

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 709\*  
PROPOSED COMMITTEE SUBSTITUTE H709-PCS80242-TG-19

Short Title: Protect and Put NC Back to Work.

(Public)

Sponsors:

Referred to:

April 7, 2011

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

4 The General Assembly of North Carolina enacts:

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

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

8 **"§ 97-2. Definitions.**

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

10 ...

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

22 ...

23 (22) Suitable employment. – The term "suitable employment" means employment  
24 offered to the employee or, if prohibited by the Immigration and Nationality  
25 Act, 8 U.S.C. § 1324a, employment available to the employee that (i) prior  
26 to reaching maximum medical improvement is within the employee's work  
27 restrictions, including rehabilitative or other noncompetitive employment  
28 with the employer of injury approved by the employee's authorized health  
29 care provider or (ii) after reaching maximum medical improvement is  
30 employment that the employee is capable of performing considering the  
31 employee's preexisting and injury-related physical and mental limitations,  
32 vocational skills, education, and experience and is located within a 50-mile  
33 radius of the employee's residence at the time of injury or the employee's  
34 current residence if the employee had a legitimate reason to relocate since



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1 the date of injury. No one factor shall be considered exclusively in  
2 determining suitable employment."

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

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

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

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

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

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

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

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

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

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

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

29 **"§ 97-25. Medical treatment and supplies.**

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

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

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

47 Provided, however, if the employee so desires, an injured employee may select a health  
48 care provider of the employee's own choosing to attend, prescribe, and assume the care and  
49 charge of the employee's case subject to the approval of the Industrial Commission. In addition,  
50 in case of a controversy arising between the employer and the employee, the Industrial  
51 Commission may order necessary treatment. In order for the Commission to grant an

1 employee's request to change treatment or health care provider, the employee must show by a  
2 preponderance of the evidence that the change is reasonably necessary to effect a cure, provide  
3 relief, or lessen the period of disability. When deciding whether to grant an employee's request  
4 to change treatment or health care provider, the Commission may disregard or give less weight  
5 to the opinion of a health care provider from whom the employee sought evaluation, diagnosis,  
6 or treatment before the employee first requested authorization in writing from the employer,  
7 insurer, or Commission.

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

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

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

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

24 **"§ 97-25.6. Reasonable access to medical information.**

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

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

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

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

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

- 1           (2)   Written communications with health care providers. – An employer may  
2           communicate with the employee's authorized health care provider in writing,  
3           without the express authorization of the employee, to obtain relevant  
4           medical information not available in the employee's medical records. The  
5           employer shall provide the employee with contemporaneous written notice  
6           of the written communication. The employer may request the following  
7           additional information:
- 8           a.       The diagnosis of the employee's condition;  
9           b.       The appropriate course of treatment;  
10          c.       The anticipated time that the employee will be out of work;  
11          d.       The relationship, if any, of the employee's condition to the  
12          employment;  
13          e.       Work restrictions resulting from the condition;  
14          f.       The kind of work for which the employee may be eligible;  
15          g.       The anticipated time the employee will be restricted; and  
16          h.       Any permanent impairment as a result of the condition.  
17          The employer shall provide a copy of the health care provider's response to  
18          the employee within 10 business days of its receipt by the employer.
- 19          (3)   Oral communications with health care providers. – An employer may  
20          communicate with the employee's authorized health care provider by oral  
21          communication to obtain relevant medical information not contained in the  
22          employee's medical records, not available through written communication,  
23          and not otherwise available to the employer, subject to the following:
- 24          a.       The employer must give the employee prior notice of the purpose of  
25          the intended oral communication and an opportunity for the  
26          employee to participate in the oral communication at a mutually  
27          convenient time for the employer, employee, and health care  
28          provider.
- 29          b.       The employer shall provide the employee with a summary of the  
30          communication with the health care provider within 10 business days  
31          of any oral communication in which the employee did not  
32          participate.
- 33          (d)   Additional Information Submitted by the Employer. – Notwithstanding subsection  
34          (c) of this section, an employer may submit additional relevant medical information not already  
35          contained in the employee's medical records to the employee's authorized health care provider  
36          and may communicate in writing with the health care provider about the additional information  
37          in accordance with the following procedure:
- 38               (1)   The employer shall first notify the employee in writing that the employer  
39               intends to communicate additional information about the employee to the  
40               employee's health care provider. The notice shall include the employer's  
41               proposed written communication to the health care provider and the  
42               additional information to be submitted.
- 43               (2)   The employee shall have 10 business days from the postmark or verifiable  
44               facsimile or electronic mail either to consent or object to the employer's  
45               proposed written communication.
- 46               (3)   Upon consent of the employee or in the absence of the employee's timely  
47               response, the employer may submit the additional information directly to the  
48               health care provider.
- 49               (4)   Upon making a timely objection, the employee may request a protective  
50               order to prevent the written communication, in which case the employer  
51               shall refrain from communicating with the health care provider until the

1 Commission has ruled upon the employee's request. In deciding whether to  
2 allow the submission of additional information to the health care provider, in  
3 part or in whole, the Commission shall determine whether the proposed  
4 written communication and additional information are pertinent to and  
5 necessary for the fair and swift administration and resolution of the workers'  
6 compensation claim and whether there is an alternative method to discover  
7 the information. If the Industrial Commission determines that any party has  
8 acted unreasonably by initiating or objecting to the submission of additional  
9 information to the health care provider, the Commission may assess costs  
10 associated with any proceeding, including reasonable attorneys' fees and  
11 deposition costs, against the offending party.

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

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

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

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

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

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

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

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

49 ~~An employer or insurer paying compensation for an admitted claim or paying without~~  
50 ~~prejudice pursuant to G.S. 97-18(d) may communicate with an employee's medical provider in~~  
51 ~~writing, limited to specific questions promulgated by the Commission, to determine, among~~

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

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

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

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

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

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

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

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

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

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

48 (3) Notwithstanding the provisions of G.S. 97-25.6 to the contrary, an employer  
49 or its agent shall be allowed to openly communicate either orally or in  
50 writing with an independent medical examiner chosen by the employer  
51 regardless of whether the examiner physically examined the employee.

1           (4) If the examiner physically examined the employee, the employer must  
2 produce the examiner's report to the employee within 10 business days of  
3 receipt by the employer, along with a copy of all documents and written  
4 communication sent to the independent medical examiner pertaining to the  
5 employee.

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

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

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

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

51           "**§ 97-29. Compensation rates** Rates and duration of compensation for total incapacity.

1       (a) When an employee qualifies for total disability, ~~Except as hereinafter otherwise~~  
2 provided, where the incapacity for work resulting from the injury is total, the employer shall  
3 pay or cause to be paid, as hereinafter provided by subsections (b) through (d) of this section,  
4 to the injured employee during such total disability a weekly compensation equal to sixty-six and  
5 two-thirds percent (662/3%) of his average weekly wages, but not more than the amount  
6 established annually to be effective ~~October~~ January 1 as provided herein, nor less than thirty  
7 dollars (\$30.00) per week.

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

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

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

- 43       (1) The loss of both hands, both arms, both feet, both legs, both eyes, or any two  
44 thereof, as provided by G.S. 97-31(17).
- 45       (2) Spinal injury involving severe paralysis of both arms, both legs, or the trunk.
- 46       (3) Severe brain or closed head injury as evidenced by severe and permanent:
  - 47           a. Sensory or motor disturbances;
  - 48           b. Communication disturbances;
  - 49           c. Complex integrated disturbances of cerebral function; or
  - 50           d. Neurological disorders.



1           (4) Second-degree or third-degree burns to thirty-three percent (33%) or more of  
2           the total body surface.

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

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

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

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

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

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

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

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

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

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

51           "**§ 97-30. Partial incapacity.**

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

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

19 "**§ 97-32. Refusal of injured employee to accept suitable employment as suspending**  
20 **compensation.**

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

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

32 "**§ 97-32.2. Vocational rehabilitation.**

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

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

1 request that the Industrial Commission order a change of vocational rehabilitation professional  
2 for good cause.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 Subject to the provisions of G.S. 97-38, if the deceased employee leaves neither whole nor  
 47 partial dependents, then the compensation which would be payable under G.S. 97-38 to whole  
 48 dependents shall be commuted to its present value and paid in a lump sum to the next of kin as  
 49 herein defined. For purposes of this section and G.S. 97-38, "next of kin" shall include only  
 50 child, father, mother, brother or sister of the deceased employee, including adult children or  
 51 adult brothers or adult sisters of the deceased, but excluding a parent who has willfully

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

14 If the deceased employee leaves neither whole dependents, partial dependents, nor next of  
15 kin as hereinabove defined, then no compensation shall be due or payable on account of the  
16 death of the deceased employee, except that the employer shall pay or cause to be paid the  
17 burial expenses of the deceased employee not exceeding ~~three thousand five hundred dollars~~  
18 ~~(\$3,500)~~ ten thousand dollars (\$10,000) to the person or persons entitled thereto."

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

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

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

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

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

1 pursuant to this subsection when the General Assembly is not in session, and the appointment is  
2 deemed urgent by the Governor, the commissioner may be appointed and serve on an interim  
3 basis pending confirmation by the General Assembly. For the purpose of this subsection, the  
4 General Assembly is not in session only (i) prior to convening of the Regular Session, (ii)  
5 during any adjournment of the Regular Session for more than 10 days, and (iii) after sine die  
6 adjournment of the Regular Session.

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

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

12 **"§ 97-78.1. Standards of judicial conduct to apply to commissioners and deputy**  
13 **commissioners.**

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

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

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

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

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

30 **"§ 97-84. Determination of disputes by Commission or deputy.**

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

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

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

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

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

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

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

14           ...

15           (18) The Industrial Commission."

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

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

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

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

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