

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013**

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**SENATE BILL 174  
PROPOSED COMMITTEE SUBSTITUTE S174-PCS35341-RO-24**

Short Title: Disapprove Industrial Commission Rules.

(Public)

Sponsors:

Referred to:

March 5, 2013

A BILL TO BE ENTITLED  
AN ACT TO DISAPPROVE CERTAIN RULES ADOPTED BY THE NORTH CAROLINA  
INDUSTRIAL COMMISSION AND TO AMEND CERTAIN PROVISIONS OF THE  
WORKER'S COMPENSATION LAW.

The General Assembly of North Carolina enacts:

**SECTION 1.** Pursuant to G.S. 150B-21.3(b1), 04 NCAC 10A .0102 (Official Forms), 04 NCAC 10A .0105 (Electronic Payment of Costs), 04 NCAC 10A .0405 (Reinstatement of Compensation), 04 NCAC 10A .0406 (Discount Rate to be Used in Determining Commuted Values), 04 NCAC 10A .0601 (Employer's Obligations Upon Notice; Denial of Liability...), 04 NCAC 10A .0603 (Responding to a Party's Request for Hearing), 04 NCAC 10A .0604 (Appointment of Guardian Ad Litem), 04 NCAC 10A .0605 (Discovery), 04 NCAC 10A .0608 (Statement of Incident Leading to Claim), 04 NCAC 10A .0609 (Motions Practice in Contested Cases), 04 NCAC 10A .0609A (Medical Motions and Emergency Medical Motions), 04 NCAC 10A .0612 (Depositions and Additional Hearings), 04 NCAC 10A .0613 (Expert Witnesses and Fees), 04 NCAC 10A .0616 (Dismissals), 04 NCAC 10A .0701 (Review by Full Commission), 04 NCAC 10A .0704 (Remand from the Appellate Courts), 04 NCAC 10C .0101 (Applicability of the Rules), 04 NCAC 10C .0103 (Definitions), 04 NCAC 10C .0107 (Communication), 04 NCAC 10C .0109 (Vocational Rehabilitation Services Return to Work), 04 NCAC 01E .0201 (Document and Record Fees), 04 NCAC 10E .0202 (Hearing Costs or Fees), 04 NCAC 10E .0203 (Fees Set by the Commission), 04 NCAC 10G .0101 (Order for Mediated Settlement Conference), 04 NCAC 10G .0104A (Foreign Language Interpreters), as adopted by the Industrial Commission on September 20, 2012, and approved by the Rules Review Commission on October 18, 2012, are disapproved.

**SECTION 2.** Pursuant to G.S. 150B-21.3(b1), 04 NCAC 10A .0801 (Suspension of Rules), 04 NCAC 10B .0203 (Infants and Incompetents), 04 NCAC 10B .0501 (Suspension of Rules), 04 NCAC 10C .0108 (Interaction with Physicians), 04 NCAC 10C .0201 (Suspension of Rules), 04 NCAC 10D .0110 (Suspension of Rules), 04 NCAC 10E .0301 (Suspension of Rules), 04 NCAC 10G .0105 (Sanctions), 04 NCAC 10G .0107 (Compensation of the Mediator), 04 NCAC 10G .0110 (Waiver of Rules), 04 NCAC 10H .0206 (Waiver of Rules), 04 NCAC 10I .0204 (Suspension of Rules), as adopted by the Industrial Commission on September 20, 2012, and approved by the Rules Review Commission on November 15, 2012, are disapproved.

**SECTION 3.** G.S. 97-18(k) reads as rewritten:

"(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



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1 a form prescribed by the Commission. If the employer or insurer contests the employee's  
2 request for reinstatement, the matter shall be scheduled for a formal hearing pursuant to  
3 G.S. 97-83 on a preemptive basis. This subsection shall not apply to a request for a review of  
4 an award on the grounds of a change in condition pursuant to G.S. 97-47."

5 **SECTION 4.** G.S. 97-2 is amended by adding a new subdivision to read:

6 "(23) Commuted Value. – The term "commuted value" means an eight percent  
7 (8%) discount rate applied to unaccrued compensation."

8 **SECTION 5.** G.S. 97-40 reads as rewritten:

9 **"§ 97-40. Commutation and payment of compensation in absence of dependents; "next of**  
10 **kin" defined; commutation and distribution of compensation to partially**  
11 **dependent next of kin; payment in absence of both dependents and next of kin.**

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

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

37 **SECTION 6.** G.S. 97-79 is amended by adding a new subsection to read:

38 "(g) The Commission shall adopt rules, in accordance with Article 2A of Chapter 150B  
39 of the General Statutes, for establishing administrative motions, practices, and procedures for  
40 carrying out the provisions of this Article."

41 **SECTION 7.** G.S. 97-78(f) reads as rewritten:

42 "(f) No later than April 1, 2008, the Commission shall prepare and implement a strategic  
43 plan for accomplishing all of the following:

- 44 (1) Tracking compliance with the provisions of G.S. 97-18(b), (c), and (d), and  
45 establishing a procedure to enforce compliance with the requirements of  
46 these subsections.
- 47 (2) Expeditiously resolving requests for, or disputes involving, medical  
48 compensation under G.S. 97-25, including selection of a physician, change  
49 of physician, the specific treatment involved, and the provider of such  
50 treatment. The Commission shall schedule a formal hearing pursuant to  
51 G.S. 97-83 on a preemptive basis."

1           **SECTION 8.** G.S. 97-73(a) reads as rewritten:

2           "(a) Claims. – The Industrial Commission may establish by rule a schedule of fees to be  
3 borne by all parties for examinations conducted, reports made, documents filed, and  
4 agreements reviewed under this Article. The fees shall be collected in accordance with rules  
5 adopted by the Industrial Commission."

6           **SECTION 9.** G.S. 97-80 reads as rewritten:

7           "**§ 97-80. Rules and regulations; subpoena of witnesses; examination of books and**  
8 **records; depositions; costs.**

9           (a) The Commission shall adopt rules, in accordance with Article 2A of Chapter 150B  
10 of the General Statutes and not inconsistent with this Article, for carrying out the provisions of  
11 this Article.

12           The Commission shall adopt rules establishing the forms, processes, and procedure to be  
13 used under this Article.

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

16           (a1) Notwithstanding the service requirements of G.S. 1A-1, Rule 45, referenced in  
17 subsection (e) of this section, the Rules of Civil Procedure do not apply to claims filed pursuant  
18 to this Chapter.

19           (b) The Commission or any member thereof, or any person deputized by it, shall have  
20 the power, for the purpose of this Article, to tax costs and fees against ~~the all~~ parties, to  
21 administer or cause to have administered oaths, to preserve order at hearings, and to compel the  
22 attendance and testimony of witnesses, and to compel the production of books, papers, records,  
23 and other tangible things-witnesses.

24           (c) The Commission may order parties to participate in mediation, under rules  
25 substantially similar to those approved by the Supreme Court for use in the Superior Court  
26 division, except the Commission shall determine the manner in which payment of the costs of  
27 the mediated settlement conference is assessed.

28           (d) The Commission may order testimony to be taken by deposition and any party to a  
29 proceeding under this Article may, upon application to the Commission, which application  
30 shall set forth the materiality of the evidence to be given, cause the depositions of witnesses  
31 residing within or without the State to be taken, the costs and fees to be taxed as other costs by  
32 Commission against all parties. Depositions ordered by the Commission upon application of a  
33 party shall be taken after giving the notice and in the manner prescribed by law for depositions  
34 in action at law, except that they shall be directed to the Commission, the commissioner, or the  
35 deputy commissioner before whom the proceedings may be pending.

36           (e) A subpoena requiring a witness to appear to provide testimony may be issued by the  
37 Commission and served in accordance with G.S. 1A-1, Rule 45. G.S. 1A-1, Rule 30(b)(6),  
38 depositions shall not be permissible in a claim filed pursuant to this Chapter. A subpoena duces  
39 tecum shall not be issued by the Commission or any party except as to witnesses who are not  
40 party to the action. Upon a motion, the Commission may quash a subpoena if it finds that the  
41 evidence the production of which is required does not relate to a matter in issue, the subpoena  
42 does not describe with sufficient particularity the evidence the production of which is required,  
43 or for any other reason sufficient in law the subpoena may be quashed-testimony of the witness  
44 does not relate to a matter in issue or for any other reason sufficient in law. Each witness who  
45 appears in obedience to such subpoena of the Commission shall receive for attendance the fees  
46 and mileage for witnesses in civil cases in courts of the county where the hearing is held.

47           (f) The Commission may by rule provide for and limit the use of interrogatories and  
48 other forms of discovery, including production of books, papers, records, and other tangible  
49 things, and it may provide reasonable sanctions for failure to comply with a Commission order  
50 compelling discovery.

1 (g) The Commission or any member or deputy thereof shall have the same power as a  
2 judicial officer pursuant to Chapter 5A of the General Statutes to hold a person in civil  
3 contempt, as provided thereunder, for failure to comply with an order of the Commission,  
4 Commission member, or deputy. A person held in civil contempt may appeal in the manner  
5 provided for appeals pursuant to G.S. 97-85 and G.S. 97-86. The provisions of G.S. 5A-24 shall  
6 not apply to appeals pursuant to this subsection.

7 (h) The Commission or any member or deputy thereof shall also have the same power  
8 as a judicial officer pursuant to Chapter 5A of the General Statutes to punish for criminal  
9 contempt, subject to the limitations thereunder, (i) for ~~wilful~~-willful behavior committed during  
10 the sitting of the commissioner or deputy commissioner and directly tending to interrupt the  
11 proceedings; (ii) for ~~wilful~~-willful disobedience of a lawful order of the Commission or a  
12 member or deputy thereof; or (iii) for ~~wilful~~-willful refusal to be sworn or affirmed as a  
13 witness, or, when so sworn or affirmed, ~~wilful~~-willful refusal to answer any legal and proper  
14 question when refusal is not legally justified. The Commission or any member or deputy  
15 thereof may issue an order of arrest as provided by G.S. 15A-305 when authorized by  
16 G.S. 5A-16 in connection with contempt proceedings. When the commissioner or deputy  
17 commissioner chooses not to proceed summarily pursuant to G.S. 5A-14, the proceedings shall  
18 be before a district court judge, and venue lies throughout the district where the order was  
19 issued directing the person charged to appear. A person found in criminal contempt may appeal  
20 in the manner provided for appeals in criminal actions to the superior court of the district in  
21 which the order of contempt was issued, and the appeal is by hearing de novo before a superior  
22 court judge."

23 **SECTION 10.** The Industrial Commission shall study the financial and economic  
24 impact and operational burdens on all parties of mandating that costs and fees be submitted  
25 electronically as provided by 04 NCAC 10A .0105. The Commission shall submit a report of  
26 its findings and recommendations to the 2014 Regular Session of the 2013 General Assembly.

27 **SECTION 11.** This act is effective when it becomes law.