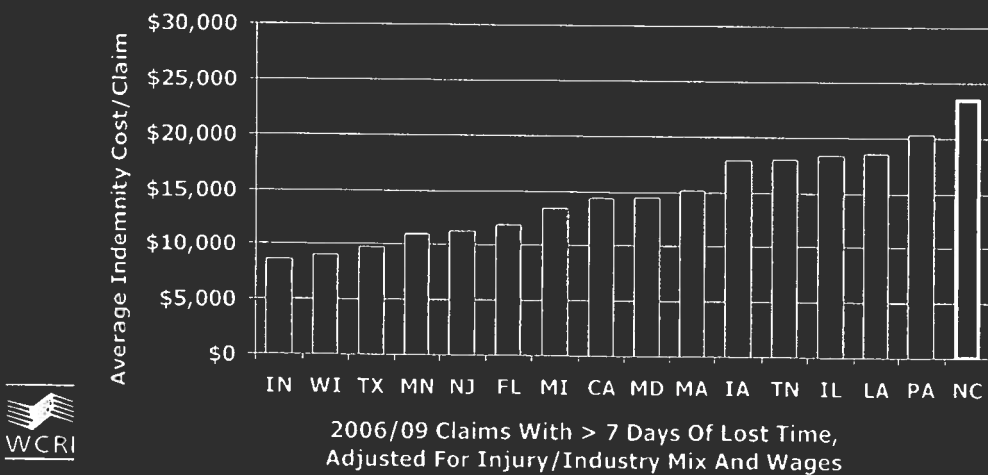


2006/09 Claims With > 7 Days Of Lost Time,
Adjusted For Injury/Industry Mix And Wages

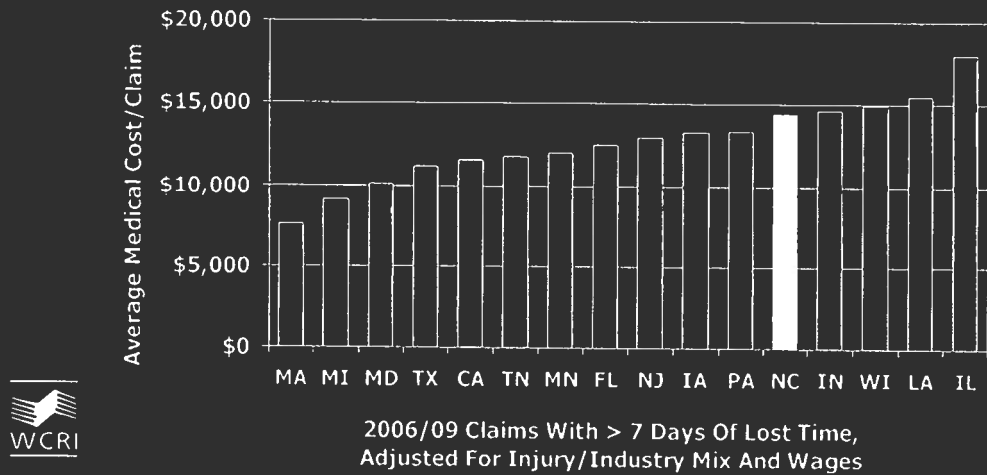
NC Total Costs Per Claim Grew Faster Than The Median State In The Study



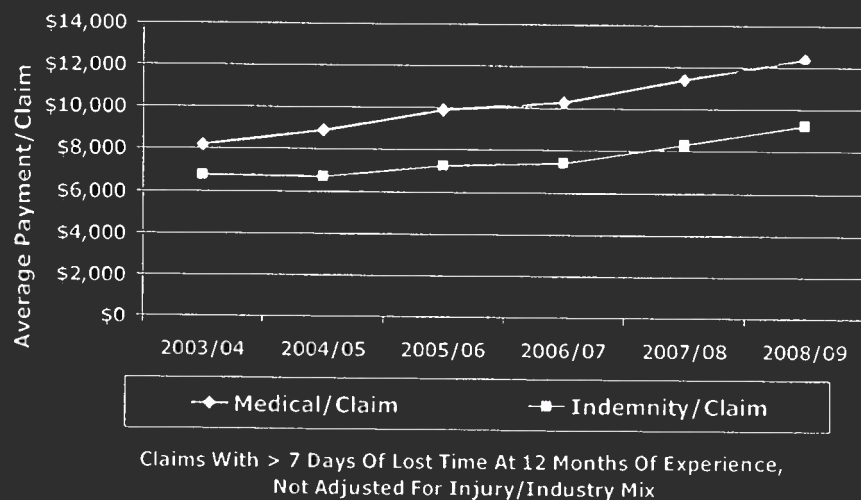
NC Had Highest Indemnity Benefits Paid Per Claim



Medical Cost Per Claim In NC 13% Higher Than Median State



*North Carolina Medical And Indemnity Costs Per Claim Grew



Data And Methods

Data reasonably representative of states' experience

Source: Insurers, self-insurers, state insurance funds
56% of North Carolina claims; 44-80% across all 16 states

Meaningful interstate comparisons

Definitions harmonized across states and data sources

Adjusted for interstate differences in:

Injury mix, industry mix, wage levels

Adjusted for differences in waiting periods



NC Hospitals Received Higher Payments Per Claim

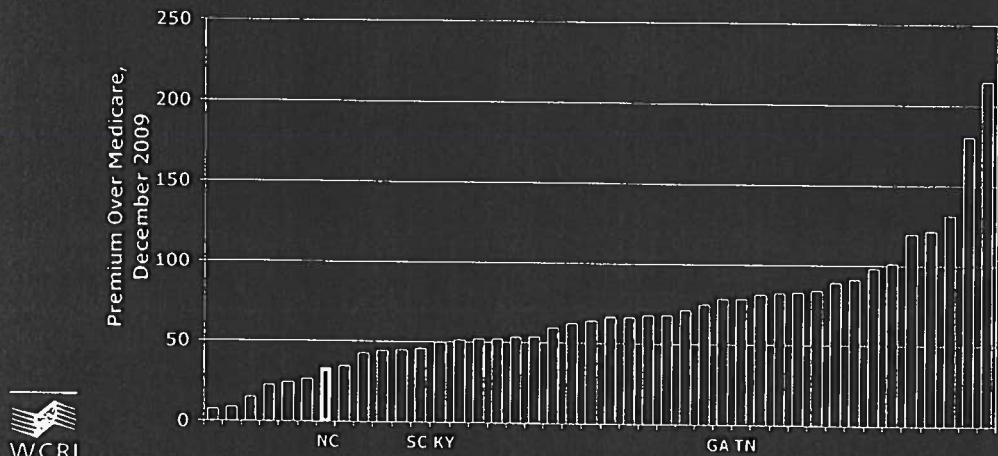
Average Payment Per Claim	North Carolina	16-State Median	Percent Difference
Nonhospital	\$4,712	\$5,018	-6%
Outpatient	\$5,883	\$3,848	53%
Inpatient	\$29,214	\$20,633	42%



2007/08 Claims With > 7 Days Of Lost Time,
Adjusted For Injury/Industry Mix And Wages

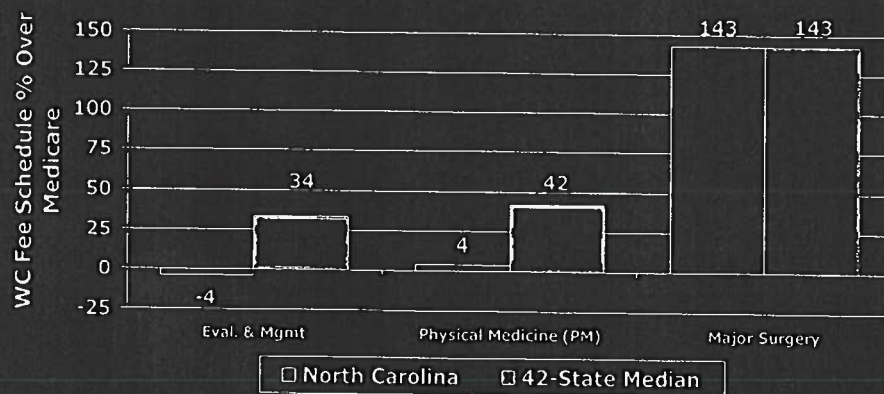
Source: *CompScopeSM Medical Benchmarks For North Carolina, 10th Edition (2010)*

*For Nonhospital Providers, Fee Schedule Was Lower Than Median State



Source: *Benchmarks For Designing Workers' Compensation Medical Fee Schedules: 2009*

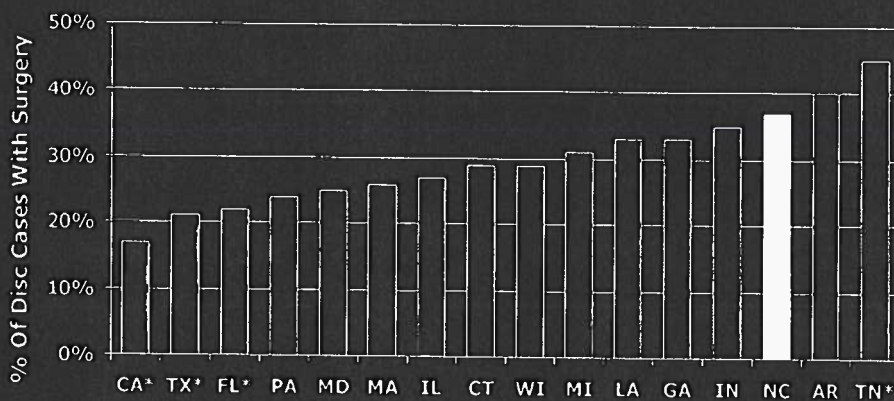
NC Nonhospital Fee Schedule Low For Primary Care & PM; Typical For Surgery



Fees In Effect In December 2009

Source: *Benchmarks For Designing WC Medical Fee Schedules: 2009 (2010)*

Disc Cases: NC Surgery Rate Higher Than Median State

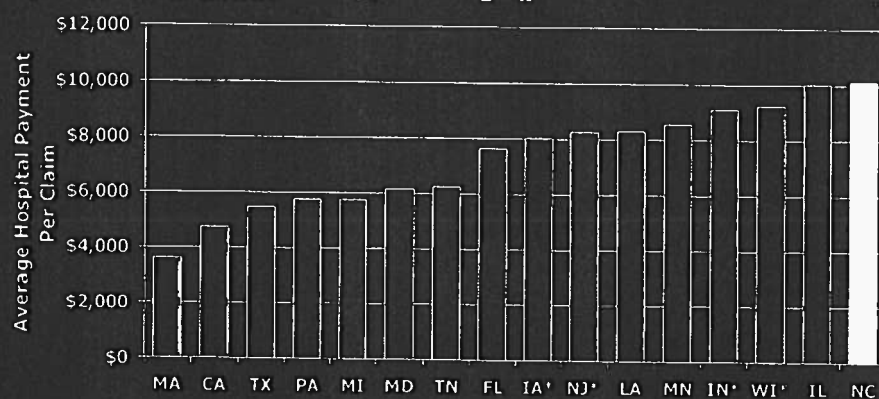


2000-2003 Claims With > 7 Days Of Lost Time In 16 States,
Up To 12 Months Of Medical Treatment

* Data For CA, FL, TN, And TX Were Before Major Medical Reform

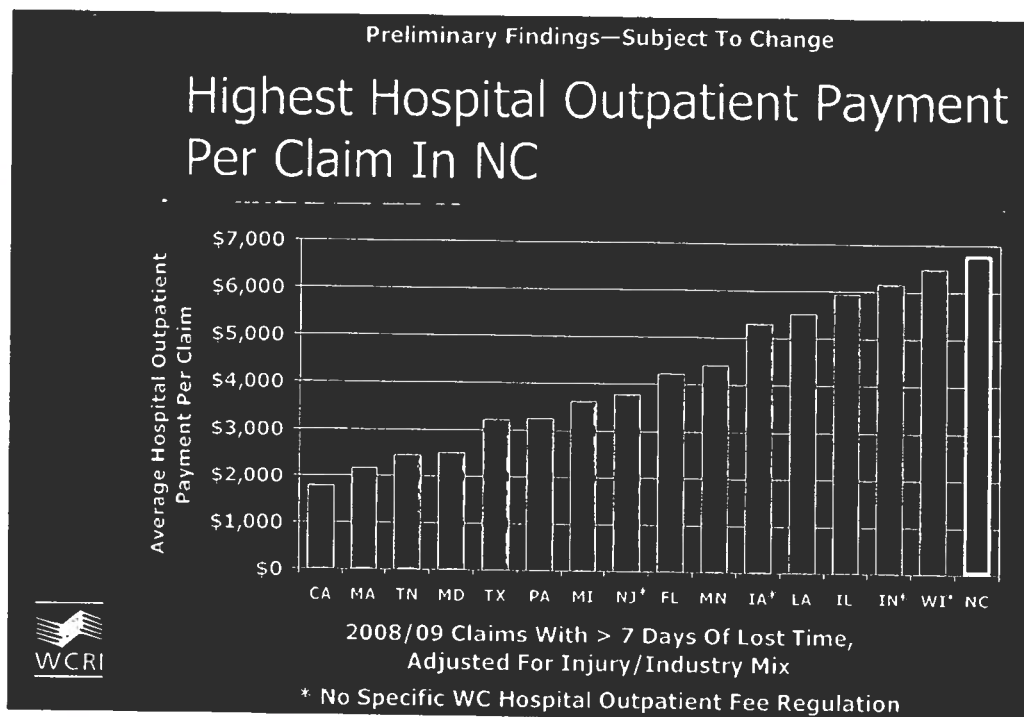
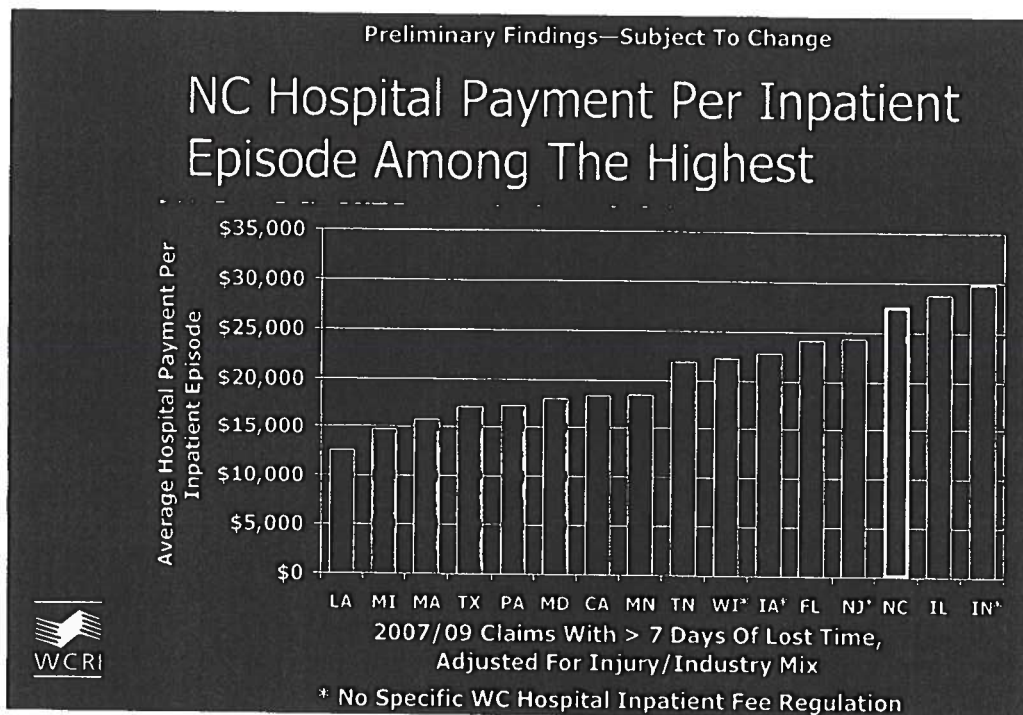
Preliminary Findings—Subject To Change

Highest Hospital Payments Per Claim In North Carolina

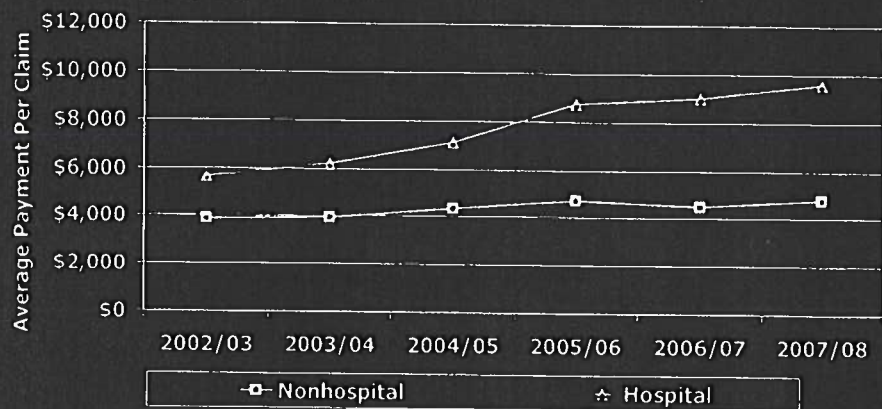


2007/09 Claims With > 7 Days Of Lost Time,
Adjusted For Injury/Industry Mix

* No Specific WC Hospital Fee Regulation



Hospital Payments Drove Growth In NC Medical Costs Per Claim



Claims With > 7 Days Of Lost Time,
Not Adjusted For Injury/Industry Mix

Source: *CompScopeTM Medical Benchmarks For North Carolina, 10th Edition (2010)*

*Hospital Fee Schedule Lowered Rates In July 2009

Hospital Inpatient: DRG end cap lowered from 77.07% to 75% of charges (most hospitals)

Hospital Outpatient: Reduced maximum rate
79% of charges from 95% (most hospitals)
87% of charges from 95% (critical care hospitals)

ASC: Reduced rates to 79% of charges from 100%



Preliminary Findings—Subject To Change

*Inferring Likely Impact Of 2009 Changes To Hospital Outpatient Fee Schedule: Examples

CPT Or R Code	Service	Actual Paid-To-Charge Ratio*	Applicable Fee Schedule Ratio
97110	Therapeutic Procedure (PT)	.70	.79-.87
610	MRI	.93	.79-.87
70450	CT Scan, Head Or Brain, 2 Views	.96	.79-.87
320	X-ray	.86	.79-.87
71020	Chest X-ray	.87	.79-.87
360	Operating Room	.92	.79-.87

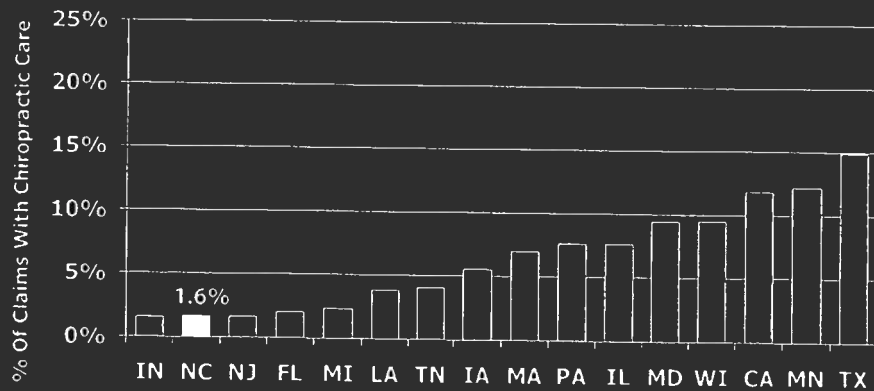


*Pre-reform

2008/09 Claims With > 7 Days Of Lost Time

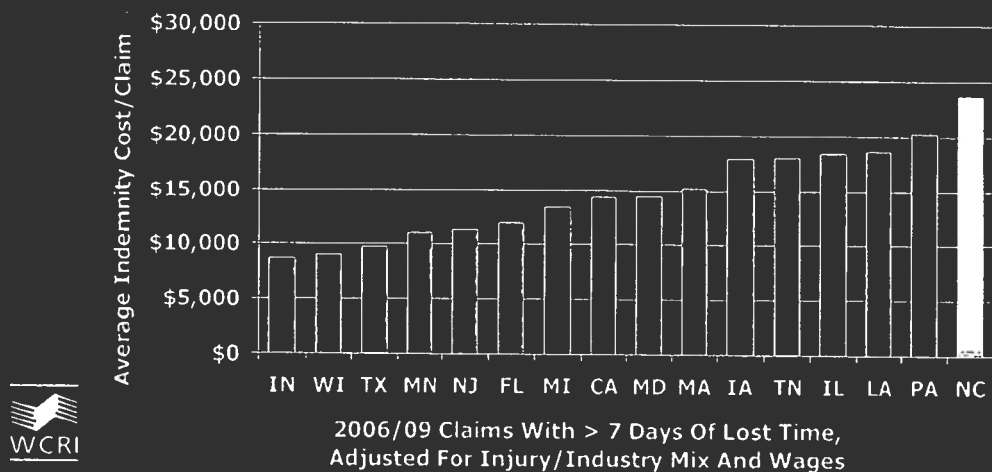
Preliminary Findings—Subject To Change

*NC Chiropractors Rarely Treat Injured Workers

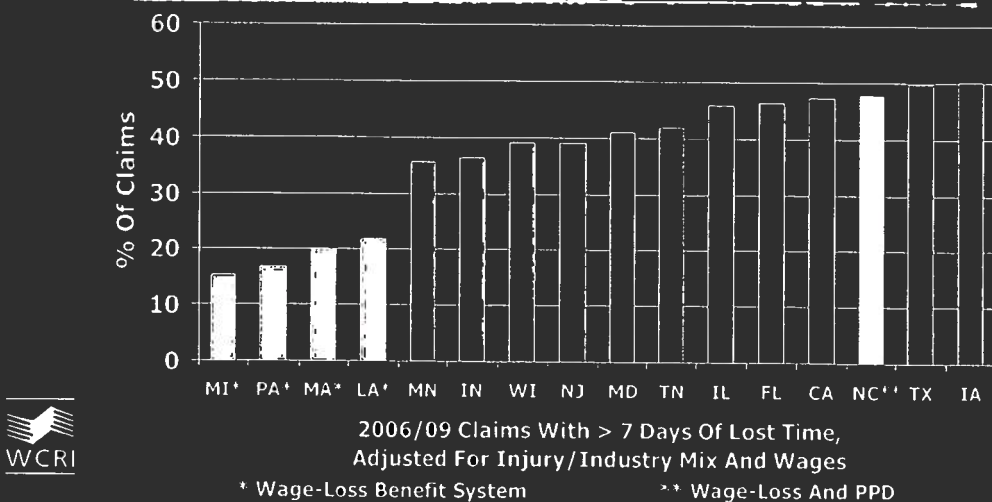


2008/09 Claims With > 7 Days Of Lost Time,
Adjusted For Injury/Industry Mix

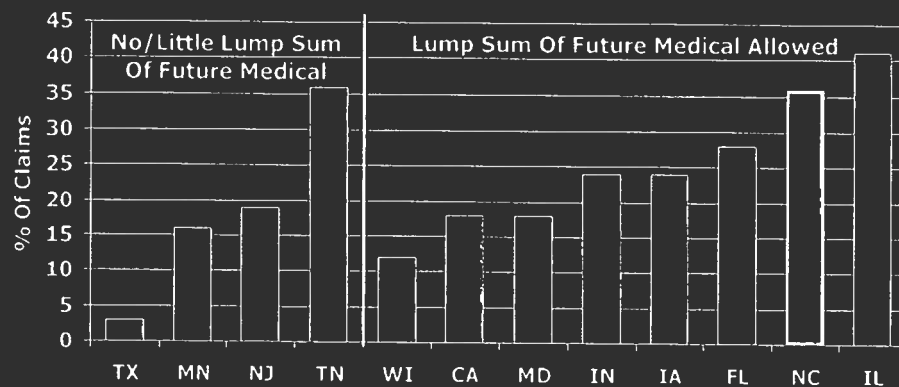
Highest Indemnity Benefits Paid Per Claim In NC



NC Workers More Often Received PPD Payments Or Lump-Sum Settlements

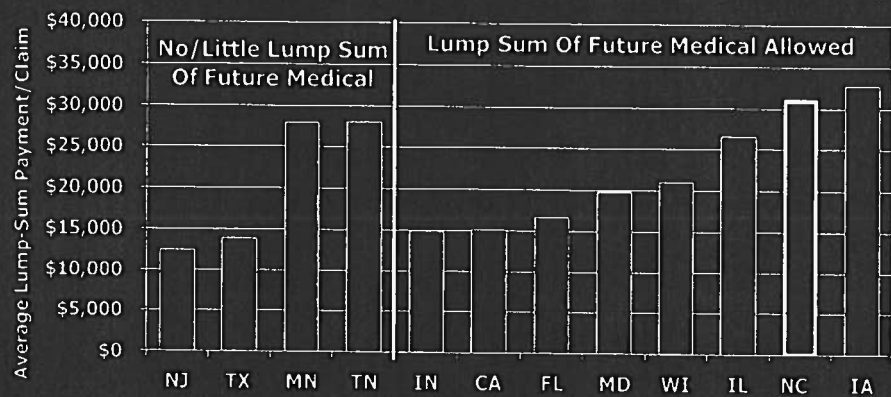


Lump-Sum Settlements Occur More Often In North Carolina



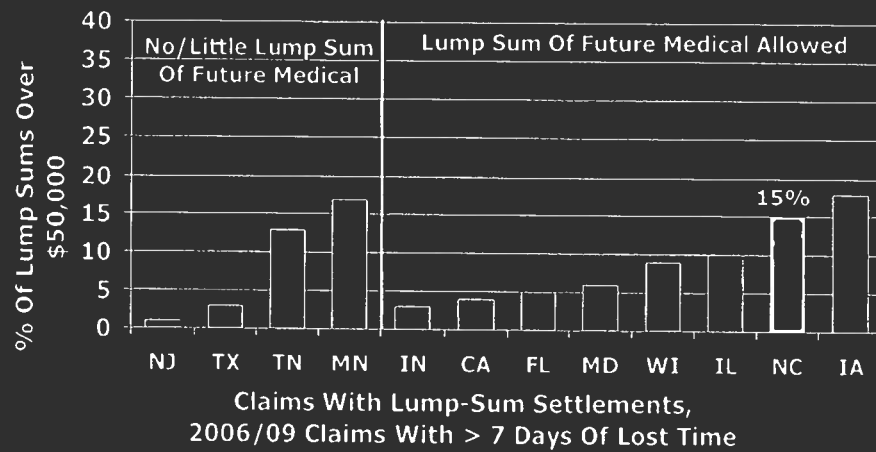
2006/09 Claims With > 7 Days Of Lost Time,
Adjusted For Injury/Industry Mix And Wages

Lump-Sum Payments Larger In NC

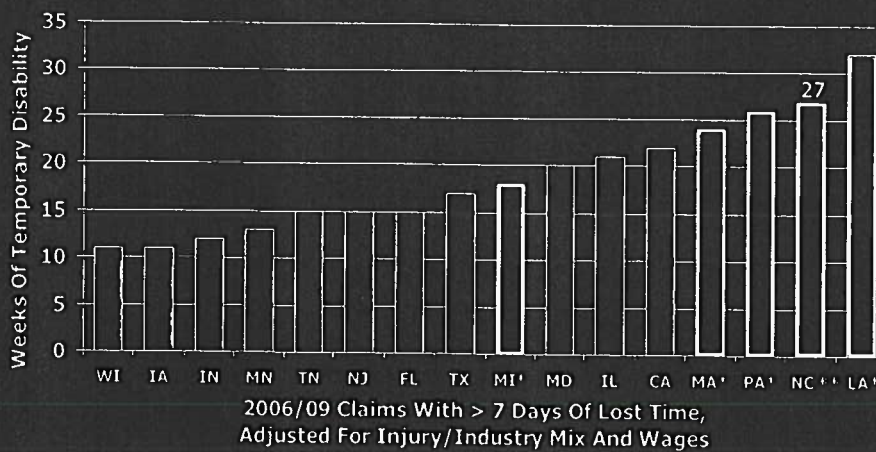


2006/09 Claims With > 7 Days Of Lost Time,
Adjusted For Injury/Industry Mix And Wages

*Lump Sums In NC More Likely To Exceed \$50,000



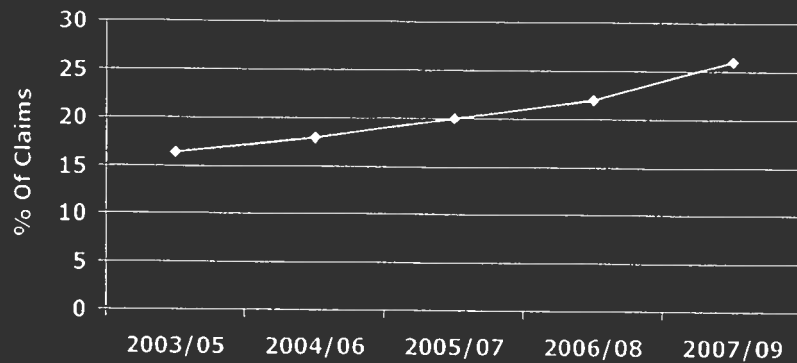
*NC Had Longer Duration Of Temporary Disability Payments



* Wage-Loss Benefit System

** Wage-Loss And PPD

*Litigiousness Increased (% Of Claims With Defense Attorney)



Claims With > 7 Days Of Lost Time At 24 Months Of Experience

High-level Summary For N. Carolina

Important worker outcomes were average,
except initial payment was slower

Employers' average premiums were in the
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May suggest opportunities to reduce costs



High-level Summary For N. Carolina

Main areas where costs higher than typical

- Hospital costs—both inpatient and outpatient

- Surgery rates higher than most states

- Average income benefits per claim

 - Frequency and size of lump-sum settlements

 - Hybrid income benefit system

Chiropractic care used more in other states

Increasing litigiousness



*Recent WCRI Studies That Include North Carolina Information

- Comparing Outcomes for Injured Workers (2010)

- CompScope™ Benchmarks, 11th Edition (2011)

- CompScope™ Medical Benchmarks, 11th Edition (forthcoming)

- Prescription Benchmarks for North Carolina (2010)

- Benchmarks for Designing Workers'

- Compensation Medical Fee Schedules (2010)

- National Inventory of WC Fee Schedules for Hospitals and Ambulatory Surgical Centers (2010)



*Recent WCRI Studies That Include North Carolina Information

- Workers' Compensation Medical Cost Containment: National Inventory (2009)
- WCRI Medical Price Index (annual)
- Interstate Variations in Medical Practice Patterns for Low Back Conditions (2008)



For More Information About WCRI

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Deputy Director
rtanabe@wcrinet.org

Richard Victor
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SPEAKER PRO TEMPORE DALE R. FOLWELL

Dale.Folwell@ncleg.net

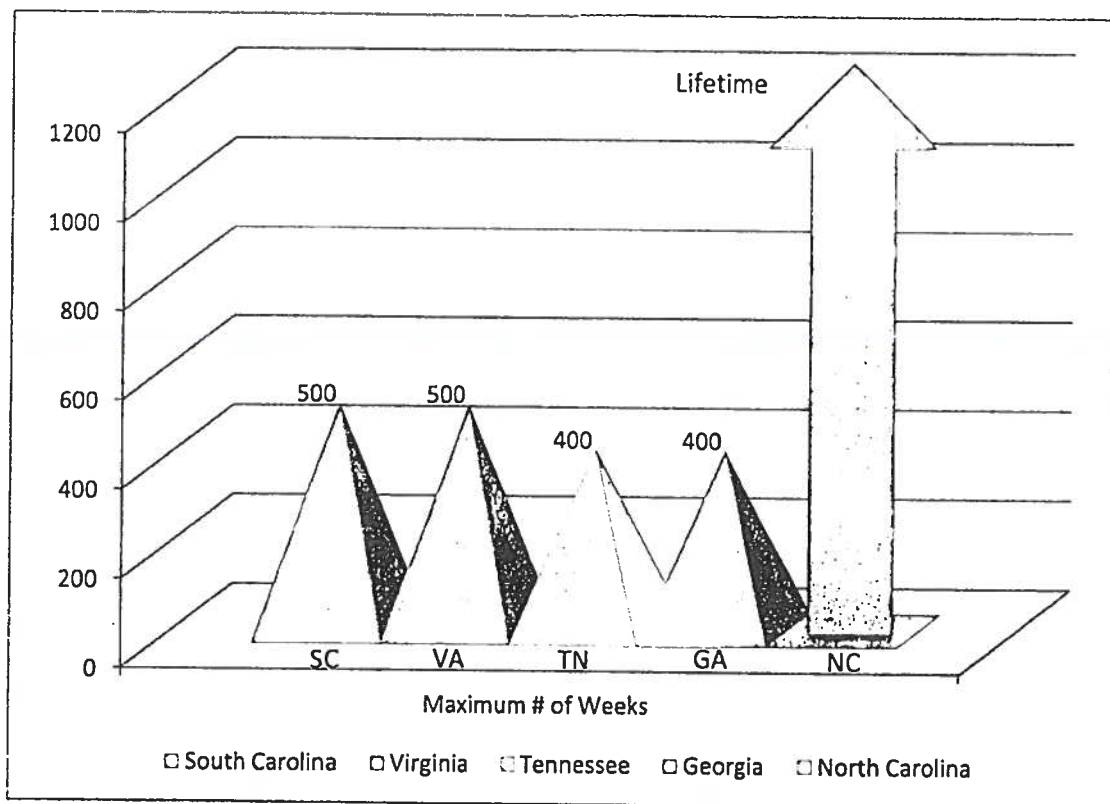
Phone Number: 919-733-5787
Room 301F, Legislative Office Building

North Carolina House of Representatives
Raleigh, NC 27603-5925

WORKERS' COMPENSATION: PUTTING NORTH CAROLINA BACK TO WORK

Duration of Temporary Total Disability Benefits

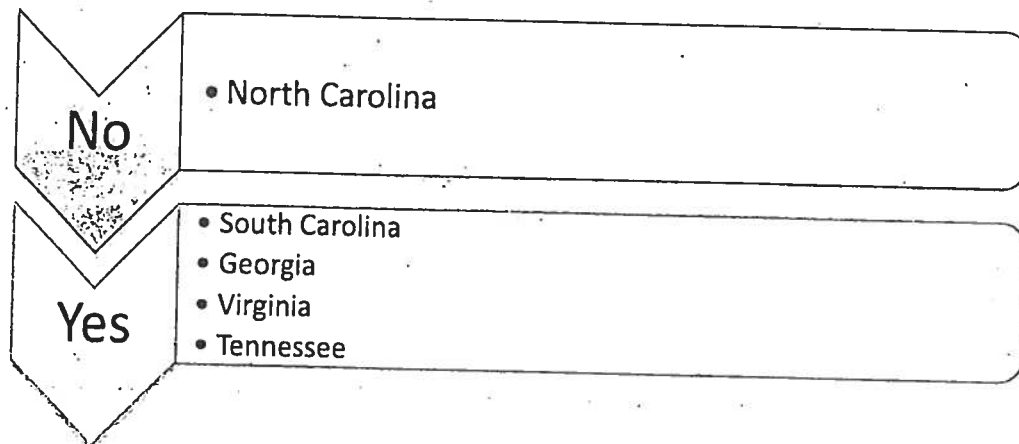
Temporary Total Disability—TTD benefits are paid when a worker is
TEMPORARILY unable to earn wages.



North Carolina hurts its ability to compete by turning our workers' comp system into a retirement system.

Over →

DO THE COMMISSIONERS ADHERE TO THE CODE OF JUDICIAL STANDARDS?



CIVITAS POLL CONDUCTED FEBRUARY 2011

Please tell me if you agree or disagree with the following statement: "A person who is injured on the job should receive workers compensation for the remainder of their life, even if they are able to work at a different job."

12%	Total Agree
85%	Total Disagree
6%	Strongly Agree
6%	Somewhat Agree
19%	Somewhat Disagree
66%	Strongly Disagree
2%	Don't Know/ No Opinion (DO NOT READ)
--	Refused (DO NOT READ)

600 registered voters conducted Feb 10, 12-13 2011 by National Research, Inc. of Holmdel, NJ.

Please Email me at DaleF@ncleg.net to join my mailing list.

Follow me on Facebook & Twitter



(DaleFolwell)

Over →

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 709*

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

Sponsors: Representatives Folwell, Dollar, Hager, and Crawford (Primary Sponsors).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Commerce and Job Development, if favorable, Judiciary, if favorable, Finance.

April 7, 2011

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

SECTION 2. G.S. 97-2 is amended by adding a new subsection to read:
"§ 97-2. Definitions.

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

...

(22) Suitable employment. — The term "suitable employment" means any
employment available that (i) prior to reaching maximum medical
improvement is within the employee's work restrictions including
rehabilitative employment approved by the employee's treating health care
provider or (ii) after reaching maximum medical improvement is



employment which the employee is capable of performing considering the employee's education, physical limitations due to the injury, vocational skills, and experience."

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

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

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

- (1) The employee knowingly and willfully made a false representation as to the employee's physical condition;
- (2) The employer relied upon one or more false representations by the employee, and the reliance was a substantial factor in the employer's decision to hire the employee; and
- (3) There was a causal connection between false representation by the employee and the injury or occupational disease."

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

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

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

"§ 97-25. Medical treatment and supplies.

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

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

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

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

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

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

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

1 (a) It is the policy of this State that the parties have reasonable access to all medical
2 records, reports, and information that are pertinent to and necessary for the fair and swift
3 resolution of workers' compensation claims. Therefore, an employer is entitled, without the
4 express authorization of the employee, to obtain medical records of the employee and
5 communicate with an employee's health care providers if the requested medical records,
6 reports, and information are:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 "§ 97-27. Medical examination; facts not privileged; refusal to be examined suspends
29 compensation; other medical opinions; autopsy.

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

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

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

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

1 Industrial Commission, shall have the right in any case of death to require an autopsy at the
2 expense of the party requesting the same.

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

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

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

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

34 **"§ 97-29. ~~Compensation rates~~ Rates and duration of compensation for total incapacity.**

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

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

(c) In cases of total and permanent disability compensation, compensation including medical compensation, shall be paid for by the employer during the lifetime of the injured employee. If death results from the injury or occupational disease, then the employer shall pay compensation in accordance with the provisions of G.S. 97-37. An injured employee is presumed to be totally and permanently disabled and qualified for lifetime compensation only if the injured employee has an injury consisting of one or more of the following:

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

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

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

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

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

"§ 97-30. Partial incapacity.

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

Patrol, but he shall be awarded any other benefits to which he may be entitled under the provisions of this Article."

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

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

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

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

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

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

...

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

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

Compensation payable under this Article to aliens not residents (or about to become nonresidents) of the United States or Canada, shall be the same in

amounts as provided for residents, except that dependents in any foreign country except Canada shall be limited to surviving spouse and child or children, or if there be no surviving spouse or child or children, to the surviving father or mother."

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

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

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

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

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

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

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

"§ 97-78.1. Standards of judicial conduct to apply to commissioners and deputy commissioners.

1 The standards of judicial conduct provided for judges in Article 30 of Chapter 7A of the
2 General Statutes shall apply to commissioners and deputy commissioners. Commissioners and
3 deputy commissioners shall be liable to impeachment for the causes and in the manner
4 provided for judges of the General Court of Justice in Chapter 123 of the General Statutes.
5 Commissioners and deputy commissioners shall not engage in any other employment, business,
6 profession, or vocation while in office."

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

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

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

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

18 "**§ 97-84. Determination of disputes by Commission or deputy.**

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

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

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

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

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

50 read:

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

...

(18) The Industrial Commission."

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

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

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

- (1) One serves a term expiring April 30, 2011.
- (2) Two serve terms expiring June 30, 2012.
- (3) One serves a term expiring April 30, 2013.
- (4) One serves a term expiring June 30, 2014.
- (5) One serves a term expiring April 30, 2015.
- (6) One serves a term expiring June 30, 2016.

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

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

2011-2012

**SENATE
INSURANCE**

MINUTES

Senate Insurance Committee

Co-Chairman

Senator Tom Apodaca
2010 Legislative Building
733-5745

Legislative Assistant: Carolyn
Gooden

Co-Chairman

Senator Wesley Meredith
2106 Legislative Building
733-5776

Legislative Assistant: Debbie
Lown

Vice Chairman

Senator Rick Gunn
312 Legislative Office Building
301-1446

Legislative Assistant: Karen
Johns, Gayle Gunn, Tory Apply

Vice Chairman

Senator Ralph Hise
1026 Legislative Building
733-3460

Legislative Assistant: Shelly
Carver

Member

Senator Bob Atwater
519 Legislative Office Building
715-3036
Legislative Assistant: Carol Resar

Member

Senator Debbie Clary
314 Legislative Office Building
715-3038
Legislative Assistant: Lynn
Tennant

Member

Senator Doug Berger
515 Legislative Office Building
715-8363
Legislative Assistant: Anna
Meadows

Member

Senator Jim Davis
2111 Legislative Building
733-5875
Legislative Assistant: Kaye
Culberson

Senate Insurance Committee

Member

Senator Don East
522 Legislative Office Building
733-5743
Legislative Assistant: Anne
Misenheimer

Member

Senator Brent Jackson
525 Legislative Office Building
733-5705
Legislative Assistant: Cindy Davis

Member

Senator David Rouzer
523 Legislative Office Building
733-5748
Legislative Assistant: Judy
Edwards

Member

Senator Don Vaughan
515 Legislative Office Building
733-5856
Legislative Assistant: Ryan Butler

Member

Senator Stan White
1121 Legislative Building
715-8293
Legislative Assistant: Suzell
Crosswhite

Member

Senator Linda Garrou
620 Legislative Office Building
733-5620
Legislative Assistant: Gail Bishop

Member

Senator Buck Newton
410 Legislative Office Building
715-3030
Legislative Assistant: Rachel Lee

Member

Senator Bob Rucho
300-A Legislative Office Building
733-5655
Legislative Assistant: Helen Long

Member

Senator Michael Walters
1118 Legislative Building
733-5651
Legislative Assistant: Vickie
Spears

Member

Senator Floyd McKissick
520 Legislative Office Building
733-4599
Legislative Assistant: Rosita Littlejohn

SENATE INSURANCE COMMITTEE
Thursday, June 9th at 8:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Insurance Committee met at 8:07 AM on June 9th, 2011, in Room 1124 of the Legislative Building. Eleven members of the committee were present. Senator's Apodaca and Meredith presided. Tucker Loflin from Greensboro, Addie Griffin from Louisburg, Mariah Bishop from Apex, Ashley Gorman from Greensboro; Bethany Spivey from Greensboro.

H.B. 298- Insurance Amendments- AB

Senator Apodaca recognized Tim Hovis, NCGA Staff, to explain the bill. Senator Hise made a motion for a favorable report to the House Committee Substitute bill. The summary and House Committee Substitute is attached.

S.B. 236- Local Events Priority/Convention Center

Senator Apodaca recognized Senator White's motion, to consider the PCS of SB 236. Senator Apodaca recognized Senator Goolsby to explain the local bill. Senator Meredith moved for an unfavorable report to the original bill, but favorable to the PCS. The PCS and summary is attached.

H.B. 709- Protect and Put NC Back to Work

Senator Apodaca recognized Representative Folwell to explain the bill. Paul Cooley, Advocates for Justice, spoke to endorse the bill. John McAllister, NC Chamber, spoke to endorse the bill. Andy Ellen, Retail Merchants, spoke to endorse the bill. Chip Baggett, NC Medical Society, spoke to endorse the bill. James Andrew, AFLCIO, spoke to endorse the bill. Rep. Hager spoke as a co-sponsor to endorse the bill. Senator Jackson made a motion for favorable report as to the House Committee Substitute Bill and the motion passed. The House Committee Substitute, summary, and press release from Representative Dale Folwell is attached.

S.B. 656- Right to Choose Physical Therapist


Senator Apodaca recognized Senator Gunn. Senator Gunn's motion to bring the PCS before the committee passed. Senator Davis was recognized to give a summary of the bill. Senator East moved unfavorable as to the original bill and favorable as to the PCS. The motion passed. The PCS and summary are attached.

S.B. 744- Transparency in the Cost of Health Care

Senator Apodaca recognized Senator Newton's motion to consider the PCS and the motion passed. Senator Goolsby was recognized to explain the PCS. Amy Jo Johnson, NCGA staff, was recognized to provide a summary of the PCS. Harry Kaplan, NC Association of

Health Plans, endorsed the bill. Senator Gunn moved unfavorable to the original bill, favorable as to the PCS. The PCS and summary is attached.

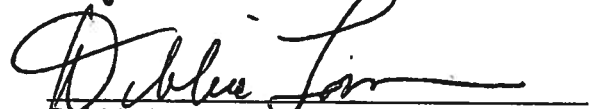
The meeting adjourned at 9:01 AM.



Senator Tom Apodaca, Presiding Chair
Senate Insurance Committee



Nicole McGuinness, Committee Clerk



Debbie Lown, Committee Clerk

Senate Insurance Committee
Thursday, June 9, 2011, 8:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 298	Insurance Amendments.-AB
HB 709	Protect and Put NC Back to Work.
SB 656	Right to Choose Physical Therapist.
SB 744	Transparency in the Cost of Health Care.

Representative Dockham
Representative Folwell
Representative Crawford, Jr.
Representative Dollar
Representative Hager
Senator Davis
Senator Goolsby

Presentations

Other Business

Adjournment

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

INSURANCE COMMITTEE REPORT

**Senator Tom Apodaca, Co-Chair
Senator Wesley Meredith, Co-Chair**

Thursday, June 09, 2011

Senator MEREDITH,
submits the following with recommendations as to passage:

FAVORABLE

H.B.	298	Insurance Amendments.-AB	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.(CS #1)	709	Protect and Put NC Back to Work.	
		Sequential Referral:	None
		Recommended Referral:	None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B.	236	9th Senatorial District Local Act.	
		Draft Number:	75181
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	Yes
S.B.	656	Right to Choose Physical Therapist.	
		Draft Number:	35271
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	No
S.B.	744	Transparency in the Cost of Health Care.	
		Draft Number:	85222
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	No

TOTAL REPORTED: 5

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

2

HOUSE BILL 709*
Committee Substitute Favorable 5/27/11

Short Title: Protect and Put NC Back to Work.

(Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED
AN ACT PROTECTING AND PUTTING NORTH CAROLINA BACK TO WORK BY
REFORMING THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

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

SECTION 2. G.S. 97-2 reads as rewritten:

"§ 97-2. Definitions.

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

(19) Medical Compensation. – The term "medical compensation" means medical, surgical, hospital, nursing, and rehabilitative ~~services~~ services, including, but not limited to, attendant care services prescribed by a health care provider authorized by the employer or subsequently by the Commission, vocational rehabilitation, and medicines, sick travel, and other treatment, including medical and surgical supplies, as may reasonably be required to effect a cure or give relief and for such additional time as, in the judgment of the Commission, will tend to lessen the period of disability; and any original artificial members as may reasonably be necessary at the end of the healing period and the replacement of such artificial members when reasonably necessitated by ordinary use or medical circumstances.

(22) Suitable employment. – The term "suitable employment" means employment offered to the employee or, if prohibited by the Immigration and Nationality Act, 8 U.S.C. § 1324a, employment available to the employee that (i) prior to reaching maximum medical improvement is within the employee's work restrictions, including rehabilitative or other noncompetitive employment with the employer of injury approved by the employee's authorized health care provider or (ii) after reaching maximum medical improvement is employment that the employee is capable of performing considering the employee's preexisting and injury-related physical and mental limitations, vocational skills, education, and experience and is located within a 50-mile radius of the employee's residence at the time of injury or the employee's current residence if the employee had a legitimate reason to relocate since the date of injury. No one factor shall be considered exclusively in determining suitable employment."



* H 709 - V - 2 *

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

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

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

- (1) The employee knowingly and willfully made a false representation as to the employee's physical condition;
- (2) The employer relied upon one or more false representations by the employee, and the reliance was a substantial factor in the employer's decision to hire the employee; and
- (3) There was a causal connection between false representation by the employee and the injury or occupational disease."

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

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

SECTION 5. G.S. 97-18 is amended by adding a new subsection to read:

"(k) In addition to any other methods for reinstatement of compensation available under the Act, whenever the employer or insurer has admitted the employee's right to compensation, or liability has been established, the employee may move for reinstatement of compensation on a form prescribed by the Commission. If the employer or insurer contests the employee's request for reinstatement, the matter shall be scheduled on a preemptive basis. This subsection shall not apply to a request for a review of an award on the grounds of a change in condition pursuant to G.S. 97-47."

SECTION 6. G.S. 97-25 reads as rewritten:

"§ 97-25. Medical treatment and supplies.

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

~~The Commission may at any time upon the request of an employee order a change of treatment and designate other treatment suggested by the injured employee subject to the approval of the Commission, and in such a case the expense thereof shall be borne by the employer upon the same terms and conditions as hereinbefore provided in this section for medical and surgical treatment and attendance.~~

Upon the written request of the employee to the employer, the employer may agree to authorize and pay for a second opinion examination with a duly qualified physician licensed to practice in North Carolina, or licensed in another state if agreed to by the parties or ordered by the Commission. If, within 14 calendar days of the receipt of the written request, the request is denied or the parties, in good faith, are unable to agree upon a health care provider to perform a second opinion examination, the employee may request that the Industrial Commission order a second opinion examination. The expense thereof shall be borne by the employer upon the same terms and conditions as provided in this section for medical compensation.

Provided, however, if the employee so desires, an injured employee may select a health care provider of the employee's own choosing to attend, prescribe, and assume the care and charge of the employee's case subject to the approval of the Industrial Commission. In addition, in case of a controversy arising between the employer and the employee, the Industrial Commission may order necessary treatment. In order for the Commission to grant an employee's request to change treatment or health care provider, the employee must show by a preponderance of the evidence that the change is reasonably necessary to effect a cure, provide

1 relief, or lessen the period of disability. When deciding whether to grant an employee's request
2 to change treatment or health care provider, the Commission may disregard or give less weight
3 to the opinion of a health care provider from whom the employee sought evaluation, diagnosis,
4 or treatment before the employee first requested authorization in writing from the employer,
5 insurer, or Commission.

6 ~~The refusal of the employee to accept any medical, hospital, surgical or other treatment or~~
7 ~~rehabilitative procedure~~ medical compensation when ordered by the Industrial Commission
8 shall bar said the employee from further compensation until such refusal ceases, and no
9 compensation shall at any time be paid for the period of suspension unless in the opinion of the
10 Industrial Commission the circumstances justified the refusal, in which case, the Industrial
11 Commission may order a change in the medical or hospital service refusal. Any order issued by
12 the Commission suspending compensation pursuant to G.S. 97-18.1 shall specify what action
13 the employee should take to end the suspension and reinstate the compensation.

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

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

21 **SECTION 7. G.S. 97-25.6 reads as rewritten:**

22 **"§ 97-25.6. Reasonable access to medical information.**

23 (a) Notwithstanding any provision of G.S. 8-53 to the contrary, and because discovery
24 is limited pursuant to G.S. 97-80, it is the policy of this State to protect the employee's right to a
25 confidential physician-patient relationship while allowing the parties to have reasonable access
26 to all relevant medical information, including medical records, reports, and information
27 necessary to the fair and swift administration and resolution of workers' compensation claims,
28 while limiting unnecessary communications with and administrative requests to health care
29 providers.

30 (b) As used in this section, "relevant medical information" means any medical record,
31 report, or information that is:

- 32 (1) restricted to the particular evaluation, diagnosis, or treatment of the injury or
33 disease for which compensation, including medical compensation, is sought;
34 (2) reasonably related to the injury or disease for which the employee claims
35 compensation; or
36 (3) related to an assessment of the employee's ability to return to work as a
37 result of the particular injury or disease.

38 (c) Relevant medical information shall be requested and provided subject to the
39 following provisions:

- 40 (1) Medical records. – An employer is entitled, without the express
41 authorization of the employee, to obtain the employee's medical records
42 containing relevant medical information from the employee's health care
43 providers. In a claim in which the employer is not paying medical
44 compensation to a health care provider from whom the medical records are
45 sought, or in a claim denied pursuant to G.S. 97-18(c), the employer shall
46 provide the employee with contemporaneous written notice of the request for
47 medical records. The employer shall provide the employee with a copy of
48 any records received in response to this request within 30 days of its receipt
49 by the employer.
50 (2) Written communications with health care providers. – An employer may
51 communicate with the employee's authorized health care provider in writing,

without the express authorization of the employee, to obtain relevant medical information not available in the employee's medical records. The employer shall provide the employee with contemporaneous written notice of the written communication. The employer may request the following additional information:

- a. The diagnosis of the employee's condition;
- b. The appropriate course of treatment;
- c. The anticipated time that the employee will be out of work;
- d. The relationship, if any, of the employee's condition to the employment;
- e. Work restrictions resulting from the condition;
- f. The kind of work for which the employee may be eligible;
- g. The anticipated time the employee will be restricted; and
- h. Any permanent impairment as a result of the condition.

The employer shall provide a copy of the health care provider's response to the employee within 10 business days of its receipt by the employer.

(3) Oral communications with health care providers. – An employer may communicate with the employee's authorized health care provider by oral communication to obtain relevant medical information not contained in the employee's medical records, not available through written communication, and not otherwise available to the employer, subject to the following:

- a. The employer must give the employee prior notice of the purpose of the intended oral communication and an opportunity for the employee to participate in the oral communication at a mutually convenient time for the employer, employee, and health care provider.
- b. The employer shall provide the employee with a summary of the communication with the health care provider within 10 business days of any oral communication in which the employee did not participate.

(d) Additional Information Submitted by the Employer. – Notwithstanding subsection (c) of this section, an employer may submit additional relevant medical information not already contained in the employee's medical records to the employee's authorized health care provider and may communicate in writing with the health care provider about the additional information in accordance with the following procedure:

- (1) The employer shall first notify the employee in writing that the employer intends to communicate additional information about the employee to the employee's health care provider. The notice shall include the employer's proposed written communication to the health care provider and the additional information to be submitted.
- (2) The employee shall have 10 business days from the postmark or verifiable facsimile or electronic mail either to consent or object to the employer's proposed written communication.
- (3) Upon consent of the employee or in the absence of the employee's timely response, the employer may submit the additional information directly to the health care provider.
- (4) Upon making a timely objection, the employee may request a protective order to prevent the written communication, in which case the employer shall refrain from communicating with the health care provider until the Commission has ruled upon the employee's request. In deciding whether to allow the submission of additional information to the health care provider, in

part or in whole, the Commission shall determine whether the proposed written communication and additional information are pertinent to and necessary for the fair and swift administration and resolution of the workers' compensation claim and whether there is an alternative method to discover the information. If the Industrial Commission determines that any party has acted unreasonably by initiating or objecting to the submission of additional information to the health care provider, the Commission may assess costs associated with any proceeding, including reasonable attorneys' fees and deposition costs, against the offending party.

(e) Any medical records or reports that reflect evaluation, diagnosis, or treatment of the particular injury or disease for which compensation is sought or are reasonably related to the injury or disease for which the employee seeks compensation that are in the possession of a party shall be furnished to the requesting party by the opposing party when requested in writing, except for records or reports generated by a retained expert.

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

(g) Other forms of communication with a health care provider may be authorized by order of the Industrial Commission issued upon a showing that the information sought is necessary for the administration of the employee's claim and is not otherwise reasonably obtainable under this section.

(h) The employer may communicate with the health care provider to request medical bills or a response to a pending written request, or about nonsubstantive administrative matters without the express authorization of the employee.

(i) The Commission shall establish annually an appropriate medical fee to compensate health care providers for time spent communicating with the employer or employee. Each party shall bear its own costs for said communication.

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

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

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

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

~~An employer or insurer paying compensation for an admitted claim or paying without prejudice pursuant to G.S. 97-18(d) may communicate with an employee's medical provider in writing, limited to specific questions promulgated by the Commission, to determine, among other information, the diagnosis for the employee's condition, the reasonable and necessary treatment, the anticipated time that the employee will be out of work, the relationship, if any, of~~

1 ~~the employee's condition to the employment, the restrictions from the condition, the kind of~~
2 ~~work for which the employee may be eligible, the anticipated time the employee will be~~
3 ~~restricted, and the permanent impairment, if any, as a result of the condition. When these~~
4 ~~questions are used, a copy of the written communication shall be provided to the employee at~~
5 ~~the same time and by the same means as the communication is provided to the provider.~~

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

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

19 **SECTION 8.** G.S. 97-26 is amended by adding a new subsection to read:

20 "(g1) Administrative Simplification. – The applicable administrative standards for code
21 sets, identifiers, formats, and electronic transactions to be used in processing electronic medical
22 bills under this Article shall comply with 45 C.F.R. § 162. The Commission shall adopt rules to
23 require electronic medical billing and payment processes, to standardize the necessary medical
24 documentation for billing adjudication, to provide for effective dates and compliance, and for
25 further implementation of this subsection."

26 **SECTION 9.** G.S. 97-27 reads as rewritten:

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

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

- 37 (1) The injured employee shall have ~~has~~ the right to have present at ~~such the~~
38 independent medical examination any duly qualified physician or surgeon
39 provided and paid by him the employee.
- 40 (2) Notwithstanding the provisions of G.S. 8-53, no fact communicated to or
41 otherwise learned by any physician ~~or surgeon or hospital or hospital~~
42 ~~employee~~ who may have attended or examined the employee, or who may
43 have been present at any examination, shall be privileged ~~in any workers'~~
44 ~~compensation case~~ with respect to a claim ~~pending for hearing before the~~
45 ~~Industrial Commission.~~
- 46 (3) Notwithstanding the provisions of G.S. 97-25.6 to the contrary, an employer
47 or its agent shall be allowed to openly communicate either orally or in
48 writing with an independent medical examiner chosen by the employer
49 regardless of whether the examiner physically examined the employee.
- 50 (4) If the examiner physically examined the employee, the employer must
51 produce the examiner's report to the employee within 10 business days of

1 receipt by the employer, along with a copy of all documents and written
2 communication sent to the independent medical examiner pertaining to the
3 employee.

4 (5) If the employee refuses to submit himself to or in any way obstructs such ~~an~~
5 independent medical examination requested by and provided for by the
6 employer, his the employee's right to compensation and his right to take or
7 prosecute any proceedings under this Article shall be suspended pursuant to
8 G.S. 97-18.1 until such the refusal or objection ceases, and no compensation
9 shall at any time be payable for the period of obstruction, unless in the
10 opinion of the Industrial Commission the circumstances justify the refusal or
11 obstruction. When the employer seeks to suspend compensation under this
12 subdivision, it shall not be necessary for the employer to have first obtained
13 an order compelling the employee to submit to the proposed independent
14 medical examination. Any order issued by the Commission suspending
15 compensation pursuant to G.S. 97-18.1 shall specify what action the
16 employee should take to end the suspension and reinstate the compensation.
17 The employer, or the Industrial Commission, shall have the right in any case
18 of death to require an autopsy at the expense of the party requesting the
19 same.

20 (b) ~~In these cases any case arising under this Article in which there is a question as to~~
21 the employee is dissatisfied with the percentage of permanent disability suffered by an
22 employee, if any employee, required to submit to a physical examination under the provisions
23 of subsection (a) is dissatisfied with such examination or the report thereof, he shall be entitled
24 to have as provided by G.S. 97-31 and determined by the authorized health care provider, the
25 employee is entitled to have another examination solely on the percentage of permanent
26 disability provided by a duly qualified physician or surgeon licensed and practicing of the
27 employee's choosing who is licensed to practice in North Carolina or by a duly qualified
28 physician or surgeon licensed to practice in South Carolina, Georgia, Virginia and Tennessee
29 provided said nonresident physician or surgeon shall have been approved by the North Carolina
30 Industrial Commission and his name placed on the Commission's list of approved nonresident
31 physicians and surgeons, Carolina, or licensed in another state if agreed to by the parties or
32 ordered by the Commission, and designated by him and the employee. That physician shall be
33 paid by the employer or the Industrial Commission in the same manner as physicians health
34 care providers designated by the employer or the Industrial Commission are paid. The
35 Industrial Commission must either disregard or give less weight to the opinions of the duly
36 qualified physician chosen by the employee pursuant to this subsection on issues outside the
37 scope of the G.S. 97-27(b) examination. No fact that is communicated to or otherwise learned
38 by any physician who attended or examined the employee, or who was present at any
39 examination, shall be privileged with respect to a claim before the Industrial Commission.
40 Provided, however, that all travel expenses incurred in obtaining said examination shall be paid
41 by said employee. The employer shall have the right to have present at such examination a duly
42 qualified physician or surgeon provided and paid by him. No fact communicated to or
43 otherwise learned by any physician or surgeon who may have attended or examined the
44 employee, or who may have been present at any examination, shall be privileged, either in
45 hearings provided for by this Article or any action at law.

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

48 SECTION 10. G.S. 97-29 reads as rewritten:

49 "§ 97-29. ~~Compensation rates~~ Rates and duration of compensation for total incapacity.

50 (a) When an employee qualifies for total disability, Except as hereinafter otherwise
51 provided, where the incapacity for work resulting from the injury is total, the employer shall

1 pay or cause to be paid, as hereinafter provided by subsections (b) through (d) of this section, to
2 the injured employee ~~during such total disability~~ a weekly compensation equal to sixty-six and
3 two-thirds percent ($\frac{662}{3}\%$) of his average weekly wages, but not more than the amount
4 established annually to be effective ~~October-January 1~~ as provided herein, nor less than thirty
5 dollars (\$30.00) per week.

6 (b) When a claim is compensable pursuant to G.S. 97-18(b), paid without prejudice
7 pursuant to G.S. 97-18(d), agreed by the parties pursuant to G.S. 97-82, or when an employee
8 proves by a preponderance of the evidence that the employee is unable to earn the same wages
9 the employee had earned before the injury, either in the same or other employment, the
10 employee qualifies for temporary total disability subject to the limitations noted herein. The
11 employee shall not be entitled to compensation pursuant to this subsection greater than 500
12 weeks from the date of first disability unless the employee qualifies for extended compensation
13 under subsection (c) of this section.

14 (c) An employee may qualify for extended compensation in excess of the 500-week
15 limitation on temporary total disability as described in subsection (b) of this section only if (i)
16 at the time the employee makes application to the Commission to exceed the 500-week
17 limitation on temporary total disability as described in subsection (b) of this section, 425 weeks
18 have passed since the date of first disability and (ii) pursuant to the provisions of G.S. 97-84,
19 unless agreed to by the parties, the employee shall prove by a preponderance of the evidence
20 that the employee has sustained a total loss of wage-earning capacity. If an employee makes
21 application for extended compensation pursuant to this subsection and is awarded extended
22 compensation by the Commission, the award shall not be stayed pursuant to G.S. 97-85 or
23 G.S. 97-86 until the full Commission or an appellate court determines otherwise. Upon its own
24 motion or upon the application of any party in interest, the Industrial Commission may review
25 an award for extended compensation in excess of the 500-week limitation on temporary total
26 disability described in subsection (b) of this section, and, on such review, may make an award
27 ending or continuing extended compensation. When reviewing a prior award to determine if the
28 employee remains entitled to extended compensation, the Commission shall determine if the
29 employer has proven by a preponderance of the evidence that the employee no longer has a
30 total loss of wage-earning capacity. When an employee is receiving full retirement benefits
31 under section 202(a) of the Social Security Act, after attainment of retirement age, as defined in
32 section 216(l) of the Social Security Act, the employer may reduce the extended compensation
33 by one hundred percent (100%) of the employee's retirement benefit. The reduction shall
34 consist of the employee's primary benefit paid pursuant to section 202(a) of the Social Security
35 Act but shall not include any dependent or auxiliary benefits paid pursuant to any other section
36 of the Social Security Act, if any, or any cost-of-living increases in benefits made pursuant to
37 section 215(i) of the Social Security Act.

38 (d) An injured employee may qualify for permanent total disability only if the
39 employee has one or more of the following physical or mental limitations resulting from the
40 injury:

- 41 (1) The loss of both hands, both arms, both feet, both legs, both eyes, or any two
42 thereof, as provided by G.S. 97-31(17).
- 43 (2) Spinal injury involving severe paralysis of both arms, both legs, or the trunk.
- 44 (3) Severe brain or closed head injury as evidenced by severe and permanent:
 - 45 a. Sensory or motor disturbances;
 - 46 b. Communication disturbances;
 - 47 c. Complex integrated disturbances of cerebral function; or
 - 48 d. Neurological disorders.
- 49 (4) Second-degree or third-degree burns to thirty-three percent (33%) or more of
50 the total body surface.

1 An employee who qualifies for permanent total disability pursuant to this subsection shall
2 be entitled to compensation, including medical compensation, during the lifetime of the injured
3 employee, unless the employer shows by a preponderance of the evidence that the employee is
4 capable of returning to suitable employment as defined in G.S. 97-2(22). Provided, however,
5 the termination or suspension of compensation because the employee is capable of returning to
6 suitable employment as defined in G.S. 97-2(22) does not affect the employee's entitlement to
7 medical compensation. An employee who qualifies for permanent total disability under
8 subdivision (1) of this subsection is entitled to lifetime compensation, including medical
9 compensation, regardless of whether or not the employee has returned to work in any capacity.
10 In no other case shall an employee be eligible for lifetime compensation for permanent total
11 disability.

12 ~~In cases of total and permanent disability, compensation, including medical compensation,~~
13 ~~shall be paid for by the employer during the lifetime of the injured employee. If death results~~
14 ~~from the injury then the employer shall pay compensation in accordance with the provisions of~~
15 ~~G.S. 97-38.~~

16 (e) An employee shall not be entitled to benefits under this section or G.S. 97-30 and
17 G.S. 97-31 at the same time.

18 (f) Where an employee can show entitlement to compensation pursuant to this section
19 or G.S. 97-30 and a specific physical impairment pursuant to G.S. 97-31, the employee shall
20 not collect benefits concurrently pursuant to both this section or G.S. 97-30 and G.S. 97-31, but
21 rather is entitled to select the statutory compensation which provides the more favorable
22 remedy.

23 ~~In cases of total and permanent disability, compensation, including medical compensation,~~
24 ~~shall be paid for by the employer during the lifetime of the injured employee. If death results~~
25 ~~from the injury then the employer shall pay compensation in accordance with the provisions of~~
26 ~~G.S. 97-38.~~

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

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

38 (i) Notwithstanding any other provision of this Article, on July 1 of each year, a
39 maximum weekly benefit amount shall be computed. The amount of this maximum weekly
40 benefit shall be derived by obtaining the average weekly insured wage in accordance with
41 G.S. 96-8(22), by multiplying such average weekly insured wage by 1.10, and by rounding
42 such figure to its nearest multiple of two dollars (\$2.00), and this said maximum weekly benefit
43 shall be applicable to all injuries and claims arising on and after January 1 following such
44 computation. Such maximum weekly benefit shall apply to all provisions of this Chapter and
45 shall be adjusted July 1 and effective January 1 of each year as herein provided.

46 (j) If death results from the injury or occupational disease, then the employer shall pay
47 compensation in accordance with the provisions of G.S. 97-38."

48 **SECTION 11. G.S. 97-30 reads as rewritten:**

49 **"§ 97-30. Partial incapacity.**

50 Except as otherwise provided in G.S. 97-31, where the incapacity for work resulting from
51 the injury is partial, the employer shall pay, or cause to be paid, as hereinafter provided, to the

1 injured employee during such disability, a weekly compensation equal to sixty-six and
2 two-thirds percent (66 2/3%) of the difference between his average weekly wages before the
3 injury and the average weekly wages which he is able to earn thereafter, but not more than the
4 amount established annually to be effective ~~October-January 1~~ as provided in G.S. 97-29 a
5 week, and in no case shall the ~~period covered by such compensation be greater~~ employee
6 receive more than 300-500 weeks of payments under this section. Any weeks of payments
7 made pursuant to G.S. 97-29 shall be deducted from the 500 weeks of payments available
8 under this section. from the date of injury. In case the partial disability begins after a period of
9 total disability, the latter period shall be deducted from the maximum period herein allowed for
10 partial disability. An officer or member of the State Highway Patrol shall not be awarded any
11 weekly compensation under the provisions of this section for the first two years of any
12 incapacity resulting from an injury by accident arising out of and in the course of the
13 performance by him of his official duties if, during such incapacity, he continues to be an
14 officer or member of the State Highway Patrol, but he shall be awarded any other benefits to
15 which he may be entitled under the provisions of this Article."

16 **SECTION 12.** G.S. 97-32 reads as rewritten:

17 "**§ 97-32. Refusal of injured employee to accept suitable employment as suspending**
18 **compensation.**

19 If an injured employee refuses ~~employment procured for him suitable to his capacity~~ he
20 suitable employment as defined by G.S. 97-2(22), the employee shall not be entitled to any
21 compensation at any time during the continuance of such refusal, unless in the opinion of the
22 Industrial Commission such refusal was justified. Any order issued by the Commission
23 suspending compensation pursuant to G.S. 97-18.1 on the ground of an unjustified refusal of an
24 offer of suitable employment shall specify what actions the employee should take to end the
25 suspension and reinstate the compensation. Nothing in this Article prohibits an employer from
26 contacting the employee directly about returning to suitable employment with
27 contemporaneous notice to the employee's counsel, if any."

28 **SECTION 13.** Article 1 of Chapter 97 of the General Statutes is amended by
29 adding a new section to read:

30 "**§ 97-32.2. Vocational rehabilitation.**

31 (a) In a compensable claim, the employer may engage vocational rehabilitation services
32 at any point during a claim, regardless of whether the employee has reached maximum medical
33 improvement to include, among other services, a one-time assessment of the employee's
34 vocational potential. If the employee (i) has not returned to work or (ii) has returned to work
35 earning less than seventy-five percent (75%) of the employee's average weekly wages and is
36 receiving benefits pursuant to G.S. 97-30, the employee may request vocational rehabilitation
37 services, including education and retraining in the North Carolina community college or
38 university systems so long as the education and retraining are reasonably likely to substantially
39 increase the employee's wage-earning capacity following completion of the education or
40 retraining program. Provided, however, the seventy-five percent (75%) threshold is for the
41 purposes of qualification for vocational rehabilitation benefits only and shall not impact a
42 decision as to whether a job is suitable per G.S. 97-2(22). The expense of vocational
43 rehabilitation services provided pursuant to this section shall be borne by the employer in the
44 same manner as medical compensation.

45 (b) Vocational rehabilitation services shall be provided by either a qualified or
46 conditional rehabilitation professional approved by the Industrial Commission. Unless the
47 parties mutually agree to a vocational rehabilitation professional, the employer may make the
48 initial selection. At any point during the vocational rehabilitation process, either party may
49 request that the Industrial Commission order a change of vocational rehabilitation professional
50 for good cause.

1 (c) Vocational rehabilitation services shall include a vocational assessment and the
2 formulation of an individualized written rehabilitation plan with the goal of substantially
3 increasing the employee's wage-earning capacity, and subject to the following provisions:

4 (1) When performing a vocational assessment, the vocational rehabilitation
5 professional should evaluate the employee's medical and vocational
6 circumstances, the employee's expectations and specific requests for
7 vocational training, benefits expected from vocational services, and other
8 information significant to the employee's employment potential. The
9 assessment should also involve a face-to-face interview between the
10 employee and the vocational rehabilitation professional to identify the
11 specific type and sequence of appropriate services. If, at any point during
12 vocational rehabilitation services, the vocational rehabilitation professional
13 determines that the employee will not benefit from vocational rehabilitation
14 services, the employer may terminate said services unless the Commission
15 orders otherwise.

16 (2) Following assessment, and after receiving input from the employee, the
17 vocational rehabilitation professional shall draft an individualized written
18 rehabilitation plan. The plan should be individually tailored to the employee
19 based on the employee's education, skills, experience, and aptitudes, with
20 appropriate recommendations for vocational services, which may include
21 appropriate retraining, education, or job placement. The plan may be
22 changed or updated by mutual consent at any time during rehabilitation
23 services. A written plan is not necessary if the vocational rehabilitation
24 professional has been retained to perform a one-time assessment.

25 (d) Specific vocational rehabilitation services may include, but are not limited to,
26 vocational assessment, vocational exploration, sheltered workshop or community supported
27 employment training, counseling, job analysis, job modification, job development and
28 placement, labor market survey, vocational or psychometric testing, analysis of transferable
29 skills, work adjustment counseling, job seeking skills training, on-the-job training, or training
30 or education through the North Carolina community college or university systems.

31 (e) Vocational rehabilitation services may be terminated by agreement of the parties or
32 by order of the Commission.

33 (f) Job placement activities may commence after completion of an individualized
34 written rehabilitation plan. Return-to-work options should be considered, with order of priority
35 given to returning the employee to suitable employment with the current employer, returning
36 the employee to suitable employment with a new employer, and, if appropriate, formal
37 education or vocational training to prepare the employee for suitable employment with the
38 current employer or a new employer.

39 (g) The refusal of the employee to accept or cooperate with vocational rehabilitation
40 services when ordered by the Industrial Commission shall bar the employee from further
41 compensation until such refusal ceases, and no compensation shall at any time be paid for the
42 period of suspension, unless in the opinion of the Industrial Commission the circumstances
43 justified the refusal. Any order issued by the Commission suspending compensation per
44 G.S. 97-18.1 shall specify what action the employee should take to end the suspension and
45 reinstate the compensation."

46 SECTION 14. G.S. 97-38 reads as rewritten:

47 "§ 97-38. Where death results proximately from compensable injury or occupational
48 disease; dependents; burial expenses; compensation to aliens; election by
49 partial dependents.

50 If death results proximately from a compensable injury or occupational disease and within
51 six years thereafter, or within two years of the final determination of disability, whichever is

1 later, the employer shall pay or cause to be paid, subject to the provisions of other sections of
2 this Article, weekly payments of compensation equal to sixty-six and two-thirds percent (66
3 2/3%) of the average weekly wages of the deceased employee at the time of the accident, but
4 not more than the amount established annually to be effective October 1 as provided in
5 G.S. 97-29, nor less than thirty dollars (\$30.00), per week, and burial expenses not exceeding
6 ~~three thousand five hundred dollars (\$3,500),~~ ten thousand dollars (\$10,000). to the person or
7 persons entitled thereto as follows:

8 ...

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

24 When weekly payments have been made to an injured employee before
25 his death, the compensation to dependents shall begin from the date of the
26 last of such payments. Compensation payments due on account of death
27 shall be paid for a period of ~~400~~500 weeks from the date of the death of the
28 employee; provided, however, after said ~~400-week~~ 500-week period in case
29 of a widow or widower who is unable to support herself or himself because
30 of physical or mental disability as of the date of death of the employee,
31 compensation payments shall continue during her or his lifetime or until
32 remarriage and compensation payments due a dependent child shall be
33 continued until such child reaches the age of 18.

34 Compensation payable under this Article to aliens not residents (or about
35 to become nonresidents) of the United States or Canada, shall be the same in
36 amounts as provided for residents, except that dependents in any foreign
37 country except Canada shall be limited to surviving spouse and child or
38 children, or if there be no surviving spouse or child or children, to the
39 surviving father or mother."

40 **SECTION 15. G.S. 97-40 reads as rewritten:**

41 **"§ 97-40. Commutation and payment of compensation in absence of dependents; "next of**
42 **kin" defined; commutation and distribution of compensation to partially**
43 **dependent next of kin; payment in absence of both dependents and next of kin.**

44 Subject to the provisions of G.S. 97-38, if the deceased employee leaves neither whole nor
45 partial dependents, then the compensation which would be payable under G.S. 97-38 to whole
46 dependents shall be commuted to its present value and paid in a lump sum to the next of kin as
47 herein defined. For purposes of this section and G.S. 97-38, "next of kin" shall include only
48 child, father, mother, brother or sister of the deceased employee, including adult children or
49 adult brothers or adult sisters of the deceased, but excluding a parent who has willfully
50 abandoned the care and maintenance of his or her child and who has not resumed its care and
51 maintenance at least one year prior to the first occurring of the majority or death of the child

1 and continued its care and maintenance until its death or majority. For all such next of kin who
2 are neither wholly nor partially dependent upon the deceased employee and who take under this
3 section, the order of priority among them shall be governed by the general law applicable to the
4 distribution of the personal estate of persons dying intestate. In the event of exclusion of a
5 parent based on abandonment, the claim for compensation benefits shall be treated as though
6 the abandoning parent had predeceased the employee. For all such next of kin who were also
7 partially dependent on the deceased employee but who exercise the election provided for partial
8 dependents by G.S. 97-38, the general law applicable to the distribution of the personal estate
9 of persons dying intestate shall not apply and such person or persons upon the exercise of such
10 election, shall be entitled, share and share alike, to the compensation provided in G.S. 97-38 for
11 whole dependents commuted to its present value and paid in a lump sum.

12 If the deceased employee leaves neither whole dependents, partial dependents, nor next of
13 kin as hereinabove defined, then no compensation shall be due or payable on account of the
14 death of the deceased employee, except that the employer shall pay or cause to be paid the
15 burial expenses of the deceased employee not exceeding ~~three thousand five hundred dollars~~
16 ~~(\$3,500)~~ ten thousand dollars (\$10,000) to the person or persons entitled thereto."

17 SECTION 16. G.S. 97-77(a) reads as rewritten:

18 "(a) There is hereby created a commission to be known as the North Carolina Industrial
19 Commission, consisting of ~~seven~~ six commissioners who shall devote their entire time to the
20 duties of the Commission. The Governor shall appoint the members of the ~~Commission~~, ~~one for~~
21 ~~a term of two years, one for a term of four years, one for a term~~ Commission for terms of six
22 years. Of the additional appointments made in 1994, one shall be for a term expiring June 30,
23 1996, one for a term expiring June 30, 1998, and two for terms expiring June 30, 2000. Upon
24 the expiration of each term as above mentioned, the Governor shall appoint a successor for a
25 term of six years, and thereafter the term of office of each commissioner shall be six years. Not
26 more than three Three appointees commissioners shall be persons who, on account of their
27 previous vocations, employment or affiliations, can be classed as representatives of ~~employers,~~
28 ~~and not more than three employers. Three appointees commissioners~~ shall be persons who, on
29 account of their previous vocations, employment or affiliations, can be classed as
30 representatives of employees. No person may serve more than two terms on the Commission,
31 including any term served prior to the effective date of this section. In calculating the number
32 of terms served, a partial term that is less than three years in length shall not be included."

33 SECTION 17. G.S. 97-77 is amended by adding a new subsection to read:

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

42 In case of death, incapacity, resignation, or any other vacancy in the office of any
43 commissioner prior to the expiration of the term of office, a nomination to fill the vacancy for
44 the remainder of the unexpired term shall be submitted by the Governor within four weeks after
45 the vacancy arises to the General Assembly for confirmation by the General Assembly. If the
46 Governor fails to timely nominate a person to fill the vacancy, the General Assembly shall
47 appoint a person to fill the remainder of the unexpired term upon the joint recommendation of
48 the President Pro Tempore of the Senate and the Speaker of the House of Representatives in
49 accordance with G.S. 120-121 not inconsistent with this section. If a vacancy arises or exists
50 pursuant to this subsection when the General Assembly is not in session, and the appointment is
51 deemed urgent by the Governor, the commissioner may be appointed and serve on an interim

1 basis pending confirmation by the General Assembly. For the purpose of this subsection, the
2 General Assembly is not in session only (i) prior to convening of the Regular Session, (ii)
3 during any adjournment of the Regular Session for more than 10 days, and (iii) after sine die
4 adjournment of the Regular Session.

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

8 **SECTION 18.** Article 1 of Chapter 97 of the General Statutes is amended by
9 adding a new section to read:

10 **"§ 97-78.1. Standards of judicial conduct to apply to commissioners and deputy**
11 **commissioners.**

12 The Code of Judicial Conduct for judges of the General Court of Justice and the procedure
13 for discipline of judges in Article 30 of Chapter 7A of the General Statutes shall apply to
14 commissioners and deputy commissioners. Commissioners and deputy commissioners shall be
15 liable for impeachment for the causes and in the manner provided for judges of the General
16 Court of Justice in Chapter 123 of the General Statutes."

17 **SECTION 19.** G.S. 97-80(a) reads as rewritten:

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

25 Processes, procedure, and discovery under this Article shall be as summary and simple as
26 reasonably may be."

27 **SECTION 20.** G.S. 97-84 reads as rewritten:

28 **"§ 97-84. Determination of disputes by Commission or deputy.**

29 The Commission or any of its members shall hear the parties at issue and their
30 representatives and witnesses, and shall determine the dispute in a summary manner. The
31 Commission shall decide the case and issue findings of fact based upon the preponderance of
32 the evidence in view of the entire record. The award, together with a statement of the findings
33 of fact, rulings of law, and other matters pertinent to the questions at issue shall be filed with
34 the record of the proceedings, within 180 days of the close of the hearing record unless time is
35 extended for good cause by the Commission, and a copy of the award shall immediately be sent
36 to the parties in dispute. The parties may be heard by a deputy, in which event the hearing shall
37 be conducted in the same way and manner prescribed for hearings which are conducted by a
38 member of the Industrial Commission, and said deputy shall proceed to a complete
39 determination of the matters in dispute, file his written opinion within 180 days of the close of
40 the hearing record unless time is extended for good cause by the Commission, and the deputy
41 shall cause to be issued an award pursuant to such determination."

42 **SECTION 21.(a)** G.S. 150B-1(c) reads as rewritten:

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

- 44 (1) The North Carolina National Guard in exercising its court-martial
45 jurisdiction.
- 46 (2) The Department of Health and Human Services in exercising its authority
47 over the Camp Butner reservation granted in Article 6 of Chapter 122C of
48 the General Statutes.
- 49 (3) The Utilities Commission.
- 50 (4) ~~The Industrial Commission.~~
- 51 (5) The Employment Security Commission.

1 (6) The State Board of Elections in administering the HAVA Administrative
2 Complaint Procedure of Article 8A of Chapter 163 of the General Statutes.

3 (7) The North Carolina State Lottery.

4 (8) **(Expires June 30, 2012)** Except as provided in G.S. 150B-21.1B, any
5 agency with respect to contracts, disputes, protests, and/or claims arising out
6 of or relating to the implementation of the American Recovery and
7 Reinvestment Act of 2009 (Public Law 111-5)."

8 **SECTION 21.(b)** G.S. 150B-1(e) is amended by adding a new subdivision to read:

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

12

13 ...
14 **(18) The Industrial Commission."**

15 **SECTION 21.(c)** Any existing rule contained in Title 4 of Chapter 10 of the North
16 Carolina Administrative Code that has not been readopted in accordance with Article 2A of
17 Chapter 150B of the General Statutes on or before December 31, 2012, shall expire. Any rule
18 that has been readopted by the Industrial Commission in accordance with G.S. 150B-21.2(g) on
19 or before December 31, 2012, shall remain in effect until the rule becomes effective pursuant to
20 G.S. 150B-21.3.

21 **SECTION 22.** As of February 1, 2011, the terms of the seven members of the
22 Industrial Commission are as follows:

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

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

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

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

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

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

29 The reduction from seven commissioners to six commissioners provided by Section 16 of this
30 act shall be effected by not filling one of the two offices that expire June 30, 2012, pursuant to
31 subdivision (2) of this section.

32 **SECTION 23.** Notwithstanding G.S. 97-31.1, this act is effective when it becomes
33 law. Sections 4, 5, 6, 7, and 9 apply to claims pending on or after the effective date of this act.
34 Sections 2, 3, 10, 11, 12, 13, 14, 15, and 20 apply to claims arising on or after the effective date
of this act. Section 21 applies to rules adopted on or after the effective date of this act.



HOUSE BILL 709: Protect and Put NC Back to Work

2011-2012 General Assembly

Committee:	Senate Insurance	Date:	June 7, 2011
Introduced by:	Reps. Folwell, Dollar, Hager, Crawford	Prepared by:	Bill Patterson
Analysis of:	Second Edition		Staff Attorney

SUMMARY: *House Bill 709 makes numerous changes to the Workers Compensation Act.*

[As introduced, this bill was identical to S544, as introduced by Sens. Brown, Apodaca, and Davis, which is currently in Senate Insurance.]

CURRENT LAW:

Under the Workers Compensation Act, Article 1 of Chapter 97 of the General Statutes ("the Act"), an employee who sustains a compensable injury by accident or occupational disease is eligible for several types of benefits, including indemnity (wage-replacement) and medical benefits. The Industrial Commission is charged with carrying out the Act's provisions. Seven commissioners appointed by the Governor make the Commission's rules and hear appeals from decisions of deputy commissioners in contested cases. Pursuant to G.S. 150B-1(c)(4), the Commission is exempt from all provisions of the Administrative Procedures Act.

In addition to medical compensation, an employee whose injury has resulted in a loss of wage-earning capacity is entitled to weekly compensation for either total or partial incapacity. For a total loss of wage-earning capacity, the employee is entitled under G.S. 97-29 to receive weekly compensation in the amount of 2/3 of his or her average weekly wage for as long as that loss lasts, with no limitation on the duration of the benefits. If the total incapacity is permanent, the employee is entitled to receive this compensation for life. For a partial loss of wage-earning capacity, the employee is entitled under G.S. 97-30 to receive weekly compensation in the amount of 2/3 of the difference in average weekly wage before and after the injury, for as long as the partial loss of wage-earning capacity lasts, but subject to a maximum of 300 weeks.

In addition to weekly compensation for partial or total incapacity, if an employee has a specific physical impairment that falls under the schedule of injuries set forth in G.S. 97-31, the employee is presumed to have suffered a loss of wage-earning capacity. In that case, the employee is entitled to weekly compensation during the "healing period" and, in addition, a lump-sum payment according to the schedule of injuries set forth in the statute.

Employees who are eligible for compensation under G.S. 97-31 for a scheduled injury and who also qualify under either G.S. 97-29 or 97-30 for permanent total or partial disability compensation are permitted to select the more favorable remedy.¹

BILL ANALYSIS:

Section 1 states that the act shall be known as the "Protecting and Putting North Carolina Back to Work Act."

Section 2 amends G.S. 97-2(19)'s definition of "medical compensation" to include attendant care services if prescribed by a physician or ordered by the Commission, and vocational rehabilitation, and

¹ Whitley v. Columbia Lumber Mfg. Co., 318 N.C. 89, 348 S.E.2d 336 (1986); Gupton v. Builders Transport, 320 N.C. 38, 357 S.E.2d 674 (1987).

House Bill 709

Page 2

adds new G.S. 97-2(22) to define the term "suitable employment" as any employment offered to the employee that is

- within the employee's work restrictions before the employee has reached maximum medical improvement, or
- that the employee is capable of performing after reaching maximum medical improvement given the employee's pre-existing physical and mental limitations, vocational skills, education and experience

and that is within a 50 mile radius of the employee's residence at the time of the injury, or current residence if the employee had a legitimate reason to relocate since the date of the accident. This section applies to claims arising on or after the effective date of the act.

Section 3 enacts new G.S. 97-12.1, which disqualifies an employee from receiving compensation under the Act if, in connection with being hired, the employee willfully made a false representation regarding his or her physical condition, the employer relied upon the representation, and there was a causal connection between the representation and the injury or occupational disease for which the employee seeks compensation. This section applies to claims arising on or after the effective date of the act.

Section 4 amends G.S. 97-17, which governs settlements of claims brought under the Act, to clarify that nothing in this section prevents the parties from reaching a separate contemporaneous agreement resolving issues not covered by the Act. This section applies to claims pending on or after the effective date of the act.

Section 5 adds a new subsection (k) to G.S. 97-18, which governs payment of compensation, to provide a procedure for reinstatement of compensation for any reason other than a change in condition, whenever the employer or insurer has admitted the employee's right to compensation or liability has been established. Any challenge to the employee's request for reinstatement must be scheduled on a preemptive basis. This section applies to claims pending on or after the effective date of the act.

Section 6 amends G.S. 97-25 applicable to medical treatment, by deleting the current provision permitting an employee to select a physician of his own choosing subject to Commission approval, and requiring the employee to show by a preponderance of the evidence that the requested change of treatment or health care provider is reasonably necessary to effect a cure, provide relief or lessen the period of disability. In making this decision, the Commission may disregard or give lesser weight to the opinion of any health care provider not authorized to evaluate, diagnose, or treat the employee before the employee filed the request for a change in treatment or provider. This section also gives the employee a right to request a second opinion evaluation, and provides that if an employer refuses the request or if the parties are unable to agree on who will perform the examination, the employee may request that the Commission order a second opinion examination. This section applies to claims pending on or after the effective date of the act.

Section 7 rewrites G.S. 97-25.6, which governs access to an employee's medical information, to set forth the procedure by which employers, their attorneys, and their insurers can obtain relevant medical information relating to an employee without the employee's prior authorization. "Relevant medical information" is defined as any medical record, report, or information that is:

- restricted to the particular evaluation, diagnosis, or treatment of the injury or disease for which compensation, including medical compensation, is sought;
- reasonably related to the injury or disease for which the employee claims compensation; or

House Bill 709

Page.3

- related to an assessment of the employee's ability to return to work as a result of the particular injury or disease. the medical records of an employee making a claim under the Act.

Under the new procedure, the employer must first request medical records, and then can make a written request for information not contained in the records, and then can make a request for oral communication to obtain information not contained in the medical records or available through written communication or otherwise. The employer must provide contemporaneous written notice to the employee of requests for medical records or written requests for additional information, and must give the employee prior notice of any request for oral communication and an opportunity to participate in the communication. The employer must also provide the employee with a copy of the records or written response received from the provider and a summary of any oral communication in which the employee did not participate.

This section also requires advance notice to the employee before the employer submits to a provider any relevant medical information not contained in the employee's medical records, with an opportunity for a hearing before the Commission if the employee does not consent.

An employer may contact a provider without the employee's authorization to request medical bills, follow-up on a prior written request for information, or to request information about other non-substantive matters.

This section applies to claims pending on or after the effective date of the act.

Section 8 adds a new subsection to G.S. 97-26 requiring the Commission to adopt rules requiring electronic medical billing and payment processes and requiring applicable administrative standards for processing electronic medical bills to comply with HIPAA billing procedures.

Section 9 amends G.S. 97-27, relating to medical examinations, to provide that:

- the employee must submit to an independent medical examination after an injury and for so long as the employee claims compensation, as requested by the employer or as ordered by the Commission, by a physician licensed and practicing in North Carolina, regardless of whether the employee's claim has been denied by the employer
- any refusal by the employee immediately suspends the employee's right to compensation and right to prosecute any proceedings under the Act, and the Commission is required to state what the employee should do to end the suspension and reinstate compensation
- any employer is permitted to communicate with an independent medical examiner chosen by the employer regardless of whether the examiner physically examined the employee
- the employer must provide the employee with a copy of any written report of an independent medical examination within ten days of its receipt, together with all supporting documents provided to the examiner

This section applies to claims pending on or after the effective date of the act.

Section 10 amends G.S. 97-29 to:

- places a 500 week limit on the duration of compensation, including medical compensation, paid for total disability, measured from the date of first disability
- permit an employee to seek extended compensation beyond 500 weeks if the employee 1) has received at least 425 weeks of compensation at the time of the request, and 2) shows by a

House Bill 709

Page 4

preponderance of the evidence that the employee has sustained a total loss of wage earning capacity

- permit an employer to seek termination of extended benefits by showing by a preponderance of the evidence that the employee no longer has a total loss of wage earning capacity
- reduce compensation payable beyond 500 weeks for extended benefits by any Social Security retirement benefits received by the employee
- require an employee who has reached maximum medical improvement and who has one or more scheduled injuries to elect whether to receive compensation under G.S. 97-31 or receive compensation under either G.S. 97-29 (temporary total disability) or G.S. 97-30 (temporary partial disability)
- provide that an employee may qualify for permanent and total disability only if he employee has one or more of the injuries specified in new subdivisions (c)(1) through (c)(4)
- provide that an employee qualified for permanent and total disability shall receive compensation for life unless the employer shows by a preponderance of the evidence that the employee is capable of returning to suitable employment, in which event compensation other than medical compensation shall be terminated or suspended

This section applies to claims arising on or after the effective date of the act.

Section 11 increases the maximum duration of compensation for partial incapacity under G.S. 97-30 from 300 weeks to 500 weeks from the date of injury, and provides that any compensation received for total incapacity under G.S. 97-29 shall count toward this limit. This section applies to claims arising on or after the effective date of the act.

Section 12 amends G.S. 97-32 to provide that an employee shall not receive compensation for so long as the employee refuses "suitable employment" without justification as determined by the Commission, and clarifies that nothing in the Act prohibits an employer from directly contacting the employee about returning to suitable employment. This section requires the Commission to specify in its order suspending compensation what the employee should do to end the suspension and reinstate compensation. This section applies to claims arising on or after the effective date of the act.

Section 13 enacts a new G.S. 97-32.2, to provide requirements for the provision of, payment for, and termination of vocational rehabilitation services, including a one-time evaluation regardless of whether the employee has reached maximum medical improvement. An employee who has not returned to work or who has returned to work but is earning less than 75% of the pre-injury average weekly wages and is receiving benefits for partial incapacity under G.S. 97-30, may request vocational rehabilitation services, including education and retraining if reasonably likely to substantially increase the employee's wage earning capacity. Refusal of an employee to accept or cooperate with vocational rehabilitation bars the employee from receiving compensation during the period of such refusal, unless the Commission determines the refusal was justified. This section applies to claims arising on or after the effective date of the act.

Section 14 amends G.S. 97-38, applicable when a compensable injury or occupational disease causes the employee's death, by increasing the maximum burial benefits from \$3,500 to \$10,000, and by increasing the weekly benefits payable to dependents after the employee's death from 400 to 500 weeks. This section applies to claims arising on or after the effective date of the act.

House Bill 709

Page 5

Section 15 amends G.S. 97-40 to increase the maximum compensation payable for burial expenses of an employee who dies without dependents from \$3,500 to \$10,000. This section applies to claims arising on or after the effective date of the act.

Section 16 amends G.S. 97-77(a) to reduce the number of commissioners from seven to six, three of whom shall be classed as employer representatives and three of whom shall be classed as employee representatives, based on their previous vocations, employment or affiliations, and no one of whom may serve more than two terms, including terms served prior to the effective date of the act, but not counting a partial term of less than three months in length.

Section 17 adds a new subsection (a1) to G.S. 97-77 requiring legislative confirmation of the Governor's appointments to the Commission, and setting forth the procedure for confirmation of appointments and for filling vacancies in the office of any commissioner prior to expiration of the commissioner's term.

Section 18 creates a new section 97-78.1 subjecting commissioners and deputy commissioners to the Code of Judicial Conduct (was standards of judicial conduct) applicable to judges in the General Courts of Justice, and to the impeachment provisions applicable to judges under Chapter 123 of the General Statutes.

Section 19 amends G.S. 97-80(a) to require the Commission to adopt rules in accordance with Article 2A of the Administrative Procedures Act.

Section 20 amends G.S. 97-84 to expressly state that decisions and findings of fact of the Commission shall be based upon the preponderance of the evidence in view of the entire record. This section applies to claims arising on or after the effective date of the act.

Section 21 deletes the current statutory exemption of the Commission from the APA, adds a provision exempting the Commission from the APA's contested case provisions, requires the Commission to readopt all rules currently in effect pursuant to the procedures in APA Article 2A, and provides that any existing Commission that is not readopted by December 31, 2012 shall expire. This section clarifies that rules readopted on or before December 31, 2012 shall remain in effect until the rule becomes effective pursuant to the APA. This section applies to rules adopted on or after the effective date of the act.

Section 22 establishes the remaining terms of the existing seven commissioners and reduces the number of commissioners from seven to six by providing that one of the two commissioners whose terms expire on June 30, 2012, shall not be replaced.

EFFECTIVE DATE: This act is effective when it becomes law. Sections 4, 5, 6, 7 and 9 apply to claims pending on or after the effective date. Sections 2, 3, 10, 11, 12, 13, 14, 15, and 20 apply to claims arising on or after the effective date. Section 21 applies to rules adopted by the Commission on or after the effective date.

H709-SMTG-35(e2).v2



SPEAKER PRO TEMPORE DALE R. FOLWELL

Dale.Folwell@ncleg.net

Phone Number: 919-733-5787

Room 301F, Legislative Office Building

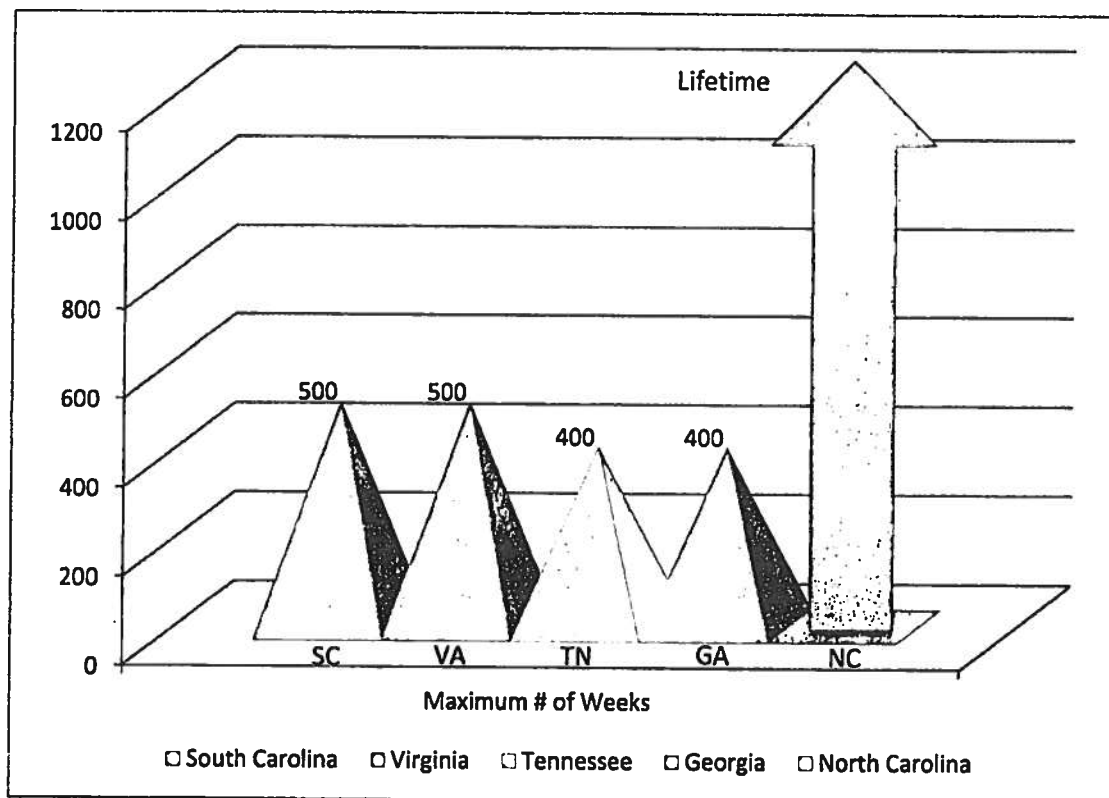
North Carolina House of Representatives

Raleigh, NC 27603-5925

WORKERS' COMPENSATION: PUTTING NORTH CAROLINA BACK TO WORK

Duration of Temporary Total Disability Benefits

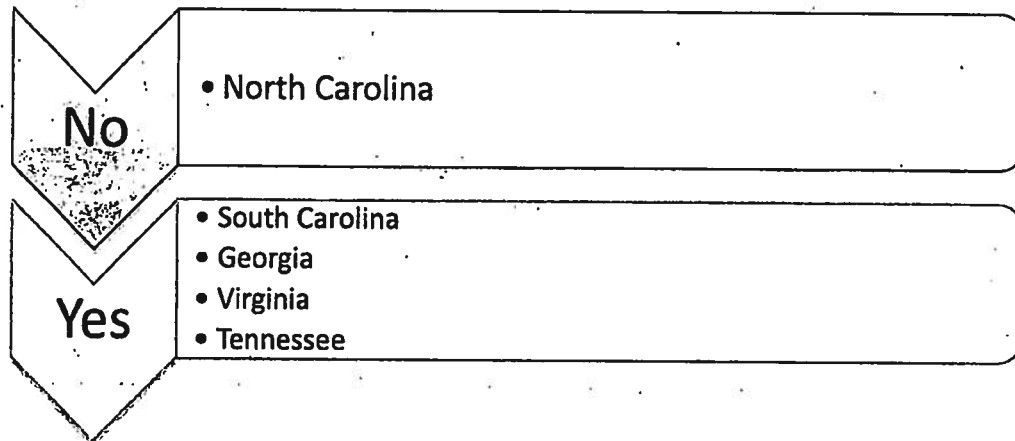
Temporary Total Disability—TTD benefits are paid when a worker is
TEMPORARILY unable to earn wages.



North Carolina hurts its ability to compete by turning our workers' comp system into a retirement system.

Over →

DO THE COMMISSIONERS ADHERE TO THE CODE OF JUDICIAL STANDARDS?



CIVITAS POLL CONDUCTED FEBRUARY 2011

Please tell me if you agree or disagree with the following statement: "A person who is injured on the job should receive workers compensation for the remainder of their life, even if they are able to work at a different job."

12%	Total Agree
85%	Total Disagree
6%	Strongly Agree
6%	Somewhat Agree
19%	Somewhat Disagree
66%	Strongly Disagree
2%	Don't Know/ No Opinion (DO NOT READ)
--	Refused (DO NOT READ)

600 registered voters conducted Feb 10, 12-13 2011 by National Research, Inc. of Holmdel, NJ.

Please Email me at DaleF@ncleg.net to join my mailing list.

Follow me on Facebook & Twitter

facebook



(DaleFolwell)

Over →

VISITOR REGISTRATION SHEET

INSURANCE

June 9, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
TED Hamby	NC DOI
Rosewillu	NC DOJ
Steve Leone	NC Med Soc
Will Culpepper	MVI
Mike Olson	re state AFCS
JOE LANIER	NELSON MULLINS
Allison Waller	Nelson Mullins
Philip Foley	NCRTJ
Lisa Muth	NC Home Builders

VISITOR REGISTRATION SHEET

INSURANCE

Name of Committee

June 9, 2011

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE
CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Barbara Conklin	BCCOK
Michelle Frazier	MF+S
John Mulla	MF+S
Jennifer Cohen	IFNC
John Bode	Monarch Butterfly
G	
Kathryn Melican	BBS
Meredith Henderson	NCIC
Shir Cammarano	Farah + Cammarano
Hank Patterson	Patterson Haley LP
David Anders	PFFPNC

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2011-287
HOUSE BILL 709

AN ACT PROTECTING AND PUTTING NORTH CAROLINA BACK TO WORK BY
REFORMING THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

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

SECTION 2. G.S. 97-2 reads as rewritten:

"§ 97-2. Definitions.

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

(19) Medical Compensation. – The term "medical compensation" means medical, surgical, hospital, nursing, and rehabilitative ~~services~~ services, including, but not limited to, attendant care services prescribed by a health care provider authorized by the employer or subsequently by the Commission, vocational rehabilitation, and medicines, sick travel, and other treatment, including medical and surgical supplies, as may reasonably be required to effect a cure or give relief and for such additional time as, in the judgment of the Commission, will tend to lessen the period of disability; and any original artificial members as may reasonably be necessary at the end of the healing period and the replacement of such artificial members when reasonably necessitated by ordinary use or medical circumstances.

(22) Suitable employment. – The term "suitable employment" means employment offered to the employee or, if prohibited by the Immigration and Nationality Act, 8 U.S.C. § 1324a, employment available to the employee that (i) prior to reaching maximum medical improvement is within the employee's work restrictions, including rehabilitative or other noncompetitive employment with the employer of injury approved by the employee's authorized health care provider or (ii) after reaching maximum medical improvement is employment that the employee is capable of performing considering the employee's preexisting and injury-related physical and mental limitations, vocational skills, education, and experience and is located within a 50-mile radius of the employee's residence at the time of injury or the employee's current residence if the employee had a legitimate reason to relocate since the date of injury. No one factor shall be considered exclusively in determining suitable employment."

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

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

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

- (1) The employee knowingly and willfully made a false representation as to the employee's physical condition;
- (2) The employer relied upon one or more false representations by the employee, and the reliance was a substantial factor in the employer's decision to hire the employee; and



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

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

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

SECTION 5. G.S. 97-18 is amended by adding a new subsection to read:

"(k) In addition to any other methods for reinstatement of compensation available under the Act, whenever the employer or insurer has admitted the employee's right to compensation, or liability has been established, the employee may move for reinstatement of compensation on a form prescribed by the Commission. If the employer or insurer contests the employee's request for reinstatement, the matter shall be scheduled on a preemptive basis. This subsection shall not apply to a request for a review of an award on the grounds of a change in condition pursuant to G.S. 97-47."

SECTION 6. G.S. 97-25 reads as rewritten:

"§ 97-25. Medical treatment and supplies.

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

~~The Commission may at any time upon the request of an employee order a change of treatment and designate other treatment suggested by the injured employee subject to the approval of the Commission, and in such a case the expense thereof shall be borne by the employer upon the same terms and conditions as hereinbefore provided in this section for medical and surgical treatment and attendance.~~

Upon the written request of the employee to the employer, the employer may agree to authorize and pay for a second opinion examination with a duly qualified physician licensed to practice in North Carolina, or licensed in another state if agreed to by the parties or ordered by the Commission. If, within 14 calendar days of the receipt of the written request, the request is denied or the parties, in good faith, are unable to agree upon a health care provider to perform a second opinion examination, the employee may request that the Industrial Commission order a second opinion examination. The expense thereof shall be borne by the employer upon the same terms and conditions as provided in this section for medical compensation.

Provided, however, if the employee so desires, an injured employee may select a health care provider of the employee's own choosing to attend, prescribe, and assume the care and charge of the employee's case subject to the approval of the Industrial Commission. In addition, in case of a controversy arising between the employer and the employee, the Industrial Commission may order necessary treatment. In order for the Commission to grant an employee's request to change treatment or health care provider, the employee must show by a preponderance of the evidence that the change is reasonably necessary to effect a cure, provide relief, or lessen the period of disability. When deciding whether to grant an employee's request to change treatment or health care provider, the Commission may disregard or give less weight to the opinion of a health care provider from whom the employee sought evaluation, diagnosis, or treatment before the employee first requested authorization in writing from the employer, insurer, or Commission.

~~The refusal of the employee to accept any medical, hospital, surgical or other treatment or rehabilitative procedure medical compensation when ordered by the Industrial Commission shall bar said the employee from further compensation until such refusal ceases, and no compensation shall at any time be paid for the period of suspension unless in the opinion of the Industrial Commission the circumstances justified the refusal, in which case, the Industrial Commission may order a change in the medical or hospital service refusal. Any order issued by the Commission suspending compensation pursuant to G.S. 97-18.1 shall specify what action the employee should take to end the suspension and reinstate the compensation.~~

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

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

SECTION 7. G.S. 97-25.6 reads as rewritten:

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

(a) Notwithstanding any provision of G.S. 8-53 to the contrary, and because discovery is limited pursuant to G.S. 97-80, it is the policy of this State to protect the employee's right to a confidential physician-patient relationship while allowing the parties to have reasonable access to all relevant medical information, including medical records, reports, and information necessary to the fair and swift administration and resolution of workers' compensation claims, while limiting unnecessary communications with and administrative requests to health care providers.

(b) As used in this section, "relevant medical information" means any medical record, report, or information that is:

- (1) restricted to the particular evaluation, diagnosis, or treatment of the injury or disease for which compensation, including medical compensation, is sought;
- (2) reasonably related to the injury or disease for which the employee claims compensation; or
- (3) related to an assessment of the employee's ability to return to work as a result of the particular injury or disease.

(c) Relevant medical information shall be requested and provided subject to the following provisions:

- (1) Medical records. – An employer is entitled, without the express authorization of the employee, to obtain the employee's medical records containing relevant medical information from the employee's health care providers. In a claim in which the employer is not paying medical compensation to a health care provider from whom the medical records are sought, or in a claim denied pursuant to G.S. 97-18(c), the employer shall provide the employee with contemporaneous written notice of the request for medical records. The employer shall provide the employee with a copy of any records received in response to this request within 30 days of its receipt by the employer.
- (2) Written communications with health care providers. – An employer may communicate with the employee's authorized health care provider in writing, without the express authorization of the employee, to obtain relevant medical information not available in the employee's medical records. The employer shall provide the employee with contemporaneous written notice of the written communication. The employer may request the following additional information:
 - a. The diagnosis of the employee's condition;
 - b. The appropriate course of treatment;
 - c. The anticipated time that the employee will be out of work;
 - d. The relationship, if any, of the employee's condition to the employment;
 - e. Work restrictions resulting from the condition;
 - f. The kind of work for which the employee may be eligible;
 - g. The anticipated time the employee will be restricted; and
 - h. Any permanent impairment as a result of the condition.The employer shall provide a copy of the health care provider's response to the employee within 10 business days of its receipt by the employer.
- (3) Oral communications with health care providers. – An employer may communicate with the employee's authorized health care provider by oral communication to obtain relevant medical information not contained in the employee's medical records, not available through written communication, and not otherwise available to the employer, subject to the following:
 - a. The employer must give the employee prior notice of the purpose of the intended oral communication and an opportunity for the employee to participate in the oral communication at a mutually convenient time for the employer, employee, and health care provider.
 - b. The employer shall provide the employee with a summary of the communication with the health care provider within 10 business days

of any oral communication in which the employee did not participate.

(d) Additional Information Submitted by the Employer. – Notwithstanding subsection (c) of this section, an employer may submit additional relevant medical information not already contained in the employee's medical records to the employee's authorized health care provider and may communicate in writing with the health care provider about the additional information in accordance with the following procedure:

- (1) The employer shall first notify the employee in writing that the employer intends to communicate additional information about the employee to the employee's health care provider. The notice shall include the employer's proposed written communication to the health care provider and the additional information to be submitted.
- (2) The employee shall have 10 business days from the postmark or verifiable facsimile or electronic mail either to consent or object to the employer's proposed written communication.
- (3) Upon consent of the employee or in the absence of the employee's timely response, the employer may submit the additional information directly to the health care provider.
- (4) Upon making a timely objection, the employee may request a protective order to prevent the written communication, in which case the employer shall refrain from communicating with the health care provider until the Commission has ruled upon the employee's request. In deciding whether to allow the submission of additional information to the health care provider, in part or in whole, the Commission shall determine whether the proposed written communication and additional information are pertinent to and necessary for the fair and swift administration and resolution of the workers' compensation claim and whether there is an alternative method to discover the information. If the Industrial Commission determines that any party has acted unreasonably by initiating or objecting to the submission of additional information to the health care provider, the Commission may assess costs associated with any proceeding, including reasonable attorneys' fees and deposition costs, against the offending party.

(e) Any medical records or reports that reflect evaluation, diagnosis, or treatment of the particular injury or disease for which compensation is sought or are reasonably related to the injury or disease for which the employee seeks compensation that are in the possession of a party shall be furnished to the requesting party by the opposing party when requested in writing, except for records or reports generated by a retained expert.

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

(g) Other forms of communication with a health care provider may be authorized by order of the Industrial Commission issued upon a showing that the information sought is necessary for the administration of the employee's claim and is not otherwise reasonably obtainable under this section.

(h) The employer may communicate with the health care provider to request medical bills or a response to a pending written request, or about nonsubstantive administrative matters without the express authorization of the employee.

(i) The Commission shall establish annually an appropriate medical fee to compensate health care providers for time spent communicating with the employer or employee. Each party shall bear its own costs for said communication.

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

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

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

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

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

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

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

SECTION 8. G.S. 97-26 is amended by adding a new subsection to read:

"(g1) Administrative Simplification. – The applicable administrative standards for code sets, identifiers, formats, and electronic transactions to be used in processing electronic medical bills under this Article shall comply with 45 C.F.R. § 162. The Commission shall adopt rules to require electronic medical billing and payment processes, to standardize the necessary medical documentation for billing adjudication, to provide for effective dates and compliance, and for further implementation of this subsection."

SECTION 9. G.S. 97-27 reads as rewritten:

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

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

- (1) The injured employee shall have ~~has~~ the right to have present at ~~such the independent medical examination~~ any duly qualified physician ~~or surgeon~~ provided and paid by ~~him the employee.~~
- (2) Notwithstanding the provisions of G.S. 8-53, no fact communicated to or otherwise learned by any physician ~~or surgeon or hospital or hospital employee~~ who may have attended or examined the employee, or who may have been present at any examination, shall be privileged ~~in any workers'~~

~~compensation case with respect to a claim pending for hearing before the Industrial Commission.~~

- (3) Notwithstanding the provisions of G.S. 97-25.6 to the contrary, an employer or its agent shall be allowed to openly communicate either orally or in writing with an independent medical examiner chosen by the employer regardless of whether the examiner physically examined the employee.
- (4) If the examiner physically examined the employee, the employer must produce the examiner's report to the employee within 10 business days of receipt by the employer, along with a copy of all documents and written communication sent to the independent medical examiner pertaining to the employee.
- (5) If the employee refuses to submit himself to or in any way obstructs such an independent medical examination requested by and provided for by the employer, his the employee's right to compensation and his right to take or prosecute any proceedings under this Article shall be suspended pursuant to G.S. 97-18.1 until such the refusal or objection ceases, and no compensation shall at any time be payable for the period of obstruction, unless in the opinion of the Industrial Commission the circumstances justify the refusal or obstruction. When the employer seeks to suspend compensation under this subdivision, it shall not be necessary for the employer to have first obtained an order compelling the employee to submit to the proposed independent medical examination. Any order issued by the Commission suspending compensation pursuant to G.S. 97-18.1 shall specify what action the employee should take to end the suspension and reinstate the compensation. The employer, or the Industrial Commission, shall have the right in any case of death to require an autopsy at the expense of the party requesting the same.

(b) In those cases any case arising under this Article in which there is a question as to the employee is dissatisfied with the percentage of permanent disability suffered by an employee, if any employee, required to submit to a physical examination under the provisions of subsection (a) is dissatisfied with such examination or the report thereof, he shall be entitled to have as provided by G.S. 97-31 and determined by the authorized health care provider, the employee is entitled to have another examination solely on the percentage of permanent disability provided by a duly qualified physician or surgeon licensed and practicing of the employee's choosing who is licensed to practice in North Carolina or by a duly qualified physician or surgeon licensed to practice in South Carolina, Georgia, Virginia and Tennessee provided said nonresident physician or surgeon shall have been approved by the North Carolina Industrial Commission and his name placed on the Commission's list of approved nonresident physicians and surgeons, Carolina, or licensed in another state if agreed to by the parties or ordered by the Commission, and designated by him and the employee. That physician shall be paid by the employer or the Industrial Commission in the same manner as physicians health care providers designated by the employer or the Industrial Commission are paid. The Industrial Commission must either disregard or give less weight to the opinions of the duly qualified physician chosen by the employee pursuant to this subsection on issues outside the scope of the G.S. 97-27(b) examination. No fact that is communicated to or otherwise learned by any physician who attended or examined the employee, or who was present at any examination, shall be privileged with respect to a claim before the Industrial Commission. Provided, however, that all travel expenses incurred in obtaining said examination shall be paid by said employee. The employer shall have the right to have present at such examination a duly qualified physician or surgeon provided and paid by him. No fact communicated to or otherwise learned by any physician or surgeon who may have attended or examined the employee, or who may have been present at any examination, shall be privileged, either in hearings provided for by this Article or any action at law.

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

SECTION 10. G.S. 97-29 reads as rewritten:

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

(a) When an employee qualifies for total disability, Except as hereinafter otherwise provided, where the incapacity for work resulting from the injury is total, the employer shall

pay or cause to be paid, as hereinafter provided by subsections (b) through (d) of this section, to the injured employee ~~during such total disability~~ a weekly compensation equal to sixty-six and two-thirds percent (662/3%) of his average weekly wages, but not more than the amount established annually to be effective ~~October-January 1~~ as provided herein, nor less than thirty dollars (\$30.00) per week.

(b) When a claim is compensable pursuant to G.S. 97-18(b), paid without prejudice pursuant to G.S. 97-18(d), agreed by the parties pursuant to G.S. 97-82, or when an employee proves by a preponderance of the evidence that the employee is unable to earn the same wages the employee had earned before the injury, either in the same or other employment, the employee qualifies for temporary total disability subject to the limitations noted herein. The employee shall not be entitled to compensation pursuant to this subsection greater than 500 weeks from the date of first disability unless the employee qualifies for extended compensation under subsection (c) of this section.

(c) An employee may qualify for extended compensation in excess of the 500-week limitation on temporary total disability as described in subsection (b) of this section only if (i) at the time the employee makes application to the Commission to exceed the 500-week limitation on temporary total disability as described in subsection (b) of this section, 425 weeks have passed since the date of first disability and (ii) pursuant to the provisions of G.S. 97-84, unless agreed to by the parties, the employee shall prove by a preponderance of the evidence that the employee has sustained a total loss of wage-earning capacity. If an employee makes application for extended compensation pursuant to this subsection and is awarded extended compensation by the Commission, the award shall not be stayed pursuant to G.S. 97-85 or G.S. 97-86 until the full Commission or an appellate court determines otherwise. Upon its own motion or upon the application of any party in interest, the Industrial Commission may review an award for extended compensation in excess of the 500-week limitation on temporary total disability described in subsection (b) of this section, and, on such review, may make an award ending or continuing extended compensation. When reviewing a prior award to determine if the employee remains entitled to extended compensation, the Commission shall determine if the employer has proven by a preponderance of the evidence that the employee no longer has a total loss of wage-earning capacity. When an employee is receiving full retirement benefits under section 202(a) of the Social Security Act, after attainment of retirement age, as defined in section 216(l) of the Social Security Act, the employer may reduce the extended compensation by one hundred percent (100%) of the employee's retirement benefit. The reduction shall consist of the employee's primary benefit paid pursuant to section 202(a) of the Social Security Act but shall not include any dependent or auxiliary benefits paid pursuant to any other section of the Social Security Act, if any, or any cost-of-living increases in benefits made pursuant to section 215(i) of the Social Security Act.

(d) An injured employee may qualify for permanent total disability only if the employee has one or more of the following physical or mental limitations resulting from the injury:

- (1) The loss of both hands, both arms, both feet, both legs, both eyes, or any two thereof, as provided by G.S. 97-31(17).
- (2) Spinal injury involving severe paralysis of both arms, both legs, or the trunk.
- (3) Severe brain or closed head injury as evidenced by severe and permanent:
 - a. Sensory or motor disturbances;
 - b. Communication disturbances;
 - c. Complex integrated disturbances of cerebral function; or
 - d. Neurological disorders.
- (4) Second-degree or third-degree burns to thirty-three percent (33%) or more of the total body surface.

An employee who qualifies for permanent total disability pursuant to this subsection shall be entitled to compensation, including medical compensation, during the lifetime of the injured employee, unless the employer shows by a preponderance of the evidence that the employee is capable of returning to suitable employment as defined in G.S. 97-2(22). Provided, however, the termination or suspension of compensation because the employee is capable of returning to suitable employment as defined in G.S. 97-2(22) does not affect the employee's entitlement to medical compensation. An employee who qualifies for permanent total disability under subdivision (1) of this subsection is entitled to lifetime compensation, including medical compensation, regardless of whether or not the employee has returned to work in any capacity.

In no other case shall an employee be eligible for lifetime compensation for permanent total disability.

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

(e) An employee shall not be entitled to benefits under this section or G.S. 97-30 and G.S. 97-31 at the same time.

(f) Where an employee can show entitlement to compensation pursuant to this section or G.S. 97-30 and a specific physical impairment pursuant to G.S. 97-31, the employee shall not collect benefits concurrently pursuant to both this section or G.S. 97-30 and G.S. 97-31, but rather is entitled to select the statutory compensation which provides the more favorable remedy.

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

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

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

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

(j) If death results from the injury or occupational disease, then the employer shall pay compensation in accordance with the provisions of G.S. 97-38."

SECTION 11. G.S. 97-30 reads as rewritten:

"§ 97-30. Partial incapacity.

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

SECTION 12. G.S. 97-32 reads as rewritten:

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

If an injured employee refuses ~~employment procured for him suitable to his capacity~~ suitable employment as defined by G.S. 97-2(22), the employee shall not be entitled to any compensation at any time during the continuance of such refusal, unless in the opinion of the Industrial Commission such refusal was justified. Any order issued by the Commission suspending compensation pursuant to G.S. 97-18.1 on the ground of an unjustified refusal of an offer of suitable employment shall specify what actions the employee should take to end the suspension and reinstate the compensation. Nothing in this Article prohibits an employer from contacting the employee directly about returning to suitable employment with contemporaneous notice to the employee's counsel, if any.

SECTION 13. Article 1 of Chapter 97 of the General Statutes is amended by adding a new section to read:

"§ 97-32.2. Vocational rehabilitation.

(a) In a compensable claim, the employer may engage vocational rehabilitation services at any point during a claim, regardless of whether the employee has reached maximum medical improvement to include, among other services, a one-time assessment of the employee's vocational potential. If the employee (i) has not returned to work or (ii) has returned to work earning less than seventy-five percent (75%) of the employee's average weekly wages and is receiving benefits pursuant to G.S. 97-30, the employee may request vocational rehabilitation services, including education and retraining in the North Carolina community college or university systems so long as the education and retraining are reasonably likely to substantially increase the employee's wage-earning capacity following completion of the education or retraining program. Provided, however, the seventy-five percent (75%) threshold is for the purposes of qualification for vocational rehabilitation benefits only and shall not impact a decision as to whether a job is suitable per G.S. 97-2(22). The expense of vocational rehabilitation services provided pursuant to this section shall be borne by the employer in the same manner as medical compensation.

(b) Vocational rehabilitation services shall be provided by either a qualified or conditional rehabilitation professional approved by the Industrial Commission. Unless the parties mutually agree to a vocational rehabilitation professional, the employer may make the initial selection. At any point during the vocational rehabilitation process, either party may request that the Industrial Commission order a change of vocational rehabilitation professional for good cause.

(c) Vocational rehabilitation services shall include a vocational assessment and the formulation of an individualized written rehabilitation plan with the goal of substantially increasing the employee's wage-earning capacity, and subject to the following provisions:

- (1) When performing a vocational assessment, the vocational rehabilitation professional should evaluate the employee's medical and vocational circumstances, the employee's expectations and specific requests for vocational training, benefits expected from vocational services, and other information significant to the employee's employment potential. The assessment should also involve a face-to-face interview between the employee and the vocational rehabilitation professional to identify the specific type and sequence of appropriate services. If, at any point during vocational rehabilitation services, the vocational rehabilitation professional determines that the employee will not benefit from vocational rehabilitation services, the employer may terminate said services unless the Commission orders otherwise.
- (2) Following assessment, and after receiving input from the employee, the vocational rehabilitation professional shall draft an individualized written rehabilitation plan. The plan should be individually tailored to the employee based on the employee's education, skills, experience, and aptitudes, with appropriate recommendations for vocational services, which may include appropriate retraining, education, or job placement. The plan may be changed or updated by mutual consent at any time during rehabilitation services. A written plan is not necessary if the vocational rehabilitation professional has been retained to perform a one-time assessment.

(d) Specific vocational rehabilitation services may include, but are not limited to, vocational assessment, vocational exploration, sheltered workshop or community supported employment training, counseling, job analysis, job modification, job development and placement, labor market survey, vocational or psychometric testing, analysis of transferable skills, work adjustment counseling, job seeking skills training, on-the-job training, or training or education through the North Carolina community college or university systems.

(e) Vocational rehabilitation services may be terminated by agreement of the parties or by order of the Commission.

(f) Job placement activities may commence after completion of an individualized written rehabilitation plan. Return-to-work options should be considered, with order of priority given to returning the employee to suitable employment with the current employer, returning the employee to suitable employment with a new employer, and, if appropriate, formal education or vocational training to prepare the employee for suitable employment with the current employer or a new employer.

(g) The refusal of the employee to accept or cooperate with vocational rehabilitation services when ordered by the Industrial Commission shall bar the employee from further compensation until such refusal ceases, and no compensation shall at any time be paid for the period of suspension, unless in the opinion of the Industrial Commission the circumstances justified the refusal. Any order issued by the Commission suspending compensation per G.S. 97-18.1 shall specify what action the employee should take to end the suspension and reinstate the compensation."

SECTION 14. G.S. 97-38 reads as rewritten:

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

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

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

When weekly payments have been made to an injured employee before his death, the compensation to dependents shall begin from the date of the last of such payments. Compensation payments due on account of death shall be paid for a period of ~~400~~500 weeks from the date of the death of the employee; provided, however, after said ~~400-week~~500-week period in case of a widow or widower who is unable to support herself or himself because of physical or mental disability as of the date of death of the employee, compensation payments shall continue during her or his lifetime or until

remarriage and compensation payments due a dependent child shall be continued until such child reaches the age of 18.

Compensation payable under this Article to aliens not residents (or about to become nonresidents) of the United States or Canada, shall be the same in amounts as provided for residents, except that dependents in any foreign country except Canada shall be limited to surviving spouse and child or children, or if there be no surviving spouse or child or children, to the surviving father or mother."

SECTION 15. G.S. 97-40 reads as rewritten:

"§ 97-40. Commutation and payment of compensation in absence of dependents; "next of kin" defined; commutation and distribution of compensation to partially dependent next of kin; payment in absence of both dependents and next of kin.

Subject to the provisions of G.S. 97-38, if the deceased employee leaves neither whole nor partial dependents, then the compensation which would be payable under G.S. 97-38 to whole dependents shall be commuted to its present value and paid in a lump sum to the next of kin as herein defined. For purposes of this section and G.S. 97-38, "next of kin" shall include only child, father, mother, brother or sister of the deceased employee, including adult children or adult brothers or adult sisters of the deceased, but excluding a parent who has willfully abandoned the care and maintenance of his or her child and who has not resumed its care and maintenance at least one year prior to the first occurring of the majority or death of the child and continued its care and maintenance until its death or majority. For all such next of kin who are neither wholly nor partially dependent upon the deceased employee and who take under this section, the order of priority among them shall be governed by the general law applicable to the distribution of the personal estate of persons dying intestate. In the event of exclusion of a parent based on abandonment, the claim for compensation benefits shall be treated as though the abandoning parent had predeceased the employee. For all such next of kin who were also partially dependent on the deceased employee but who exercise the election provided for partial dependents by G.S. 97-38, the general law applicable to the distribution of the personal estate of persons dying intestate shall not apply and such person or persons upon the exercise of such election, shall be entitled, share and share alike, to the compensation provided in G.S. 97-38 for whole dependents commuted to its present value and paid in a lump sum.

If the deceased employee leaves neither whole dependents, partial dependents, nor next of kin as hereinabove defined, then no compensation shall be due or payable on account of the death of the deceased employee, except that the employer shall pay or cause to be paid the burial expenses of the deceased employee not exceeding ~~three thousand five hundred dollars (\$3,500)~~ ten thousand dollars (\$10,000) to the person or persons entitled thereto."

SECTION 16. G.S. 97-77(a) reads as rewritten:

"(a) There is hereby created a commission to be known as the North Carolina Industrial Commission, consisting of ~~seven-six~~ commissioners who shall devote their entire time to the duties of the Commission. The Governor shall appoint the members of the ~~Commission, one for a term of two years, one for a term of four years, one for a term~~ Commission for terms of six years. Of the additional appointments made in 1994, one shall be for a term expiring June 30, 1996, one for a term expiring June 30, 1998, and two for terms expiring June 30, 2000. Upon the expiration of each term as above mentioned, the Governor shall appoint a successor for a term of six years, and thereafter the term of office of each commissioner shall be six years. Not more than three Three appointees-commissioners shall be persons who, on account of their previous vocations, employment or affiliations, can be classed as representatives of employers, and not more than three employers. Three appointees-commissioners shall be persons who, on account of their previous vocations, employment or affiliations, can be classed as representatives of employees. No person may serve more than two terms on the Commission, including any term served prior to the effective date of this section. In calculating the number of terms served, a partial term that is less than three years in length shall not be included."

SECTION 17. G.S. 97-77 is amended by adding a new subsection to read:

"(a1) Appointments of commissioners are subject to confirmation by the General Assembly by joint resolution. The names of commissioners to be appointed by the Governor shall be submitted by the Governor to the General Assembly for confirmation by the General Assembly on or before March 1 of the year of expiration of the term. If the Governor fails to timely submit nominations, the General Assembly shall appoint to fill the succeeding term upon the joint recommendation of the President Pro Tempore of the Senate and the Speaker of

the House of Representatives in accordance with G.S. 120-121 not inconsistent with this section.

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

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

SECTION 18. Article 1 of Chapter 97 of the General Statutes is amended by adding a new section to read:

"§ 97-78.1. Standards of judicial conduct to apply to commissioners and deputy commissioners.

The Code of Judicial Conduct for judges of the General Court of Justice and the procedure for discipline of judges in Article 30 of Chapter 7A of the General Statutes shall apply to commissioners and deputy commissioners. Commissioners and deputy commissioners shall be liable for impeachment for the causes and in the manner provided for judges of the General Court of Justice in Chapter 123 of the General Statutes."

SECTION 19. G.S. 97-80(a) reads as rewritten:

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

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

SECTION 20. G.S. 97-84 reads as rewritten:

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

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

SECTION 21.(a) G.S. 150B-1(c) reads as rewritten:

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

- (1) The North Carolina National Guard in exercising its court-martial jurisdiction.

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

SECTION 21.(b) G.S. 150B-1(e) is amended by adding a new subdivision to read:

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

...
(18) The Industrial Commission."

SECTION 21.(c) Any existing rule contained in Title 4 of Chapter 10 of the North Carolina Administrative Code that has not been readopted in accordance with Article 2A of Chapter 150B of the General Statutes on or before December 31, 2012, shall expire. Any rule that has been readopted by the Industrial Commission in accordance with G.S. 150B-21.2(g) on or before December 31, 2012, shall remain in effect until the rule becomes effective pursuant to G.S. 150B-21.3.

SECTION 22. As of February 1, 2011, the terms of the seven members of the Industrial Commission are as follows:

- (1) One serves a term expiring April 30, 2011.
- (2) Two serve terms expiring June 30, 2012.
- (3) One serves a term expiring April 30, 2013.
- (4) One serves a term expiring June 30, 2014.
- (5) One serves a term expiring April 30, 2015.
- (6) One serves a term expiring June 30, 2016.

The reduction from seven commissioners to six commissioners provided by Section 16 of this act shall be effected by not filling one of the two offices that expire June 30, 2012, pursuant to subdivision (2) of this section.

SECTION 23. Notwithstanding G.S. 97-31.1, this act is effective when it becomes law. Sections 4, 5, 6, 7, and 9 apply to claims pending on or after the effective date of this act. Sections 2, 3, 10, 11, 12, 13, 14, 15, and 20 apply to claims arising on or after the effective date of this act. Section 21 applies to rules adopted on or after the effective date of this act.

In the General Assembly read three times and ratified this the 13th day of June, 2011.

s/ Walter H. Dalton
President of the Senate

s/ Dale R. Folwell
Speaker Pro Tempore of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 4:28 p.m. this 24th day of June, 2011