

ADOPTED



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 26

AMENDMENT NO. A1
(to be filled in by
Principal Clerk)

H26-ARO-10 [v.5]

Page 1 of 2

Amends Title [YES]
Third Edition

Date _____, 2017

Senator Bishop

1 moves to amend the bill on page 1, lines 2 – 5 by rewriting the lines to read:

2
3 "AN ACT TO CLARIFY THAT AN INJURY NOT IDENTIFIED IN AN AWARD ARISING
4 OUT OF G.S. 97-18(b) OR G.S. 97-18(d) IS NOT PRESUMED CAUSALLY RELATED,
5 AND TO AMEND THE WORKERS' COMPENSATION ACT REGARDING APPROVAL
6 OF DISPUTED LEGAL FEES BY THE INDUSTRIAL COMMISSION.

7
8 Whereas, in 2011, the Workers' Compensation Act was amended by S.L. 2011-287;
9 and

10 Whereas, the North Carolina Supreme Court issued a decision in *Wilkes v. City of*
11 *Greenville* (No. 368PA15) on June 9, 2017; and

12 Whereas, prior to the Supreme Court's decision in *Wilkes*, employees were not
13 required to prove entitlement to additional medical treatment for the injuries determined to be
14 compensable by the Commission; and

15 Whereas, prior to the Supreme Court's decision in *Wilkes*, employees could seek
16 medical treatment for future symptoms allegedly related to the original compensable injury;
17 and

18 Whereas, the *Wilkes* decision held that once an employer issues direct payment to an
19 employee pursuant to G.S. 97-82(b), the employee is entitled to a presumption that additional
20 medical treatment is causally related to the employee's compensable injury unless the employer
21 rebuts this presumption with evidence that the condition or treatment is not causally related to
22 the compensable injury; and

23 Whereas, an employee bears the burden of proving that the employee's future
24 symptoms or conditions that the employee alleges are related to the compensable injury but that
25 were not enumerated on a Form 60 or Form 63 pursuant to G.S. 97-18(b) or G.S. 97-18(d),
26 respectively, are causally related to the compensable injury; Now, therefore,
27 The General Assembly of North Carolina enacts:

28 **SECTION 1.(a).** G.S. 97-82(b) reads as rewritten:

29 "(b) If approved by the Commission, a memorandum of agreement shall for all purposes be
30 enforceable by the court's decree as hereinafter specified. Payment pursuant to G.S. 97-18(b),
31 or payment pursuant to G.S. 97-18(d) when compensability and liability are not contested prior
32 to expiration of the period for payment without prejudice, shall constitute an award of the



* H 2 6 - A R O - 1 0 - V - 5 *

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 26

ADOPTED

AMENDMENT NO. A1
(to be filled in by
Principal Clerk)

H26-ARO-10 [v.5]

Page 2 of 2

1 Commission on the question of compensability of and the insurer's liability for the injury as
2 reflected on a form prescribed by the Commission pursuant to G.S. 97-18(b) or G.S. 97-18(d)
3 for which payment was made. An award of the Commission arising out of G.S. 97-18(b) or
4 G.S. 97-18(d) shall not create a presumption that medical treatment for an injury or condition
5 not identified in the form prescribed by the Commission pursuant to G.S. 97-18(b) or G.S. 97-
6 18(d) is causally related to the compensable injury. An employee may request a hearing
7 pursuant to G.S. 97-84 to prove that an injury or condition is causally related to the
8 compensable injury. Compensation paid in these circumstances shall constitute payment of
9 compensation pursuant to an award under this Article."

10 **SECTION 1.(b).** In enacting subsection (a) of this section, it is the intent of the
11 General Assembly to clarify, in response to *Wilkes v. City of Greenville*, that an injury not
12 identified in an award arising out of G.S. 97-18(b) or G.S. 97-18(d) is not presumed to be
13 causally related to the compensable injury to reflect the intent of the General Assembly when it
14 enacted S.L. 2011-287.

15 **SECTION 1.(c).** This section is effective when it becomes law, and applies to
16 claims accrued or pending prior to, on, or after that date.

17 **SECTION 2.** G.S. 97-90(f) reads as rewritten:";

18
19 And on page 1, line 15, by rewriting the line to read:

20 **"SECTION 3.** Except as otherwise provided, this act is effective when it becomes
21 law and applies to claims".
22
23

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

**The official copy of this document, with signatures
and vote information, is available in the
Senate Principal Clerk's Office**