

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H.B. 338
Mar 19, 2013
HOUSE PRINCIPAL CLERK

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HOUSE DRH70135-LR-76C* (02/27)

Short Title: WC/Subrogation/Employer Consent.

(Public)

Sponsors: Representatives Hanes, Lambeth, and Terry (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE WORKERS' COMPENSATION LAWS TO REQUIRE
3 EMPLOYER CONSENT FOR THE REDUCTION BY MORE THAN FIFTY PERCENT
4 OF AN EMPLOYER'S SUBROGATION LIEN.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 97-10.2(j) reads as rewritten:

7 "(j) Notwithstanding any other subsection in this section, in the event that a judgment is
8 obtained by the employee in an action against a third party, or in the event that a settlement has
9 been agreed upon by the employee and the third party, either party may apply to the resident
10 superior court judge of the county in which the cause of action arose or where the injured
11 employee resides, or to a presiding judge of either district, to determine the subrogation
12 amount. After notice to the employer and the insurance carrier, after an opportunity to be heard
13 by all interested parties, ~~and with or without the consent of the employer,~~ the judge shall
14 determine, in his or her discretion, the amount, ~~if any,~~ of the employer's lien, whether based on
15 accrued or prospective workers' compensation benefits, and the amount of cost of the
16 third-party litigation to be shared between the employee and employer. The judge shall
17 consider the anticipated amount of prospective compensation the employer or workers'
18 compensation carrier is likely to pay to the employee in the future, the net recovery to plaintiff,
19 the likelihood of the plaintiff prevailing at trial or on appeal, the need for finality in the
20 litigation, and any other factors the court deems just and reasonable, in determining the
21 appropriate amount of the employer's lien. However, the employer's lien shall not be reduced
22 by more than fifty percent (50%) without the consent of the employer. If the matter is pending
23 in the federal district court such determination may be made by a federal district court judge of
24 that division."

25 **SECTION 2.** This act is effective when it becomes law.



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