

## **Chapter 97.**

### **Workers' Compensation Act.**

#### Article 1.

#### Workers' Compensation Act.

##### **§ 97-1. Short title.**

This Article shall be known and cited as The North Carolina Workers' Compensation Act. (1929, c. 120, s. 1; 1979, c. 714, s. 1.)

##### **§ 97-1.1. References to workmen's compensation.**

Any reference in any act, public or local, to the "Workmen's Compensation Act," "Workmen's Compensation," or "workmen's compensation" shall be deemed to refer respectively to "Workers' Compensation Act," "Workers' Compensation" or "workers' compensation." (1979, c. 714, s. 4.)

##### **§ 97-2. Definitions.**

When used in this Article, unless the context otherwise requires –

- (1) Employment. – The term "employment" includes employment by the State and all political subdivisions thereof, and all public and quasi-public corporations therein and all private employments in which three or more employees are regularly employed in the same business or establishment or in which one or more employees are employed in activities which involve the use or presence of radiation, except agriculture and domestic services, unless 10 or more full-time nonseasonal agricultural workers are regularly employed by the employer and an individual sawmill and logging operator with less than 10 employees, who saws and logs less than 60 days in any six consecutive months and whose principal business is unrelated to sawmilling or logging.
- (2) Employee. – The term "employee" means every person engaged in an employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also minors, whether lawfully or unlawfully employed, but excluding persons whose employment is both casual and not in the course of the trade, business, profession, or occupation of his employer, and as relating to those so employed by the State, the term "employee" shall include all officers and employees of the State, including such as are elected by the people, or by the General Assembly, or appointed by the Governor to serve on a per diem, part-time or fee basis, either with or without the confirmation of the Senate; as relating to municipal corporations and political subdivisions of the State, the term "employee" shall include all officers and employees thereof, including such as are

elected by the people. The term "employee" shall include members of the North Carolina national guard while on State active duty under orders of the Governor and members of the North Carolina State Defense Militia while on State active duty under orders of the Governor. The term "employee" shall include deputy sheriffs and all persons acting in the capacity of deputy sheriffs, whether appointed by the sheriff or by the governing body of the county and whether serving on a fee basis or on a salary basis, or whether deputy sheriffs serving upon a full-time basis or a part-time basis, and including deputy sheriffs appointed to serve in an emergency, but as to those so appointed, only during the continuation of the emergency. The sheriff shall furnish to the board of county commissioners a complete list of all deputy sheriffs named or appointed by him immediately after their appointment and notify the board of commissioners of any changes made therein promptly after such changes are made. Any reference to an employee who has been injured shall, when the employee is dead, include also his legal representative, dependents, and other persons to whom compensation may be payable: Provided, further, that any employee, as herein defined, of a municipality, county, or of the State of North Carolina, while engaged in the discharge of his official duty outside the jurisdictional or territorial limits of the municipality, county, or the State of North Carolina and while acting pursuant to authorization or instruction from any superior officer, shall have the same rights under this Article as if such duty or activity were performed within the territorial boundary limits of his employer.

Every executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation shall be considered as an employee of such corporation under this Article.

Any such executive officer of a corporation may, notwithstanding any other provision of this Article, be exempt from the coverage of the corporation's insurance contract by such corporation's specifically excluding such executive officer in such contract of insurance, and the exclusion to remove such executive officer from the coverage shall continue for the period such contract of insurance is in effect, and during such period such executive officers thus exempted from the coverage of the insurance contract shall not be employees of such corporation under this Article.

All county agricultural extension service employees who do not receive official federal appointments as employees of the United States Department of Agriculture and who are field faculty members with professional rank as designated in the memorandum of understanding between the North Carolina Agricultural Extension Service, North Carolina State University, A & T State University, and the boards of

county commissioners shall be deemed to be employees of the State of North Carolina. All other county agricultural extension service employees paid from State or county funds shall be deemed to be employees of the county board of commissioners in the county in which the employee is employed for purposes of workers' compensation.

The term "employee" shall also include members of the Civil Air Patrol currently certified pursuant to G.S. 143B-491(a) when performing duties in the course and scope of a State-approved mission pursuant to Article 11 of Chapter 143B of the General Statutes.

"Employee" shall not include any person performing voluntary service as a ski patrolman who receives no compensation for such services other than meals or lodging or the use of ski tow or ski lift facilities or any combination thereof.

Any sole proprietor or partner of a business or any member of a limited liability company may elect to be included as an employee under the workers' compensation coverage of such business if he is actively engaged in the operation of the business and if the insurer is notified of his election to be so included. Any such sole proprietor or partner or member of a limited liability company shall, upon such election, be entitled to employee benefits and be subject to employee responsibilities prescribed in this Article.

"Employee" shall include an authorized pickup firefighter of the Division of Forest Resources of the Department of Environment and Natural Resources when that individual is engaged in emergency fire suppression activities for the Division of Forest Resources. As used in this section, "authorized pickup firefighter" means an individual who has completed required fire suppression training as a wildland firefighter and who is available as needed by the Division of Forest Resources for emergency fire suppression activities, including immediate dispatch to wildfires and standby for initial attack on fires during periods of high fire danger.

It shall be a rebuttable presumption that the term "employee" shall not include any person performing services in the sale of newspapers or magazines to ultimate consumers under an arrangement whereby the newspapers or magazines are to be sold by that person at a fixed price and the person's compensation is based on the retention of the excess of the fixed price over the amount at which the newspapers or magazines are charged to the person.

- (3) Employer. – The term "employer" means the State and all political subdivisions thereof, all public and quasi-public corporations therein, every person carrying on any employment, and the legal representative of a deceased person or the receiver or trustee of any person. The board of commissioners of each county of the State, for the purposes of this

law, shall be considered as "employer" of all deputy sheriffs serving within such county, or persons serving or performing the duties of a deputy sheriff, whether such persons are appointed by the sheriff or by the board of commissioners and whether serving on a fee basis or salary basis. Each county is authorized to insure its compensation liability for deputy sheriffs to the same extent it is authorized to insure other compensation liability for employees thereof. For purposes of this Chapter, when an authorized pickup firefighter of the Division of Forest Resources of the Department of Environment and Natural Resources is engaged in emergency fire suppression activities for the Division of Forest Resources, that individual's employer is the Division of Forest Resources.

- (4) Person. – The term "person" means individual, partnership, association or corporation.
- (5) Average Weekly Wages. – "Average weekly wages" shall mean the earnings of the injured employee in the employment in which he was working at the time of the injury during the period of 52 weeks immediately preceding the date of the injury, including the subsistence allowance paid to veteran trainees by the United States government, provided the amount of said allowance shall be reported monthly by said trainee to his employer, divided by 52; but if the injured employee lost more than seven consecutive calendar days at one or more times during such period, although not in the same week, then the earnings for the remainder of such 52 weeks shall be divided by the number of weeks remaining after the time so lost has been deducted. Where the employment prior to the injury extended over a period of fewer than 52 weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed; provided, results fair and just to both parties will be thereby obtained. Where, by reason of a shortness of time during which the employee has been in the employment of his employer or the casual nature or terms of his employment, it is impractical to compute the average weekly wages as above defined, regard shall be had to the average weekly amount which during the 52 weeks previous to the injury was being earned by a person of the same grade and character employed in the same class of employment in the same locality or community.

But where for exceptional reasons the foregoing would be unfair, either to the employer or employee, such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury.

Wherever allowances of any character made to an employee in lieu of wages are specified part of the wage contract, they shall be deemed a part of his earnings.

Where a minor employee, under the age of 18 years, sustains a permanent disability or dies leaving dependents surviving, the compensation payable for permanent disability or death shall be calculated, first, upon the average weekly wage paid to adult employees employed by the same employer at the time of the accident in a similar or like class of work which the injured minor employee would probably have been promoted to if not injured, or, second, upon a wage sufficient to yield the maximum weekly compensation benefit. Compensation for temporary total disability or for the death of a minor without dependents shall be computed upon the average weekly wage at the time of the accident, unless the total disability extends more than 52 weeks, and then the compensation may be increased in proportion to his expected earnings.

In case of disabling injury or death to a volunteer fireman; member of an organized rescue squad; an authorized pickup firefighter, as defined in subdivision (2) of this section, when that individual is engaged in emergency fire suppression activities for the Division of Forest Resources; a duly appointed and sworn member of an auxiliary police department organized pursuant to G.S. 160A-282; or senior members of the State Civil Air Patrol functioning under Article 11 of Chapter 143B of the General Statutes, under compensable circumstances, compensation payable shall be calculated upon the average weekly wage the volunteer fireman, member of an organized rescue squad, authorized pickup firefighter of the Division of Forest Resources, when that individual is engaged in emergency fire suppression activities for the Division of Forest Resources, member of an auxiliary police department, or senior member of the State Civil Air Patrol was earning in the employment wherein he principally earned his livelihood as of the date of injury. Provided, however, that the minimum compensation payable to a volunteer fireman, member of an organized rescue squad, an authorized pickup firefighter of the Division of Forest Resources of the Department of Environment and Natural Resources, when that individual is engaged in emergency fire suppression activities for the Division of Forest Resources, a sworn member of an auxiliary police department organized pursuant to G.S. 160A-282, or senior members of the State Civil Air Patrol shall be sixty-six and two-thirds percent (66 2/3%) of the maximum weekly benefit established in G.S. 97-29.

- (6) Injury. – "Injury and personal injury" shall mean only injury by accident arising out of and in the course of the employment, and shall not include

a disease in any form, except where it results naturally and unavoidably from the accident. With respect to back injuries, however, where injury to the back arises out of and in the course of the employment and is the direct result of a specific traumatic incident of the work assigned, "injury by accident" shall be construed to include any disabling physical injury to the back arising out of and causally related to such incident. Injury shall include breakage or damage to eyeglasses, hearing aids, dentures, or other prosthetic devices which function as part of the body; provided, however, that eyeglasses and hearing aids will not be replaced, repaired, or otherwise compensated for unless injury to them is incidental to a compensable injury.

- (7) Carrier. – The term "carrier" or "insurer" means any person or fund authorized under G.S. 97-93 to insure under this Article, and includes self-insurers.
- (8) Commission. – The term "Commission" means the North Carolina Industrial Commission, to be created under the provisions of this Article.
- (9) Disability. – The term "disability" means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment.
- (10) Death. – The term "death" as a basis for a right to compensation means only death resulting from an injury.
- (11) Compensation. – The term "compensation" means the money allowance payable to an employee or to his dependents as provided for in this Article, and includes funeral benefits provided herein.
- (12) Child, Grandchild, Brother, Sister. – The term "child" shall include a posthumous child, a child legally adopted prior to the injury of the employee, and a stepchild or acknowledged illegitimate child dependent upon the deceased, but does not include married children unless wholly dependent upon him. "Grandchild" means a child as above defined of a child as above defined. "Brother" and "sister" include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but does not include married brothers nor married sisters unless wholly dependent on the employee. "Child," "grandchild," "brother," and "sister" include only persons who at the time of the death of the deceased employee are under 18 years of age.
- (13) Parent. – The term "parent" includes stepparents and parents by adoption, parents-in-law, and any person who for more than three years prior to the death of the deceased employee stood in the place of a parent to him, if dependent on the injured employee.
- (14) Widow. – The term "widow" includes only the decedent's wife living with or dependent for support upon him at the time of his death; or

living apart for justifiable cause or by reason of his desertion at such time.

- (15) Widower. – The term "widower" includes only the decedent's husband living with or dependent for support upon her at the time of her death or living apart for justifiable cause or by reason of her desertion at such time.
- (16) Adoption. – The term "adoption" or "adopted" means legal adoption prior to the time of the injury.
- (17) Singular. – The singular includes the plural and the masculine includes the feminine and neuter.
- (18) Hernia. – In all claims for compensation for hernia or rupture, resulting from injury by accident arising out of and in the course of the employee's employment, it must be definitely proven to the satisfaction of the Industrial Commission:
  - a. That there was an injury resulting in hernia or rupture.
  - b. That the hernia or rupture appeared suddenly.
  - c. Repealed by Session Laws 1987, c. 729, s. 2.
  - d. That the hernia or rupture immediately followed an accident. Provided, however, a hernia shall be compensable under this Article if it arises out of and in the course of the employment and is the direct result of a specific traumatic incident of the work assigned.
  - e. That the hernia or rupture did not exist prior to the accident for which compensation is claimed.

All hernia or rupture, inguinal, femoral or otherwise, so proven to be the result of an injury by accident arising out of and in the course of employment, shall be treated in a surgical manner by a radical operation. If death results from such operation, the death shall be considered as a result of the injury, and compensation paid in accordance with the provisions of G.S. 97-38. In nonfatal cases, if it is shown by special examination, as provided in G.S. 97-27, that the injured employee has a disability resulting after the operation, compensation for such disability shall be paid in accordance with the provisions of this Article.

In case the injured employee refuses to undergo the radical operation for the cure of said hernia or rupture, no compensation will be allowed during the time such refusal continues. If, however, it is shown that the employee has some chronic disease, or is otherwise in such physical condition that the Commission considers it unsafe for the employee to undergo said operation, the employee shall be paid compensation in accordance with the provisions of this Article.

- (19) Medical Compensation. – The term "medical compensation" means medical, surgical, hospital, nursing, and rehabilitative services, 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.

- (20) Health care provider. – The term "health care provider" means physician, hospital, pharmacy, chiropractor, nurse, dentist, podiatrist, physical therapist, rehabilitation specialist, psychologist, and any other person providing medical care pursuant to this Article.
- (21) Managed care organization. – The term "managed care organization" means a preferred provider organization or a health maintenance organization regulated under Chapter 58 of the General Statutes. "Managed care organization" also means a preferred provider benefit plan of an insurance company, hospital, or medical service corporation in which utilization review or quality management programs are used to manage the provision of health care services and benefits under this Chapter. (1929, c. 120, s. 2; 1933, c. 448; 1939, c. 277, s. 1; 1943, c. 543; c. 672, s. 1; 1945, c. 766; 1947, c. 698; 1949, c. 399; 1953, c. 619; 1955, c. 644; c. 1026, s. 1; c. 1055; 1957, c. 95; 1959, c. 289; 1961, cc. 231, 235; 1967, c. 1229, s. 1; 1969, c. 206, s. 2; c. 707; 1971, c. 284, s. 1; c. 1231, s. 1; 1973, c. 521, ss. 1, 2; c. 763, ss. 1-3; c. 1291, s. 14; 1975, c. 266, s. 1; c. 284, ss. 2, 3; c. 288; c. 718, s. 3; c. 817, s. 1; 1977, c. 419; c. 893, s. 1; 1979, cc. 86, 374; c. 516, ss. 4, 5; c. 714, s. 3; 1981, c. 421, ss. 1, 2; 1983, c. 833; 1983 (Reg. Sess., 1984), c. 1042, s. 1; 1985, cc. 133, 144; 1987, c. 729, ss. 1, 2; 1991, c. 703, s. 1; 1993, c. 389, s. 3; 1993 (Reg. Sess., 1994), c. 679, ss. 2.6, 10.7; 1995, c. 517, s. 35; 1999-219, s. 4.2; 1999-418, s. 1; 1999-456, s. 33(c); 2001-204, ss. 1, 1.1, 2; 2003-156, s. 1.)

**§ 97-3. Presumption that all employers and employees have come under provisions of Article.**

From and after January 1, 1975, every employer and employee, as hereinbefore defined and except as herein stated, shall be presumed to have accepted the provisions of this Article respectively to pay and accept compensation for personal injury or death by accident arising out of and in the course of his employment and shall be bound thereby. (1929, c. 120, s. 4; 1973, c. 1291, s. 1.)

**§ 97-4: Repealed by Session Laws 1973, c. 1291, s. 2.**

**§ 97-5. Presumption as to contract of service.**

Every contract of service between any employer and employee covered by this Article, written or implied, now in operation or made or implied prior to July 1, 1929, shall, after that date, be presumed to continue, subject to the provisions of this Article; and every such contract made subsequent to that date shall be presumed to have been made subject to the provisions of this Article. (1929, c. 120, s. 6; 1973, c. 1291, s. 3.)

**§ 97-6. No special contract can relieve an employer of obligations.**

No contract or agreement, written or implied, no rule, regulation, or other device shall in any manner operate to relieve an employer in whole or in part, of any obligation created by this Article, except as herein otherwise expressly provided. (1929, c. 120, s. 7.)

**§ 97-6.1: Repealed by 1991 (Regular Session, 1992), c. 1021, s. 4.**

**§ 97-7. State or subdivision and employees thereof.**

Neither the State nor any municipal corporation within the State, nor any political subdivision thereof, nor any employee of the State or of any such corporation or subdivision, shall have the right to reject the provisions of this Article relative to payment and acceptance of compensation, and G.S. 97-100(c) does not apply to them: Provided, that all such corporations or subdivisions are hereby authorized to self-insure or purchase insurance to secure its liability under this Article and to include thereunder the liability of such subordinate governmental agencies as the county board of health, the school board, and other political and quasi-political subdivisions supported in whole or in part by the municipal corporation or political subdivision of the State. Each municipality is authorized to make appropriations for these purposes and to fund them by levy of property taxes pursuant to G.S. 153A-149 and G.S. 160A-209 and by the allocation of other revenues whose use is not otherwise restricted by law. (1929, c. 120, s. 8; 1931, c. 274, s. 1; 1945, c. 766; 1957, c. 1396, s. 1; 1961, c. 1200; 1973, c. 803, s. 34; c. 1291, s. 4; 2006-105, s. 1.10.)

**§ 97-8. Prior injuries and deaths unaffected.**

The provisions of this Article shall not apply to injuries or deaths, nor to accidents which occurred prior to July 1, 1929. (1929, c. 120, s. 9.)

**§ 97-9. Employer to secure payment of compensation.**

Every employer subject to the compensation provisions of this Article shall secure the payment of compensation to his employees in the manner hereinafter provided; and while such security remains in force, he or those conducting his business shall only be liable to any employee for personal injury or death by accident to the extent and in the manner herein specified. (1929, c. 120, s. 10; 1973, c. 1291, s. 5.)

**§ 97-10. Repealed by Session Laws 1959, c. 1324.**

**§ 97-10.1. Other rights and remedies against employer excluded.**

If the employee and the employer are subject to and have complied with the provisions of this Article, then the rights and remedies herein granted to the employee, his dependents, next of kin, or personal representative shall exclude all other rights and remedies of the employee, his dependents, next of kin, or representative as against the employer at common law or otherwise on account of such injury or death. (1929, c. 120, s. 11; 1933, c. 449, s. 1; 1943, c. 622; 1959, c. 1324; 1973, c. 1291, s. 6.)

**§ 97-10.2. Rights under Article not affected by liability of third party; rights and remedies against third parties.**

(a) The right to compensation and other benefits under this Article for disability, disfigurement, or death shall not be affected by the fact that the injury or death was caused under circumstances creating a liability in some person other than the employer to pay damages therefor, such person hereinafter being referred to as the "third party." The respective rights and interests of the employee-beneficiary under this Article, the employer, and the employer's insurance carrier, if any, in respect of the common-law cause of action against such third party and the damages recovered shall be as set forth in this section.

(b) The employee, or his personal representative if he be dead, shall have the exclusive right to proceed to enforce the liability of the third party by appropriate proceedings if such proceedings are instituted not later than 12 months after the date of injury or death, whichever is later. During said 12-month period, and at any time thereafter if summons is issued against the third party during said 12-month period, the employee or his personal representative shall have the right to settle with the third party and to give a valid and complete release of all claims to the third party by reason of such injury or death, subject to the provisions of (h) below.

(c) If settlement is not made and summons is not issued within said 12-month period, and if employer shall have filed with the Industrial Commission a written admission of liability for the benefits provided by this Chapter, then either the employee or the employer shall have the right to proceed to enforce the liability of the third party by appropriate proceedings; either shall have the right to settle with the third party and to give a valid and complete release of all claims to the third party by reason of such injury or death, subject to the provisions of (h) below. Provided that 60 days before the expiration of the period fixed by the applicable statute of limitations if neither the employee nor the employer shall have settled with or instituted proceedings against the third party, all such rights shall revert to the employee or his personal representative.

(d) The person in whom the right to bring such proceeding or make settlement is vested shall, during the continuation thereof, also have the exclusive right to make settlement with the third party and the release of the person having the right shall fully acquit and discharge the third party except as provided by (h) below. A proceeding so instituted by the person having the right shall be brought in the name of the employee or his personal representative and the employer or the insurance carrier shall not be a necessary or proper party thereto. If the employee or his personal representative shall

refuse to cooperate with the employer by being the party plaintiff, then the action shall be brought in the name of the employer and the employee or his personal representative shall be made a party plaintiff or party defendant by order of court.

(e) The amount of compensation and other benefits paid or payable on account of such injury or death shall be admissible in evidence in any proceeding against the third party. In the event that said amount of compensation and other benefits is introduced in such a proceeding the court shall instruct the jury that said amount will be deducted by the court from any amount of damages awarded to the plaintiff. If the third party defending such proceeding, by answer duly served on the employer, sufficiently alleges that actionable negligence of the employer joined and concurred with the negligence of the third party in producing the injury or death, then an issue shall be submitted to the jury in such case as to whether actionable negligence of employer joined and concurred with the negligence of the third party in producing the injury or death. The employer shall have the right to appear, to be represented, to introduce evidence, to cross-examine adverse witnesses, and to argue to the jury as to this issue as fully as though he were a party although not named or joined as a party to the proceeding. Such issue shall be the last of the issues submitted to the jury. If the verdict shall be that actionable negligence of the employer did join and concur with that of the third party in producing the injury or death, then the court shall reduce the damages awarded by the jury against the third party by the amount which the employer would otherwise be entitled to receive therefrom by way of subrogation hereunder and the entire amount recovered, after such reduction, shall belong to the employee or his personal representative free of any claim by the employer and the third party shall have no further right by way of contribution or otherwise against the employer, except any right which may exist by reason of an express contract of indemnity between the employer and the third party, which was entered into prior to the injury to the employee. In the event that the court becomes aware that there is an express contract of indemnity between the employer and the third party the court may in the interest of justice exclude the employer from the trial of the claim against the third party and may meet the issue of the actionable negligence of the employer to the jury in a separate hearing.

- (f) (1) If the employer has filed a written admission of liability for benefits under this Chapter with, or if an award final in nature in favor of the employee has been entered by the Industrial Commission, then any amount obtained by any person by settlement with, judgment against, or otherwise from the third party by reason of such injury or death shall be disbursed by order of the Industrial Commission for the following purposes and in the following order of priority:
- a. First to the payment of actual court costs taxed by judgment and/or reasonable expenses incurred by the employee in the litigation of the third-party claim.
  - b. Second to the payment of the fee of the attorney representing the person making settlement or obtaining judgment, and except for the fee on the subrogation interest of the employer such fee shall

not be subject to the provisions of G.S. 97-90 but shall not exceed one third of the amount obtained or recovered of the third party.

- c. Third to the reimbursement of the employer for all benefits by way of compensation or medical compensation expense paid or to be paid by the employer under award of the Industrial Commission.
  - d. Fourth to the payment of any amount remaining to the employee or his personal representative.
- (2) The attorney fee paid under (f)(1) shall be paid by the employee and the employer in direct proportion to the amount each shall receive under (f)(1)c and (f)(1)d hereof and shall be deducted from such payments when distribution is made.

(g) The insurance carrier affording coverage to the employer under this Chapter shall be subrogated to all rights and liabilities of the employer hereunder but this shall not be construed as conferring any other or further rights upon such insurance carrier than those herein conferred upon the employer, anything in the policy of insurance to the contrary notwithstanding.

(h) In any proceeding against or settlement with the third party, every party to the claim for compensation shall have a lien to the extent of his interest under (f) hereof upon any payment made by the third party by reason of such injury or death, whether paid in settlement, in satisfaction of judgment, as consideration for covenant not to sue, or otherwise and such lien may be enforced against any person receiving such funds. Neither the employee or his personal representative nor the employer shall make any settlement with or accept any payment from the third party without the written consent of the other and no release to or agreement with the third party shall be valid or enforceable for any purpose unless both employer and employee or his personal representative join therein; provided, that this sentence shall not apply:

- (1) If the employer is made whole for all benefits paid or to be paid by him under this Chapter less attorney's fees as provided by (f)(1) and (2) hereof and the release to or agreement with the third party is executed by the employee; or
- (2) If either party follows the provisions of subsection (j) of this section.

(i) Institution of proceedings against or settlement with the third party, or acceptance of benefits under this Chapter, shall not in any way or manner affect any other remedy which any party to the claim for compensation may have except as otherwise specifically provided in this Chapter, and the exercise of one remedy shall not in any way or manner be held to constitute an election of remedies so as to bar the other.

(j) Notwithstanding any other subsection in this section, in the event that a judgment is obtained by the employee in an action against a third party, or in the event that a settlement has been agreed upon by the employee and the third party, either party may apply to the resident superior court judge of the county in which the cause of action arose or where the injured employee resides, or to a presiding judge of either district, to

determine the subrogation amount. After notice to the employer and the insurance carrier, after an opportunity to be heard by all interested parties, and with or without the consent of the employer, the judge shall determine, in his discretion, the amount, if any, of the employer's lien, whether based on accrued or prospective workers' compensation benefits, and the amount of cost of the third-party litigation to be shared between the employee and employer. The judge shall consider the anticipated amount of prospective compensation the employer or workers' compensation carrier is likely to pay to the employee in the future, the net recovery to plaintiff, the likelihood of the plaintiff prevailing at trial or on appeal, the need for finality in the litigation, and any other factors the court deems just and reasonable, in determining the appropriate amount of the employer's lien. If the matter is pending in the federal district court such determination may be made by a federal district court judge of that division. (1929, c. 120, s. 11; 1933, c. 449, s. 1; 1943, c. 622; 1959, c. 1324; 1963, c. 450, s. 1; 1971, c. 171, s. 1; 1979, c. 865, s. 1; 1983, c. 645, ss. 1, 2; 1991, c. 408, s. 1; c. 703, s. 2; 1999-194, s. 1; 2004-199, s. 13(b).)

### **§ 97-10.3. Minors illegally employed.**

In any case where an employer and employee are subject to the provisions of this Chapter, any injury to a minor while employed contrary to the laws of this State shall be compensable under this Chapter as if said minor were an adult, subject to the other provisions of this Chapter. (1929, c. 120, s. 11; 1933, c. 449, s. 1; 1943, c. 622; 1959, c. 1324.)

### **§ 97-11. Employer not relieved of statutory duty.**

Nothing in this Article shall be construed to relieve any employer or employee from penalty for failure or neglect to perform any statutory duty. (1929, c. 120, s. 12.)

### **§ 97-12. Use of intoxicant or controlled substance; willful neglect; willful disobedience of statutory duty, safety regulation or rule.**

No compensation shall be payable if the injury or death to the employee was proximately caused by:

- (1) His intoxication, provided the intoxicant was not supplied by the employer or his agent in a supervisory capacity to the employee; or
- (2) His being under the influence of any controlled substance listed in the North Carolina Controlled Substances Act, G.S. 90-86, et seq., where such controlled substance was not by prescription by a practitioner; or
- (3) His willful intention to injure or kill himself or another.

When the injury or death is caused by the willful failure of the employer to comply with any statutory requirement or any lawful order of the Commission, compensation shall be increased ten percent (10%). When the injury or death is caused by the willful failure of the employee to use a safety appliance or perform a statutory duty or by the willful breach of any rule or regulation adopted by the employer and approved by the Commission and brought to the knowledge of the employee prior to the injury

compensation shall be reduced ten percent (10%). The burden of proof shall be upon him who claims an exemption or forfeiture under this section.

"Intoxication" and "under the influence" shall mean that the employee shall have consumed a sufficient quantity of intoxicating beverage or controlled substance to cause the employee to lose the normal control of his or her bodily or mental faculties, or both, to such an extent that there was an appreciable impairment of either or both of these faculties at the time of the injury.

A result consistent with "intoxication" or being "under the influence" from a blood or other medical test conducted in a manner generally acceptable to the scientific community and consistent with applicable State and federal law, if any, shall create a rebuttable presumption of impairment from the use of alcohol or a controlled substance. (1929, c. 120, s. 13; 1975, c. 740; 2005-448, s. 2.)

### **§ 97-13. Exceptions from provisions of Article.**

(a) **Employees of Certain Railroads.** – This Article shall not apply to railroads or railroad employees nor in any way repeal, amend, alter or affect Article 8 of Chapter 60 or any section thereof relating to the liability of railroads for injuries to employees, nor upon the trial of any action in tort for injuries not coming under the provisions of this Article, shall any provision herein be placed in evidence or be permitted to be argued to the jury. Provided, however, that the foregoing exemption to railroads and railroad employees shall not apply to employees of a State-owned railroad company, as defined in G.S. 124-11, or to electric street railroads or employees thereof; and this Article shall apply to electric street railroads and employees thereof and to this extent the provisions of Article 8 of Chapter 60 are hereby amended.

(b) **Casual Employment, Domestic Servants, Farm Laborers, Federal Government, Employer of Less than Three Employees.** – This Article shall not apply to casual employees, farm laborers when fewer than 10 full-time nonseasonal farm laborers are regularly employed by the same employer, federal government employees in North Carolina, and domestic servants, nor to employees of such persons, nor to any person, firm or private corporation that has regularly in service less than three employees in the same business within this State, except that any employer without regard to number of employees, including an employer of domestic servants, farm laborers, or one who previously had exempted himself, who has purchased workers' compensation insurance to cover his compensation liability shall be conclusively presumed during life of the policy to have accepted the provisions of this Article from the effective date of said policy and his employees shall be so bound unless waived as provided in this Article; provided however, that this Article shall apply to all employers of one or more employees who are employed in activities which involve the use or presence of radiation.

(c) **Prisoners.** – This Article shall not apply to prisoners being worked by the State or any subdivision thereof, except to the following extent: Whenever any prisoner assigned to the State Department of Correction shall suffer accidental injury or accidental death arising out of and in the course of the employment to which he had been assigned, if there be death or if the results of such injury continue until after the date of the lawful

discharge of such prisoner to such an extent as to amount to a disability as defined in this Article, then such discharged prisoner or the dependents or next of kin of such discharged prisoner may have the benefit of this Article by applying to the Industrial Commission as any other employee; provided, such application is made within 12 months from the date of the discharge; and provided further that the maximum compensation to any prisoner or to the dependents or next of kin of any deceased prisoner shall not exceed thirty dollars (\$30.00) per week and the period of compensation shall relate to the date of his discharge rather than the date of the accident. If any person who has been awarded compensation under the provisions of this subsection shall be recommitted to prison upon conviction of an offense committed subsequent to the award, such compensation shall immediately cease. Any awards made under the terms of this subsection shall be paid by the State Department of Correction from the funds available for the operation of the Department of Corrections. The provisions of G.S. 97-10.1 and 97-10.2 shall apply to prisoners and discharged prisoners entitled to compensation under this subsection and to the State in the same manner as said section applies to employees and employers.

(d) Sellers of Agricultural Products. – This Article shall not apply to persons, firms or corporations engaged in selling agricultural products for the producers thereof on commission or for other compensation, paid by the producers, provided the product is prepared for sale by the producer. (1929, c. 120, s. 14; 1933, c. 401; 1935, c. 150; 1941, c. 295; 1943, c. 543; 1945, c. 766; 1957, c. 349, s. 10; c. 809; 1967, c. 996, s. 13; 1971, c. 284, s. 2; c. 1176; 1975, c. 718, s. 3; 1979, c. 247, s. 1; c. 714, s. 2; 1981, c. 378, s. 1; 1983 (Reg. Sess., 1984), c. 1042, s. 2; 1987, c. 729, s. 3; 2000-146, s. 11.)

**§§ 97-14 through 97-16. Repealed by Session Laws 1973, c. 1291, ss. 7-9.**

**§ 97-17. Settlements allowed in accordance with Article.**

(a) This article does not prevent settlements made by and between the employee and employer so long as the amount of compensation and the time and manner of payment are in accordance with the provisions of this Article. A copy of a settlement agreement shall be filed by the employer with and approved by the Commission. No party to any agreement for compensation approved by the Commission shall deny the truth of the matters contained in the settlement agreement, unless the party is able to show to the satisfaction of the Commission that there has been error due to fraud, misrepresentation, undue influence or mutual mistake, in which event the Commission may set aside the agreement. Except as provided in this subsection, the decision of the Commission to approve a settlement agreement is final and is not subject to review or collateral attack.

(b) The Commission shall not approve a settlement agreement under this section, unless all of the following conditions are satisfied:

- (1) The settlement agreement is deemed by the Commission to be fair and just, and that the interests of all of the parties and of any person, including a health benefit plan that paid medical expenses of the employee have been considered.

- (2) The settlement agreement contains a list of all of the known medical expenses of the employee related to the injury to the date of the settlement agreement, including medical expenses that the employer or carrier disputes, and a list of medical expenses, if any, that will be paid by the employer under the settlement agreement.
- (3) The settlement agreement contains a finding that the positions of all of the parties to the agreement are reasonable as to the payment of medical expenses.

It is not necessary, however, to satisfy the condition in subdivision (2) of this subsection when in the settlement agreement the employer agrees to pay all medical expenses of the employee related to the injury to the date of the settlement agreement.

(c) In determining whether the positions of all of the parties to the agreement are reasonable as to the payment of medical expenses under subdivision (3) of subsection (b) of this section, the Commission shall consider all of the following:

- (1) Whether the employer admitted or reasonably denied the employee's claim for compensation.
- (2) The amount of all of the known medical expenses of the employee related to the injury to the date of the settlement agreement, including medical expenses that the employer or carrier disputes.
- (3) The need for finality in the litigation.

(d) Nothing in this section shall be construed to limit the application of G.S. 44-49 and G.S. 44-50 to funds in compensation for settlement under this section. (1929, c. 120, s. 18; 1963, c. 436; 2001-216, s. 2; 2001-487, s. 102(b); 2005-448, s. 3.)

**§ 97-18. Prompt payment of compensation required; installments; payment without prejudice; notice to Commission; penalties.**

(a) Compensation under this Article shall be paid periodically, promptly and directly to the person entitled thereto unless otherwise specifically provided.

(b) When the employer or insurer admits the employee's right to compensation, the first installment of compensation payable by the employer shall become due on the fourteenth day after the employer has written or actual notice of the injury or death, on which date all compensation then due shall be paid. Compensation thereafter shall be paid in installments weekly except where the Commission determines that payment in installments should be made monthly or at some other period. Upon paying the first installment of compensation and upon suspending, reinstating, changing, or modifying such compensation for any cause, the insurer shall immediately notify the Commission, on a form prescribed by the Commission, that compensation has begun, or has been suspended, reinstated, changed, or modified. A copy of each notice shall be provided to the employee. The first notice of payment to the Commission shall contain the date and nature of the injury, the average weekly wages of the employee, the weekly compensation rate, the date the disability resulting from the injury began, and the date compensation commenced.

(c) If the employer or insurer denies the employee's right to compensation, the employer or insurer shall notify the Commission, on or before the fourteenth day after it has written or actual notice of the injury or death, or within such reasonable additional time as the Commission may allow, and advise the employee in writing of its refusal to pay compensation on a form prescribed by the Commission. This notification shall (i) include the name of the employee, the name of the employer, the date of the alleged injury or death, the insurer on the risk, if any, and a detailed statement of the grounds upon which the right to compensation is denied, and (ii) advise the employee of the employee's right to request a hearing pursuant to G.S. 97-83. If the employer or insurer, in good faith, is without sufficient information to admit the employee's right to compensation, the employer or insurer may deny the employee's right to compensation.

(d) In any claim for compensation in which the employer or insurer is uncertain on reasonable grounds whether the claim is compensable or whether it has liability for the claim under this Article, the employer or insurer may initiate compensation payments without prejudice and without admitting liability. The initial payment shall be accompanied by a form prescribed by and filed with the Commission, stating that the payments are being made without prejudice. Payments made pursuant to this subsection may continue until the employer or insurer contests or accepts liability for the claim or 90 days from the date the employer has written or actual notice of the injury or death, whichever occurs first, unless an extension is granted pursuant to this section. Prior to the expiration of the 90-day period, the employer or insurer may upon reasonable grounds apply to the Commission for an extension of not more than 30 days. The initiation of payment does not affect the right of the employer or insurer to continue to investigate or deny the compensability of the claim or its liability therefor during this period. If at any time during the 90-day period or extension thereof, the employer or insurer contests the compensability of the claim or its liability therefor, it may suspend payment of compensation and shall promptly notify the Commission and the employee on a form prescribed by the Commission. The employer or insurer must provide on the prescribed form a detailed statement of its grounds for denying compensability of the claim or its liability therefor. If the employer or insurer does not contest the compensability of the claim or its liability therefor within 90 days from the date it first has written or actual notice of the injury or death, or within such additional period as may be granted by the Commission, it waives the right to contest the compensability of and its liability for the claim under this Article. However, the employer or insurer may contest the compensability of or its liability for the claim after the 90-day period or extension thereof when it can show that material evidence was discovered after that period that could not have been reasonably discovered earlier, in which event the employer or insurer may terminate or suspend compensation subject to the provisions of G.S. 97-18.1.

(e) The first installment of compensation payable under the terms of an award by the Commission, or under the terms of a judgment of the court upon an appeal from such an award, shall become due 10 days from the day following expiration of the time for appeal from the award or judgment or the day after notice waiving the right of appeal by all parties has been received by the Commission, whichever is sooner. Thereafter

compensation shall be paid in installments weekly, except where the Commission determines that payment in installments shall be made monthly or in some other manner.

(f) The employer's or insurer's grounds for contesting the employee's claim or its liability therefor as specified in the notice suspending compensation under subsection (d) of this section are the only bases for the employer's or insurer's defense on the issue of compensability in a subsequent proceeding, unless the defense is based on newly discovered material evidence that could not reasonably have been discovered prior to the notice suspending compensation.

(g) If any installment of compensation is not paid within 14 days after it becomes due, there shall be added to such unpaid installment an amount equal to ten per centum (10%) thereof, which shall be paid at the same time as, but in addition to, such installment, unless such nonpayment is excused by the Commission after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

(h) Within 16 days after final payment of compensation has been made, the employer or insurer shall send to the Commission and the employee a notice, in accordance with a form prescribed by the Commission, stating that such final payment has been made, the total amount of compensation paid, the name of the employee and of any other person to whom compensation has been paid, the date of the injury or death, and the date to which compensation has been paid. If the employer or insurer fails to so notify the Commission or the employee within such time, the Commission shall assess against such employer or insurer a civil penalty in the amount of twenty-five dollars (\$25.00). The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(i) If any bill for services rendered under G.S. 97-25 by any provider of health care is not paid within 60 days after it has been approved by the Commission and returned to the responsible party, or within 60 days after it was properly submitted, in accordance with the provisions of this Article, to an insurer or managed care organization responsible for direct reimbursement pursuant to G.S. 97-26(g), there shall be added to such unpaid bill an amount equal to ten per centum (10%) thereof, which shall be paid at the same time as, but in addition to, such medical bill, unless such late payment is excused by the Commission.

(j) The employer or insurer shall promptly investigate each injury reported or known to the employer and at the earliest practicable time shall admit or deny the employee's right to compensation or commence payment of compensation as provided in subsections (b), (c), or (d) of this section. When an employee files a claim for compensation with the Commission, the Commission may order reasonable sanctions against an employer or insurer which does not, within 30 days following notice from the Commission of the filing of a claim, or within such reasonable additional time as the Commission may allow, do one of the following:

- (1) Notify the Commission and the employee in writing that it is admitting the employee's right to compensation and, if applicable, satisfy the

requirements for payment of compensation under subsection (b) of this section.

- (2) Notify the Commission and the employee that it denies the employee's right to compensation consistent with subsection (c) of this section.
- (3) Initiate payments without prejudice and without liability and satisfy the requirements of subsection (d) of this section.

For purposes of this subsection, reasonable sanctions shall not prohibit the employer or insurer from contesting the compensability of or its liability for the claim. (1929, c. 120, s. 181/2; 1967, c. 1229, s. 2; 1979, c. 249, ss. 1, 2; c. 599; 1993 (Reg. Sess., 1994), c. 679, s. 3.1; 1998-215, s. 114; 2005-448, s. 4; 2006-264, s. 91.7.)

### **§ 97-18.1. Termination or suspension of compensation benefits.**

(a) Payments of compensation pursuant to an award of the Commission shall continue until the terms of the award have been fully satisfied.

(b) An employer may terminate payment of compensation for total disability being paid pursuant to G.S. 97-29 when the employee has returned to work for the same or a different employer, subject to the provisions of G.S. 97-32.1, or when the employer contests a claim pursuant to G.S. 97-18(d) within the time allowed thereunder. The employer shall promptly notify the Commission and the employee, on a form prescribed by the Commission, of the termination of compensation and the availability of trial return to work and additional compensation due the employee for any partial disability.

(c) An employer seeking to terminate or suspend compensation being paid pursuant to G.S. 97-29 for a reason other than those specified in subsection (b) of this section shall notify the employee and the employee's attorney of record in writing of its intent to do so on a form prescribed by the Commission. A copy of the notice shall be filed with the Commission. This form shall contain the reasons for the proposed termination or suspension of compensation, be supported by available documentation, and inform the employee of the employee's right to contest the termination or suspension by filing an objection in writing with the Commission within 14 days of the date the employer's notice is filed with the Commission or within such additional reasonable time as the Commission may allow.

(d) If the employee fails to object to the employer's notice of proposed termination or suspension within the time provided, the Commission may enter an appropriate order terminating or suspending the compensation if it finds that there is a sufficient basis under this Article for this action. If the employee files a timely objection to the employer's notice, the Commission shall conduct an informal hearing by telephone with the parties or their counsel. If either party objects to conducting the hearing by telephone, the Commission may conduct the hearing in person in Raleigh or at another location selected by the Commission. The parties shall be afforded an opportunity to state their position and to submit documentary evidence at the informal hearing. The employer may waive the right to an informal hearing and proceed to the formal hearing. The informal hearing, whether by telephone or in person, shall be conducted only on the issue of termination or suspension of compensation and shall be conducted within 25 days of the

receipt by the Commission of the employer's notice to the employee unless this time is extended by the Commission for good cause. The Commission shall issue a decision on the employer's application for termination of compensation within five days after completion of the informal hearing. The decision shall (i) approve the application, (ii) disapprove the application, or (iii) state that the Commission is unable to reach a decision on the application in an informal hearing, in which event the Commission shall schedule a formal hearing pursuant to G.S. 97-83 on the employer's application for termination of compensation. Compensation may be terminated or suspended by the employer following an informal hearing only if its application is approved. If the Commission was unable to reach a decision in the informal hearing, the employee's compensation shall continue pending a decision by the Commission in the formal hearing. The Commission's decision in the informal hearing is not binding in subsequent hearings.

The employer or the employee may request a formal hearing pursuant to G.S. 97-83 on the Commission's decision approving or denying the employer's application for termination of compensation. A formal hearing under G.S. 97-83 ordered or requested pursuant to this section shall be a hearing de novo on the employer's application for termination or suspension of compensation and may be scheduled by the Commission on a preemptive basis.

(e) At an informal hearing on the issue of termination or suspension of compensation, and at any subsequent hearing, the Commission may address related issues regarding the selection of medical providers or treatment under G.S. 97-25, subject to exhaustion of the dispute resolution procedures of a managed care organization pursuant to G.S. 97-25.2. (1993 (Reg. Sess., 1994), c. 679, ss. 3.6, 10.9.)

**§ 97-19. Liability of principal contractors; certificate that subcontractor has complied with law; right to recover compensation of those who would have been liable; order of liability.**

Any principal contractor, intermediate contractor, or subcontractor who shall sublet any contract for the performance of any work without requiring from such subcontractor or obtaining from the Industrial Commission a certificate, issued by a workers' compensation insurance carrier, or a certificate of compliance issued by the Department of Insurance to a self-insured subcontractor, stating that such subcontractor has complied with G.S. 97-93 hereof, shall be liable, irrespective of whether such subcontractor has regularly in service fewer than three employees in the same business within this State, to the same extent as such subcontractor would be if he were subject to the provisions of this Article for the payment of compensation and other benefits under this Article on account of the injury or death of any employee of such subcontractor due to an accident arising out of and in the course of the performance of the work covered by such subcontract. If the principal contractor, intermediate contractor or subcontractor shall obtain such certificate at the time of subletting such contract to subcontractor, he shall not thereafter be held liable to any employee of such subcontractor for compensation or other benefits under this Article.

Any principal contractor, intermediate contractor, or subcontractor paying compensation or other benefits under this Article, under the foregoing provisions of this section, may recover the amount so paid from any person, persons, or corporation who independently of such provision, would have been liable for the payment thereof.

Every claim filed with the Industrial Commission under this section shall be instituted against all parties liable for payment, and said Commission, in its award, shall fix the order in which said parties shall be exhausted, beginning with the immediate employer.

The principal or owner may insure any or all of his contractors and their employees in a blanket policy, and when so insured such contractor's employees will be entitled to compensation benefits regardless of whether the relationship of employer and employee exists between the principal and the contractor. (1929, c. 120, s. 19; 1941, c. 358, s. 1; 1945, c. 766; 1973, c. 1291, s. 10; 1979, c. 247, s. 2; 1987, c. 729, s. 4; 1989, c. 637; 1991, c. 703, s. 7; 1993 (Reg. Sess., 1994), c. 679, s. 10.6; 1995, c. 517, s. 36; 1995 (Reg. Sess., 1996), c. 555, s. 1.)

**§ 97-19.1. Truck, tractor, or truck tractor trailer driver's status as employee or independent contractor.**

(a) An individual in the interstate or intrastate carrier industry who operates a truck, tractor, or truck tractor trailer licensed by a governmental motor vehicle regulatory agency may be an employee or an independent contractor under this Article dependent upon the application of the common law test for determining employment status.

Any principal contractor, intermediate contractor, or subcontractor, irrespective of whether such contractor regularly employs three or more employees, who contracts with an individual in the interstate or intrastate carrier industry who operates a truck, tractor, or truck tractor trailer licensed by the United States Department of Transportation and who has not secured the payment of compensation in the manner provided for employers set forth in G.S. 97-93 for himself personally and for his employees and subcontractors, if any, shall be liable as an employer under this Article for the payment of compensation and other benefits on account of the injury or death of the independent contractor and his employees or subcontractors due to an accident arising out of and in the course of the performance of the work covered by such contract.

(b) Notwithstanding subsection (a) of this section, a principal contractor, intermediate contractor, or subcontractor shall not be liable as an employer under this Article for the payment of compensation on account of the injury or death of the independent contractor if the principal contractor, intermediate contractor, or subcontractor (i) contracts with an independent contractor who is an individual licensed by the United States Department of Transportation and (ii) the independent contractor personally is operating the vehicle solely pursuant to that license.

(c) The principal contractor, intermediate contractor, or subcontractor may insure any and all of his independent contractors and their employees or subcontractors in a blanket policy, and when insured, the independent contractors, subcontractors, and employees will be entitled to compensation benefits under the blanket policy.

A principal contractor, intermediate contractor, or subcontractor may include in the governing contract with an independent contractor in the interstate or intrastate carrier industry who operates a truck, tractor, or truck tractor trailer licensed by a governmental motor vehicle regulatory agency an agreement for the independent contractor to reimburse the cost of covering that independent contractor under the principal contractor's, intermediate contractor's, or subcontractor's coverage of his business. (2003-235, s. 1; 2006-26, s. 1; 2006-259, s. 19.)

**§ 97-20. Priority of compensation claims against assets of employer.**

All rights of compensation granted by this Article shall have the same preference or priority for the whole thereof against the assets of the employer as is allowed by law for any unpaid wages for labor. (1929, c. 120, s. 20.)

**§ 97-21. Claims unassignable and exempt from taxes and debts; agreement of employee to contribute to premium or waive right to compensation void; unlawful deduction by employer.**

No claim for compensation under this Article shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors and from taxes.

No agreement by an employee to pay any portion of premium paid by his employer to a carrier or to contribute to a benefit fund or department maintained by such employer for the purpose of providing compensation or medical services and supplies as required by this Article shall be valid, and any employer who makes a deduction for such purpose from the pay of any employee entitled to the benefits of this Article shall be guilty of a Class 3 misdemeanor and upon conviction thereof shall be punished only by a fine of not more than five hundred dollars (\$500.00). No agreement by an employee to waive his right to compensation under this Chapter shall be valid. (1929, c. 120, s. 21; 1993, c. 539, s. 677; 1994, Ex. Sess., c. 24, s. 14(c).)

**§ 97-22. Notice of accident to employer.**

Every injured employee or his representative shall immediately on the occurrence of an accident, or as soon thereafter as practicable, give or cause to be given to the employer a written notice of the accident, and the employee shall not be entitled to physician's fees nor to any compensation which may have accrued under the terms of this Article prior to the giving of such notice, unless it can be shown that the employer, his agent or representative, had knowledge of the accident, or that the party required to give such notice had been prevented from doing so by reason of physical or mental incapacity, or the fraud or deceit of some third person; but no compensation shall be payable unless such written notice is given within 30 days after the occurrence of the accident or death, unless reasonable excuse is made to the satisfaction of the Industrial Commission for not giving such notice and the Commission is satisfied that the employer has not been prejudiced thereby. (1929, c. 120, s. 22.)

**§ 97-23. What notice is to contain; defects no bar; notice personally or by registered letter or certified mail.**

The notice provided in the foregoing section [G.S. 97-22] shall state in ordinary language the name and address of the employee, the time, place, nature, and cause of the accident, and of the resulting injury or death; and shall be signed by the employee or by a person on his behalf, or, in the event of his death, by any one or more of his dependents, or by a person in their behalf.

No defect or inaccuracy in the notice shall be a bar to compensation unless the employer shall prove that his interest was prejudiced thereby, and then only to such extent as the prejudice.

Said notice shall be given personally to the employer or any of his agents upon whom a summons in civil action may be served under the laws of the State, or may be sent by registered letter or certified mail addressed to the employer at his last known residence or place of business. (1929, c. 120, s. 23; 1959, c. 863, s. 1.)

**§ 97-24. Right to compensation barred after two years; destruction of records.**

(a) The right to compensation under this Article shall be forever barred unless (i) a claim or memorandum of agreement as provided in G.S. 97-82 is filed with the Commission or the employee is paid compensation as provided under this Article within two years after the accident or (ii) a claim or memorandum of agreement as provided in G.S. 97-82 is filed with the Commission within two years after the last payment of medical compensation when no other compensation has been paid and when the employer's liability has not otherwise been established under this Article. The provisions of this subsection shall not limit the time otherwise allowed for the filing of a claim for compensation for occupational disease in G.S. 97-58, but in no event shall the time for filing a claim for compensation for occupational disease be less than the times provided herein for filing a claim for an injury by accident.

(b) If any claim for compensation is hereafter made upon the theory that such claim or the injury upon which said claim is based is within the jurisdiction of the Industrial Commission under the provisions of this Article, and if the Commission, or the appellate courts on appeal, shall adjudge that such claim is not within the Article, the claimant, or if he dies, his personal representative, shall have one year after the rendition of a final judgment in the case within which to commence an action at law.

(c) When all claims and reports required by this Article have been filed, and the cases and records of which they are a part have been closed by proper reports, receipts, awards or orders, these records, may after five years in the discretion of the Commission, with and by the authorization and approval of the Department of Cultural Resources, be destroyed by burning or otherwise. (1929, c. 120, s. 24; 1933, c. 449, s. 2; 1945, c. 766; 1955, c. 1026, s. 12; 1973, c. 476, s. 48; c. 1060, s. 1; 1991, c. 703, s. 8; 1993 (Reg. Sess., 1994), c. 679, s. 3.4.)

**§ 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.

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 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.

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 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. (1929, c. 120, s. 25; 1931, c. 274, s. 4; 1933, c. 506; 1955, c. 1026, s. 2; 1973, c. 520, s. 1; 1991, c. 703, s. 3; 1997-308, s. 1; 1999-150, s. 1; 2005-448, s. 6.2.)

#### **§ 97-25.1. Limitation of duration of medical compensation.**

The right to medical compensation shall terminate two years after the employer's last payment of medical or indemnity compensation unless, prior to the expiration of this period, either: (i) the employee files with the Commission an application for additional medical compensation which is thereafter approved by the Commission, or (ii) the Commission on its own motion orders additional medical compensation. If the Commission determines that there is a substantial risk of the necessity of future medical compensation, the Commission shall provide by order for payment of future necessary medical compensation. (1993 (Reg. Sess., 1994), c. 679, s. 2.5.)

#### **§ 97-25.2. Managed care organizations.**

The requirements of G.S. 97-25 may be satisfied by contracting with a managed care organization. Notwithstanding any other provision of this Article, if an employer or carrier contracts with a managed care organization for medical services pursuant to this Article, those employees who are covered by the contract with the managed care organization shall receive medical services for a condition for which the employer has accepted liability or authorized treatment under this Article in the manner prescribed by the contract and in accordance with the managed care organization's certificate of

authority; provided that the contract complies with rules adopted by the Commission, consistent with this Article, governing managed care organizations. An employee must exhaust all dispute resolution procedures of a managed care organization before applying to the Commission for review of any issue related to medical services compensable under this Article. Once application to the Commission has been made, the employee shall be entitled to an examination by a duly qualified physician or surgeon in the same manner as provided by G.S. 97-27.

If an employee's medical services are provided through a managed care organization pursuant to this section, subject to the rules of the managed care organization, the employee shall select the attending physician from those physicians who are members of the managed care organization's panel, and may subsequently change attending physicians once within the group of physicians who are members of the managed care organization's panel without approval from the employer or insurer. Additional changes in the attending physician or any change to a physician or examination by a physician not a member of the insurer's managed care organization's panel shall only be made pursuant to the organization's contract or upon reasonable grounds by order of the Commission. (1993 (Reg. Sess., 1994), c. 679, s. 2.1.)

### **§ 97-25.3. Preauthorization.**

(a) An insurer may require preauthorization for inpatient admission to a hospital, inpatient admission to a treatment center, and inpatient or outpatient surgery. The insurer's preauthorization requirement must adhere to the following standards:

- (1) The insurer may require no more than 10 days advance notice of the inpatient admission or surgery.
- (2) The insurer must respond to a request for preauthorization within two business days of the request.
- (3) The insurer shall review the need for the inpatient admission or surgery and may require the employee to submit to an independent medical examination as provided in G.S. 97-27(a). This examination must be completed and the insurer must make its determination on the request for preauthorization within seven days of the date of the request unless this time is extended by the Commission for good cause.
- (4) The insurer shall document its review findings and determination in writing and shall provide a copy of the findings and determination to the employee and the employee's attending physician, and, if applicable, to the hospital or treatment center.
- (5) The insurer shall authorize the inpatient admission or surgery when it requires the employee to submit to a medical examination as provided in G.S. 97-27(a) and the examining physician concurs with the original recommendation for the inpatient admission or surgery. The insurer shall also authorize the inpatient admission or surgery when the employee obtains a second opinion from a physician approved by the insurer or the Commission, and the second physician concurs with the

original recommendation for the inpatient admission or surgery. However, the insurer shall not be required by this subdivision to authorize the inpatient admission or surgery if it denies liability under this Article for the particular medical condition for which the services are sought.

- (6) Except as provided in subsection (c) of this section, the insurer may reduce its reimbursement of the provider's eligible charges under this Article by up to fifty percent (50%) if the insurer has notified the provider in writing of its preauthorization requirement and the provider failed to timely obtain preauthorization. The employee shall not be liable for the balance of the charges.
  - (7) The insurer shall adhere to all other procedures for preauthorization prescribed by the Commission.
- (b) An insurer may not impose a preauthorization requirement for the following:
- (1) Emergency services;
  - (2) Services rendered in the diagnosis or treatment of an injury or illness for which the insurer has not admitted liability or authorized payment for treatment pursuant to this Article; and
  - (3) Services rendered in the diagnosis and treatment of a specific medical condition for which the insurer has not admitted liability or authorized payment for treatment although the insurer admits the employee has suffered a compensable injury or illness.

(c) The Commission may, upon reasonable grounds, upon the request of the employee or provider, authorize treatment for which preauthorization is otherwise required by this section but was not obtained if the Commission determines that the treatment is or was reasonably required to effect a cure or give relief.

(d) The Commission may adopt procedures governing the use of preauthorization requirements and expeditious review of preauthorization denials.

(e) A managed care organization may impose preauthorization requirements consistent with the provisions of Chapter 58 of the General Statutes.

(f) A provider that refuses to treat an employee for other than an emergency medical condition because preauthorization has not been obtained shall be immune from liability in any civil action for the refusal to treat the employee because of lack of preauthorization. (1993 (Reg. Sess., 1994), c. 679, s. 2.2.)

#### **§ 97-25.4. Utilization guidelines for medical treatment.**

(a) The Commission may adopt utilization rules and guidelines, consistent with this Article, for medical care and medical rehabilitation services, other than those services provided by managed care organizations pursuant to G.S. 97-25.2, including, but not limited to, necessary palliative care, physical therapy treatment, psychological therapy, chiropractic services, medical rehabilitation services, and attendant care. The Commission's rules and guidelines shall ensure that injured employees are provided the services and care intended by this Article and that medical costs are adequately

contained. In developing the rules and guidelines, the Commission may consider, among other factors, the practice guidelines adopted by the boards and associations representing medical and rehabilitation professionals.

(b) Palliative care rules or guidelines adopted by the Commission may require that the provider (i) supply to the employer a treatment plan, including a schedule of measurable objectives, a projected termination date for treatment, and an estimated cost of services, and (ii) obtain preauthorization from the employer, not inconsistent with the provisions of G.S. 97-25.3. (1993 (Reg. Sess., 1994), c. 679, s. 2.4.)

#### **§ 97-25.5. Utilization guidelines for vocational and other rehabilitation.**

The Commission may adopt utilization rules and guidelines, consistent with this Article, for vocational rehabilitation services and other types of rehabilitation services. In developing the rules and guidelines, the Commission may consider, among other factors, the practice and treatment guidelines adopted by professional rehabilitation associations and organizations. (1993 (Reg. Sess., 1994), c. 679, s. 2.4.)

#### **§ 97-25.6. Reasonable access to medical information.**

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. (2005-448, s. 6.1.)

**§ 97-26. Fees allowed for medical treatment; malpractice of physician.**

(a) **(Effective until July 1, 2008)** Fee Schedule. – The Commission shall adopt a schedule of maximum fees for medical compensation, except as provided in subsection (b) of this section, and shall periodically review the schedule and make revisions pursuant to the provisions of this Article.

The fees adopted by the Commission in its schedule shall be adequate to ensure that (i) injured workers are provided the standard of services and care intended by this Chapter, (ii) providers are reimbursed reasonable fees for providing these services, and (iii) medical costs are adequately contained.

Prior to adoption of a fee schedule, the Commission shall publish notice of its intent to adopt the schedule in the North Carolina Register and hold a public hearing. The published notice shall include the location, date and time of the public hearing, the proposed effective date of the fee schedule, the period of time during which the Commission will receive written comments on the proposed schedule, and the person to whom comments and questions should be directed. In addition to publication in the North Carolina Register, the notice may be mailed to parties who have requested notice of the fee schedule hearing. The public hearing shall be held no earlier than 15 days after the publication of the notice. The Commission shall receive written comments for at least 30 days or until the date of the public hearing, whichever is later, after which the Commission may adopt the fee schedule.

The Commission may consider any and all reimbursement systems and plans in establishing its fee schedule, including, but not limited to, the Teachers' and State Employees' Comprehensive Major Medical Plan (hereinafter, "State Plan"), Blue Cross and Blue Shield, and any other private or governmental plans. The Commission may also consider any and all reimbursement methodologies, including, but not limited to, the use of current procedural terminology ("CPT") codes, diagnostic-related groupings ("DRGs"), per diem rates, capitated payments, and resource-based relative-value system ("RBRVS") payments. The Commission may consider statewide fee averages, geographical and community variations in provider costs, and any other factors affecting provider costs.

An appeal from a decision of the Commission establishing a fee schedule, by any party aggrieved thereby, shall be to the North Carolina Court of Appeals. The decision of

the Commission shall be affirmed if supported by substantial evidence. For the purposes of the appeal, the Commission is a party.

(a) **(Effective July 1, 2008) Fee Schedule.** – The Commission shall adopt a schedule of maximum fees for medical compensation, except as provided in subsection (b) of this section, and shall periodically review the schedule and make revisions pursuant to the provisions of this Article.

The fees adopted by the Commission in its schedule shall be adequate to ensure that (i) injured workers are provided the standard of services and care intended by this Chapter, (ii) providers are reimbursed reasonable fees for providing these services, and (iii) medical costs are adequately contained.

Prior to adoption of a fee schedule, the Commission shall publish notice of its intent to adopt the schedule in the North Carolina Register and hold a public hearing. The published notice shall include the location, date and time of the public hearing, the proposed effective date of the fee schedule, the period of time during which the Commission will receive written comments on the proposed schedule, and the person to whom comments and questions should be directed. In addition to publication in the North Carolina Register, the notice may be mailed to parties who have requested notice of the fee schedule hearing. The public hearing shall be held no earlier than 15 days after the publication of the notice. The Commission shall receive written comments for at least 30 days or until the date of the public hearing, whichever is later, after which the Commission may adopt the fee schedule.

The Commission may consider any and all reimbursement systems and plans in establishing its fee schedule, including, but not limited to, the State Health Plan for Teachers and State Employees (hereinafter, "State Plan"), Blue Cross and Blue Shield, and any other private or governmental plans. The Commission may also consider any and all reimbursement methodologies, including, but not limited to, the use of current procedural terminology ("CPT") codes, diagnostic-related groupings ("DRGs"), per diem rates, capitated payments, and resource-based relative-value system ("RBRVS") payments. The Commission may consider statewide fee averages, geographical and community variations in provider costs, and any other factors affecting provider costs.

An appeal from a decision of the Commission establishing a fee schedule, by any party aggrieved thereby, shall be to the North Carolina Court of Appeals. The decision of the Commission shall be affirmed if supported by substantial evidence. For the purposes of the appeal, the Commission is a party.

(b) **Hospital Fees.** – Each hospital subject to the provisions of this subsection shall be reimbursed the amount provided for in this subsection unless it has agreed under contract with the insurer, managed care organization, employer (or other payor obligated to reimburse for inpatient hospital services rendered under this Chapter) to accept a different amount or reimbursement methodology.

Except as otherwise provided herein, payment for medical treatment and services rendered to workers' compensation patients by a hospital shall be a reasonable fee determined by the Commission. Effective September 16, 2001, through June 30, 2002,

the fee shall be the following amount unless the Commission adopts a different fee schedule in accordance with the provisions of this section:

- (1) For inpatient hospital services, the amount that the hospital would have received for those services as of June 30, 2001. The payment shall not be more than a maximum of one hundred percent (100%) of the hospital's itemized charges as shown on the UB-92 claim form nor less than the minimum percentage for payment of inpatient DRG claims that was in effect as of June 30, 2001.
- (2) For outpatient hospital services and any other services that were reimbursed as a discount off of charges under the State Plan as of June 30, 2001, the amount calculated by the Commission as a percentage of the hospital charges for such services. The percentage applicable to each hospital shall be the percentage used by the Commission to determine outpatient rates for each hospital as of June 30, 2001.
- (3) For any other services, a reasonable fee as determined by the Industrial Commission.

Notwithstanding any other provisions of law, the Commission's determination of payment rates under this subsection shall:

- (1) Comply with the procedures for adoption of a fee schedule established in G.S. 97-26(a);
- (2) Include publication of the proposed payment rate, and a summary of the data and calculations on which the rate is based at least 90 days before the proposed effective date;
- (3) Be subject to the declaratory ruling provisions of G.S. 150B-4; and
- (4) Be deemed to constitute a final permanent rule under Article 2A of Chapter 150B for purposes of judicial review under Article 4 of that Chapter.

A hospital's itemized charges on the UB-92 claim form for workers' compensation services shall be the same as itemized charges for like services for all other payers.

(c) Maximum Reimbursement for Providers Under Subsection (a). – Each health care provider subject to the provisions of subsection (a) of this section shall be reimbursed the amount specified under the fee schedule unless the provider has agreed under contract with the insurer or managed care organization to accept a different amount or reimbursement methodology. In any instance in which neither the fee schedule nor a contractual fee applies, the maximum reimbursement to which a provider under subsection (a) is entitled under this Article is the usual, customary, and reasonable charge for the service or treatment rendered. In no event shall a provider under subsection (a) charge more than its usual fee for the service or treatment rendered.

(d) Information to Commission. – Each health care provider seeking reimbursement for medical compensation under this Article shall provide the Commission information requested by the Commission for the development of fee schedules and the determination of appropriate reimbursement.

(e) When Charges Submitted. – Health care providers shall submit charges to the insurer or managed care organization within 30 days of treatment, within 30 days after the end of the month during which multiple treatments were provided, or within such other reasonable period of time as allowed by the Commission. If an insurer or managed care organization disputes a portion of a health care provider's bill, it shall pay the uncontested portion of the bill and shall resolve disputes regarding the balance of the charges in accordance with this Article or its contractual arrangement.

(f) Repeating Diagnostic Tests. – A health care provider shall not authorize a diagnostic test previously conducted by another provider, unless the health care provider has reasonable grounds to believe a change in patient condition may have occurred or the quality of the prior test is doubted. The Commission may adopt rules establishing reasonable requirements for reports and records to be made available to other health care providers to prevent unnecessary duplication of tests and examinations. A health care provider that violates this subsection shall not be reimbursed for the costs associated with administering or analyzing the test.

(g) Direct Reimbursement. – The Commission may adopt rules to allow insurers and managed care organizations to review and reimburse charges for medical compensation without submitting the charges to the Commission for review and approval.

(h) Malpractice. – The employer shall not be liable in damages for malpractice by a physician or surgeon furnished by him pursuant to the provisions of this section, but the consequences of any such malpractice shall be deemed part of the injury resulting from the accident, and shall be compensated for as such.

(i) Resolution of Dispute. – The employee or health care provider may apply to the Commission by motion or for a hearing to resolve any dispute regarding the payment of charges for medical compensation in accordance with this Article. (1929, c. 120, s. 26; 1955, c. 1026, s. 3; 1993 (Reg. Sess., 1994), c. 679, s. 2.3; 1995 (Reg. Sess., 1996), c. 548, s. 1; 1997-145, s. 1; 2001-410, s. 3; 2001-413, s. 8.2(a); 2005-448, s. 5; 2007-323, s. 28.22A(o); 2007-345, s. 12.)

#### **§ 97-26.1. Fees for medical records and reports; expert witnesses.**

The Commission may establish maximum fees for the following when related to a claim under this Article: (i) the searching, handling, copying, and mailing of medical records, (ii) the preparation of medical reports and narratives, and (iii) the presentation of expert testimony in a Commission proceeding. (1993 (Reg. Sess., 1994), c. 679, s. 5.6.)

#### **§ 97-27. Medical examination; facts not privileged; refusal to be examined suspends compensation; autopsy.**

(a) After an injury, and so long as he claims compensation, the employee, if so requested by his employer or ordered by the Industrial Commission, shall, subject to the provisions of subsection (b), submit himself to examination, at reasonable times and places, by a duly qualified physician or surgeon designated and paid by the employer or the Industrial Commission. The employee shall have the right to have present at such

examination any duly qualified physician or surgeon provided and paid by him. 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. If the employee refuses to submit himself to or in any way obstructs such examination requested by and provided for by the employer, his right to compensation and his right to take or prosecute any proceedings under this Article shall be suspended until such 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. 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 arising under this Article in which there is a question as to 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 another examination by a duly qualified physician or surgeon licensed and practicing 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, designated by him and paid by the employer or the Industrial Commission in the same manner as physicians designated by the employer or the Industrial Commission are paid. 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. (1929, c. 120, s. 27; 1959, c. 732; 1969, c. 135; 1973, c. 520, s. 2; 1977, c. 511; 1991, c. 636, s. 3.)

**§ 97-28. Seven-day waiting period; exceptions.**

No compensation, as defined in G.S. 97-2(11), shall be allowed for the first seven calendar days of disability resulting from an injury, except the benefits provided for in G.S. 97-25. Provided however, that in the case the injury results in disability of more than 21 days, the compensation shall be allowed from the date of the disability. Nothing in this section shall prevent an employer from allowing an employee to use paid sick leave, vacation or annual leave, or disability benefits provided directly by the employer during the first seven calendar days of disability. (1929, c. 120, s. 28; 1983, c. 599; 1987, c. 729, s. 5.)

**§ 97-29. Compensation rates for total incapacity.**

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 wages, 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.

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.

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.

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.

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. (1929, c. 120, s. 29; 1939, c. 277, s. 1; 1943, c. 502, s. 3; c. 543; c. 672, s. 2; 1945, c. 766; 1947, c. 823; 1949, c. 1017; 1951, c. 70, s. 1; 1953, c. 1135, s. 1; c. 1195, s. 2; 1955, c. 1026, s. 5; 1957, c. 1217; 1963, c. 604, s. 1; 1967, c. 84, s. 1; 1969, c. 143, s. 1; 1971, c. 281, s. 1; c. 321, s. 1; 1973, c. 515, s. 1; c. 759, s. 1; c. 1103, s. 1; c. 1308, ss. 1, 2; 1975, c. 284, s. 4; 1979, c. 244; 1981, c. 276, s. 2; c. 378, s. 1; c. 421, s. 3; c. 521, s. 2; c. 920, s. 1; 1987, c. 729, s. 6; 1991, c. 703, s. 4; 1999-456, s. 33(d).)

**§ 97-29.1. Increase in payments in cases for total and permanent disability occurring prior to July 1, 1973.**

In all cases of total and permanent disability occurring prior to July 1, 1973, weekly compensation payments shall be increased effective July 1, 1977, to an amount computed

by multiplying the number of calendar years prior to July 1, 1973, that the case arose by five percent (5%). Payments made by the employer or its insurance carrier by reason of such increase in weekly benefits may be deducted by such employer or insurance carrier from the tax levied on such employer or carrier pursuant to G.S. 105-228.5 or G.S. 97-100. Every employer or insurance carrier claiming such deduction or credit shall verify such claim to the Secretary of Revenue or the Industrial Commission by affidavit or by such other method as may be prescribed by the Secretary of Revenue or the Industrial Commission. (1977, c. 651.)

**§ 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 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. (1929, c. 120, s. 30; 1943, c. 502, s. 4; 1947, c. 823; 1951, c. 70, s. 2; 1953, c. 1195, s. 3; 1955, c. 1026, s. 6; 1957, c. 1217; 1963, c. 604, s. 2; 1967, c. 84, s. 2; 1969, c. 143, s. 2; 1971, c. 281, s. 2; 1973, c. 515, s. 2; c. 759, s. 2; 1981, c. 276, s. 1.)

**§ 97-31. Schedule of injuries; rate and period of compensation.**

In cases included by the following schedule the compensation in each case shall be paid for disability during the healing period and in addition the disability shall be deemed to continue for the period specified, and shall be in lieu of all other compensation, including disfigurement, to wit:

- (1) For the loss of a thumb, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 75 weeks.
- (2) For the loss of a first finger, commonly called the index finger, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 45 weeks.
- (3) For the loss of a second finger, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 40 weeks.
- (4) For the loss of a third finger, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 25 weeks.

- (5) For the loss of a fourth finger, commonly called the little finger, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 20 weeks.
- (6) The loss of the first phalange of the thumb or any finger shall be considered to be equal to the loss of one half of such thumb or finger, and the compensation shall be for one half of the periods of time above specified.
- (7) The loss of more than one phalange shall be considered the loss of the entire finger or thumb: Provided, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.
- (8) For the loss of a great toe, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 35 weeks.
- (9) For the loss of one of the toes other than a great toe, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 10 weeks.
- (10) The loss of the first phalange of any toe shall be considered to be equal to the loss of one half of such toe, and the compensation shall be for one half of the periods of time above specified.
- (11) The loss of more than one phalange shall be considered as the loss of the entire toe.
- (12) For the loss of a hand, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 200 weeks.
- (13) For the loss of an arm, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 240 weeks.
- (14) For the loss of a foot, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 144 weeks.
- (15) For the loss of a leg, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 200 weeks.
- (16) For the loss of an eye, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 120 weeks.
- (17) The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two thereof, shall constitute total and permanent disability, to be compensated according to the provisions of G.S. 97-29. The employee shall have a vested right in a minimum amount of compensation for the total number of weeks of benefits provided under this section for each member involved. When an employee dies from any cause other than the injury for which he is entitled to compensation, payment of the minimum amount of compensation shall be payable as provided in G.S. 97-37.
- (18) For the complete loss of hearing in one ear, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 70 weeks; for the

- complete loss of hearing in both ears, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 150 weeks.
- (19) Total loss of use of a member or loss of vision of an eye shall be considered as equivalent to the loss of such member or eye. The compensation for partial loss of or for partial loss of use of a member or for partial loss of vision of an eye or for partial loss of hearing shall be such proportion of the periods of payment above provided for total loss as such partial loss bears to total loss, except that in cases where there is eighty-five per centum (85%), or more, loss of vision in any eye, this shall be deemed "industrial blindness" and compensated as for total loss of vision of such eye.
- (20) The weekly compensation payments referred to in this section shall all be subject to the same limitations as to maximum and minimum as set out in G.S. 97-29.
- (21) In case of serious facial or head disfigurement, the Industrial Commission shall award proper and equitable compensation not to exceed twenty thousand dollars (\$20,000). In case of enucleation where an artificial eye cannot be fitted and used, the Industrial Commission may award compensation as for serious facial disfigurement.
- (22) In case of serious bodily disfigurement for which no compensation is payable under any other subdivision of this section, but excluding the disfigurement resulting from permanent loss or permanent partial loss of use of any member of the body for which compensation is fixed in the schedule contained in this section, the Industrial Commission may award proper and equitable compensation not to exceed ten thousand dollars (\$10,000).
- (23) For the total loss of use of the back, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages during 300 weeks. The compensation for partial loss of use of the back shall be such proportion of the periods of payment herein provided for total loss as such partial loss bears to total loss, except that in cases where there is seventy-five per centum (75%) or more loss of use of the back, in which event the injured employee shall be deemed to have suffered "total industrial disability" and compensated as for total loss of use of the back.
- (24) In case of the loss of or permanent injury to any important external or internal organ or part of the body for which no compensation is payable under any other subdivision of this section, the Industrial Commission may award proper and equitable compensation not to exceed twenty thousand dollars (\$20,000). (1929, c. 120, s. 31; 1931, c. 164; 1943, c. 502, s. 2; 1955, c. 1026, s. 7; 1957, c. 1221; c. 1396, ss. 2, 3; 1963, c. 424, ss. 1, 2; 1967, c. 84, s. 3; 1969, c. 143, s. 3; 1973, c. 515, s. 3; c. 759, s. 3; c. 761, ss. 1, 2; 1975, c. 164, s. 1; 1977, c. 892, s. 1; 1979, c. 250; 1987, c. 729, ss. 7, 8.)

**§ 97-31.1. Effective date of legislative changes in benefits.**

Every act of the General Assembly that changes the benefits enumerated in this Chapter shall become law no later than June 1 and shall have an effective date of no earlier than January 1 of the year after which it is ratified. (1981, c. 521, s. 3; 1995, c. 20, s. 11.)

**§ 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 he 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. (1929, c. 120, s. 32.)

**§ 97-32.1. Trial return to work.**

Notwithstanding the provisions of G.S. 97-32, an employee may attempt a trial return to work for a period not to exceed nine months. During a trial return to work period, the employee shall be paid any compensation which may be owed for partial disability pursuant to G.S. 97-30. If the trial return to work is unsuccessful, the employee's right to continuing compensation under G.S. 97-29 shall be unimpaired unless terminated or suspended thereafter pursuant to the provisions of this Article. (1993 (Reg. Sess., 1994), c. 679, s. 4.1.)

**§ 97-33. Prorating in event of earlier disability or injury.**

If any employee is an epileptic, or has a permanent disability or has sustained a permanent injury in service in the army or navy of the United States, or in another employment other than that in which he received a subsequent permanent injury by accident, such as specified in G.S. 97-31, he shall be entitled to compensation only for the degree of disability which would have resulted from the later accident if the earlier disability or injury had not existed. (1929, c. 120, s. 33; 1975, c. 832.)

**§ 97-34. Employee receiving an injury when being compensated for former injury.**

If an employee receives an injury for which compensation is payable, while he is still receiving or entitled to compensation for a previous injury in the same employment, he shall not at the same time be entitled to compensation for both injuries, unless the later injury be a permanent injury such as specified in G.S. 97-31; but he shall be entitled to compensation for that injury and from the time of that injury which will cover the longest period and the largest amount payable under this Article. (1929, c. 120, s. 34.)

**§ 97-35. How compensation paid for two injuries; employer liable only for subsequent injury.**

If any employee receives a permanent injury as specified in G.S. 97-31 after having sustained another permanent injury in the same employment, he shall be entitled to

compensation for both injuries, but the total compensation shall be paid by extending the period and not by increasing the amount of weekly compensation, and in no case exceeding 500 weeks.

If an employee has previously incurred permanent partial disability through the loss of a hand, arm, foot, leg, or eye, and by subsequent accident incurs total permanent disability through the loss of another member, the employer's liability is for the subsequent injury only. (1929, c. 120, s. 35.)

**§ 97-36. Accidents taking place outside State; employees receiving compensation from another state.**

Where an accident happens while the employee is employed elsewhere than in this State and the accident is one which would entitle him or his dependents or next of kin to compensation if it had happened in this State, then the employee or his dependents or next of kin shall be entitled to compensation (i) if the contract of employment was made in this State, (ii) if the employer's principal place of business is in this State, or (iii) if the employee's principal place of employment is within this State; provided, however, that if an employee or his dependents or next of kin shall receive compensation or damages under the laws of any other state nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided for in this Article. (1929, c. 120, s. 36; 1963, c. 450, s. 2; 1967, c. 1229, s. 3; 1973, c. 1059; 1991, c. 284.)

**§ 97-37. Where injured employee dies before total compensation is paid.**

When an employee receives or is entitled to compensation under this Article for an injury covered by G.S. 97-31 and dies from any other cause than the injury for which he was entitled to compensation, payment of the unpaid balance of compensation shall be made: First, to the surviving whole dependents; second, to partial dependents, and, if no dependents, to the next of kin as defined in the Article; if there are no whole or partial dependents or next of kin as defined in the Article, then to the personal representative, in lieu of the compensation the employee would have been entitled to had he lived.

Provided, however, that if the death is due to a cause that is compensable under this Article, and the dependents of such employee are awarded compensation therefor, all right to unpaid compensation provided by this section shall cease and determine. (1929, c. 120, s. 37; 1947, c. 823; 1971, c. 322.)

**§ 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), to the person or persons entitled thereto as follows:

- (1) Persons wholly dependent for support upon the earnings of the deceased employee at the time of the accident shall be entitled to receive the entire compensation payable share and share alike to the exclusion of all other persons. If there be only one person wholly dependent, then that person shall receive the entire compensation payable.
- (2) If there is no person wholly dependent, then any person partially dependent for support upon the earnings of the deceased employee at the time of the accident shall be entitled to receive a weekly payment of compensation computed as hereinabove provided, but such weekly payment shall be the same proportion of the weekly compensation provided for a whole dependent as the amount annually contributed by the deceased employee to the support of such partial dependent bears to the annual earnings of the deceased at the time of the accident.
- (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 weeks from the date of the death of the employee; provided, however, after said 400-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. (1929, c. 120, s. 38; 1943, c. 163; c. 502, s. 5; 1947, c. 823; 1951, c. 70, s. 3; 1953, c. 53, s. 1; 1955, c. 1026, s. 8; 1957, c. 1217; 1963, c. 604, s. 3; 1967, c. 84, s. 4; 1969, c. 143, s. 4; 1971, c. 281, s. 3; 1973, c. 515, s. 4; c. 759, s. 4; c. 1308, ss. 3, 4; c. 1357, ss. 1, 2; 1977, c. 409; 1981, c. 276, s. 1; c. 378, s. 1; c. 379; 1983, c. 772, s. 1; 1987, c. 729, s. 9; 1997-301, s. 1; 2001-232, s. 1.)

**§ 97-39. Widow, widower, or child to be conclusively presumed to be dependent; other cases determined upon facts; division of death benefits among those wholly dependent; when division among partially dependent.**

A widow, a widower and/or a child shall be conclusively presumed to be wholly dependent for support upon the deceased employee. In all other cases questions of dependency, in whole or in part shall be determined in accordance with the facts as the facts may be at the time of the accident, but no allowance shall be made for any payment made in lieu of board and lodging or services, and no compensation shall be allowed unless the dependency existed for a period of three months or more prior to the accident. If there is more than one person wholly dependent, the death benefit shall be divided among them, the persons partly dependent, if any, shall receive no part thereof. If there is no one wholly dependent, and more than one person partially dependent, the death benefit shall be divided among them according to the relative extent of their dependency.

The widow, or widower and all children of deceased employees shall be conclusively presumed to be dependents of deceased and shall be entitled to receive the benefits of this Article for the full periods specified herein. (1929, c. 120, s. 39.)

**§ 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) to the person or persons entitled thereto. (1929, c. 120, s. 40; 1931, c. 274, s. 5; c. 319; 1945, c. 766; 1953, c. 53, s. 2; c. 1135, s. 2; 1963, c. 604, s. 4; 1965, c. 419; 1967, c. 84, s. 5; 1971, c. 1179; 1981, c. 379; 1987, c. 729, s. 10; 2001-232, s. 3.1.)

#### **§ 97-40.1. Second Injury Fund.**

(a) There is hereby created a fund to be known as the "Second Injury Fund," to be held and disbursed by the Industrial Commission as hereinafter provided.

For the purpose of providing money for said fund the Industrial Commission may assess against the employer or its insurance carrier the payment of not to exceed two hundred fifty dollars (\$250.00) for the loss, or loss of use, of each minor member in every case of a permanent partial disability where there is such loss, and shall assess not to exceed seven hundred fifty dollars (\$750.00) for fifty percent (50%) or more loss or loss of use of each major member, defined as back, foot, leg, hand, arm, eye, or hearing.

(b) The Industrial Commission shall disburse moneys from the Second Injury Fund in unusual cases of second injuries as follows:

- (1) To pay additional compensation in cases of second injuries referred to in G.S. 97-33; provided, however, that the original injury and the subsequent injury were each at least twenty percent (20%) of the entire member; and, provided further, that such additional compensation, when added to the compensation awarded under said section, shall not exceed the amount which would have been payable for both injuries had both been sustained in the subsequent accident.
- (2) To pay additional compensation to an injured employee who has sustained permanent total disability in the manner referred to in the second paragraph of G.S. 97-35, which shall be in addition to the compensation awarded under said section; provided, however, that such additional compensation, when added to the compensation awarded

under said section, shall not exceed the compensation for permanent total disability as provided for in G.S. 97-29.

- (3) To pay compensation and medical expense in cases of permanent and total disability resulting from an injury to the brain or spinal cord in the manner and to the extent hereinafter provided.

The additional compensation and treatment expenses herein provided for shall be paid out of the Second Injury Fund exclusively and only to the extent to which the assets of such fund shall permit.

(c) In addition to payments for the purposes hereinabove set forth, the Industrial Commission may, in its discretion, make payments from said fund for the following purposes and under the following conditions:

- (1) In any case in which total and permanent disability due to paralysis or loss of mental capacity has resulted from an injury to the brain or spinal cord, the Industrial Commission may, in its discretion enter an award and pay compensation and reasonable and necessary medical, nursing, hospital, institutional, equipment, and other treatment expenses from the Second Injury Fund during the life of the injured employee in cases where the injury giving rise to such disability occurred prior to July 1, 1953, and the last payment of compensation has been made subsequent to January 1, 1941. Such compensation and medical expense shall be paid only from April 4, 1947, and after the employer's liability for compensation and treatment expense has ended, and in every case in which the injury resulting in paralysis due to injury to the spinal cord occurred subsequent to April 4, 1947, and prior to July 1, 1953, the liability of the employer and his insurance carrier to pay compensation and medical expense during the life of the injured employee shall not be affected by this section.
- (2) When compensation is allowed from the fund in any case under subdivision (1) of subsection (c), the Commission may in its discretion authorize payment of medical, nursing, hospital, equipment, and other treatment expenses incurred prior to the date compensation is allowed and after the employer's liability has ended if funds are reasonably available in the Second Injury Fund for such purpose after paying claims in cases of second injuries as specified in G.S. 97-33 and 97-35. Should the fund be insufficient to pay both compensation and treatment expenses, then the said expenses may, in the discretion of the Commission, be paid first and compensation thereafter according to the reasonable availability of funds in the fund. (1953, c. 1135, s. 2; 1957, c. 1396, s. 4; 1963, c. 450, s. 3; 1977, c. 457; 1991, c. 703, s. 11; 1993 (Reg. Sess., 1994), c. 679, s. 6.1.)

**§ 97-41. Repealed by Session Laws 1973, c. 1308, s. 5.**

**§ 97-42. Deduction of payments.**

Payments made by the employer to the injured employee during the period of his disability, or to his dependents, which by the terms of this Article were not due and payable when made, may, subject to the approval of the Commission be deducted from the amount to be paid as compensation. Provided, that in the case of disability such deductions shall be made by shortening the period during which compensation must be paid, and not by reducing the amount of the weekly payment. Unless otherwise provided by the plan, when payments are made to an injured employee pursuant to an employer-funded salary continuation, disability or other income replacement plan, the deduction shall be calculated from payments made by the employer in each week during which compensation was due and payable, without any carry-forward or carry-back of credit for amounts paid in excess of the compensation rate in any given week. (1929, c. 120, s. 42; 1993 (Reg. Sess., 1994), c. 679, s. 3.7.)

**§ 97-42.1. Credit for unemployment benefits.**

If an injured employee has received unemployment benefits under the Employment Security Law for any week with respect to which he is entitled to workers' compensation benefits for temporary total or permanent and total disability, the employment benefits paid for such weeks may be deducted from the award to be paid as compensation. If an injured employee has received unemployment benefits for any week with respect to which he is entitled to workers' compensation benefits for partial disability as provided in G.S. 97-30, the unemployment benefits paid for such weeks may be deducted from the award to be paid only to the extent that the sum of the unemployment benefits and workers' compensation payable for such week exceeds two-thirds of the injured employee's average weekly wages as determined by the Commission in accordance with G.S. 97-2(5). Benefits payable under G.S. 97-31 for permanent partial disability or other permanent injury shall not be subject to reduction because of the receipt of unemployment benefits. (1985, c. 616, s. 1.)

**§ 97-43. Commission may prescribe monthly or quarterly payments.**

The Industrial Commission, upon application of either party, may, in its discretion, having regard to the welfare of the employee and the convenience of the employer, authorize compensation to be paid monthly or quarterly instead of weekly. (1929, c. 120, s. 43.)

**§ 97-44. Lump sums.**

Whenever any weekly payment has been continued for not less than six weeks, the liability therefor may, in unusual cases, where the Industrial Commission deems it to be to the best interest of the employee or his dependents, or where it will prevent undue hardships on the employer or his insurance carrier, without prejudicing the interests of the employee or his dependents, be redeemed, in whole or in part, by the payment by the employer of a lump sum which shall be fixed by the Commission, but in no case to exceed the uncommuted value of the future installments which may be due under this

Article. The Commission, however, in its discretion, may at any time in the case of a minor who has received permanently disabling injuries either partial or total provide that he be compensated, in whole or in part, by the payment of a lump sum, the amount of which shall be fixed by the Commission, but in no case to exceed the uncommuted value of the future installments which may be due under this Article. (1929, c. 120, s. 44; 1963, c. 450, s. 4; 1975, c. 255.)

**§ 97-45. Reducing to judgment outstanding liability of insurance carriers withdrawing from State.**

Upon the withdrawal of any insurance carrier from doing business in the State that has any outstanding liability under the Workers' Compensation Act, the Insurance Commissioner shall immediately notify the North Carolina Industrial Commission, and thereupon the said North Carolina Industrial Commission shall issue an award against said insurance carrier and commute the installments due the injured employee or employees, and immediately have said award docketed in the superior court of the county in which the claimant resides, and the said North Carolina Industrial Commission shall then cause suit to be brought on said judgment in the state of the residence of any such insurance carrier, and the proceeds from said judgment after deducting the cost, if any, of the proceeding, shall be turned over to the injured employee, or employees, taking from such employee, or employees, the proper receipt in satisfaction of his claim. (1933, c. 474; 1979, c. 714, s. 2.)

**§ 97-46. Lump sum payments to trustee; receipt to discharge employer.**

Whenever the Industrial Commission deems it expedient any lump sum, subject to the provisions of G.S. 97-44, shall be paid by the employer to some suitable person or corporation appointed by the superior court in the county wherein the accident occurred, as trustee, to administer the same for the benefit of the person entitled thereto, in the manner provided by the Commission. The receipt of such trustee for the amount as paid shall discharge the employer or anyone else who is liable therefor. (1929, c. 120, s. 45.)

**§ 97-47. Change of condition; modification of award.**

Upon its own motion or upon the application of any party in interest on the grounds of a change in condition, the Industrial Commission may review any award, and on such review may make an award ending, diminishing, or increasing the compensation previously awarded, subject to the maximum or minimum provided in this Article, and shall immediately send to the parties a copy of the award. No such review shall affect such award as regards any moneys paid but no such review shall be made after two years from the date of the last payment of compensation pursuant to an award under this Article, except that in cases in which only medical or other treatment bills are paid, no such review shall be made after 12 months from the date of the last payment of bills for medical or other treatment, paid pursuant to this Article. (1929, c. 120, s. 46; 1931, c. 274, s. 6; 1947, c. 823; 1973, c. 1060, s. 2.)

**§ 97-47.1. Payment without prejudice; limitations period.**

When the employer has paid compensation without prejudice but timely contested liability as provided in G.S. 97-18(d), the right, if any, to further indemnity compensation and medical compensation shall terminate two years after the employer's last payment of medical or indemnity compensation, whichever last occurs, unless the employee files with the Commission a claim for further compensation prior to the expiration of this period. (1993 (Reg. Sess., 1994), c. 679, s. 3.5.)

**§ 97-48. Receipts relieving employer; payment to minors; when payment of claims to dependents subsequent in right discharges employer.**

(a) Whenever payment of compensation is made to a widow or widower for her or his use, or for her or his use and the use of the child or children, the written receipt thereof of such widow or widower shall acquit the employer: Provided, however, that in order to protect the interests of minors or incompetents the Industrial Commission may at its discretion change the terms of any award with respect to whom compensation for the benefit of such minors or incompetents shall be paid.

(b) Whenever payment is made to any person 18 years of age or over, the written receipt of such person shall acquit the employer.

(c) Payment of death benefits by an employer in good faith to a dependent subsequent in right to another or other dependents shall protect and discharge the employer, unless and until such dependent or dependents prior in right shall have given notice of his or their claims. In case the employer is in doubt as to the respective rights of rival claimants, he may apply to the Industrial Commission to decide between them.

(d) A minor employee under the age of 18 years may sign agreements and receipts for payments of compensation for temporary total disability, and such agreements and receipts executed by such minor shall acquit the employer. Where the injury results in a permanent disability and the sum to be paid does not exceed five hundred dollars (\$500.00) the minor employee may execute agreements and sign receipts and such agreements and receipts shall acquit the employer; provided, that when deemed necessary the Commission may require the signature of a parent or person standing in place of a parent. (1929, c. 120, s. 47; 1931, c. 274, s. 7; 1945, c. 766.)

**§ 97-49. Benefits of mentally incompetent or minor employees under 18 may be paid to a trustee, etc.**

If an injured employee is mentally incompetent or is under 18 years of age at the time when any right or privilege accrues to him under this Article, his guardian, trustee or committee may in his behalf claim and exercise such right or privilege. (1929, c. 120, s. 48.)

**§ 97-50. Limitation as against minors or mentally incompetent.**

No limitation of time provided in this Article for the giving of notice or making claim under this Article shall run against any person who is mentally incompetent, or a minor dependent, as long as he has no guardian, trustee, or committee. (1929, c. 120, s. 49.)

**§ 97-51. Joint employment; liabilities.**

Whenever an employee, for whose injury or death compensation is payable under this Article, shall at the time of the injury be in joint service of two or more employers subject to this Article, such employers shall contribute to the payment of such compensation in proportion to their wages liability to such employee; provided, however, that nothing in this section shall prevent any reasonable arrangement between such employers for a different distribution as between themselves of the ultimate burden of compensation. (1929, c. 120, s. 50.)

**§ 97-52. Occupational disease made compensable; "accident" defined.**

Disablement or death of an employee resulting from an occupational disease described in G.S. 97-53 shall be treated as the happening of an injury by accident within the meaning of the North Carolina Workers' Compensation Act and the procedure and practice and compensation and other benefits provided by said act shall apply in all such cases except as hereinafter otherwise provided. The word "accident," as used in the Workers' Compensation Act, shall not be construed to mean a series of events in employment, of a similar or like nature, occurring regularly, continuously or at frequent intervals in the course of such employment, over extended periods of time, whether such events may or may not be attributable to fault of the employer and disease attributable to such causes shall be compensable only if culminating in an occupational disease mentioned in and compensable under this Article: Provided, however, no compensation shall be payable for asbestosis and/or silicosis as hereinafter defined if the employee, at the time of entering into the employment of the employer by whom compensation would otherwise be payable, falsely represented himself in writing as not having previously been disabled or laid off because of asbestosis or silicosis. (1935, c. 123; 1979, c. 714, s. 2.)

**§ 97-53. (See editor's note on condition precedent) Occupational diseases enumerated; when due to exposure to chemicals.**

The following diseases and conditions only shall be deemed to be occupational diseases within the meaning of this Article:

- (1) Anthrax.
- (2) Arsenic poisoning.
- (3) Brass poisoning.
- (4) Zinc poisoning.
- (5) Manganese poisoning.
- (6) Lead poisoning. Provided the employee shall have been exposed to the hazard of lead poisoning for at least 30 days in the preceding 12 months' period; and, provided further, only the employer in whose employment such employee was last injuriously exposed shall be liable.
- (7) Mercury poisoning.
- (8) Phosphorus poisoning.

- (9) Poisoning by carbon bisulphide, menthanol, naphtha or volatile halogenated hydrocarbons.
- (10) Chrome ulceration.
- (11) Compressed-air illness.
- (12) Poisoning by benzol, or by nitro and amido derivatives of benzol (dinitrolbenzol, anilin, and others).
- (13) Any disease, other than hearing loss covered in another subdivision of this section, which is proven to be due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation or employment, but excluding all ordinary diseases of life to which the general public is equally exposed outside of the employment.
- (14) Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye due to tar, pitch, bitumen, mineral oil, or paraffin, or any compound, product, or residue of any of these substances.
- (15) Radium poisoning or disability or death due to radioactive properties of substances or to roentgen rays, X rays or exposure to any other source of radiation; provided, however, that the disease under this subdivision shall be deemed to have occurred on the date that disability or death shall occur by reason of such disease.
- (16) Blisters due to use of tools or appliances in the employment.
- (17) Bursitis due to intermittent pressure in the employment.
- (18) Miner's nystagmus.
- (19) Bone felon due to constant or intermittent pressure in employment.
- (20) Synovitis, caused by trauma in employment.
- (21) Tenosynovitis, caused by trauma in employment.
- (22) Carbon monoxide poisoning.
- (23) Poisoning by sulphuric, hydrochloric or hydrofluoric acid.
- (24) Asbestosis.
- (25) Silicosis.
- (26) Psittacosis.
- (27) Undulant fever.
- (28) Loss of hearing caused by harmful noise in the employment. The following rules shall be applicable in determining eligibility for compensation and the period during which compensation shall be payable:
  - a. The term "harmful noise" means sound in employment capable of producing occupational loss of hearing as hereinafter defined. Sound of an intensity of less than 90 decibels, A scale, shall be deemed incapable of producing occupational loss of hearing as defined in this section.
  - b. "Occupational loss of hearing" shall mean a permanent sensorineural loss of hearing in both ears caused by prolonged exposure to harmful noise in employment. Except in instances of

preexisting loss of hearing due to disease, trauma, or congenital deafness in one ear, no compensation shall be payable under this subdivision unless prolonged exposure to harmful noise in employment has caused loss of hearing in both ears as hereinafter provided.

- c. No compensation benefits shall be payable for temporary total or temporary partial disability under this subdivision and there shall be no award for tinnitus or a psychogenic hearing loss.
- d. An employer shall become liable for the entire occupational hearing loss to which his employment has contributed, but if previous deafness is established by a hearing test or other competent evidence, whether or not the employee was exposed to harmful noise within six months preceding such test, the employer shall not be liable for previous loss so established, nor shall he be liable for any loss for which compensation has previously been paid or awarded and the employer shall be liable only for the difference between the percent of occupational hearing loss determined as of the date of disability as herein defined and the percentage of loss established by the preemployment and audiometric examination excluding, in any event, hearing losses arising from nonoccupational causes.
- e. In the evaluation of occupational hearing loss, only the hearing levels at the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second shall be considered. Hearing losses for frequencies below 500 and above 3,000 cycles per second are not to be considered as constituting compensable hearing disability.
- f. The employer liable for the compensation in this section shall be the employer in whose employment the employee was last exposed to harmful noise in North Carolina during a period of 90 working days or parts thereof, and an exposure during a period of less than 90 working days or parts thereof shall be held not to be an injurious exposure; provided, however, that in the event an insurance carrier has been on the risk for a period of time during which an employee has been injuriously exposed to harmful noise, and if after insurance carrier goes off the risk said employee has been further exposed to harmful noise, although not exposed for 90 working days or parts thereof so as to constitute an injurious exposure, such carrier shall, nevertheless, be liable.
- g. The percentage of hearing loss shall be calculated as the average, in decibels, of the thresholds of hearing for the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second. Pure tone air conduction audiometric instruments, properly calibrated

according to accepted national standards such as American Standards Association, Inc., (ASA), International Standards Organization (ISO), or American National Standards Institute, Inc., (ANSI), shall be used for measuring hearing loss. If more than one audiogram is taken, the audiogram having the lowest threshold will be used to calculate occupational hearing loss. If the losses of hearing average 15 decibels (26 db if ANSI or ISO) or less in the four frequencies, such losses of hearing shall not constitute any compensable hearing disability. If the losses of hearing average 82 decibels (93 db if ANSI or ISO) or more in the four frequencies, then the same shall constitute and be total or one hundred percent (100%) compensable hearing loss. In measuring hearing impairment, the lowest measured losses in each of the four frequencies shall be added together and divided by four to determine the average decibel loss. For each decibel of loss exceeding 15 decibels (26 db if ANSI or ISO) an allowance of one and one-half percent (1 1/2%) shall be made up to the maximum of one hundred percent (100%) which is reached at 82 decibels (93 db if ANSI or ISO). In determining the binaural percentage of loss, the percentage of impairment in the better ear shall be multiplied by five. The resulting figure shall be added to the percentage of impairment in the poorer ear, and the sum of the two divided by six. The final percentage shall represent the binaural hearing impairment.

- h. There shall be payable for total occupational loss of hearing in both ears 150 weeks of compensation, and for partial occupational loss of hearing in both ears such proportion of these periods of payment as such partial loss bears to total loss.
- i. No claim for compensation for occupational hearing loss shall be filed until after six months have elapsed since exposure to harmful noise with the last employer. The last day of such exposure shall be the date of disability. The regular use of employer-provided protective devices capable of preventing loss of hearing from the particular harmful noise where the employee works shall constitute removal from exposure to such particular harmful noise.
- j. No consideration shall be given to the question of whether or not the ability of an employee to understand speech is improved by the use of a hearing aid. The North Carolina Industrial Commission may order the employer to provide the employee with an original hearing aid if it will materially improve the employee's ability to hear.

- k. No compensation benefits shall be payable for the loss of hearing caused by harmful noise after October 1, 1971, if employee fails to regularly utilize employer-provided protection device or devices, capable of preventing loss of hearing from the particular harmful noise where the employee works.
- (29) **(See editor's note on condition precedent)** Infection with smallpox, infection with vaccinia, or any adverse medical reaction when the infection or adverse reaction is due to the employee receiving in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002) (to be codified at 42 U.S.C. § 233(p)), or when the infection or adverse medical reaction is due to the employee being exposed to another employee vaccinated as described in this subdivision.

Occupational diseases caused by chemicals shall be deemed to be due to exposure of an employee to the chemicals herein mentioned only when as a part of the employment such employee is exposed to such chemicals in such form and quantity, and used with such frequency as to cause the occupational disease mentioned in connection with such chemicals. (1935, c. 123; 1949, c. 1078; 1953, c. 1112; 1955, c. 1026, s. 10; 1957, c. 1396, s. 6; 1963, c. 553, s. 1; c. 965; 1971, c. 547, s. 1; c. 1108, s. 1; 1973, c. 760, ss. 1, 2; 1975, c. 718, s. 4; 1987, c. 729, ss. 11, 12; 1991, c. 703, s. 10; 2003-169, s. 2.)

**§ 97-54. "Disablement" defined.**

The term "disablement" as used in this Article as applied to cases of asbestosis and silicosis means the event of becoming actually incapacitated because of asbestosis or silicosis to earn, in the same or any other employment, the wages which the employee was receiving at the time of his last injurious exposure to asbestosis or silicosis; but in all other cases of occupational disease "disablement" shall be equivalent to "disability" as defined in G.S. 97-2(9). (1935, c. 123; 1955, c. 525, s. 1.)

**§ 97-55. "Disability" defined.**

The term "disability" as used in this Article means the state of being incapacitated as the term is used in defining "disablement" in G.S. 97-54. (1935, c. 123.)

**§ 97-56. Limitation on compensable diseases.**

The provisions of this Article shall apply only to cases of occupational disease in which the last exposure in an occupation subject to the hazards of such diseases occurred on or after March 26, 1935. (1935, c. 123.)

**§ 97-57. Employer liable.**

In any case where compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of such

disease, and the insurance carrier, if any, which was on the risk when the employee was so last exposed under such employer, shall be liable.

For the purpose of this section when an employee has been exposed to the hazards of asbestosis or silicosis for as much as 30 working days, or parts thereof, within seven consecutive calendar months, such exposure shall be deemed injurious but any less exposure shall not be deemed injurious; provided, however, that in the event an insurance carrier has been on the risk for a period of time during which an employee has been injuriously exposed to the hazards of asbestosis or silicosis, and if after insurance carrier goes off the risk said employee is further exposed to the hazards of asbestosis or silicosis, although not so exposed for a period of 30 days or parts thereof so as to constitute a further injurious exposure, such carrier shall, nevertheless, be liable. (1935, c. 123; 1945, c. 762; 1957, c. 1396, s. 7.)

**§ 97-58. Time limit for filing claims.**

(a) Repealed by Session Laws 1987, c. 729, s. 13.

(b) The report and notice to the employer as required by G.S. 97-22 shall apply in all cases of occupational disease except in case of asbestosis, silicosis, or lead poisoning. The time of notice of an occupational disease shall run from the date that the employee has been advised by competent medical authority that he has same.

(c) The right to compensation for occupational disease shall be barred unless a claim be filed with the Industrial Commission within two years after death, disability, or disablement as the case may be. Provided, however, that the right to compensation for radiation injury, disability or death shall be barred unless a claim is filed within two years after the date upon which the employee first suffered incapacity from the exposure to radiation and either knew or in the exercise of reasonable diligence should have known that the occupational disease was caused by his present or prior employment. (1935, c. 123; 1945, c. 762; 1955, c. 525, s. 6; 1963, c. 553, s. 2; 1973, c. 1060, s. 3; 1981, c. 734, s. 1; 1987, c. 729, s. 13.)

**§ 97-59. Employer to pay for treatment.**

Medical compensation shall be paid by the employer in cases in which awards are made for disability or damage to organs as a result of an occupational disease after bills for same have been approved by the Industrial Commission.

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. (1935, c. 123; 1945, c. 762; 1973, c. 1061; 1981, c. 339; 1991, c. 703, s. 5.)

**§ 97-60:** Repealed by Session Laws 2003-284, s. 10.33(a), effective July 1, 2003.

**§ 97-61. Rewritten as §§ 97-61.1 to 97-61.7.**

**§ 97-61.1. First examination of and report on employee having asbestosis or silicosis.**

When the Industrial Commission is advised by an employer or employee that an employee has or allegedly has asbestosis or silicosis, the employee, when ordered by the Industrial Commission, shall submit to X rays and a physical examination by the advisory medical committee or other designated qualified physician who is not a member of the advisory medical committee. The employer shall pay the expenses connected with the examination by the advisory medical committee or other designated qualified physician who is not a member of the advisory medical committee in such amounts as shall be directed by the Industrial Commission. Within 30 days after the completion of the examination, the advisory medical committee or other designated qualified physician shall submit a written report to the Industrial Commission setting forth:

- (1) The X rays and clinical procedures used.
- (2) Whether or not the claimant has contracted asbestosis or silicosis.
- (3) The advisory medical committee's or designated qualified physician's opinion expressed in percentages of the impairment of the employee's ability to perform normal labor in the same or any other employment.
- (4) Any other matter deemed pertinent.

When a competent physician certifies to the Industrial Commission that the employee's physical condition is such that his movement to the place of examination ordered by the Industrial Commission as herein provided in G.S. 97-61.1, 97-61.3 and 97-61.4 would be harmful or injurious to the health of the employee, the Industrial Commission shall cause the examination of the employee to be made by the advisory medical committee or other designated qualified physician as herein provided at some place in the vicinity of the residence of the employee suitable for the purposes of making such examination. (1935, c. 123; 1945, c. 762; 1955, c. 525, s. 2; 1973, c. 476, s. 128; 1989, c. 727, s. 219(15); 1997-443, s. 11A.37; 2003-284, s. 10.33(b).)

**§ 97-61.2. Filing of first report; right of hearing; effect of report as testimony.**

The advisory medical committee shall file its report in triplicate with the Industrial Commission, which shall send one copy thereof to the claimant and one copy thereof to the employer by registered mail or certified mail. Unless within 30 days from receipt of the copy of said report the claimant and employer, or either of them, shall request the Industrial Commission in writing to set the case for hearing for the purpose of examining and cross-examining the members of the advisory medical committee respecting the report of said committee, and for the purpose of introducing additional testimony, said report shall become a part of the record of the case and shall be accepted by the Industrial Commission as expert medical testimony to be considered as such and in connection with all the evidence in the case in arriving at its decision. (1935, c. 123; 1945, c. 762; 1955, c. 525, s. 2; 1963, c. 450, s. 5.)

**§ 97-61.3. Second examination and report.**

As soon as practicable after the expiration of one year following the initial examination by the advisory medical committee and when ordered by the Industrial Commission, the employee shall again appear before the advisory medical committee, at least one of whom shall conduct the examination, and the member or members of the advisory medical committee conducting the examination shall forward the X rays and findings to the member or members of the committee not present for the physical examination. Within 30 days after the completion of the examination, the advisory medical committee shall make a written report to the Industrial Commission signed by all of its members, setting forth any change since the first report in the employee's condition which is due to asbestosis or silicosis, said report to be filed in triplicate with the Industrial Commission, which shall send one copy thereof to the claimant, and one copy to the employer by registered mail or certified mail. The claimant and employer, or either of them, shall have the right only at the final hearing provided for in G.S. 97-61.4 to examine or cross-examine the members of the advisory medical committee respecting the second report of the committee. (1935, c. 123; 1945, c. 762; 1955, c. 525, s. 2; 1959, c. 863, s. 2.)

#### **§ 97-61.4. Third examination and report.**

As soon as practicable after the expiration of two years from the first examination and when ordered by the Industrial Commission, the employee shall appear before the advisory medical committee, or at least two of them, for final X rays and physical examination. Upon completion of this examination and within 30 days, the advisory medical committee shall make a written report setting forth:

- (1) The X rays and clinical procedures used by the committee.
- (2) To what extent, if any, has the damage to the employee's lungs due to asbestosis or silicosis changed since the first examination.
- (3) The opinion of the committee, expressed in percentages, with respect to the extent of impairment of the employee's ability to earn in the same or any other employment the wages which the employee was receiving at the time of his last injurious exposure to asbestosis or silicosis.
- (4) Any other matter deemed pertinent by the committee.

Said report shall be filed in triplicate with the Industrial Commission which shall send one copy thereof to the claimant and one copy to the employer by registered mail or certified mail. (1935, c. 123; 1945, c. 762; 1955, c. 525, s. 2; 1959, c. 863, s. 3.)

#### **§ 97-61.5. Hearing after first examination and report; removal of employee from hazardous occupation; compensation upon removal from hazardous occupation.**

(a) After the employer and employee have received notice of the first committee report, the Industrial Commission, unless it has already approved an agreement between the employer and employee, shall set the matter for hearing at a time and place to be decided by it, to hear any controverted questions, determine if and to whom liability attaches, and where appropriate, file a written opinion with its findings of fact and

conclusions of law and cause its award to be issued thereon, all of which shall be subject to modification as provided in G.S. 97-61.6.

(b) If the Industrial Commission finds at the first hearing that the employee has either asbestosis or silicosis or if the parties enter into an agreement to the effect that the employee has silicosis or asbestosis, it shall by order remove the employee from any occupation which exposes him to the hazards of asbestosis or silicosis, and if the employee thereafter engages in any occupation which exposes him to the hazards of asbestosis or silicosis without having obtained the written approval of the Industrial Commission as provided in G.S. 97-61.7, neither he, his dependents, personal representative nor any other person shall be entitled to any compensation for disablement or death resulting from asbestosis or silicosis; provided, that if the employee is removed from the industry the employer shall pay or cause to be paid as in this subsection provided to the employee affected by such asbestosis or silicosis a weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of his average weekly wages before removal from the industry, but not more than the amount established annually to be effective October 1 as provided in G.S. 97-29 or less than thirty dollars (\$30.00) a week, which compensation shall continue for a period of 104 weeks. Payments made under this subsection shall be credited on the amounts payable under any final award in the cause entered under G.S. 97-61.6. (1935, c. 123; 1945, c. 762; 1955, c. 525, s. 2; c. 1354; 1957, c. 1217; c. 1396, s. 8; 1963, c. 604, s. 6; 1967, c. 84, s. 7; 1969, c. 143, s. 6; 1971, c. 281, s. 5; 1973, c. 515, s. 6; c. 759, s. 5; 1981, c. 276, s. 1; c. 378, s. 1.)

**§ 97-61.6. Hearing after third examination and report; compensation for disability and death from asbestosis or silicosis.**

After receipt by the employer and employee of the advisory medical committee's third report, the Industrial Commission, unless it has approved an agreement between the employee and employer, shall set a final hearing in the cause, at which it shall receive all competent evidence bearing on the cause, and shall make a final disposition of the case, determining what compensation, if any, the employee is entitled to receive in addition to the 104 weeks already received.

Where the incapacity for work resulting from asbestosis or silicosis is found to be total, the employer shall pay, or cause to be paid, to the injured employee during such total disability a weekly compensation in accordance with G.S. 97-29.

When the incapacity for work resulting from asbestosis or silicosis is partial, the employer shall pay, or cause to be paid, to the affected employee, a weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of the difference between his average weekly wages at the time of his last injurious exposure, 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 provided that the total compensation so paid shall not exceed a period of 196 weeks, in addition to the 104 weeks for which the employee has already been compensated.

Provided, however, should death result from asbestosis or silicosis within two years from the date of last exposure, or should death result from asbestosis or silicosis, or from

a secondary infection or diseases developing from asbestosis or silicosis within 350 weeks from the date of last exposure and while the employee is entitled to compensation for disablement due to asbestosis or silicosis, either partial or total, then in either of these events, the employer shall pay, or cause to be paid compensation in accordance with G.S. 97-38.

Provided further that if the employee has asbestosis or silicosis and dies from any other cause, the employer shall pay, or cause to be paid by one of the methods set forth in G.S. 97-38 compensation for any remaining portion of the 104 weeks specified in G.S. 97-61.5 for which the employee has not previously been paid compensation, and in addition shall pay compensation for such number of weeks as the percentage of disability of the employee bears to 196 weeks. If the employee was totally disabled as a result of asbestosis or silicosis, compensation shall be paid for any remaining portion of the 104 weeks specified in G.S. 97-61.5 for which the employee has not previously been paid compensation, and in addition shall be paid for an additional 300 weeks. (1935, c. 123; 1945, c. 762; 1955, c. 525, s. 2; c. 1354; 1957, c. 1271; 1963, c. 604, s. 7; 1965, c. 907; 1967, c. 84, s. 8; 1969, c. 143, s. 7; 1971, c. 281, s. 6; c. 631; 1973, c. 515, s. 7; c. 759, s. 6; c. 1308, ss. 6, 7; 1979, c. 246; 1981, c. 276, s. 1.)

**§ 97-61.7. Waiver of right to compensation as alternative to forced change of occupation.**

An employee who has been compensated under the terms of G.S. 97-61.5(b) as an alternative to forced change of occupation, may, subject to the approval of the Industrial Commission, waive in writing his right to further compensation for any aggravation of his condition that may result from his continuing in an occupation exposing him to the hazards of asbestosis or silicosis, in which case payment of all compensation awarded previous to the date of the waiver as approved by the Industrial Commission shall bar any further claims by the employee, or anyone claiming through him, provided, that in the event of total disablement or death as a result of asbestosis or silicosis with which the employee was so affected, compensation shall nevertheless be payable, but in no case, whether for disability or death or both, for a longer period than 100 weeks in addition to the 104 weeks already paid. Such written waiver must be filed with the Industrial Commission, and the Commission shall keep a record of each waiver, which record shall be open to the inspection of any interested person. (1935, c. 123; 1945, c. 762; 1955, c. 525, s. 2.)

**§ 97-62. "Silicosis" and "asbestosis" defined.**

The word "silicosis" shall mean the characteristic fibrotic condition of the lungs caused by the inhalation of dust of silica or silicates. "Asbestosis" shall mean a characteristic fibrotic condition of the lungs caused by the inhalation of asbestos dust. (1935, c. 123.)

**§ 97-63. Period necessary for employee to be exposed.**

Compensation shall not be payable for disability or death due to silicosis and/or asbestosis unless the employee shall have been exposed to the inhalation of dust of silica or silicates or asbestos dust in employment for a period of not less than two years in this State, provided no part of such period of two years shall have been more than 10 years prior to the last exposure. (1935, c. 123.)

**§ 97-64. General provisions of act to control as regards benefits.**

Except as herein otherwise provided, in case of disablement or death from silicosis and/or asbestosis, compensation shall be payable in accordance with the provisions of the North Carolina Workers' Compensation Act. (1935, c. 123; 1979, c. 714, s. 2.)

**§ 97-65. Reduction of rate where tuberculosis develops.**

In case of disablement or death due primarily from silicosis and/or asbestosis and complicated with tuberculosis of the lungs compensation shall be payable as hereinbefore provided, except that the rate of payments may be reduced one sixth. (1935, c. 123.)

**§ 97-66. Claim where benefits are discontinued.**

Where compensation payments have been made and discontinued, and further compensation is claimed, the claim for further compensation shall be made within two years after the last payment in all cases of occupational disease, provided, that claims for further compensation for asbestosis or silicosis shall be governed by the final award as set forth in G.S. 97-61.6. (1935, c. 123; 1945, c. 762; 1955, c. 525, s. 3; 1987, c. 729, s. 14.)

**§ 97-67. Postmortem examinations; notice to next of kin and insurance carrier.**

Upon the filing of a claim for death from an occupational disease where in the opinion of the Industrial Commission a postmortem examination is necessary to accurately ascertain the cause of death, such examination shall be ordered by the Industrial Commission. A full report of such examination shall be certified to the Industrial Commission. The surviving spouse or next kin and the employer or his insurance carrier, if their identity and whereabouts can be reasonably ascertained, shall be given reasonable notice of the time and place of such postmortem examination, and, if present at such examination, shall be given an opportunity to witness the same. Any such person may be present at and witness such examination either in person or through a duly authorized representative. If such examination is not consented to by the surviving husband or wife or next of kin, all right to compensation shall cease. (1935, c. 123.)

**§ 97-68. Controverted medical questions.**

The Industrial Commission may at its discretion refer to the advisory medical committee controverted medical questions arising out of occupational disease claims other than asbestosis or silicosis. (1935, c. 123; 1955, c. 525, s. 4.)

**§ 97-69. Examination by advisory medical committee; inspection of medical reports.**

The advisory medical committee, upon reference to it of a case of occupational disease shall notify the employee, or, in case he is dead, his dependents or personal representative, and his employer to appear before the advisory medical committee at a time and place stated in the notice. If the employee be living, he shall appear before the advisory medical committee at the time and place specified then or thereafter and he shall submit to such examinations including clinical and X-ray examinations as the advisory medical committee may require. The employee, or, if he be dead, the claimant and the employer shall be entitled to have present at all such examinations, a physician admitted to practice medicine in the State who shall be given every reasonable facility for observing every such examination whose services shall be paid for by the claimant or by the employer who engaged his services. If a physician admitted to practice medicine in the State shall certify that the employee is physically unable to appear at the time and place designated by the advisory medical committee, such committee may, upon the advice of the Industrial Commission, and on notice to the employer, change the place and/or time of the examination so as to reasonably facilitate the examination of the employee, and in any such case the employer shall furnish transportation and provide for other reasonably necessary expenses incidental to necessary travel. The claimant and the employer shall produce to the advisory medical committee all reports of medical and X-ray examinations which may be in their respective possession or control showing the past or present condition of the employee to assist the advisory medical committee in reaching its conclusions. Provided that this section shall not apply to a living employee who has contracted asbestosis or silicosis. (1935, c. 123; 1955, c. 525, s. 5.)

**§ 97-70. Report of committee to Industrial Commission.**

The advisory medical committee, shall, as soon as practicable after it has completed its consideration of a case, report to the Industrial Commission its opinion regarding all medical questions involved in the case. The advisory medical committee shall include in its report a statement of what, if any, physician or physicians were present at the examination on behalf of the claimant or employer and what, if any, medical reports and X rays were produced by or on behalf of the claimant or employer. (1935, c. 123.)

**§ 97-71. Filing report; right of hearing on report.**

The advisory medical committee shall file its report in triplicate with the Industrial Commission, which shall send one copy thereof to the claimant and one copy to the employer by registered mail. Unless within 30 days from receipt of the copy of said report the claimant and/or employer shall request the Industrial Commission in writing to set the case for further hearing for the purpose of examining and/or cross-examining the members of the advisory medical committee respecting the report of said committee, said report shall become a part of the record of the case and shall be accepted by the Industrial Commission as expert medical testimony to be considered as such in connection with all the evidence in the case in arriving at its decision. (1935, c. 123.)

**§ 97-72. Appointment of advisory medical committee; terms of office; duties and functions; salaries and expenses.**

(a) There shall be an advisory medical committee consisting of three members, who shall be licensed physicians in good professional standing and peculiarly qualified in the diagnosis or treatment of occupational diseases. They shall be appointed by the Industrial Commission with the approval of the Governor, and one of them shall be designated as chairman of the committee by the Industrial Commission. The members of committee shall be appointed to serve terms as follows: one for a term of two years, one for a term of four years, and one for a term of six years. Upon the expiration of each term as above mentioned the Industrial Commission shall appoint a successor for a term of six years. The function of the committee shall be to conduct examinations and make reports as required by G.S. 97-61.1 through 97-61.6 and 97-68 through 97-71, and to assist in any postmortem examinations provided for in G.S. 97-67 when so directed by the Industrial Commission. Members of the committee shall devote to the duties of the office so much of their time as may be required in the conducting of examinations with reasonable promptness, and they shall attend hearings as scheduled by the Industrial Commission when their attendance is desired for the purpose of examining and cross-examining them respecting any report or reports made by them.

(b) Repealed by Session Laws 2003-284, s. 10.33(c), effective July 1, 2003.

(c) Notwithstanding any other provision of this Article, the Industrial Commission, in its discretion, may designate a qualified physician who is not a member of the advisory medical committee to perform an examination of an employee who has filed a claim for benefits for asbestosis or silicosis. This physician shall file his reports in the same manner a member of the advisory medical committee files reports; and these reports shall be deemed reports of the advisory medical committee. (1935, c. 123; 1955, c. 525, s. 7; 1981, c. 562, s. 2; 1989, c. 439; 1991, c. 481, s. 1; 1997-443, s. 11A.38; 1997-508, s. 1; 2003-284, s. 10.33(c).)

**§ 97-73. Fees.**

(a) The Industrial Commission may establish by rule a schedule of fees for examinations conducted, reports made, documents filed, and agreements reviewed under this Article. The fees shall be collected in accordance with rules adopted by the Industrial Commission.

(b), (c) Repealed by Session Laws 2003-284, s. 10.33(d), effective July 1, 2003. (1935, c. 123; 1955, c. 525, s. 8; 1991, c. 481, s. 2; 1991 (Reg. Sess., 1992), c. 1039, s. 2; 1997-443, s. 11A.39; 2003-284, s. 10.33(d); 2005-276, s. 45.1(a).)

**§ 97-74. Expense of hearings taxed as costs in compensation cases; fees collected directed to general fund.**

In hearings arising out of claims for disability and/or death resulting from occupational diseases the Industrial Commission shall tax as a part of the costs in cases in which compensation is awarded a reasonable allowance for the services of members of the advisory medical committee attending such hearings and reasonable allowances for

the services of members of the advisory medical committee for making investigations in connection with all claims for compensation on account of occupational diseases, including uncontested cases, as well as contested cases, and whether or not hearings shall have been conducted in connection therewith. All such charges, fees and allowances to be collected by the Industrial Commission shall be paid into the general fund of the State treasury to constitute a fund out of which to pay the expenses of the advisory medical committee. (1935, c. 123.)

**§§ 97-75, 97-76:** Repealed by Session Laws 2003-284, s. 10.33(f), effective July 1, 2003.

**§ 97-77. North Carolina Industrial Commission created; members appointed by Governor; terms of office; chairman.**

(a) There is hereby created a commission to be known as the North Carolina Industrial Commission, consisting of seven 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, and one for a term 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 appointees 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 appointees shall be persons who, on account of their previous vocations, employment or affiliations, can be classed as representatives of employees.

(b) One member, to be designated by the Governor, shall act as chairman. The chairman shall be the chief judicial officer and the chief executive officer of the Industrial Commission; such authority shall be exercised pursuant to the provisions of Chapter 126 of the General Statutes and the rules and policies of the State Personnel Commission. Notwithstanding the provisions of this Chapter, the chairman shall have such authority as is necessary to direct and oversee the Commission. The chairman may delegate any duties and responsibilities as may be necessary to ensure the proper management of the Industrial Commission. Notwithstanding the provisions of this Chapter, Chapter 143A, and Chapter 143B of the General Statutes, the chairman may hire or fire personnel and transfer personnel within the Industrial Commission.

The Governor may designate one vice-chairman from the remaining commissioners. The vice-chairman shall assume the powers of the chairman upon request of the chairman or when the chairman is absent for 24 hours or more. The authority delegated to the vice-chairman shall be relinquished immediately upon the return of the chairman or at the request of the chairman. (1929, c. 120, s. 51; 1931, c. 274, s. 8; 1991, c. 264, s. 1; 1993, c. 399, s. 3; 1993 (Reg. Sess., 1994), c. 769, s. 28.15(a).)

**§ 97-77.1. Expired.**

**§ 97-78. Salaries and expenses; administrator, executive secretary, deputy commissioners, and other staff assistance; annual report.**

(a) The salary of each commissioner shall be the same as that fixed from time to time for district attorneys except that the commissioner designated as chair shall receive one thousand five hundred dollars (\$1,500) additional per annum.

(b) The Commission may appoint an administrator whose duties shall be prescribed by the Commission, and who shall be subject to the State Personnel System. The Commission may appoint an executive secretary whose duties shall be prescribed by the Commission, and who shall be subject to the State Personnel System and who, upon entering upon his duties, shall give bond in such sum as may be fixed by the Commission. The Commission may also employ such clerical or other assistance as it may deem necessary, and fix the compensation of its staff, except that the salaries of the administrator and the executive secretary shall be fixed by subsection (b1) of this section. The compensation of Commission staff shall be in keeping with the compensation paid to the persons employed to do similar work in other State departments.

(b1) The salary of the administrator shall be ninety percent (90%) of the salary of a commissioner. The salary of the executive secretary shall be ninety percent (90%) of the salary of a commissioner.

(b2) The Chairman of the Industrial Commission shall designate one deputy commissioner as chief deputy commissioner. The salary of the chief deputy commissioner shall be ninety percent (90%) of the salary of a commissioner.

(b3) The salary of deputy commissioners shall be based upon years of experience as a deputy commissioner as follows:

- (1) Seventy-five percent (75%) of the salary of a commissioner, with three years of experience or less.
- (2) Seventy-seven percent (77%) of the salary of a commissioner, with more than three but less than seven years of experience.
- (3) Eighty percent (80%) of the salary of a commissioner, with seven or more but less than 10 years of experience.
- (4) Eighty-three percent (83%) of the salary of a commissioner, with 10 or more but less than 12 years of experience.
- (5) Eighty-five percent (85%) of the salary of a commissioner, with 12 or more years experience.

(b4) In lieu of merit and other incremental raises, the administrator, executive secretary, chief deputy commissioner, and deputy commissioners shall receive longevity pay on the same basis as is provided to other employees subject to the State Personnel Act.

(c) The members of the Commission and its assistants shall be entitled to receive from the State their actual and necessary expenses while traveling on the business of the Commission, but such expenses shall be certified by the person who incurred the same, and shall be approved by the chairman of the Commission before payment is made.

(d) All salaries and expenses of the Commission shall be audited and paid out of the State treasury, in the manner prescribed for similar expenses in other departments or branches of the State service, and to defray such salaries and expenses a sufficient appropriation shall be made under the General Appropriation Act as made to other departments, commissions and agencies of the State government.

(e) No later than October 1 of each year, the Commission shall publish annually for free distribution a report of the administration of this Article, together with such recommendations as the Commission deems advisable. No later than October 1 of each year, the Commission shall submit this report to the Joint Legislative Commission on Governmental Operations.

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

- (1) Tracking compliance with the provisions of G.S. 97-18(b), (c), and (d), and establishing a procedure to enforce compliance with the requirements of these subsections.
- (2) Expeditiously resolving requests for, or disputes involving, medical compensation under G.S. 97-25, including selection of a physician, change of physician, the specific treatment involved, and the provider of such treatment.

(g) The Commission shall demonstrate its success in implementing its strategic plan under subsection (f) of this section by including all of the following in its annual report under subsection (e) of this section:

- (1) The total number of claims made during the preceding calendar year, the total number of claims in which compliance was not timely made, and, for each claim, the date the claim was filed, the date by which compliance was required, the date of actual compliance, and any sanctions or other remedial action imposed by the Commission.
- (2) The total number of requests for, and disputes involving, medical compensation under G.S. 97-25 in which final disposition was not made within 45 days of the filing of the motion with the Commission, and, for each such request or dispute, the date the motion or other initial pleading was filed, the date on which final disposition was made and, where reasonably ascertainable, the date on which any ordered medical treatment was actually provided. (1929, c. 120, s. 52; 1931, c. 274, s. 9; 1941, c. 358, s. 2; 1947, c. 823; 1957, c. 541, s. 6; 1971, c. 527, s. 1; c. 1147, s. 1; 1983, c. 717, s. 20; 1983 (Reg. Sess., 1984), c. 1034, s. 164; 1997-443, s. 33.4; 1998-212, s. 28.18(a); 2005-276, s. 29.20(b); 2007-323, ss. 13.4A(a), (b).)

**§ 97-79. Offices and supplies; deputies with power to subpoena witnesses and to take testimony; meetings; hearings.**

(a) The Commission shall be provided with adequate offices in which the records shall be kept and its official business transacted during regular business hours; it shall also be provided with necessary office furniture, stationery, and other supplies.

(b) The Commission may appoint deputies who shall have the same power as members of the Commission pursuant to G.S. 97-80 and the same power to take evidence, and enter orders, opinions, and awards based thereon as is possessed by the members of the Commission. The deputies shall be subject to the State Personnel System.

(c) The Commission or any member thereof may hold sessions at any place within the State as may be deemed necessary by the Commission.

(d) Hearings before the Commission shall be open to the public and shall be stenographically reported, and the Commission is authorized to contract for the reporting of such hearings. The Commission shall by regulation provide for the preparation of a record of the hearings and other proceedings. Notwithstanding the provisions of this subsection, informal hearings conducted pursuant to the provisions of G.S. 97-18.1, whether by telephone or in person, shall not be open to the public nor stenographically reported unless the Commission orders otherwise.

(e) The Commission, or any member thereof, or any deputy is authorized by appropriate order, to make additional parties plaintiff or defendant in any proceeding pending before the Commission when it is made to appear that such new party is either a necessary party or a proper party to a final determination of the proceeding.

(f) The Commission shall create an ombudsman program to assist unrepresented claimants, employers, and other parties, to enable them to protect their rights under this Article. In addition to other duties assigned by the Commission, the ombudsman shall meet with, or otherwise provide information to, injured employees, investigate complaints, and communicate with employers' insurance carriers and physicians at the request of the claimant. Assistance provided under this subsection shall not include representing the claimant in a compensation hearing. (1929, c. 120, s. 53; 1931, c. 274, s. 10; 1951, c. 1059, s. 7; 1955, c. 1026, s. 11; 1971, c. 527, s. 2; c. 1147, s. 2; 1981 (Reg. Sess., 1982), c. 1243, s. 1; 1993 (Reg. Sess., 1994), c. 679, s. 5.2.)

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

(a) The Commission may make rules, 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.

(b) The Commission or any member thereof, or any person deputized by it, shall have the power, for the purpose of this Article, to tax costs against the parties, to administer or cause to have administered oaths, to preserve order at hearings, to compel

the attendance and testimony of witnesses, and to compel the production of books, papers, records, and other tangible things.

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

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

(e) A subpoena may be issued by the Commission and served in accordance with G.S. 1A-1, Rule 45. Upon a motion, the Commission may quash a subpoena if it finds that the evidence the production of which is required does not relate to a matter in issue, the subpoena does not describe with sufficient particularity the evidence the production of which is required, or for any other reason sufficient in law the subpoena may be quashed. Each witness who appears in obedience to such subpoena of the Commission shall receive for attendance the fees and mileage for witnesses in civil cases in courts of the county where the hearing is held.

(f) The Commission may by rule provide for and limit the use of interrogatories and other forms of discovery, and it may provide reasonable sanctions for failure to comply with a Commission order compelling discovery.

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

(h) The Commission or any member or deputy thereof shall also have the same power as a judicial officer pursuant to Chapter 5A of the General Statutes to punish for criminal contempt, subject to the limitations thereunder, (i) for wilful behavior committed during the sitting of the commissioner or deputy commissioner and directly tending to interrupt the proceedings; (ii) for wilful disobedience of a lawful order of the Commission or a member or deputy thereof; or (iii) for wilful refusal to be sworn or affirmed as a witness, or, when so sworn or affirmed, wilful refusal to answer any legal and proper question when refusal is not legally justified. The Commission or any member or deputy thereof may issue an order of arrest as provided by G.S. 15A-305 when authorized by G.S. 5A-16 in connection with contempt proceedings. When the commissioner or deputy commissioner chooses not to proceed summarily pursuant to

G.S. 5A-14, the proceedings shall be before a district court judge, and venue lies throughout the district where the order was issued directing the person charged to appear. A person found in criminal contempt may appeal in the manner provided for appeals in criminal actions to the superior court of the district in which the order of contempt was issued, and the appeal is by hearing de novo before a superior court judge. (1929, c. 120, s. 54; 1977, cc. 456, 505; 1981 (Reg. Sess., 1982), c. 1243, s. 2; 1993, c. 321, s. 25(b); c. 399, s. 1; 1993 (Reg. Sess., 1994), c. 679, ss. 5.3, 5.4; 1995, c. 358, s. 8(a), (b); c. 437, s. 6(a), (b); c. 467, s. 5(a), (b); c. 507, ss. 25.13, 27.8(o); c. 509, s. 48; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b).)

**§ 97-81. Blank forms and literature; statistics; safety provisions; accident reports; studies and investigations and recommendations to General Assembly; to cooperate with other agencies for prevention of injury.**

(a) The Commission shall prepare and cause to be printed, and upon request furnish, free of charge to any employee or employer, such blank forms and literature as it shall deem requisite to facilitate or prompt the efficient administration of this Article. The Commission may authorize the use of electronic submission of forms and other means of transmittal of forms and notices when it deems appropriate.

(b) The Commission shall tabulate the accident reports received from employers in accordance with G.S. 97-92 and shall publish the same in the annual report of the Commission and as often as it may deem advisable, in such detailed or aggregate form as it may deem best. The name of the employer or employee shall not appear in such publications, and the employers' reports shall be private records of the Commission, and shall not be open for public inspection except for the inspection of the parties directly involved, and only to the extent of such interest, and except for inspection by the Department of Labor and other State or federal agencies pursuant to subsections (d) and (e) of this section. These reports shall not be used as evidence against any employer in any suit at law brought by any employee for the recovery of damages.

(c) The Commission shall make studies and investigations with respect to safety provisions and the causes of injuries in employments covered by this Article, and shall from time to time make to the General Assembly and to employers and carriers such recommendations as it may deem proper as to the best means of preventing such injuries.

(d) In making such studies and investigations the Commission shall:

- (1) Cooperate with any agency of the United States charged with the duty of enforcing any law securing safety against injury in any employment covered by this Article, or with any State agency engaged in enforcing any laws to assure safety for employees, and
- (2) Permit any such agency to have access to the records of the Commission.

In carrying out the provisions of this section the Commission or any officer or employee of the Commission is authorized to enter at any reasonable time upon any premises, tracks, wharf, dock, or other landing place, or to enter any building, where an

employment covered by this Article is being carried on, and to examine any tool, appliance, or machinery used in such employment.

(e) The Commission shall, upon written request from the Commissioner of Labor, provide from the Commission's records the following information from claims filed by employees, and from employer reports of injury to an employee required by G.S. 97-92:

- (1) Name and business address of the employer;
- (2) Type of business of the employer;
- (3) Date the accident, illness, or injury occurred;
- (4) Nature of the injury or disease reported; and
- (5) Whether compensation for disability or medical expenses was paid to the injured employee.

Information provided to the Commissioner of Labor pursuant to this subsection, and to other State and federal agencies pursuant to subsection (d) of this section, shall be private and exempt from public inspection to the same extent that records of the Commission are so exempt. (1929, c. 120, s. 55; 1991 (Reg. Sess., 1992), c. 894, s. 2; 1993 (Reg. Sess., 1994), c. 679, s. 10.2.)

**§ 97-82. Memorandum of agreement between employer and employee to be submitted to Commission on prescribed forms for approval; direct payment as award.**

(a) If the employer and the injured employee or his dependents reach an agreement in regard to compensation under this Article, they may enter into a memorandum of the agreement in the form prescribed by the Commission.

An agreement, however, shall be incorporated into a memorandum of agreement in regard to compensation: (i) for loss or permanent injury, disfigurement, or permanent and total disability under G.S. 97-31, (ii) for death from a compensable injury or occupational disease under G.S. 97-38, or (iii) when compensation under this Article is paid or payable to an employee who is incompetent or under 18 years of age.

The memorandum of agreement, accompanied by the material medical and vocational records, shall be filed with and approved by the Commission; otherwise such agreement shall be voidable by the employee or his dependents.

(b) If approved by the Commission, a memorandum of agreement shall for all purposes be enforceable by the court's decree as hereinafter specified. Payment pursuant to G.S. 97-18(b), or payment pursuant to G.S. 97-18(d) when compensability and liability are not contested prior to expiration of the period for payment without prejudice, shall constitute an award of the Commission on the question of compensability of and the insurer's liability for the injury for which payment was made. Compensation paid in these circumstances shall constitute payment of compensation pursuant to an award under this Article. (1929, c. 120, s. 56; 1993 (Reg. Sess., 1994), c. 679, s. 3.2; 2005-448, s. 7.)

**§ 97-83. Commission is to make award after hearing.**

If the employer and the injured employee or his dependents fail to reach an agreement in regard to benefits under this Article within 14 days after the employer has written or

actual notice of the injury or death, or upon the arising of a dispute under this Article, either party may make application to the Commission for a hearing in regard to the matters at issue, and for a ruling thereon.

Immediately after such application has been received the Commission shall set the date of a hearing, which shall be held as soon as practicable and shall notify the parties at issue of the time and place of such hearing. The hearing or hearings shall be held in the city or county where the injury occurred, unless otherwise authorized by the Commission. (1929, c. 120, s. 57; 1955, c. 1026, s. 121/2; 1977, c. 743; 1993 (Reg. Sess., 1994), c. 679, s. 3.3.)

#### **§ 97-83.1. Facilities for hearings; security.**

The senior resident superior court judge shall provide suitable facilities for the conduct of hearings under this Article in the county or counties within the judge's district at the time the Commission schedules hearings therein. The senior resident superior court judge shall, to the extent the judge determines necessary and practicable, provide or arrange for security at Commission hearings upon the request of a member or deputy of the Commission. (1993 (Reg. Sess., 1994), c. 679, s. 5.7.)

#### **§ 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 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. (1929, c. 120, s. 58; 1951, c. 1059, s. 7; 1987, c. 729, s. 15.)

#### **§ 97-85. Review of award.**

If application is made to the Commission within 15 days from the date when notice of the award shall have been given, the full Commission shall review the award, and, if good ground be shown therefor, reconsider the evidence, receive further evidence, rehear the parties or their representatives, and, if proper, amend the award: Provided, however, when application is made for review of an award, and such an award has been heard and determined by a commissioner of the North Carolina Industrial Commission, the commissioner who heard and determined the dispute in the first instance, as specified by G.S. 97-84, shall be disqualified from sitting with the full Commission on the review of such award, and the chairman of the Industrial Commission shall designate a deputy

commissioner to take such commissioner's place in the review of the particular award. The deputy commissioner so designated, along with the two other commissioners, shall compose the full Commission upon review. Provided further, the chairman of the Industrial Commission shall have the authority to designate a deputy commissioner to take the place of a commissioner on the review of any case, in which event the deputy commissioner so designated shall have the same authority and duty as does the commissioner whose place he occupies on such review. (1929, c. 120, s. 59; 1963, c. 402; 1977, cc. 390, 431.)

**§ 97-86. Award conclusive as to facts; appeal; certified questions of law.**

The award of the Industrial Commission, as provided in G.S. 97-84, if not reviewed in due time, or an award of the Commission upon such review, as provided in G.S. 97-85, shall be conclusive and binding as to all questions of fact; but either party to the dispute may, within 30 days from the date of such award or within 30 days after receipt of notice to be sent by registered mail or certified mail of such award, but not thereafter, appeal from the decision of said Commission to the Court of Appeals for errors of law under the same terms and conditions as govern appeals from the superior court to the Court of Appeals in ordinary civil actions. The procedure for the appeal shall be as provided by the rules of appellate procedure.

The Industrial Commission of its own motion may certify questions of law to the Court of Appeals for decision and determination by said Court. In case of an appeal from the decision of the Commission, or of a certification by said Commission of questions of law, to the Court of Appeals, said appeal or certification shall operate on a supersedeas except as provided in G.S. 97-86.1, and no employer shall be required to make payment of the award involved in said appeal or certification until the questions at issue therein shall have been fully determined in accordance with the provisions of this Article. If the employer is a noninsurer, then the appeal of such employer shall not act as a supersedeas and the plaintiff in such case shall have the same right to issue execution or to satisfy the award from the property of the employer pending the appeal as obtains to the successful party in an action in the superior court.

When any party to an appeal from an award of the Commission is unable, by reason of his poverty, to make the deposit or to give the security required by law for said appeal, any member of the Commission or any deputy commissioner shall enter an order allowing said party to appeal from the award of the Commission without giving security therefor. The party appealing from the judgment shall, within 30 days from the filing of the appeal from the award, make an affidavit that he is unable by reason of his poverty to give the security required by law. The request shall be passed upon and granted or denied by a member of the Commission or deputy commissioner within 20 days from receipt of the affidavit specified above. (1929, c. 120, s. 60; 1947, c. 823; 1957, c. 1396, s. 9; 1959, c. 863, s. 4; 1967, c. 669; 1971, c. 1189; 1975, c. 391, s. 15; 1977, c. 521, s. 1; 1993 (Reg. Sess., 1994), c. 679, s. 10.5; 1995 (Reg. Sess., 1996), c. 552, s. 1.)

**§ 97-86.1. Payment of award pending appeal in certain cases.**

(a) When any appeal or certification to the Court of Appeals is pending, and it appears to the Commission that any part of the award appealed from is not appealed by the issues raised by such appeal, the Commission may, on action or of its own motion, render a judgment directing compliance with any portion of such award not affected by such appeal; or, if the only issue raised by such appeal is the amount of the average weekly wage, the Commission shall, on motion of the claimant, direct the payment of such portion of the compensation payable under its award as is not in dispute, if any, pending final adjudication of the undisputed portion thereof.

(b) In any claim under the provisions of this Chapter where it is conceded by all parties that the employee's claim is a compensable one and the amount is not disputed and where the only issue is which employer or employers, carrier or carriers are liable, the Commission may, where an appeal from a hearing commissioner or the full Commission is taken by one or more parties, order payment made to the employee pending outcome of the case on appeal. The order of payment shall contain the provision that if the employer or carrier ordered to pay is not ultimately liable for the amount paid, the employer or carrier will be reimbursed by the employer or carrier ultimately held liable.

(c) No payment made pursuant to the provisions of this section shall in any manner operate as an admission of liability or estoppel to deny liability by an employer or carrier.

(d) In any claim under the provisions of this Chapter wherein one employer or carrier has made payments to the employee or his dependents pending a final disposition of the claim and it is determined that different or additional employers or carriers are liable, the Commission may order any employers or carriers determined liable to make repayment in full or in part to any employer or carrier which has made payments to the employee or his dependents. (1977, c. 521, s. 2.)

#### **§ 97-86.2. Interest on awards after hearing.**

In any workers' compensation case in which an order is issued either granting or denying an award to the employee and where there is an appeal resulting in an ultimate award to the employee, the insurance carrier or employer shall pay interest on the final award or unpaid portion thereof from the date of the initial hearing on the claim, until paid at the legal rate of interest provided in G.S. 24-1. If interest is paid it shall not be a part of, or in any way increase attorneys' fees, but shall be paid in full to the claimant. (1981, c. 242, s. 1; 1985, c. 598; 1987, c. 729, s. 16.)

#### **§ 97-87. Judgments on awards.**

- (a) As used in this section, "award" includes the following:
- (1) A form filed, or an award arising, under G.S. 97-18(b), 97-18(d), or 97-82(b).
  - (2) A memorandum of agreement approved by the Commission.
  - (3) An order or decision of the Commission.
  - (4) An award of the Commission from which there has been no appeal.

(5) An award of the Commission affirmed on appeal.

(b) When an award or portion of an award provides for a sum certain or for a sum that can by computation be made certain, and that sum is due and payable as of the date of the award, a judgment may be docketed as provided in subsection (d) of this section, in an amount equal to that sum.

(c) When an award or portion of an award provides for periodic payments to be made on or after the date of the award, a judgment may be docketed as provided in subsection (d) of this section, in an amount equal to the sum stated in any Certificate of Accrued Arrearages that is issued by the Commission under this subsection. If any payment that has accrued after the date of the award, or after the date specified in the most recent Certificate of Accrued Arrearages issued under this subsection, is not received by the claimant when due, the following procedure is available for obtaining a Certificate of Accrued Arrearages:

- (1) The claimant may file with the Commission a Statement of Accrued Arrearages, on a form approved by the Commission, and shall serve a copy on all parties against whom judgment is sought and their attorney of record.
- (2) Any party against whom judgment is sought may, within 15 days of the date of service of a Statement of Accrued Arrearages, file with the Commission proof of any payments that have been made or other responsive pleadings.
- (3) If no proof or other responsive pleading is filed within 15 days of the date of service of the Statement, the Commission shall immediately issue a Certificate of Accrued Arrearages.
- (4) If proof of payment or other responsive pleading is filed, the Commission shall, within seven days, either issue a Certificate of Accrued Arrearages that shall state the sum of payments due or decline to issue a Certificate of Accrued Arrearages. The Commission shall notify the claimant, the party against whom judgment is sought, and their attorney of record of the Commission's decision.
- (5) If any party disputes the decision of the Commission entered under subdivision (c)(4) of this section, the party may appeal to the full Commission within 10 days of the entry of the decision of the Commission. The nonappealing party may file a response within 10 days of receiving notice of appeal. The notice of appeal shall request one of the following:
  - a. The Commission reconsider the decision entered based on the record and any additional evidence that parties submit with the notice and response.
  - b. A de novo evidentiary hearing before the full Commission.
- (6) The Commission shall grant the request for an evidentiary hearing under sub-subdivision (c)(5)b. of this section if a material issue of fact exists whose resolution is necessary to determine the appeal.

- (7) If a notice of appeal is given under sub-subdivision (c)(5)a. of this section, the Commission shall issue its decision within 10 days of the filing of the response under subdivision (c)(5)b. of this section. If a notice of appeal is given under sub-subdivision (c)(5) of this section, the Commission shall either conduct an evidentiary hearing and issue its decision on the appeal within 90 days of the filing of the response under subdivision (c)(5) of this section or deny the request for the evidentiary hearing and issue its decision within 10 days of the filing of the response under subdivision (c)(5) of this section. Further appeals are governed by G.S. 97-86.
- (8) Each award and each Certificate of Accrued Arrearages shall include the following information:
  - a. The names and addresses of the parties.
  - b. The sum of all principal amounts that have accrued and remain unpaid since the date of the award or since the date of the most recent prior Certificate of Accrued Arrearages.
  - c. The total of any interest that has accrued on the award, as of the date of the Certificate of Accrued Arrearages, since the date of the award or since the date of the most recent prior Certificate of Accrued Arrearages.
  - d. Any costs, penalties, or monetary sanctions included in the award.

(d) Any party in interest may file a certified copy of an award described in subsection (b) of this section, or of a Certificate of Accrued Arrearages, in the office of the clerk of superior court of the county in which the defendant has a place of business or has property, or in which an injury occurred, or in Wake County. An award shall be accompanied by the party's affidavit stating that the award has become final and the time for making the first payment under the award has expired.

(e) Promptly after a certified copy of an award or of a Certificate of Accrued Arrearages is filed, the clerk shall docket and index a judgment as provided in Chapter 1 of the General Statutes. The principal amount in the award or in the Certificate of Accrued Arrearages shall bear interest at the judgment rate from the date the judgment is docketed. The judgment may be enforced in the same manner as a judgment docketed under Chapter 1 of the General Statutes.

(f) The filing of an award, or of a Certificate of Accrued Arrearages, for docketing as a judgment under this section shall be treated as a civil action for record-keeping purposes. The amount in which the judgment is docketed shall determine the amount of the costs to be collected at the time of filing and assessed pursuant to G.S. 7A-305.

(g) Nothing in this section shall be construed to limit the Commission's authority to impose any other remedy provided by law. (1929, c. 120, s. 61; 2001-477, s. 1.)

**§ 97-88. Expenses of appeals brought by insurers.**

If the Industrial Commission at a hearing on review or any court before which any proceedings are brought on appeal under this Article, shall find that such hearing or proceedings were brought by the insurer and the Commission or court by its decision orders the insurer to make, or to continue payments of benefits, including compensation for medical expenses, to the injured employee, the Commission or court may further order that the cost to the injured employee of such hearing or proceedings including therein reasonable attorney's fee to be determined by the Commission shall be paid by the insurer as a part of the bill of costs. (1929, c. 120, s. 62; 1931, c. 274, s. 11; 1971, c. 500.)

**§ 97-88.1. Attorney's fees at original hearing.**

If the Industrial Commission shall determine that any hearing has been brought, prosecuted, or defended without reasonable ground, it may assess the whole cost of the proceedings including reasonable fees for defendant's attorney or plaintiff's attorney upon the party who has brought or defended them. (1979, c. 268, s. 1.)

**§ 97-88.2. Penalty for fraud.**

(a) Any person who willfully makes a false statement or representation of a material fact for the purpose of obtaining or denying any benefit or payment, or assisting another to obtain or deny any benefit or payment under this Article, shall be guilty of a Class 1 misdemeanor if the amount at issue is less than one thousand dollars (\$1,000). Violation of this section is a Class H felony if the amount at issue is one thousand dollars (\$1,000) or more. The court may order restitution.

(a1) When a person is convicted under subsection (a) of this section, the Commission may enter such orders as necessary to ensure that the person convicted does not benefit from the unlawful conduct.

(b) The Commission shall:

- (1) Perform investigations regarding all cases of suspected fraud and all violations related to workers' compensation claims, by or against insurers or self-funded employers, and refer possible criminal violations to the appropriate prosecutorial authorities;
- (2) Conduct administrative violation proceedings; and
- (3) Assess and collect civil penalties and restitution.

The Commission may employ sworn law enforcement officers duly appointed and certified through the North Carolina Criminal Justice Education and Training Standards Commission to conduct the investigations mandated by this subsection.

(c) Any person who threatens an employee with criminal prosecution under the provisions of subsection (a) of this section for the purpose of coercing or attempting to coerce the employee into agreeing to compensation or agreeing to forgo compensation under this Article shall be guilty of a Class H felony.

(d) The Commission shall not be liable in a civil action for any action made in good faith under this section, including the identification and referral of a person for investigation and prosecution for an alleged administrative violation or criminal offense. Any person, including, but not limited to, an attorney, an employee, an employer, an

insurer, and an employee of an insurer, who in good faith comes forward with information under this section, shall not be liable in a civil action.

(e) The Commission shall report annually to the General Assembly on the number and disposition of investigations involving claimants, employers, insurance company officials, officials of third-party administrators, insurance agents, attorneys, health care providers, and vocational rehabilitation providers. (1993 (Reg. Sess., 1994), c. 679, s. 7.1; 1995, c. 507, s. 25(a); 1997-353, s. 1; 2005-448, s. 8; 2007-358, s. 1.)

### **§ 97-88.3. Penalty for health care providers.**

(a) In addition to any liability under G.S. 97-88.2, any health care provider who willfully or intentionally undertakes the following acts is subject to an administrative penalty, assessed by the Commission, not to exceed ten thousand dollars (\$10,000):

- (1) Submitting charges for health care that was not furnished;
- (2) Fraudulently administering, providing, and attempting to collect for inappropriate or unnecessary treatment or services; or
- (3) Violating the provisions of Article 28 of Chapter 90 of the General Statutes.

A penalty assessed by the Commission for a violation of subdivision (3) of this subsection is in addition to penalties assessed under G.S. 90-407.

(b) In addition to any liability under G.S. 97-88.2, any health care provider who willfully or intentionally undertakes the following acts is subject to an administrative penalty, assessed by the Commission, not to exceed one thousand dollars (\$1,000):

- (1) Failing or refusing to timely file required reports or records;
- (2) Making unnecessary referrals; and
- (3) Knowingly violating this Article or rules promulgated hereunder, including treatment guidelines, with intention to deceive or to gain improper advantage of a patient, employee, insurer, or the Commission.

(c) A health care provider who knowingly charges or otherwise holds an employee financially responsible for the cost of any services provided for a compensable injury under this Article is guilty of a Class 1 misdemeanor.

(d) Any person, including, but not limited to, an employer, an insurer, and an employee of an insurer, who in good faith comes forward with information under this section, shall not be liable in a civil action.

(e) Information relating to possible violations under this section shall be reported to the Commission which shall refer the same to the appropriate licensing or regulatory board or authority for the health care provider involved.

(f) A hospital that relies in good faith on a written order of a physician in performing health care services shall not be subject to an administrative penalty in violation of this section. (1993 (Reg. Sess., 1994), c. 679, s. 7.2.)

### **§ 97-89. Commission may appoint qualified physician to make necessary examinations; expenses; fees.**

The Commission or any member thereof may, upon the application of either party, or upon its own motion, appoint a disinterested and duly qualified physician or surgeon to make any necessary medical examination of the employee, and to testify in respect thereto. Said physician or surgeon shall be allowed traveling expenses and a reasonable fee to be fixed by the Commission. The fees and expenses of such physician or surgeon shall be paid by the employer. (1929, c. 120, s. 63; 1931, c. 274, s. 12; 1973, c. 520, s. 3.)

**§ 97-90. Legal and medical fees to be approved by Commission; misdemeanor to receive fees unapproved by Commission, or to solicit employment in adjusting claims; agreement for fee or compensation.**

(a) Fees for attorneys and charges of health care providers for medical compensation under this Article shall be subject to the approval of the Commission; but no physician or hospital or other medical facilities shall be entitled to collect fees from an employer or insurance carrier until he has made the reports required by the Commission in connection with the case. Except as provided in G.S. 97-26(g), a request for a specific prior approval to charge shall be submitted to the Commission for each such fee or charge.

(b) Any person (i) who receives any fee, other consideration, or any gratuity on account of services so rendered, unless such consideration or gratuity is approved by the Commission or the court, as provided in subsection (c), or (ii) who makes it a business to solicit employment for a lawyer or for himself in respect of any claim or award for compensation, shall be guilty of a Class 1 misdemeanor.

(c) If an attorney has an agreement for fee or compensation under this Article, he shall file a copy or memorandum thereof with the hearing officer or Commission prior to the conclusion of the hearing. If the agreement is not considered unreasonable, the hearing officer or Commission shall approve it at the time of rendering decision. If the agreement is found to be unreasonable by the hearing officer or Commission, the reasons therefor shall be given and what is considered to be reasonable fee allowed. If within five days after receipt of notice of such fee allowance, the attorney shall file notice of appeal to the full Commission, the full Commission shall hear the matter and determine whether or not the attorney's agreement as to a fee or the fee allowed is unreasonable. If the full Commission is of the opinion that such agreement or fee allowance is unreasonable and so finds, then the attorney may, by filing written notice of appeal within 10 days after receipt of such action by the full Commission, appeal to the senior resident judge of the superior court in the county in which the cause of action arose or in which the claimant resides; and upon such appeal said judge shall consider the matter and determine in his discretion the reasonableness of said agreement or fix the fee and direct an order to the Commission following his determination therein. The Commission shall, within 20 days after receipt of notice of appeal from its action concerning said agreement or allowance, transmit its findings and reasons as to its action concerning such agreement or allowance to the judge of the superior court designated in the notice of appeal. In all other cases where there is no agreement for fee or compensation, the attorney or claimant may, by filing written notice of appeal within five days after receipt of notice of action of the full

Commission with respect to attorneys' fees, appeal to the senior resident judge of the superior court of the district of the county in which the cause arose or in which the claimant resides; and upon such appeal said judge shall consider the matter of such fee and determine in his discretion the attorneys' fees to be allowed in the cause. The Commission shall, within 20 days after notice of appeal has been filed, transmit its findings and reasons as to its action concerning such fee or compensation to the judge of the superior court designated in the notice of appeal; provided that the Commission shall in no event have any jurisdiction over any attorneys' fees in any third-party action. In any case in which an attorney appeals to the superior court on the question of attorneys' fees, the appealing attorney shall notify the Commission and the employee of any and all proceedings before the superior court on the appeal, and either or both may appear and be represented at such proceedings.

The Commission, in determining an allowance of attorneys' fees, shall examine the record to determine the services rendered. The factors which may be considered by the Commission in allowing a reasonable fee include, but are not limited to, the time invested, the amount involved, the results achieved, whether the fee is fixed or contingent, the customary fee for similar services, the experience and skill level of the attorney, and the nature of the attorney's services.

In making the allowance of attorneys' fees, the Commission shall, upon its own motion or that of an interested party, set forth findings sufficient to support the amount approved.

The Commission may deny or reduce an attorney's fees upon proof of solicitation of employment in violation of the Rules of Professional Conduct of the North Carolina State Bar.

(d) Provided, that nothing contained in this section shall prevent the collection of such reasonable fees of physicians and charges for hospitalization as may be recovered in an action, or embraced in settlement of a claim, against a third-party tort-feasor as described in G.S. 97-10.2.

(e) A health care provider shall not pursue a private claim against an employee for all or part of the costs of medical treatment provided to the employee by the provider unless the employee's claim or the treatment is finally adjudicated not to be compensable or the employee fails to request a hearing after denial of liability by the employer. Notwithstanding subsequent denial of liability or adjudication that the condition treated was not compensable, the insurer shall be liable as provided in G.S. 97-26 to providers whose services have been authorized by the insurer or employer. The statute of limitations applicable to a provider's claim for payment shall be tolled during the period the compensability of a claim or liability for particular treatment remains an issue in a compensation case. (1929, c. 120, s. 64; 1955, c. 1026, s. 4; 1959, cc. 1268, 1307; 1973, c. 520, s. 4; 1981, c. 521, s. 4; 1991, c. 703, s. 6; 1993, c. 539, s. 680; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 679, s. 9.1.)

**§ 97-90.1. Insurers that provide employee's health benefit plans, disability income plans, or any other health insurance plans as real parties in interest; reimbursement.**

An insurer that covers an employee under a health benefit plan as defined in G.S. 58-3-167, a disability income plan, or any other health insurance plan is not a real party in interest and shall not intervene or participate in any proceeding or settlement agreement under this Article to determine whether a claim is compensable under this Article or to seek reimbursement for medical payments under its plan. The insurer that covers an employee under a health benefit plan as defined in G.S. 58-3-167 or any other health insurance plan may seek reimbursement from the employee, employer, or carrier that is liable or responsible for the specific medical charge according to a final adjudication of the claim under this Article or an order of the Commission approving a settlement agreement entered into under this Article for health plan payments for that specific medical charge. Upon the admission or adjudication that a claim is compensable, the party or parties liable shall notify in writing any known health benefit plan covering the employee of the admission or adjudication. (2001-216, s. 1; 2001-487, s. 102(b).)

**§ 97-91. Commission to determine all questions.**

All questions arising under this Article if not settled by agreements of the parties interested therein, with the approval of the Commission, shall be determined by the Commission, except as otherwise herein provided. (1929, c. 120, s. 65.)

**§ 97-92. Employer's record and report of accidents; records of Commission not open to public; supplementary report upon termination of disability; penalty for refusal to make report; when insurance carrier liable.**

(a) Every employer shall hereafter keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment on blanks approved by the Commission. Within five days after the occurrence and knowledge thereof as provided in G.S. 97-22 of an injury to an employee, causing his absence from work for more than one day or charges for medical compensation exceeding the amount set by the Commission, a report thereof shall be made in writing and mailed or transmitted to the Commission in the form approved by the Commission for this purpose.

(b) The records of the Commission that are not awards under G.S. 97-84 and that are not reviews of awards under G.S. 97-85, insofar as they refer to accidents, injuries, and settlements are not public records under G.S. 132-1 and shall not be open to the public, but only to the parties satisfying the Commission of their interest in such records and the right to inspect them, and to State and federal agencies pursuant to G.S. 97-81.

(c) Upon the termination of the disability of the injured employee, or if the disability extends beyond a period of 60 days, then, also, at the expiration of such period the employer shall make a supplementary report to the Commission on blanks to be procured from the Commission for the purpose.

(d) The said report shall contain the name, nature, and location of the business of the employer and name, age, sex, and wages and occupation of the injured employee, and

shall state the date and hour of the accident causing injury, the nature and cause of the injury, and such other information as may be required by the Commission.

(e) Any employer who refuses or neglects to make the report required by this section shall be liable for a penalty of not less than five dollars (\$5.00) and not more than twenty-five dollars (\$25.00) for each refusal or neglect. The fine herein provided may be assessed by the Commission in an open hearing, with the right of review and appeal as in other cases. In the event the employer has transmitted the report to the insurance carrier for transmission by such insurance carrier to the Industrial Commission, the insurance carrier willfully neglecting or failing to transmit the report shall be liable for the said penalty.

(f) Any bill, report, application, and document of every nature and kind, which is required or permitted by Commission rules to be transmitted to the Commission by electronic media or is recorded among the Commission records on computer disk, optical disk, microfilm, or similar media and which is produced or reproduced in written form in the normal course of business or is certified as a true and accurate copy of the data recorded at the Commission in the normal course of its business shall be treated as a signed original in all uses before the Commission and as a duplicate within the meaning of Rule 1003 of the North Carolina Rules of Evidence. (1929, c. 120, s. 66; 1945, c. 766; 1991, c. 703, s. 9; 1991 (Reg. Sess., 1992), c. 894, s. 3; 1993 (Reg. Sess., 1994), c. 679, s. 10.8; 2001-216, s. 3; 2001-487, s. 102(b).)

**§ 97-93. Employers required to carry insurance or prove financial ability to pay for benefits; employers required to post notice; self-insured employers regulated by Commissioner of Insurance.**

(a) Every employer subject to the provisions of this Article relative to the payment of compensation shall either:

- (1) Insure and keep insured his liability under this Article in any authorized corporation, association, organization, or in any mutual insurance association formed by a group of employers so authorized; or
- (2) Repealed by Session Laws 1997-362, s. 5.
- (3) Obtain a license from the Commissioner of Insurance under Article 5 of this Chapter or under Article 47 of Chapter 58 of the General Statutes.

(b) through (d) Repealed by Session Laws 1997-362, s. 5.

(e) Every employer who is in compliance with the provisions of subsection (a) of this section shall post in a conspicuous place in places of employment a notice stating that employment by this employer is subject to the North Carolina Workers' Compensation Act and stating whether the employer has a policy of insurance against liability or qualifies as a self-insured employer. In the event the employer allows its insurance to lapse or ceases to qualify as a self-insured employer, the employer shall, within five working days of this occurrence, remove any notices indicating otherwise. (1929, c. 120, s. 67; 1943, c. 543; 1973, c. 1291, s. 12; 1979, c. 345; 1983, c. 728; 1985, c. 119, s. 1; 1993, c. 120, ss. 1, 2; 1993 (Reg. Sess., 1994), c. 679, s. 8.2; 1995, c. 193, s. 64; c. 471, s. 1; 1997-362, s. 5.)

**§ 97-94. Employers required to give proof that they have complied with preceding section; penalty for not keeping liability insured; review; liability for compensation; criminal penalties for failure to secure payment of compensation.**

(a) Every employer subject to the compensation provisions of this Article shall file with the Commission, in form prescribed by it, as often as the Commission determines to be necessary, evidence of its compliance with the provisions of G.S. 97-93 and all other provisions relating thereto.

(b) Any employer required to secure the payment of compensation under this Article who refuses or neglects to secure such compensation shall be punished by a penalty of one dollar (\$1.00) for each employee, but not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00) for each day of such refusal or neglect, and until the same ceases; and the employer shall be liable during continuance of such refusal or neglect to an employee either for compensation under this Article or at law at the election of the injured employee.

The penalty herein provided may be assessed by the Industrial Commission administratively, with the right to a hearing if requested within 30 days after notice of the assessment of the penalty and the right of review and appeal as in other cases. Enforcement of the penalty shall be made by the Office of the Attorney General. The clear proceeds of penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(c) Any employer required to secure the payment of compensation under this Article who willfully fails to secure such compensation shall be guilty of a Class H felony. Any employer required to secure the payment of compensation under this Article who neglects to secure the payment of compensation shall be guilty of a Class 1 misdemeanor.

(d) Any person who, with the ability and authority to bring an employer in compliance with G.S. 97-93, willfully fails to bring the employer in compliance, shall be guilty of a Class H felony. Any person who, with the ability and authority to bring an employer in compliance with G.S. 97-93, neglects to bring the employer in compliance, shall be guilty of a Class 1 misdemeanor. Any person who violates this subsection may be assessed a civil penalty by the Commission in an amount up to one hundred percent (100%) of the amount of any compensation due the employer's employees injured during the time the employer failed to comply with G.S. 97-93.

(e) Notwithstanding the provisions of G.S. 97-101, the Commission may suspend collection or remit all or part of any civil penalty imposed under this section on condition that the employer or person pays the compensation due and complies with G.S. 97-93. (1929, c. 120, s. 68; 1945, c. 766; 1963, c. 499; 1973, c. 1291, s. 13; 1985, c. 119, s. 4; 1985 (Reg. Sess., 1986), c. 1027, s. 54; 1987, c. 729, s. 17; 1993, c. 539, s. 681; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 679, s. 8.1; 1997-353, s. 2; 1998-215, s. 115.)

**§ 97-95. Actions against employers failing to effect insurance or qualify as self-insurer.**

As to every employer subject to the provisions of this Article who shall fail or neglect to keep in effect a policy of insurance against compensation liability arising hereunder with some insurance carrier as provided in G.S. 97-93, or who shall fail to qualify as a self-insurer as provided in the Article, in addition to other penalties provided by this Article, such employer shall be liable in a civil action which may be instituted by the claimant for all such compensation as may be awarded by the Industrial Commission in a proceeding properly instituted before said Commission, and such action may be brought by the claimant in the county of his residence or in any county in which the defendant has any property in this State; and in said civil action, ancillary remedies provided by law in civil actions of attachment, receivership, and other appropriate ancillary remedies shall be available to plaintiff therein. Said action may be instituted before the award shall be made by the Industrial Commission in such case for the purpose of preventing the defendant from disposing of or removing from the State of North Carolina for the purpose of defeating the payment of compensation any property which the defendant may own in this State. In said action, after being instituted, the court may, after proper amendment to the pleadings therein, permit the recovery of a judgment against the defendant for the amount of compensation duly awarded by the North Carolina Industrial Commission and subject any property seized in said action for payment of the judgment so awarded. The institution of said action shall in no wise interfere with the jurisdiction of said Industrial Commission in hearing and determining the claim for compensation in full accord with the provisions of this Article. Nothing in this section shall be construed to limit or abridge the rights of an employee as provided in subsection (b) of G.S. 97-94. (1941, c. 352.)

**§ 97-96: Repealed by Session Laws 1997-362, s. 7.**

**§ 97-97. Insurance policies must contain clause that notice to employer is notice to insurer, etc.**

All policies insuring the payment of compensation under this Article must contain a clause to the effect that, as between the employer and the insurer the notice to or acknowledgment of the occurrence of the injury on the part of the insured employer shall be deemed notice or knowledge as the case may be, on the part of the insurer; that jurisdiction of the insured for the purposes of this Article shall be jurisdiction of the insurer, that the insurer shall in all things be bound by and subject to the awards, judgments, or decrees rendered against such insured employer, and that insolvency or bankruptcy of the employer and/or discharge therein shall not relieve the insurer from the payment of compensation for disability or death sustained by an employee during the life of such policy or contract. (1929, c. 120, s. 70.)

**§ 97-98. Policy must contain agreement promptly to pay benefits; continuance of obligation of insurer in event of default.**

No policy of insurance against liability arising under this Article shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to same all benefits conferred by this Article, and all installments of the compensation that may be awarded or agreed upon, and that the obligation shall not be affected by any default of the insured after the injury or by any default in giving notice required by such policy or otherwise. Such agreement shall be construed to be a direct promise by the insurer to the person entitled to compensation enforceable in his name. (1929, c. 120, s. 71.)

**§ 97-99. Law written into each insurance policy; form of policy to be approved by Commissioner of Insurance; single catastrophe hazards.**

(a) Every policy for the insurance of the compensation in this Article, or against liability therefor, shall be deemed to be made subject to the provisions of this Article. No corporation, association or organization shall enter into any such policy of insurance unless its form has been approved by the Commissioner of Insurance.

(b) This Article shall not apply to policies of insurance against loss from explosion of boilers or flywheels or other similar single catastrophe hazards: Provided, that nothing in this Article relieves an employer from liability for injury or death of an employee as a result of such an explosion or catastrophe. (1929, c. 120, s. 72; 1943, c. 170; 1945, c. 381, s. 1; 1959, c. 863, s. 5; 1967, c. 1218; 1993, c. 504, s. 31; 2001-241, s. 1.)

**§ 97-100. Rates for insurance; carrier to make reports for determination of solvency; tax upon premium; wrongful or fraudulent representation of carrier punishable as misdemeanor; notices.**

(a) The rates charged by all carriers of insurance, including the parties to any mutual insurance association writing insurance against the liability for compensation under this Article, shall be fair, reasonable, and adequate.

(b) Each insurance carrier shall report to the Commissioner of Insurance, in accordance with rules adopted by the Commissioner of Insurance, for the purpose of determining the solvency of the carrier and the adequacy of its rates; for this purpose the Commissioner of Insurance may inspect the books and records of any insurance carrier, and examine its agents, officers, and directors under oath.

(c) Every insurer under this Article, every employer carrying its own risk under G.S. 97-93, and every group of employers that has pooled the employers' liabilities under G.S. 97-93 is subject to the premiums tax levied in Article 8B of Chapter 105 of the General Statutes.

(d) through (f). Repealed by Session Laws 1995, c. 360, s. 1.

(g) Any person who acts or assumes to act as agent for any insurance carrier whose authority to do business in this State has been suspended, while the suspension remains in force, who neglects or refuses to comply with any of the provisions of this section, or who willfully makes a false or fraudulent statement of the business or condition of any insurance carrier, is guilty of a Class 2 misdemeanor.

(h) Whenever by this Article, or the terms of any policy contract, any officer is required to give any notice to an insurance carrier, the notice may be given by delivery, or by mailing by registered letter properly addressed and stamped, to the principal office or general agent of the insurance carrier within this State, or to its home office, or to the secretary, general agent, or chief officer of the carrier in the United States, or to the Commissioner of Insurance.

(i) through (k). Repealed by Session Laws 1995, c. 360, s. 1. (1929, c. 120, s. 73; 1931, c. 274, s. 13; 1947, c. 574; 1961, c. 833, s. 13; 1977, c. 828, s. 7; 1985, c. 119, s. 2; 1985 (Reg. Sess., 1986), c. 928, s. 13; 1989, c. 647, s. 1; 1993, c. 539, s. 682; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 360, s. 1(h).)

### **§ 97-101. Collection of fines and penalties.**

The Industrial Commission shall have the power by civil action brought in its own name to enforce the collection of any fines or penalties provided by this Article, and fines or penalties collected by the Commission shall become a part of the maintenance fund referred to in subsection (j) of G.S. 97-100. (1931, c. 274, s. 14.)

#### **§ 97-101.1. Commission may issue writs of habeas corpus.**

The Industrial Commission may issue a writ of habeas corpus ad testificandum under Article 8 of Chapter 17 of the General Statutes although it is not a court of record. (1998-217, s. 31.1(a).)

## Article 2.

### Compensation Rating and Inspection Bureau.

**§§ 97-102 through 97-104.6: Repealed by Session Laws 1977, c. 828, s. 8, as amended by Session Laws 1979, c. 824, s. 8.**

## Article 3.

### Security Funds.

**§§ 97-105 through 97-122: Repealed by Session Laws 1991 (Regular Session, 1992), c. 802, s. 12, as amended by Session Laws 1991 (Regular Session, 1992), c. 1030, s. 51.3.**

**§§ 97-123 through 97-129. Reserved for future codification purposes.**

## Article 4.

### North Carolina Self-Insurance Security Association.

### **§ 97-130. Definitions.**

As used in this Article:

- (1) "Association" means the North Carolina Self-Insurance Security Association established by G.S. 97-131.

- (1a) "Association Aggregate Security System" means the security system established by the Association under G.S. 97-133 whereby individual self-insurers collectively secure their aggregate self-insured workers' compensation liabilities through the North Carolina Self-Insurance Security Association.
- (2) "Board" means the Board of Directors of the Association established by G.S. 97-132.
- (3) "Commissioner" means the North Carolina Commissioner of Insurance.
- (4) "Covered claim" means an unpaid claim against an insolvent individual self-insurer or group self-insurer that relates to an injury that occurs while the individual self-insurer or group self-insurer is a member of the Association and that is compensable under this Chapter.
- (5) "Fund" means the North Carolina Self-Insurance Security Fund established by G.S. 97-133.
- (5a) "Group" or "Group self-insurer" means a group self-insurer licensed by the Commissioner under Part 1, Article 47 of Chapter 58 of the General Statutes.
- (5b) "Individual self-insurer" means an individual employer licensed by the Commissioner under Article 5 of this Chapter.
- (6) "Member self-insurer" or "member" means an individual self-insurer or group self-insurer that is required to be a member of the Association under this Article or Part 1, Article 47 of Chapter 58 of the General Statutes.
- (7) "Plan" means the Plan of Operation authorized by G.S. 97-134.
- (8) Repealed by Session Laws 2005-400, s. 1.2, effective January 1, 2006.
- (9) "Servicing facility" means those persons delegated by the Board and approved by the Commissioner to settle or compromise claims and to expend Fund assets to pay claims. (1985 (Reg. Sess., 1986), c. 1013, s. 1; 1987, c. 528, s. 1; 1997-362, s. 8; 2005-400, s. 1.2.)

**§ 97-131. Creation.**

(a) There is created a nonprofit unincorporated legal entity to be known as the North Carolina Self-Insurance Security Association. The Association is to provide mechanisms for the payment of covered claims against member self-insurers, to avoid excessive delay in payment of covered claims, to avoid financial loss to claimants because of the insolvency of a member self-insurer, to assist the Commissioner in the detection of self-insurer insolvencies, to fund the Association Aggregate Security System, and to capitalize the Fund to ensure the availability of financial resources to pay covered claims and to fund the activities of the Association.

(b) All individual self-insurers and group self-insurers shall be and remain members of the Association as a condition of being licensed to self-insure in this State. The Association shall perform its functions under a Plan of Operation established or

amended, or both, by the Board and approved by the Commissioner, and shall exercise its powers through the Board.

- (1) An individual self-insurer or a group self-insurer shall be deemed to be a member of the Association for purposes of another member's insolvency, as defined in G.S. 97-135, when:
  - a. The individual self-insurer or group self-insurer is a member of the Association when an insolvency occurs, or
  - b. The individual self-insurer or group self-insurer has been a member of the Association at some point in time during the 12-month period immediately preceding the insolvency in question.
- (2) An individual self-insurer or a group self-insurer shall be deemed to be a member of the Association for purposes of its own insolvency if it is a member when the compensable injury occurs.
- (3) In determining the membership of the Association for the purposes of subdivisions (1) and (2) of this subsection for any date after the effective date of this Article, no individual self-insurer or group self-insurer may be deemed to be a member of the Association on any date after the effective date of this Article, unless that employer is on that date licensed as an individual self-insurer by the Commissioner under Article 5 of this Chapter or a group of employers is at that time licensed as a group self-insurer by the Commissioner under Article 47 of Chapter 58 of the General Statutes. (1985 (Reg. Sess., 1986), c. 1013, s. 1; 1987, c. 528, s. 2; 1997-362, s. 9; 2005-400, s. 2.)

### **§ 97-132. Board of directors.**

The Board shall consist of not less than nine directors serving terms as established in the Plan. The directors shall be selected by the members of the Association, subject to the approval of the Commissioner, and shall serve for three-year terms and until a successor is elected and qualified. There is no limitation on the number of terms a director may serve. In approving selections to the Board, the Commissioner shall consider, among other things, whether individual self-insurers and group self-insurers are fairly represented. Directors may be reimbursed from the assets of the Association for expenses incurred by them as directors. (1985 (Reg. Sess., 1986), c. 1013, s. 1; 1987, c. 528, s. 3; 2005-400, s. 3.)

### **§ 97-133. Powers and duties of the Association.**

- (a) The Association shall:
  - (1) Repealed by Session Laws 1999-219, s. 7.2, effective June 25, 1999.
  - (1a) Administer a fund, to be known as the North Carolina Self-Insurance Security Fund, which shall receive the assets of the North Carolina Self-Insurance Guaranty Fund previously established under subdivision (2) of this subsection, the assessments required by subdivisions (2a) and

(3a) of this subsection and any other sums received by the Association. In its discretion, the Board may determine that the assets of the Fund should be segregated or that a separate accounting shall be made in order to identify that portion of the Fund which represents assessments paid by individual self-insurers and that portion of the Fund which represents assessments paid by group self-insurers. If the Board segregates the Fund in this manner, the Association shall thereafter pay covered claims against individual member self-insurers from that portion of the Fund that represents assessments against individual self-insurers and shall thereafter pay covered claims against group member self-insurers from that portion of the Fund that represents assessments against group self-insurers. The costs of administering the Association shall be borne by the Fund. The Association is authorized to secure insurance, primary excess insurance, reinsurance, bonds, other insurance, financial guarantees and related financial instruments to effectuate the purposes of the Association. The Board will invest the Fund assets pursuant to an investment policy adopted by the Board and reviewed and approved annually by the Department of the State Treasurer. The earnings from investment of Fund assets shall be placed in or credited to the Fund.

(2) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.

(2a) Establish, operate, and maintain the Association Aggregate Security System as defined in G.S. 97-130 and G.S. 97-165 as follows:

a. The Association shall annually prepare and submit to the Commissioner a written plan to provide an Association Aggregate Security System through a combination of cash on deposit in the Fund, securities, surety bonds, irrevocable letters of credit, insurance or other financial instruments or guarantees owned or entered into by the Association and acceptable to the Commissioner. The written plan shall include, but not be limited to, (i) a description of the institutions that will issue or guarantee the securities, surety bonds, irrevocable letters of credit, insurance or other financial instruments or guarantees, including, but not limited to, the credit rating, financial strength, and AM best rating, if applicable to the institutions (ii) applicable cash flow information and financial assumptions (iii) a description of the methodology to be used by the Association to assess and collect the Association Aggregate Security System assessments to be made pursuant to subdivision (3a) of this subsection and (iv) a proposed timetable for the release of existing individual company deposits posted pursuant to G.S. 97-185(c), provided, however, that no individual company deposits posted pursuant to G.S. 97-185(c) shall be released without the written consent of

the Commissioner. The noncash elements of the composite security may be one-year or multiple-year instruments.

- b. Within 90 days following the submission of the initial plan under sub-subdivision a. of this subdivision, the Commissioner shall either approve or disapprove the initial plan and shall notify the Association in writing. If the Commissioner does not approve or disapprove the initial plan within 90 days following submission, then the initial plan shall be deemed to be approved by the Commissioner. All subsequent plans shall be either approved or disapproved within 60 days following submission.
  - c. The Commissioner shall also determine the total undiscounted claims liability of each individual self-insurer that will participate in the Association Aggregate Security System as well as the aggregate total undiscounted outstanding claims liabilities of all the individual self-insurers that are to participate in the Association Aggregate Security System and shall notify the Association of this determination.
  - d. Upon approval by the Commissioner of the Association's plan for the Association Aggregate Security System, the Association shall assess the individual self-insurers that participate in the Association Aggregate Security System pursuant to subdivision (3a) of this subsection.
  - e. If the Commissioner disapproves the plan for any year, every self-insurer shall deposit with the Commissioner, or continue to deposit, the amount required by G.S. 97-185(b3) in the manner prescribed by G.S. 97-185(c).
  - f. Group self-insurers shall not participate in the Association Aggregate Security System.
- (3) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.
- (3a) Assess members of the Association as follows:
- a. Association Aggregate Security System assessments. – The Association shall assess each individual self-insurer participating in the Association Aggregate Security System a security system assessment. The amount of the security system assessment charged to each individual self-insurer participating in the Association Aggregate Security System shall be based on the Association's reasonable consideration of all of the following factors:
    - 1. The total amount of assessments necessary to provide aggregate security for all participating individual self-insurers.
    - 2. The individual self-insurer's total workers' compensation liabilities under the Act.

3. The financial strength and creditworthiness of the participating individual self-insurer.
  4. Any other relevant factors.
- b. Special assessment. – In the event that there are covered claims against an insolvent member or members and the assets of the Fund are not sufficient to pay the obligations of the Association, then the Association may collect a special assessment from the members in an amount sufficient to pay the aggregate value of such covered claims. Each member's special assessment shall be determined by the Board and shall be based on the proportion of the member's total obligations under the Act to the aggregate total of all members' obligations under the Act.
  - c. Initial assessments. – An individual self-insurer that becomes a member and does not initially participate in the Association Aggregate Security System shall pay an initial assessment to the Association in an amount determined by the Board. A group self-insurer, upon receiving its initial license from the Commissioner, shall pay an initial assessment to the Association in an amount determined by the Board.
  - d. Each member shall be notified of assessments no later than 30 days before the assessment is due.
  - e. Delinquent assessments, except as otherwise provided, shall bear interest at a rate to be established by the Board.
- (4) Be obligated to pay covered claims.
  - (5) After paying any covered claim, be subrogated to the rights of the injured employee and dependents and be entitled to enforce liability against the self-insurer or any third party by any appropriate action brought in its own name or in the name of the injured employee and dependents.
  - (6) Expend Fund assets in amounts necessary to pay all of the following:
    - a. The obligations of the Association under this Article subsequent to an insolvency.
    - b. The expenses of handling covered claims subsequent to an insolvency.
    - c. The cost of examinations under G.S. 97-137.
    - d. The costs of implementing and operating the Association Aggregate Security System.
    - e. All other expenses authorized by this Article.
  - (7) Investigate claims brought against the Association and adjust, compromise, settle, and pay covered claims to the extent of the Association's obligation; and deny all other claims. The Association may review settlements to which the insolvent member was a party to

determine the extent to which such settlements may be properly contested.

- (8) Notify such persons as the Commissioner directs under G.S. 97-136.
  - (9) Handle claims through its directors, its employees, or through one or more members or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the Commissioner, but designation of a member as a servicing facility may be declined by such member.
  - (10) Reimburse each servicing facility for obligations of the Association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the Association.
  - (11) Pay any other expenses of the Association authorized by this section.
  - (12) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.
- (b) The Association may:
- (1) Employ or retain such persons, including, but not limited to, adjustors, brokers, accountants, attorneys, financial advisors, investment bankers, placement agents, and consultants, as the Board may determine are necessary to handle claims, perform other duties of, provide services to, and consult with the Association.
  - (2) Borrow funds necessary to effect the purposes of this Article in accord with the Plan, including entering into standby lines of credit.
  - (3) Sue or be sued.
  - (4) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this section.
  - (5) Perform such other acts as are necessary or proper to effectuate the purpose of this section.
  - (6) Reimburse the Department of Insurance up to twenty thousand dollars (\$20,000) for consultants retained by the Department to review the initial plan submitted pursuant to G.S. 97-133(a)(2a).
- (c) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.
- (c1) The Association shall provide in its Plan that the functions of administration and adjusting claims shall not be performed by the same entity that provides legal representation to the Association for claims.
- (d) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006. (1985 (Reg. Sess., 1986), c. 928, s. 1(a); 1985 (Reg. Sess., 1986), c. 1013, s. 1; 1987, c. 528, ss. 4-10; 1989, c. 485, s. 27; 1995, c. 533, s. 1; 1997-475, ss. 2.3, 2.4; 1999-219, s. 7.2; 2003-115, ss. 1, 2; 2005-400, s. 4.)

#### **§ 97-134. Plan of Operation.**

The Plan is as follows:

- (1) The Association shall submit to the Commissioner a Plan and any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the Association. The Plan and any

amendments become effective upon approval in writing by the Commissioner. If the Association at any time fails to submit a suitable Plan or suitable amendment to the Plan the Commissioner shall, after notice and hearing, adopt such reasonable rules as are necessary or advisable to effectuate this Article. The rules shall continue in force until modified by the Commissioner or superseded by a Plan submitted by the Association and approved by the Commissioner.

- (2) All member self-insurers shall comply with the Plan.
- (3) The Plan shall:
  - a. Establish the procedures whereby all the powers and duties of the Association under G.S. 97-133 will be performed.
  - b. Establish procedures for investing and managing Fund assets.
  - c. Adopt a reasonable mechanism and procedure to achieve equity in assessing members under G.S. 97-133.
  - d. Establish the amount and method of reimbursing members of the Board under G.S. 97-132.
  - e. Establish procedures by which claims may be filed with the Association and establish acceptable forms of proof of covered claims.
  - f. Establish regular places and times for meetings of the Board.
  - g. Establish procedures for records to be kept of all financial transactions of the Association, its agents, and the Board.
  - h. Provide that any member self-insurer aggrieved by any final action or decision of the Association may appeal to the Commissioner within 30 days after the action or decision.
  - i. Establish the procedures whereby selections for the Board shall be submitted to the Commissioner.
  - j. Contain additional provisions necessary or proper for the execution of the powers and duties of the Association. (1985 (Reg. Sess., 1986), c. 1013, s. 1; 1987, c. 528, s. 11; 2005-400, s. 5.)

### **§ 97-135. Insolvency.**

A member self-insurer shall be insolvent for the purposes of this Article under any of the following circumstances:

- (1) Determination of insolvency by a court of competent jurisdiction.
- (2) Institution of bankruptcy proceedings by or regarding the member self-insurer.
- (3) The Board determines that the member self-insurer's total liabilities exceed its total assets or the member self-insurer is unable or ceases to pay its debts as they fall due or in the ordinary course of business.
- (4) A member self-insurer is deemed to be insolvent, bankrupt, or in default as defined by the terms of any security instrument created pursuant to

the Association Aggregate Security System. (1985 (Reg. Sess., 1986), c. 1013, s. 1; 1987, c. 528, s. 12; 2005-400, s. 6.1.)

**§ 97-136. Powers and duties of the Commissioner.**

- (a) The Commissioner shall:
  - (1) Notify the Association of the existence of an insolvent member self-insurer not later than 30 days after he receives notice of an insolvency pursuant to the standards set forth in G.S. 97-135.
  - (2) Approve or disapprove the plan for an Association Aggregate Security System as required under G.S. 97-133(a)(2a)b. and notify the Association of the information required under G.S. 97-133(a)(2a)c.
- (b) The Commissioner may:
  - (1) Require that the Association notify the insureds of the insolvent member self-insurer and any other interested parties of the insolvency and of their rights under this Article. The notifications shall be by mail at their last known addresses, where available; but if required information for notification is not available, notice by publication in a newspaper of general circulation in this State shall be sufficient; and
  - (2) Revoke the designation of any servicing facility if the Commissioner finds claims are being handled unsatisfactorily. (1985 (Reg. Sess., 1986), c. 1013, s. 1; 2005-400, s. 6.2.)

**§ 97-137. Examination of the Association.**

The Association shall be subject to examination and regulation by the Commissioner. The Board shall submit, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the Commissioner. (1985 (Reg. Sess., 1986), c. 1013, s. 1.)

**§ 97-138. Tax exemption.**

The Association shall be exempt from payment of all fees and all taxes levied by this State or any of its political subdivisions, except taxes levied on real or personal property. (1985 (Reg. Sess., 1986), c. 928, s. 1(b).)

**§ 97-139. Immunity.**

There shall be no liability on the part of and no cause of action of any nature may arise against any member self-insurer, the Association, or its agents or employees, the Board or its individual members, or the Commissioner or his representatives for any acts or omissions taken by them in the performance of their powers and duties under this Article. The immunity established by this section shall not extend to willful neglect or malfeasance that would otherwise be actionable. (1985 (Reg. Sess., 1986), c. 1013, s. 1.)

**§ 97-140. Nonduplication of recovery.**

Any person having a covered claim that may be recovered under more than one insurance or self-insurance guaranty or security association or its equivalent shall seek recovery first from the association of the place or residence of the claimant. Any recovery under this Article shall be reduced by the amount of recovery from any other insurance guaranty or security association or its equivalent. (1985 (Reg. Sess., 1986), c. 1013, s. 1; 2005-400, s. 7.)

**§ 97-141. Stay of proceedings.**

All claims or proceedings under this Chapter to which the insolvent member self-insurer is a party either before the Industrial Commission or a court in this State and the running of all time periods against either the insolvent member self-insurer or the Association under this Chapter shall be stayed for 60 days from the later of the date of notice to the Association of the insolvency or the date the Association is notified of a claim or proceeding under this Chapter in order to permit the Association to investigate, prosecute, or defend properly any petition, claim, or appeal under this Chapter, provided that the payment of weekly compensation for incapacity is made whenever time periods or proceedings affecting the payment of weekly compensation are stayed. (1985 (Reg. Sess., 1986), c. 1013, s. 1; 2003-115, s. 6.)

**§ 97-142. Disposition of assets upon dissolution.**

In the event of dissolution of the Association, all assets remaining after provision for satisfaction of all outstanding claims shall be distributed to the State Treasurer for establishment of a reserve to satisfy potential claims against the Association and, all such claims being satisfied, for inclusion in the general fund of the State. (1985 (Reg. Sess., 1986), c. 1013, s. 1.)

**§ 97-143. Use of deposits made by insolvent member self-insurers.**

After the Commissioner has notified the Association, under G.S. 97-136(a), that a member is insolvent, the Commissioner shall assign and deliver to the Association, and the Association is authorized to expend any deposit made by the insolvent member under G.S. 58-47-90 or G.S. 97-185, to the extent the deposit is needed by the Association to pay covered claims against the insolvent member as required by this Article, and to the extent the deposit is needed to pay expenses of the Association relating to covered claims against the insolvent member. For insolvent individual member self-insurers that participate in the Association Aggregate Security System, the Association is authorized to pursue recovery under every instrument, contract, and form of security comprising the composite security. The Association shall account to the Commissioner and the insolvent member or its successor for all deposits received from the Commissioner under this section. (1991, c. 644, s. 25; 1997-362, s. 6; 2005-400, s. 8.)

**§§ 97-144 through 97-164. Reserved for future codification purposes.**

Article 5.

## Individual Employers.

### § 97-165. Definitions.

As used in this Article:

- (1) "Act" means the Workers' Compensation Act established in Article 1 of this Chapter.
- (1a) "Affiliate of" or "person affiliated with" a specific person means a person that indirectly through one or more intermediaries or directly controls, is controlled by, or is under common control with the person specified.
- (1b) "Association Aggregate Security System" means the security system established pursuant to G.S. 97-133 whereby individual self-insurers collectively secure their aggregate self-insured workers' compensation liabilities under the Act through the North Carolina Self-Insurance Security Association.
- (2) "Certified audit" means an audit on which a certified public accountant expresses his or her professional opinion that the accompanying statements fairly present the financial position of the self-insurer or the guarantor, in conformity with accounting principles generally accepted in the United States.
- (3) "Certified public accountant" or "CPA" means a CPA who is in good standing with the American Institute of Certified Public Accountants and in all states in which the CPA is licensed to practice. A CPA shall be recognized as independent as long as the CPA conforms to the standards of the profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the North Carolina State Board of Certified Public Accountant Examiners, or similar code. The Commissioner may hold a hearing to determine whether a CPA is independent and, considering the evidence presented, may rule that the CPA is not independent for purposes of expressing an opinion on the GAAP financial statement and require the self-insurer or the guarantor to replace the CPA with another whose relationship with the self-insurer or the guarantor is independent within the meaning of this definition.
- (4) "Commissioner" means the Commissioner of Insurance.
- (4a) "Control", "controlling", "controlled by", and "under common control with" mean the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person through ownership of or through proxies for voting of greater than fifty percent (50%) of the voting securities, or in the case of a not-for-profit entity, the power to direct or cause the direction of the management and policies of the entity.

- (5) "Corporate surety" means an insurance company authorized by the Commissioner to write surety business in this State.
- (6) "GAAP financial statement" means a financial statement as defined by accounting principles generally accepted in the United States.
- (6a) "Guarantor" means a person within the same holding company system who controls the applicant, whose financial statement is used by the applicant to become a self-insurer under the Act, and who has guaranteed the payment of the self-insurer's liability under the Act.
- (7) "Hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a self-insurer or guarantor is insolvent or, although not yet financially impaired or insolvent, is unlikely to be able to meet its obligations with respect to known claims and reasonably anticipated claims or to pay other obligations in the normal course of business.
- (7a) "Holding company system" means an entity comprising two or more affiliated persons.
- (8) "Management" means those persons who are authorized to direct or control the operations of a self-insurer.
- (8a) "Person" means an individual, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, or any similar entity or any combination of the foregoing acting in concert.
- (9) "Qualified actuary" means a member in good standing of the Casualty Actuarial Society or a member in good standing of the American Academy of Actuaries, who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries, and is in compliance with G.S. 58-2-171.
- (10) "Self-insurer" means an individual self-insurer as defined by G.S. 97-130(5b).
- (11) "Subsidiary of" a specific person means an affiliate controlled by such person indirectly through one or more intermediaries or an affiliate directly controlled by such person. (1997-362, s. 4; 1999-132, s. 13.5; 2004-199, s. 20(h); 2005-400, s. 9.)

**§ 97-170. License applications; required information.**

(a) No employer shall self-insure its workers' compensation liabilities under the Act unless it is licensed by the Commissioner under this Article. This subsection does not apply to an employer authorized to self-insure its workers' compensation liabilities under the Act prior to December 1, 1997, whose authority to self-insure its workers' compensation liabilities under the Act has not terminated after that date.

(b) An applicant for a license as a self-insurer shall file with the Commissioner the information required by subsection (d) of this section on a form prescribed by the

Commissioner at least 90 days before the proposed licensing date. No application is complete until the Commissioner has received all required information. A copy of the application must also be filed with the North Carolina Self-Insurance Security Association at least 90 days before the proposed licensing date.

(c) Only an applicant whose total fixed assets amount to five hundred thousand dollars (\$500,000) or more may apply for a license. In judging the applicant's financial strength and liquidity relative to its ability to comply with the Act, the Commissioner shall consider all of the following relative to the applicant:

- (1) Organizational structure and management.
- (2) Financial strength.
- (3) Source and reliability of financial information.
- (4) Risks to be retained.
- (5) Workers' compensation loss history.
- (6) Number of employees.
- (7) Claims administration.
- (8) Excess insurance.
- (9) Access to excess insurance.

(d) The license application shall be comprised of the following information:

- (1) Applicant name; organizational structure of the applicant, including any controlling entity, subsidiaries, or affiliates; location of principal office; contact person; organization date; type of operations within this State; management background; and addresses of all plants or offices in this State.
- (2) Certified audited GAAP financial statements prepared by a CPA for the two most recent years. The financial statement presentation shall facilitate application of ratio and trend analysis.
- (3) Evidence of the insurance required by G.S. 97-190.
- (4) Repealed by Session Laws 1999-132, s. 13.7, effective June 4, 1999.
- (5) For applicants with 20 or more full-time employees, a certificate or other evidence of safety inspection, satisfactory to the Commissioner, that certifies that all safety requirements of the Department of Labor have been met.
- (6) Summary of workers' compensation benefits paid for the last three calendar years and the total liability for all open claims within 30 days or some other period acceptable to the Commissioner not to exceed 90 days, before the filing of the application.
- (7) Summary, by risk classification, of annual payroll and number of employees within the State.
- (8) Repealed by Session Laws 2005-400, s. 10, effective January 1, 2006.
- (9) Proof of compliance with the claims administration provisions of Article 47 of Chapter 58 of the General Statutes.
- (10) A letter of approval for membership by the North Carolina Self-Insurance Security Association.

(e) Every applicant shall execute and file with the Commissioner an agreement, as part of the application, in which the applicant agrees to participate in the Association Aggregate Security System, or if excluded from the Association Aggregate Security System, to deposit with the Commissioner pursuant to G.S. 97-185 cash, acceptable securities, an irrevocable letter of credit in a form acceptable to the Commissioner issued by a bank acceptable to the Commissioner, or a surety bond issued by a corporate surety, or a combination thereof, that will guarantee the applicant's compliance with this Article and the Act. (1997-362, s. 4; 1999-132, ss. 13.6, 13.7; 2003-212, s. 25; 2005-400, s. 10.)

**§ 97-175. License.**

(a) After the review of the application and all supporting materials, the Commissioner shall either grant or deny a license. If a license is denied, the Commissioner shall notify the applicant of the denial and inform the applicant of the deficiencies that constitute the basis for denial.

(b) If the deficiencies are resolved within 60 days after the Commissioner's notice of denial, the applicant shall be granted a license. The applicant may be granted additional time to remedy the deficiencies in its application. A request for an extension of time shall be made in writing by the applicant within 30 days after notice of denial by the Commissioner. If the requirements of this Article have not been met, the application shall be withdrawn or denied. (1997-362, s. 4.)

**§ 97-177. License covering applicant and any subsidiary or applicant relying on a guarantor; procedure; requirements.**

(a) The Commissioner may, in the Commissioner's discretion, upon request by an applicant, issue a license to an applicant or to an applicant and one or more of its subsidiaries if all of the following requirements are satisfied:

- (1) The applicant or a guarantor of the applicant executes a guaranty agreement, in a form prescribed by the Commissioner, for the payment of all workers' compensation liabilities covered under the Act. For any applicant or guarantor that is a corporation, there shall be submitted, along with the guaranty agreement, a board of directors' resolution from the respective corporation authorizing the guaranty of the liabilities of the subsidiary company or companies and granting signature authority to each person or officer executing the agreement.
- (2) The applicant or guarantor files a statement with the Commissioner that lists the percentage of ownership of voting securities or proxies representing voting securities owned or held by the applicant or guarantor for each subsidiary, or in the case of a not-for-profit entity, documentation acceptable to the Commissioner evidencing control.
- (3) The applicant and its guarantor or the applicant and its subsidiaries, whichever applies, satisfy the requirements of G.S. 97-170(c).
- (4) All other applicable requirements for licensure under the Act are satisfied.

(b) A license issued by the Commissioner pursuant to this section shall include the name of the applicant, the name of each licensed subsidiary, and the date of issuance for each licensed subsidiary.

(c) If a self-insurer requests to add a subsidiary to its license, the Commissioner shall review the request in accordance with this section. Upon approval, the Commissioner shall issue to the self-insurer a new license that includes the newly licensed subsidiary and the date of license issuance for the newly licensed subsidiary, and the self-insurer shall return the original license to the Commissioner.

(d) A self-insurer shall neither include nor delete a subsidiary from its license without the Commissioner's prior written approval.

(e) If a controlling relationship or guaranty agreement terminates, the self-insurer shall retain all liabilities under the Act that were incurred by the self-insurer during the period of self-insurance and shall account for all such liabilities until discharged, as evidenced by reports filed with the Commissioner. Termination of a guaranty agreement does not affect the guarantor's liability for payment of liabilities arising prior to termination of the agreement. (2005-400, s. 11.)

#### **§ 97-180. Reporting and records.**

(a) Every self-insurer shall submit, within 120 days after the end of its fiscal year, a certified audited GAAP financial statement, prepared by a CPA, for that fiscal year. The financial statement presentation shall facilitate the application of ratio and trend analysis. If the self-insurer was issued a license pursuant to G.S. 97-177, the financial statement required under this subsection shall be that of the guarantor.

(b) Every self-insurer shall submit within 120 days after the end of its fiscal year a report from a qualified actuary setting forth an opinion certifying the loss and loss adjustment expense reserves for workers' compensation obligations in North Carolina. The report shall show liabilities, excess insurance carrier and other qualifying credits, if any, and net retained workers' compensation liabilities.

(c) Every self-insurer shall submit within 120 days after the end of its fiscal year a report in the form of a sworn statement prescribed by the Commissioner, setting forth the total workers' compensation benefits paid in the previous fiscal year, and the total outstanding workers' compensation liabilities for each loss year, recorded at the close of its fiscal year for the net retained liability.

(d) Upon the request of the Commissioner, every self-insurer shall submit a report of its annual payroll information. The report shall summarize payroll, by annual amount paid, and the number of employees, by classification, using the rules, classifications, and rates in the most recently approved Workers' Compensation and Employers' Liability Insurance Manual governing the audits of payrolls and the adjustments of premiums. Every self-insurer shall maintain true and accurate payroll records. These payroll records shall be maintained to allow for verification of the completeness and accuracy of the annual payroll report.

(e) Every self-insurer shall report promptly to the Commissioner changes in the name or address of the self-insurer or guarantor; significant changes in the financial

condition of the self-insurer, guarantor, or any affiliate, including bankruptcy filings; and changes in its organizational structure, including its subsidiaries and affiliates. Any change shall be reported in writing to the Commissioner within 10 days after the effective date of the change. Upon request by the Commissioner, a self-insurer shall provide the Commissioner copies of documents or information deemed necessary to determine whether any change has affected the privilege of the employer to self-insure. (1997-362, s. 4; 1999-132, ss. 13.8, 13.9; 2005-400, s. 12.)

**§ 97-185. Deposits; surety bonds; letters of credit.**

(a) Repealed by Session Laws 2005-400, s. 13, effective January 1, 2006.

(a1) All individual self-insurers as defined in G.S. 97-130(5b) shall participate in the Association Aggregate Security System established under G.S. 97-131 unless excluded by the Board of Directors of the North Carolina Self-Insurance Security Association. The Board of Directors of the North Carolina Self-Insurance Security Association shall exclude all of the following from the Association Aggregate Security System:

- (1) Individual self-insurers whose licenses have previously been revoked by the Commissioner.
- (2) Individual self-insurers with a debt rating as established by Standard & Poor's Rating Service or by Moody's Investor Service, below the minimum Standard & Poor's and Moody's ratings established in the written plan for the Association Aggregate Security System submitted by the Association and approved by the Commissioner under G.S. 97-133(a)(2a).
- (3) Individual self-insurers that have defaulted on the payment of its self-insured workers' compensation liabilities from participation in the Association Aggregate Security System.

The Board of Directors of the North Carolina Self-Insurance Security Association shall notify the Commissioner of the individual self-insurers that are excluded from participating in the Association Aggregate Security System.

(b) Repealed by Session Laws 2003-115, s. 3, effective January 1, 2004.

(b1) Repealed by Session Laws 2005-400, s. 13, effective January 1, 2006.

(b2) An individual self-insurer that is excluded from participation in the Association Aggregate Security System, including individual self-insurers that are granted a license to self-insure after the North Carolina Self-Insurance Security Association annually implements the Association Aggregate Security System, shall deposit with the Commissioner an amount not less than one hundred percent (100%) of the individual self-insurer's total undiscounted outstanding claims liability per the most recent report from a qualified actuary as required by G.S. 97-180(b), but not less than five hundred thousand dollars (\$500,000), or such greater amount as the Commissioner prescribes based on, but not limited to, the financial condition of the individual self-insurer and the risk retained by the individual self-insurer.

(b3) During any period of time that no Association Aggregate Security System is in effect, individual self-insurers with a debt rating of BBB or better from Standard & Poor's Rating Service, a division of McGraw Hill, Inc., or an equivalent rating from another national rating agency shall deposit with the Commissioner an amount not less than twenty-five percent (25%) of the individual self-insurer's total undiscounted outstanding claims liability per the most recent report from a qualified actuary as required by G.S. 97-180(b), but not less than five hundred thousand dollars (\$500,000). An individual self-insurer licensed pursuant to G.S. 97-177 may utilize the debt rating of its guarantor for the purpose of establishing the application of this subsection. The Commissioner shall consider and may, in the Commissioner's discretion, increase or reduce the deposit to a greater or lesser percentage of the individual self-insurer's claims liability based on the financial strength of the individual self-insurer and other financial information submitted by the individual self-insurer. All other individual self-insurers shall deposit with the Commissioner an amount not less than one hundred percent (100%) of the individual self-insurer's total undiscounted outstanding claims liability per the most recent report from a qualified actuary as required by G.S. 97-180(b), but not less than five hundred thousand dollars (\$500,000), or such greater amount as the Commissioner prescribes based on, but not limited to, the financial condition of the individual self-insurer and the risk retained by the individual self-insurer.

(c) Deposits received, changes to existing deposits, or deposits exchanged after the effective date of this section, shall be comprised of one or more of the following:

- (1) Interest-bearing bonds of the United States of America.
- (2) Interest-bearing bonds of the State of North Carolina, or of its cities or counties.
- (3) Certificates of deposit issued by any solvent bank domesticated in the State of North Carolina that have a maturity of one year or greater.
- (4) Surety bonds in a form acceptable to the Commissioner and issued by a corporate surety. A surety bond deposited pursuant to this subsection shall require that the surety reimburse the Commissioner, or his successors, assigns, or transferees, for any costs incurred in the collection of the proceeds of the surety bond, including reasonable attorneys' fees, and any costs incurred in administering the insolvent self-insurer's workers' compensation claims.
- (4a) Irrevocable letters of credit in a form acceptable to the Commissioner issued by a bank acceptable to the Commissioner. An irrevocable letter of credit deposited pursuant to this subsection shall require that the bank reimburse the Commissioner, or his successors, assigns, or transferees for any costs incurred in the collection of the proceeds of the letter of credit, including reasonable attorneys' fees.
- (4b) The reimbursement of attorneys' fees and collections cost provided for in subdivisions (4) and (4a) of this subsection shall be no greater than fifteen percent (15%) of the penal amount of the bond and shall not

come from the proceeds of the bond or the letter of credit but shall be in addition to the proceeds of the bond or the letter of credit.

(5) Any other investments that are approved by the Commissioner.

(d) All bonds or securities that are posted as a security deposit shall be valued annually at market value. If the market value is less than the face value, the Commissioner may require the self-insurer to post additional securities. In making this determination, the Commissioner shall consider the self-insurer's or guarantor's financial condition, the amount by which market value is less than face value, and the likelihood that the securities will be needed to provide benefits.

(e) Securities deposited under this section shall be assigned to the Commissioner, the Commissioner's successors, assigns, or trustees, on a form prescribed by the Commissioner in a manner that renders the securities negotiable by the Commissioner. If a self-insurer or guarantor is deemed by the Commissioner to be in a hazardous financial condition, the Commissioner may sell or collect, or both, such amounts that will yield sufficient funds to meet the self-insurer's obligations under the Act. In the case of a letter of credit, the Commissioner may draw the full amount of a letter of credit if the letter of credit is not renewed within 90 days prior to its expiration or at any time that the bank issuing the letter of credit is no longer acceptable to the Commissioner. Interest accruing on any negotiable security deposited under this Article shall be collected and transmitted to the self-insurer if the self-insurer or guarantor is not in a hazardous financial condition.

(f) No judgment creditor, other than a claimant entitled to benefits under the Act, may levy upon any deposits made under this section.

(g) Pursuant to the provisions of this section and with the approval of the Commissioner, deposits held by the Commissioner may be replaced with other acceptable forms of deposit in amount determined by the Commissioner. Any deposit to be replaced with another form of deposit shall not be released until the approved replacement deposit is received by the Commissioner.

(h) Any self-insurer that ceases to self-insure, whether by voluntary termination or by revocation of license, shall continue to secure and be liable for its obligations under the Act and shall continue to report to the Commissioner pursuant to G.S. 97-180. Upon the request of the Commissioner, a self-insurer that ceases to self-insure shall submit filings, as prescribed in G.S. 97-180, to determine whether the deposit is sufficient to satisfy those workers' compensation obligations incurred during the period that the self-insurer was licensed as a self-insurer. The Commissioner may require an increase in the deposit amount or may grant a reduction in the deposit amount to ensure that the deposit is sufficient to cover all existing and future obligations incurred by the self-insurer while subject to the provisions of the Act.

(i) An endorsement to a surety bond shall be filed with the Commissioner within 90 days after the effective date of the endorsement. (1997-362, s. 4; 2003-115, ss. 3, 4, 5; 2005-400, s. 13.)

### **§ 97-190. Excess insurance.**

(a) Every self-insurer, as a prerequisite for licensure under this Article, shall maintain specific and aggregate excess loss coverage through an insurance policy. A self-insurer shall maintain limits and retentions commensurate with its risk. A self-insurer's retention shall be the lowest retention suitable for the self-insurer's exposures and level of annual premium. The Commissioner may require different levels, or waive the requirement, of specific and aggregate excess loss coverage consistent with the market availability of excess loss coverage, the self-insurer's claims experience, and the self-insurer's or guarantor's financial condition.

(b) An excess insurance policy required by this section shall be issued by either an insurance company licensed in this State or an eligible surplus lines insurer as defined in G.S. 58-21-10 and shall:

- (1) Provide for at least 30 days' written notice of cancellation by registered or certified mail, return receipt requested, to the self-insurer and to the Commissioner.
- (2) Be renewable automatically at its expiration, except upon 30 days' written notice of nonrenewal by certified mail, return receipt requested, to the self-insurer and to the Commissioner.

(c) Every self-insurer shall provide to the Commissioner evidence of coverage and any amendments within 30 days after their effective dates. Every self-insurer shall, at the request of the Commissioner, furnish copies of its excess insurance policies and amendments. (1997-362, s. 4; 2005-400, s. 14.)

**§ 97-195. Revocation, suspension or restriction of license.**

(a) Repealed by Session Laws 2005-400, s. 15, effective January 1, 2006.

(a1) The Commissioner may, upon at least 45 days notice and opportunity for a hearing, revoke, suspend, or restrict the license of a self-insurer if any of the following apply:

- (1) The self-insurer fails or refuses to comply with any law, order, or rule applicable to the self-insurer.
- (2) There is a determination of insolvency by a court of competent jurisdiction.
- (3) The self-insurer is in a hazardous financial condition.
- (4) The self-insurer has experienced a material loss or deteriorating operating trends, or has reported a deficit financial position.
- (5) Any affiliate or subsidiary is insolvent, threatened with insolvency, or delinquent in payment of its monetary or any other obligation.
- (6) The self-insurer has failed to pay premium taxes pursuant to Article 8B of Chapter 105 of the General Statutes.
- (7) Contingent liabilities, pledges, or guaranties that either individually or collectively involve a total amount that in the Commissioner's opinion may affect a self-insurer's solvency.
- (8) The management of a self-insurer has failed to respond to the Commissioner's inquiries about the condition of the self-insurer or has

furnished false and misleading information in response to an inquiry by the Commissioner.

- (9) The management of a self-insurer has filed any false or misleading sworn financial statement, has released a false or misleading financial statement to a lending institution or to the general public, or has made a false or misleading entry or omitted an entry of material amount in the filed financial information.
- (10) The self-insurer has experienced, or will experience in the foreseeable future, cash flow or liquidity problems.
- (11) The self-insurer has failed to make proper and timely payment of claims, as required by this Article.
- (12) Failure to pay any North Carolina Self-Insurance Security Association assessments made pursuant to G.S. 97-133.
- (13) Failure to participate in the Association Aggregate Security System or, if excluded from participation in the Association Aggregate Security System, failure to provide and maintain the deposit required by G.S. 97-185.

(b) Repealed by Session Laws 2005-400, s. 15, effective January 1, 2006.

(c) Any self-insurer subject to license revocation, suspension, or restriction under subsection (a1) of this section may request an administrative hearing before the Commissioner to review that order. If a hearing is requested, a notice of hearing shall be served, and the notice shall state the time and place of hearing and the conduct, condition, or ground on which the Commissioner based the order. Unless mutually agreed upon between the Commissioner and the self-insurer, the hearing shall occur not less than 10 days nor more than 30 days after notice is served and shall be either in Wake County or in some other place designated by the Commissioner. The Commissioner shall hold all hearings under this section privately unless the self-insurer requests a public hearing, in which case the hearing shall be public. The request for a hearing shall not stay the effect of the order. (1997-362, s. 4; 2003-221, s. 15; 2005-400, s. 15.)

**§ 97-196. Civil penalties or restitution for violations; administrative procedure.**

(a) Whenever the Commissioner has reason to believe that a self-insurer has violated any of the provisions of this Article, and the violation subjects the license of the self-insurer to suspension or revocation, the Commissioner may, after notice and opportunity for a hearing, proceed under the appropriate subsections of this section.

(b) If the Commissioner finds a violation of this Article, the Commissioner may, in addition to or instead of suspending or revoking the license, order the payment or a monetary penalty as provided in subsection (c) of this section or petition the Superior Court of Wake County for an order directing payment of restitution as provided in subsection (d) of this section, or both. Each day during which a violation occurs constitutes a separate violation.

(c) If the Commissioner orders the payment of a monetary penalty pursuant to subsection (b) of this section, the penalty shall not be less than one hundred dollars

(\$100.00) nor more than one thousand dollars (\$1,000). In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation, the amount of money that inured to the benefit of the violator as a result of the violation, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with laws, rules, or orders applicable to the violator. The clear proceeds of the penalty shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Payment of the civil penalty under this section shall be in addition to payment of any other penalty for a violation of the criminal laws of this State.

(d) Upon petition of the Commissioner, the court may order the self-insurer who committed a violation specified in subsection (b) of this section to make restitution in an amount that would make whole any person harmed by the violation. The petition may be made at any time, and the petition may be made in any appeal of the Commissioner's order.

(e) Restitution to any State agency for extraordinary administrative expenses incurred in the investigation and hearing of the violation may also be ordered by the court in such amount that would reimburse the agency for the expenses.

(f) Nothing in this section prevents the Commissioner from negotiating a mutually acceptable agreement with any self-insurer as to the status of the self-insurer's license or as to any civil penalty or restitution.

(g) Unless otherwise specifically provided for, all administrative proceedings under this Article are governed by Chapter 150B of the General Statutes. Appeals of the Commissioner's orders under this section shall be governed by G.S. 58-2-75. (2005-400, s. 16.)

#### **§ 97-200. Claims administration.**

(a) A self-insurer shall not utilize any claims adjuster unless the adjuster is licensed under G.S. 58-33-25.

(b) Every self-insurer shall comply with the provisions of Article 47 of Chapter 58 of the General Statutes that are related to claims administration. (1997-362, s. 4.)