

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 692

Short Title: Workers' Compensation Act Amendments. (Public)

Sponsors: Senators D. Berger and Daniel.

Referred to: Rules and Operations of the Senate.

April 20, 2011

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE WORKERS' COMPENSATION ACT.
3 The General Assembly of North Carolina enacts:

4 SECTION 1. This act shall be known and may be cited as the "Workers'
5 Compensation Amendments Act of 2011."

6 SECTION 2. G.S. 97-2 reads as rewritten:

7 "§ 97-2. Definitions.

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

9 ...

10 (6) Injury. – "Injury and personal injury" shall mean only injury by accident
11 arising out of and in the course of the employment, and shall not include a
12 disease in any form, except where it results naturally and unavoidably from
13 the accident. With respect to ~~back injuries, injuries to the back or extremities~~
14 of the body, however, where ~~the injury to the back~~ arises out of and in the
15 course of the employment and is the direct result of a specific traumatic
16 incident of the work assigned, "injury by accident" shall be construed to
17 include any disabling physical injury to the back or extremities of the body
18 arising out of and causally related to such incident. Injury shall include
19 breakage or damage to eyeglasses, hearing aids, dentures, or other prosthetic
20 devices ~~which that~~ function as part of the body; provided, however, that
21 eyeglasses and hearing aids will not be replaced, repaired, or otherwise
22 compensated for unless injury to them is incidental to a compensable injury.

23 ...

24 (22) Suitable employment. – The term "suitable employment" means employment
25 procured for the employee that (i) prior to reaching maximum medical
26 improvement is within the employee's work restrictions and is rehabilitative
27 employment with the employer approved by the employee's treating health
28 care provider; or is employment within the employee's work restrictions with
29 the employer that exists within the competitive local job market (ii) after
30 reaching maximum medical improvement is available in the competitive
31 local job market and is employment which the employee is capable of
32 performing considering the employee's education, physical and mental
33 limitations, vocational skills, and experience, and offers an opportunity to
34 restore the employee as soon as possible and as nearly as practicable to
35 pre-injury wage. In determining whether offered employment is suitable, the
36 Commission may consider the employee's qualifications, vocational
37 interests, and aptitudes, as well as the benefits offered, the commuting



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1 distance, the hours, and such other factors as the Commission deems
2 appropriate under the circumstances.

3 (23) Rehabilitative employment. – The term "rehabilitative employment" is
4 employment with the employer not available in the competitive marketplace
5 but reasonably necessary to return an injured worker to suitable employment
6 as defined by G.S. 97-2(22)(ii)."

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

8 "(e) The first installment of compensation payable under the terms of an award by the
9 Commission, or under the terms of a judgment of the court upon an appeal from such an award,
10 shall become due 10 days from the day following expiration of the time for appeal from the
11 award or judgment or the day after notice waiving the right of appeal by all parties has been
12 received by the Commission, whichever is sooner. Thereafter compensation shall be paid in
13 installments weekly, except where the Commission determines that payment in installments
14 shall be made monthly or in some other manner. Notwithstanding and in addition to any other
15 methods for reinstatement of compensation available under the Act, at any time where liability
16 has been previously established, the employee may request the modification or reinstatement of
17 compensation. Where the employer or insurer contests the employee's request, the request shall
18 be heard by the Industrial Commission on an expedited basis."

19 **SECTION 4.** G.S. 97-18.1 reads as rewritten:

20 **"§ 97-18.1. Termination or suspension of compensation benefits.**

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

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

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

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

1 shall issue a decision on the employer's application for termination of compensation within five
2 days after completion of the informal hearing. The decision shall (i) approve the application,
3 (ii) disapprove the application, or (iii) state that the Commission is unable to reach a decision
4 on the application in an informal hearing, in which event the Commission shall schedule a
5 formal hearing pursuant to G.S. 97-83 on the employer's application for termination of
6 compensation. Compensation may be terminated or suspended by the employer following an
7 informal hearing only if its application is approved. If the Commission was unable to reach a
8 decision in the informal hearing, the employee's compensation shall continue pending a
9 decision by the Commission in the formal hearing. The Commission's decision in the informal
10 hearing is not binding in subsequent hearings.

11 The employer or the employee may request a formal hearing pursuant to G.S. 97-83 on the
12 Commission's decision approving or denying the employer's application for termination of
13 compensation. A formal hearing under G.S. 97-83 ordered or requested pursuant to this section
14 shall be a hearing de novo on the employer's application for termination or suspension of
15 compensation and may be scheduled by the Commission on a ~~preemptive basis~~ an expedited
16 basis as set forth in subsection (f) of this section.

17 (e) At an informal hearing on the issue of termination or suspension of compensation,
18 and at any subsequent hearing, the Commission may address related issues regarding the
19 selection of medical providers or treatment under G.S. 97-25, subject to exhaustion of the
20 dispute resolution procedures of a managed care organization pursuant to G.S. 97-25.2.

21 (f) Under the scheduled hearing set on an expedited basis pursuant to subsection (d) of
22 this section, the Commission shall conduct a formal hearing before a deputy commissioner with
23 the parties or their counsel within 60 days from the date the employer or employee filed the
24 motion in Raleigh or at such location as the Commission selects. The parties shall take the
25 deposition testimony of any health care provider whose testimony is relevant to the issue of
26 suspension or termination of total disability benefits and submit the deposition transcript within
27 three days of the scheduled hearings. The parties shall be afforded an opportunity to state their
28 position, submit relevant documentary evidence, and to present witnesses relevant to the issue
29 of continuation or termination of total disability benefits at the hearing. The hearing shall be
30 conducted on the issues of termination or suspension of total disability compensation and issues
31 allowed under subsection (e) of this section.

32 (g) The deputy commissioner shall issue a decision on the employer's application for
33 termination of compensation within five days after completion of the hearing. The decision
34 shall (i) approve the application or (ii) disapprove the application.

35 (h) Compensation may be terminated or suspended by the employer following the
36 hearing only if its application is approved. If the decision of the deputy commissioner is
37 appealed by the respective party to the full Commission, the decision of the deputy
38 commissioner shall remain in effect until a final determination by the full Commission."

39 **SECTION 5.** G.S. 97-25 reads as rewritten:

40 **"§ 97-25. Medical treatment and supplies.**

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

45 The Commission may at any time upon the request of an employee order a change of
46 treatment and designate other treatment suggested by the injured employee subject to the
47 approval of the Commission, and in such a case the expense thereof shall be borne by the
48 employer upon the same terms and conditions as hereinbefore provided in this section for
49 medical and surgical treatment and attendance. In order to support a change in treatment or
50 health care provider, the employee must show, by a preponderance of the evidence, that the

1 change in treatment or health care provider sought is reasonably intended to effect a cure, give
2 relief, or lessen the period of disability.

3 The refusal of the employee to accept any medical, hospital, surgical or other treatment or
4 rehabilitative procedure when ordered by the Industrial Commission shall bar said employee
5 from further compensation until such refusal ceases, and no compensation shall at any time be
6 paid for the period of suspension unless in the opinion of the Industrial Commission the
7 circumstances justified the refusal, in which case, the Industrial Commission may order a
8 change in the medical or hospital service.

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

13 Provided, however, ~~if he so desires,~~ an injured employee may select a ~~physician of his~~
14 health care provider of the employee's own choosing to attend, prescribe and assume the care
15 and charge of his case, subject to the approval of the Industrial Commission. ~~Commission, if the~~
16 employee sought authorization or approval from the employer, insurer, or Commission within a
17 reasonable amount of time and if the employee shows by a preponderance of the evidence that
18 treatment by the selected health care provider is reasonably required to effect a cure, give relief,
19 or lessen the period of disability."

20 **SECTION 6.** G.S. 97-25.6 reads as rewritten:

21 "**§ 97-25.6. Reasonable access to medical information.**

22 (a) Notwithstanding the provisions of G.S. 8-53, any law relating to the privacy of
23 medical records or information, and the prohibition against ex parte communications at
24 common law, an employer or insurer paying medical compensation to a provider rendering
25 treatment under this Article may obtain records of the treatment without the express
26 authorization of the employee. In addition, with written notice to the employee, the employer or
27 insurer may obtain directly from a medical provider medical records of evaluation or treatment
28 restricted to a current injury or current condition for which an employee is claiming
29 compensation from that employer under this Article.

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

33 An employer or insurer paying compensation for an admitted claim or paying without
34 prejudice pursuant to G.S. 97-18(d) may communicate with an employee's medical provider in
35 writing, limited to specific questions promulgated by the Commission, to determine, among
36 other information, the diagnosis for the employee's condition, the reasonable and necessary
37 treatment, the anticipated time that the employee will be out of work, the relationship, if any,
38 of the employee's condition to the employment, the restrictions from the condition, the kind of
39 work for which the employee may be eligible, the anticipated time the employee will be
40 restricted, and the permanent impairment, if any, as a result of the condition. When these
41 questions are used, a copy of the written communication shall be provided to the employee at
42 the same time and by the same means as the communication is provided to the provider.

43 Other forms of communication with a medical provider may be authorized by (i) a valid
44 written authorization voluntarily given and signed by the employee, (ii) by agreement of the
45 parties, or (iii) by order of the Commission issued upon a showing that the information sought
46 is necessary for the administration of the employee's claim and is not otherwise reasonably
47 obtainable under this section or through other provisions for discovery authorized by the
48 Commission's rules. In adopting rules or authorizing employer communications with medical
49 providers, the Commission shall protect the employee's right to a confidential physician-patient
50 relationship while facilitating the release of information necessary to the administration of the
51 employee's claim.

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

5 (b) In cases of accepted compensability where the employee has chosen his or her own
6 authorized health care provider, in addition to the methods in subsection (a) of this section, an
7 employer or insurer paying compensation may communicate with the employee's authorized
8 health care provider by oral or written communication. Provided, however, where the
9 communication is written, the employer or insurer must provide the employee with a copy of
10 the written communication at the same time that it is provided to the health care provider, and
11 the employer or insurer also must provide the employee with a copy of any written response by
12 the health care provider within two business days of its receipt, and where the communication
13 is oral, the employer or insurer must provide the employee with a written summary or oral
14 summary of the intended communication at least two business days prior to the intended oral
15 communication and the employer or insurer must provide the employee with a written
16 summary of the oral communication to the employee within seven days following the
17 communication."

18 **SECTION 7.** Article 1 of Chapter 97 of the General Statutes is amended by adding
19 a new section to read:

20 **"§ 97-25.7. Vocational rehabilitation.**

21 Where the employee has not returned to employment paying the same or greater wages, the
22 employer or insurer shall provide the employee with vocational rehabilitation services, which
23 shall include the formulation of an individualized written rehabilitation plan (based on a
24 thorough vocational assessment and vocational or other testing, as may be appropriate under
25 the circumstances), with the goal of restoring the employee to his or her pre-injury wage. The
26 vocational rehabilitation services shall be provided and implemented by a mutually
27 agreed-upon vocational rehabilitation counselor, or one selected by the Commission. The
28 vocational rehabilitation services shall be paid for by the employer or insurer, pursuant to a fee
29 schedule adopted by the Commission in the same manner as fees for other medical
30 compensation. The Commission shall resolve any disputes regarding vocational rehabilitation
31 services through expedited procedures to be adopted by the Commission."

32 **SECTION 8.** G.S. 97-31 reads as rewritten:

33 **"§ 97-31. Schedule of injuries; rate and period of compensation.**

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

38 ...

- 39 (24) In case of the loss of or permanent injury to any important external or
40 internal organ or part of the body for which no compensation is payable
41 under any other subdivision of this section, the Industrial Commission may
42 award proper and equitable compensation not to exceed ~~twenty thousand~~
43 ~~dollars (\$20,000).~~ fifty thousand dollars (\$50,000)."

44 **SECTION 9.** G.S. 97-32 reads as rewritten:

45 **"§ 97-32. Refusal of injured employee to accept suitable employment as suspending**
46 **compensation.**

47 If an injured employee refuses employment procured for him suitable to his capacity he
48 shall not be entitled to any compensation at any time during the continuance of such refusal,
49 unless in the opinion of the Industrial Commission such refusal was justified. Any order issued
50 by the Commission suspending compensation pursuant to G.S. 97-18.1 based upon an
51 unjustified refusal to return to suitable employment under G.S. 97-32 shall specify what actions

1 the employee should take to end the suspension and reinstate the compensation. Upon taking
2 these actions, the employee's compensation shall be automatically and immediately reinstated
3 by the employer or insurer as of the date on which the actions were taken. Additionally, a
4 suspension of compensation may only continue so long as the job offered remains available to
5 the employee.

6 **SECTION 10.** G.S. 97-32.1 reads as rewritten:

7 **"§ 97-32.1. Trial return to work.**

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

14 (b) In cases where, prior to reaching maximum medical improvement, an employee
15 returns to rehabilitative or other employment that is not available in the competitive local job
16 market, once that employee reaches maximum medical improvement, the employee may elect
17 to stop performing the rehabilitative or other employment that is not available in the
18 competitive local job market, and his or her compensation under G.S. 97-29 shall be
19 automatically and immediately reinstated by the employer or insurer as of the date on which the
20 employee reaches maximum medical improvement. Failure to automatically and immediately
21 reinstate the employee's compensation under G.S. 97-29 shall result in an immediate Order of
22 Reinstatement by the Executive Secretary's office. Failure to comply with the Order of
23 Reinstatement shall, under motion of the employee, result in the enforcement of the Order by
24 the Industrial Commission pursuant to G.S. 97-80(h). The employee also may elect to enforce
25 the Order of Reinstatement under any other provisions of this Act.

26 **SECTION 11.(a)** G.S. 97-53 reads as rewritten:

27 **§ 97-53. Occupational diseases enumerated; when due to exposure to chemicals.**

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

30 ...

31 (28) Loss of hearing caused by harmful noise in the employment. The following
32 rules shall be applicable in determining eligibility for compensation and the
33 period during which compensation shall be payable:

34 a. The term "harmful noise" means sound in employment capable of
35 producing occupational loss of hearing as hereinafter defined. Sound
36 of an intensity of less than 90 decibels, A scale, shall be deemed
37 incapable of producing occupational loss of hearing as defined in this
38 section.

39 b. The phrase "compensable hearing loss" shall mean an employee's
40 entire occupational and sensorineural loss of hearing as calculated
41 pursuant to sub-subdivision g. of this subdivision. "~~Occupational loss~~
42 of hearing" shall mean a permanent sensorineural loss of hearing in
43 both ears caused by prolonged exposure to harmful noise in
44 employment. Except in instances of preexisting loss of hearing due to
45 disease, trauma, or congenital deafness in one ear, no compensation
46 shall be payable under this subdivision unless prolonged exposure to
47 harmful noise in employment has caused loss of hearing in both ears
48 as hereinafter provided

49 c. No compensation benefits shall be payable for temporary total or
50 temporary partial disability under this subdivision and there shall be
51 no award for tinnitus or a psychogenic hearing loss.

- 1 d. An employer shall become liable for ~~the entire occupational~~ any
2 amount of compensable hearing loss-loss, however much, to which
3 ~~his-the~~ employee's employment has contributed, but if previous
4 ~~deafness is~~ levels of compensable hearing loss are established by a
5 hearing test or other competent evidence, whether or not the
6 employee was exposed to harmful noise within six months preceding
7 such test, the employer shall not be liable for previous levels of
8 compensable hearing loss so established, nor shall ~~he-the~~ employer
9 be liable for any loss for which compensation has previously been
10 paid or awarded and the employer shall be liable only for the
11 difference between the ~~percent of occupational~~ amount of
12 compensable hearing loss determined as of the date of disability as
13 herein defined and the percentage of loss established by the
14 preemployment and audiometric examination excluding, in any
15 event, hearing losses arising from nonoccupational causes.
- 16 e. In the evaluation of occupational hearing loss, only the hearing levels
17 at the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second
18 shall be considered. Hearing losses for frequencies below 500 and
19 above 3,000 cycles per second are not to be considered as
20 constituting compensable hearing disability.
- 21 f. The employer liable for the compensation in this section shall be the
22 employer in whose employment the employee was last exposed to
23 harmful noise in North Carolina during a period of 90 working days
24 or parts thereof, and an exposure during a period of less than 90
25 working days or parts thereof shall be held not to be an injurious
26 exposure; provided, however, that in the event an insurance carrier
27 has been on the risk for a period of time during which an employee
28 has been injuriously exposed to harmful noise, and if after insurance
29 carrier goes off the risk said employee has been further exposed to
30 harmful noise, although not exposed for 90 working days or parts
31 thereof so as to constitute an injurious exposure, such carrier shall,
32 nevertheless, be liable.
- 33 g. The percentage of hearing loss shall be calculated as the average, in
34 decibels, of the thresholds of hearing for the frequencies of 500,
35 1,000, 2,000, and 3,000 cycles per second. Pure tone air conduction
36 audiometric instruments, properly calibrated according to accepted
37 national standards such as American Standards Association, Inc.,
38 (ASA), International Standards Organization (ISO), or American
39 National Standards Institute, Inc., (ANSI), shall be used for
40 measuring hearing loss. If more than one audiogram is taken, the
41 audiogram having the lowest threshold will be used to calculate
42 occupational hearing loss. If the losses of hearing average 15
43 decibels (26 db if ANSI or ISO) or less in the four frequencies, such
44 losses of hearing shall not constitute any compensable hearing
45 disability. If the losses of hearing average 82 decibels (93 db if ANSI
46 or ISO) or more in the four frequencies, then the same shall
47 constitute and be total or one hundred percent (100%) compensable
48 hearing loss. In measuring hearing impairment, the lowest measured
49 losses in each of the four frequencies shall be added together and
50 divided by four to determine the average decibel loss. For each
51 decibel of loss exceeding 15 decibels (26 db if ANSI or ISO) an

1 allowance of one and one-half percent (1 1/2%) shall be made up to
2 the maximum of one hundred percent (100%) which is reached at 82
3 decibels (93 db if ANSI or ISO). In determining the binaural
4 percentage of loss, the percentage of impairment in the better ear
5 shall be multiplied by five. The resulting figure shall be added to the
6 percentage of impairment in the poorer ear, and the sum of the two
7 divided by six. The final percentage shall represent the binaural
8 hearing impairment.

- 9 h. There shall be payable for total occupational loss of hearing in both
10 ears 150 weeks of compensation, and for partial occupational loss of
11 hearing in both ears such proportion of these periods of payment as
12 such partial loss bears to total loss.
- 13 i. No claim for compensation for occupational hearing loss shall be
14 filed until after six months have elapsed since exposure to harmful
15 noise with the last employer. The last day of such exposure shall be
16 the date of disability. The regular use of employer-provided
17 protective devices capable of preventing loss of hearing from the
18 particular harmful noise where the employee works shall constitute
19 removal from exposure to such particular harmful noise.
- 20 j. No consideration shall be given to the question of whether or not the
21 ability of an employee to understand speech is improved by the use
22 of a hearing aid. The North Carolina Industrial Commission may
23 order the employer to provide the employee with an original hearing
24 aid if it will materially improve the employee's ability to hear.
- 25 k. No compensation benefits shall be payable for the loss of hearing
26 caused by harmful noise after October 1, 1971, if employee fails to
27 regularly utilize employer-provided protection device or devices,
28 capable of preventing loss of hearing from the particular harmful
29 noise where the employee works.

30 ...

31 (30) Myocardial infarction, coronary thrombosis, coronary occlusion,
32 angina-pectoris, or acute coronary insufficiency of firefighters or retired
33 firefighters who have completed five or more years as firefighters. The
34 myocardial infarction, coronary thrombosis, coronary occlusion,
35 angina-pectoris, or acute coronary insufficiency shall be presumed to result
36 from the firefighter's employment or service. For the firefighter to receive
37 the presumption, the following must be true:

- 38 a. Upon or after becoming a firefighter, the firefighter must have taken
39 a physical examination, and that examination must not have revealed
40 sufficient evidence of heart disease preceding employment or service
41 that would precipitate the disease claimed. This requirement applies
42 only if the employer or volunteer organization requested and paid for
43 the examination.
- 44 b. Within the 10 years before the diagnosis of the disease claimed, the
45 firefighter must not at any time have regularly smoked cigarettes.

46 Denial of a claim for myocardial infarction, coronary thrombosis, coronary
47 occlusion, angina-pectoris, or acute coronary insufficiency must be on the
48 basis of the greater weight of the evidence that the cause of the disease
49 claimed is unrelated to the firefighter's employment or service.

50 This subdivision applies only to firefighters who are employed by or are
51 retired from employment by units or agencies of State or local government,

1 and to current and retired volunteer firefighters. A retired firefighter who
2 meets the above requirements in this subdivision shall have the benefit of the
3 presumption only up to 10 years after the effective date of the firefighter's
4 retirement."

5 **SECTION 11.(b)** This section is effective when it becomes law and applies to
6 claims for compensation filed on or after that date. A person who began employment or service
7 as a firefighter before this act becomes law shall not be required, for purposes of the
8 presumption created by this act, to show proof that the firefighter successfully passed a
9 physical examination as required in G.S. 97-53(29), as enacted by this act.

10 **SECTION 12.(a)** G.S. 97-53 is amended by adding a new subdivision to read:

11 **"§ 97-53. Occupational diseases enumerated; when due to exposure to chemicals.**

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

14 ...

15 (30) Myocardial infarction, coronary thrombosis, coronary occlusion,
16 angina-pectoris, or acute coronary insufficiency of firefighters or retired
17 firefighters who have completed five or more years as firefighters. The
18 myocardial infarction, coronary thrombosis, coronary occlusion,
19 angina-pectoris, or acute coronary insufficiency shall be presumed to result
20 from the firefighter's employment or service.

21 a. For the firefighter to receive the presumption, the following must be
22 true:

23 1. Upon or after becoming a firefighter, the firefighter must
24 have taken a physical examination, and that examination must
25 not have revealed sufficient evidence of heart disease
26 preceding employment or service that would precipitate the
27 disease claimed. This requirement applies only if the
28 employer or volunteer organization requested and paid for the
29 examination.

30 2. Within the 10 years before the diagnosis of the disease
31 claimed, the firefighter must not at any time have regularly
32 smoked cigarettes.

33 b. Denial of a claim for myocardial infarction, coronary thrombosis,
34 coronary occlusion, angina-pectoris, or acute coronary insufficiency
35 must be on the basis of the greater weight of the evidence that the
36 cause of the disease claimed is unrelated to the firefighter's
37 employment or service.

38 c. This subdivision applies only to firefighters who are employed by or
39 are retired from employment by units or agencies of State or local
40 government and to current and retired volunteer firefighters.

41 d. A retired firefighter who meets the requirements in this subdivision
42 shall have the benefit of the presumption only up to 10 years after the
43 effective date of the firefighter's retirement.

44 Occupational diseases caused by chemicals shall be deemed to be due to exposure of an
45 employee to the chemicals herein mentioned only when as a part of the employment such
46 employee is exposed to such chemicals in such form and quantity, and used with such
47 frequency as to cause the occupational disease mentioned in connection with such chemicals."

48 **SECTION 12.(b)** This section is effective when it becomes law and applies to
49 claims for compensation filed on or after that date. A person who began employment or service
50 as a firefighter before this section becomes law shall not be required, for purposes of the

1 presumption created by this section, to show proof that the firefighter successfully passed a
2 physical examination as required in G.S. 97-53(30), as enacted by this act.

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

5 "**§ 97-78.1. Standards of judicial conduct to apply to commissioners and deputy**
6 **commissioners.**

7 The standards of judicial conduct provided for judges in Article 30 of Chapter 7A of the
8 General Statutes shall apply to commissioners and deputy commissioners. Commissioners and
9 deputy commissioners shall be liable to impeachment for the causes and in the manner
10 provided for judges of the General Court of Justice in Chapter 123 of the General Statutes.
11 Commissioners and deputy commissioners shall not engage in any other employment, business,
12 profession, or vocation while in office."

13 **SECTION 14.** G.S. 135-50(b) reads as rewritten:

14 "(b) The purpose of this Article is to improve the administration of justice by attracting
15 and retaining the most highly qualified talent available within the State to the positions of
16 justice and judge, district attorney and solicitor, public defender, the Director of Indigent
17 Defense Services, and clerk of superior court, within the General Court of ~~Justice.~~ Justice, and
18 commissioners and deputy commissioners of the Industrial Commission."

19 **SECTION 15.** G.S. 135-51 reads as rewritten:

20 "**§ 135-51. Scope.**

21 (a) This Article provides consolidated retirement benefits for all justices and judges,
22 district attorneys, and solicitors who are serving on January 1, 1974, and who become such
23 thereafter; and for all clerks of superior court who are so serving on January 1, 1975, and who
24 become such after that date; and for all public defenders who are serving on July 1, 2007, and
25 who become public defenders after that date; and for the Director of Indigent Defense Services
26 who is serving on July 1, 2008, and those who become Director of Indigent Defense Services
27 after that ~~date.~~ date; and for all commissioners and deputy commissioners of the Industrial
28 Commission who are serving on July 1, 2011, and who become commissioners or deputy
29 commissioners after that date.

30 (b) For justices and judges of the appellate and superior court divisions of the General
31 Court of Justice who so served prior to January 1, 1974, the provisions of this Article
32 supplement and, under certain circumstances, replace the provisions of Articles 6 and 8, as the
33 case may be, of Chapter 7A of the General Statutes.

34 For district attorneys and judges of the district court of the General Court of Justice who so
35 served prior to January 1, 1974, the provisions of this Article supplement and, under certain
36 circumstances, replace the provisions of Article 1 of this Chapter.

37 For clerks of superior court of the General Court of Justice who so served prior to January
38 1, 1975, the provisions of this Article supplement and, under certain circumstances, replace the
39 provisions of Article 1 of this Chapter.

40 (c) The retirement benefits of any person who becomes a justice or judge, district
41 attorney, or solicitor on and after January 1, 1974, or clerk of superior court on and after
42 January 1, 1975, or public defender on or after July 1, 2007, or the Director of Indigent Defense
43 Services on or after July 1, 2008, or commissioner or deputy commissioner of the Industrial
44 Commission on or after July 1, 2011, shall be determined solely in accordance with the
45 provisions of this Article."

46 **SECTION 16.** G.S. 135-53 reads as rewritten:

47 "**§ 135-53. Definitions.**

48 The following words and phrases as used in this Article, unless a different meaning is
49 plainly required by the context, shall have the following meanings:

50 ...

1 (4b) "Commissioner or deputy commissioner of the Industrial Commission"
 2 means a commissioner or deputy commissioner of the Industrial
 3 Commission established under G.S. 97-78.

4 (5) "Compensation" shall mean all salaries and wages derived from public funds
 5 which are earned by a member of the Retirement System for his service as a
 6 justice or judge, or district attorney, or clerk of superior court, or public
 7 defender, or the Director of Indigent Defense ~~Services.~~ Services, or
 8 commissioner or deputy commissioner of the Industrial Commission.
 9 Effective July 1, 2009, "compensation" also means payment of military
 10 differential wages. "Compensation" shall not include local supplementation
 11 as authorized under G.S. 7A-300.1 for Judicial Department employees.

12 ...
 13 (12) "Membership service" shall mean service as a judge, district attorney, clerk
 14 of superior court, public defender, or the Director of Indigent Defense
 15 ~~Services~~ Services, or commissioner or deputy commissioner of the Industrial
 16 Commission rendered while a member of the Retirement System.

17 (13) "Previous system" shall mean, with respect to any member, the retirement
 18 benefit provisions of Article 6 and Article 8 of Chapter 7A of the General
 19 Statutes, to the extent that such Article or Articles were formerly applicable
 20 to the member, and in the case of judges of the district court division, district
 21 attorney, public defender, the Director of Indigent Defense Services, and and
 22 clerk of superior court of the General Court of Justice, the Teachers' and
 23 State Employees' Retirement System.

24 "

25 **SECTION 17.** G.S. 135-54 reads as rewritten:

26 **"§ 135-54. Name and date of establishment.**

27 A Retirement System is hereby established and placed under the management of the Board
 28 of Trustees for the purpose of providing retirement allowances and other benefits under the
 29 provisions of this Article for justices and judges, district attorneys, public defenders, the
 30 Director of Indigent Defense Services, ~~and~~ clerks of superior court of the General Court of
 31 Justice of North ~~Carolina,~~ Carolina, and commissioners and deputy commissioners of the
 32 Industrial Commission, and their survivors. The Retirement System so created shall be
 33 established as of January 1, 1974.

34 The Retirement System shall have the power and privileges of a corporation and shall be
 35 known as the "Consolidated Judicial Retirement System of North Carolina," and by such name
 36 all of its business shall be transacted."

37 **SECTION 18.** G.S. 135-55 reads as rewritten:

38 **"§ 135-55. Membership.**

39 (a) The membership of the Retirement System shall consist of:

- 40 (1) All judges and district attorneys in office on January 1, 1974;
 41 (2) All persons who become judges and district attorneys or reenter service as
 42 judges and district attorneys after January 1, 1974;
 43 (3) All clerks of superior court in office on January 1, 1975;
 44 (4) All persons who become clerks of superior court or reenter service as clerks
 45 of superior court after January 1, 1975;
 46 (5) All public defenders in office on July 1, 2007;
 47 (6) All persons who become public defenders or reenter service as public
 48 defenders after July 1, 2007;
 49 (7) The Director of Indigent Defense Services on July 1, 2008; ~~and~~

- 1 (8) All persons who become the Director of Indigent Defense Services or
2 reenter service as the Director of Indigent Defense Services after July 1,
3 ~~2008~~, 2008;
4 (9) All commissioners and deputy commissioners of the Industrial Commission
5 in office on July 1, 2011; and
6 (10) All persons who become commissioners and deputy commissioners of the
7 Industrial Commission or reenter service as commissioners and deputy
8 commissioners of the Industrial Commission after July 1, 2011.

9 (b) The membership of any person in the Retirement System shall cease upon:

- 10 (1) The withdrawal of his accumulated contributions after he is no longer a
11 judge, district attorney, public defender, the Director of Indigent Defense
12 Services, ~~or~~ clerk of superior court, commissioner or deputy commissioner
13 of the Industrial Commission, or
14 (2) His retirement under the provisions of the Retirement System, or
15 (3) His death."

16 **SECTION 19.** G.S. 135-58(a5) reads as rewritten:

17 "(a5) Any member who retires under the provisions of G.S. 135-57(a) or G.S. 135-57(c)
18 on or after July 1, 2008, but before July 1, 2011, after the member has either attained the
19 member's 65th birthday or has completed 24 years or more of creditable service, shall receive
20 an annual retirement allowance, payable monthly, which shall commence on the effective date
21 of the member's retirement and shall be continued on the first day of each month thereafter
22 during the member's lifetime, the amount of which shall be computed as the sum of the
23 amounts in subdivisions (1), (2), (3), (4), and (5) of this subsection, provided that in no event
24 shall the annual allowance payable to any member be greater than an amount which, when
25 added to the allowance, if any, to which the member is entitled under the Teachers' and State
26 Employees' Retirement System, the Legislative Retirement System, or the Local Governmental
27 Employees' Retirement System (prior in any case to any reduction for early retirement or for an
28 optional mode of payment), would total three-fourths of the member's final compensation:

- 29 (1) Four and two hundredths percent (4.02%) of the member's final
30 compensation, multiplied by the number of years of creditable service
31 rendered as a justice of the Supreme Court or judge of the Court of Appeals;
32 (2) Three and fifty-two hundredths percent (3.52%) of the member's final
33 compensation, multiplied by the number of years of creditable service
34 rendered as a judge of the superior court or as Administrative Officer of the
35 Courts;
36 (3) Three and two hundredths percent (3.02%) of the member's final
37 compensation, multiplied by the number of years of creditable service
38 rendered as a judge of the district court, district attorney, clerk of superior
39 court, public defender, or the Director of Indigent Defense Services;
40 (4) A service retirement allowance computed in accordance with the service
41 retirement provisions of Article 3 of Chapter 128 of the General Statutes
42 using an average final compensation as defined in G.S. 135-53(2a) and
43 creditable service equal to the number of years of the member's creditable
44 service that was transferred from the Local Governmental Employees'
45 Retirement System to this System as provided in G.S. 135-56; and
46 (5) A service retirement allowance computed in accordance with the service
47 retirement provisions of Article 1 of this Chapter using an average final
48 compensation as defined in G.S. 135-53(2a) and creditable service, including
49 any sick leave standing to the credit of the member, equal to the number of
50 years of the member's creditable service that was transferred from the

1 Teachers' and State Employees' Retirement System or the Legislative
2 Retirement System to this System as provided in G.S. 135-56."

3 **SECTION 20.** G.S. 135-58 is amended by adding a new subsection to read:

4 "(a7) Any member who retires under the provisions of G.S. 135-57(a) or G.S. 135-57(c)
5 on or after July 1, 2011, after the member has either attained the member's 65th birthday or has
6 completed 24 years or more of creditable service, shall receive an annual retirement allowance,
7 payable monthly, which shall commence on the effective date of the member's retirement and
8 shall be continued on the first day of each month thereafter during the member's lifetime, the
9 amount of which shall be computed as the sum of the amounts in subdivisions (1), (2), (3), (4),
10 and (5) of this subsection, provided that in no event shall the annual allowance payable to any
11 member be greater than an amount which, when added to the allowance, if any, to which the
12 member is entitled under the Teachers' and State Employees' Retirement System, the
13 Legislative Retirement System, or the Local Governmental Employees' Retirement System
14 (prior in any case to any reduction for early retirement or for an optional mode of payment),
15 would total three-fourths of the member's final compensation:

- 16 (1) Four and two hundredths percent (4.02%) of the member's final
17 compensation, multiplied by the number of years of creditable service
18 rendered as a justice of the Supreme Court or judge of the Court of Appeals;
19 (2) Three and fifty-two hundredths percent (3.52%) of the member's final
20 compensation, multiplied by the number of years of creditable service
21 rendered as a judge of the superior court or as Administrative Officer of the
22 Courts;
23 (3) Three and two hundredths percent (3.02%) of the member's final
24 compensation, multiplied by the number of years of creditable service
25 rendered as a judge of the district court, district attorney, clerk of superior
26 court, public defender, the Director of Indigent Defense Services, or
27 commissioner or deputy commissioner of the Industrial Commission;
28 (4) A service retirement allowance computed in accordance with the service
29 retirement provisions of Article 3 of Chapter 128 of the General Statutes
30 using an average final compensation as defined in G.S. 135-53(2a) and
31 creditable service equal to the number of years of the member's creditable
32 service that was transferred from the Local Governmental Employees'
33 Retirement System to this System as provided in G.S. 135-56; and
34 (5) A service retirement allowance computed in accordance with the service
35 retirement provisions of Article 1 of this Chapter using an average final
36 compensation as defined in G.S. 135-53(2a) and creditable service, including
37 any sick leave standing to the credit of the member, equal to the number of
38 years of the member's creditable service that was transferred from the
39 Teachers' and State Employees' Retirement System or the Legislative
40 Retirement System to this System as provided in G.S. 135-56."

41 **SECTION 21.** Effective July 1, 2011, pursuant to G.S. 143A-6, the Fraud Unit
42 operating within the Industrial Commission shall be transferred to the Department of Insurance
43 as a Type II transfer, with the Fraud Unit intact. The Fraud Unit shall be administered under the
44 direction and supervision of the Department of Insurance, but shall exercise all its prescribed
45 statutory powers independently of the head of that department. However, the management
46 functions of the transferred unit shall be performed under the direction and supervision of the
47 Commissioner of Insurance. The term "management functions" means planning, organizing,
48 staffing, directing, coordinating, reporting, and budgeting.

49 **SECTION 22.** Section 21 of this act becomes effective July 1, 2011. Except as
50 otherwise specifically provided, this act is effective when it becomes law and applies to all
51 agreements approved by the North Carolina Industrial Commission under the Workers'

1 Compensation Act, Article 1 of Chapter 97 of the General Statutes, that are approved on or
2 after that date; all orders or decisions of the North Carolina Industrial Commission under the
3 Workers' Compensation Act that are entered on or after that date; and all awards of the North
4 Carolina Industrial Commission unappealed from or affirmed upon appeal under the Workers'
5 Compensation Act that are awarded on or after that date.