

House Bill 497 (FLOOR SUBSTITUTE) (AM)

By: Representative Smith of the 12<sup>th</sup>

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 9 of Title 34 of the Official Code of Georgia Annotated, relating to  
 2 workers' compensation, so as to change the rate of interest payable on final awards entered  
 3 by the board; to provide for the award of reasonable litigation expenses under certain  
 4 conditions; to increase the number of physicians on the posted panel from four to six; to  
 5 allow an injured employee the right to an independent medical examination within 120 days  
 6 of receipt of income benefits, rather than the current 60 days; to change provisions relating  
 7 to the penalty for nonpayment of medical charges by an employer or an insurer; to increase  
 8 the maximum temporary total disability benefits from \$375.00 per week to \$400.00 per  
 9 week; to increase the minimum temporary total disability benefits from \$37.50 per week to  
 10 \$40.00 per week; to increase the maximum temporary partial disability benefits from \$250.00  
 11 per week to \$268.00 per week; to provide that impairment ratings shall be based on the fifth  
 12 edition of *Guides to the Evaluation of Permanent Impairment*; to provide for related matters;  
 13 to provide an effective date; to repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 **SECTION 1.**

16 Chapter 9 of Title 34 of the Official Code of Georgia Annotated, relating to workers'  
 17 compensation, is amended by striking Code Section 34-9-107, relating to the amount of  
 18 interest payable on a final award of the board in the event of an appeal, and inserting in lieu  
 19 thereof the following:

20 "34-9-107.

21 Any final award for compensation entered by the board shall bear interest at the legal rate  
 22 of 7 1/2 percent on all accrued amounts and on all amounts accruing prior to final judgment  
 23 in the event of an appeal being taken from the board in the same manner in which it is now  
 24 provided that interest shall run on a judgment of the superior court in the event an appeal  
 25 is taken therefrom."

**SECTION 2.**

Said chapter is further amended by striking Code Section 34-9-108, relating to the approval of attorney's fees by the board, and inserting in lieu thereof the following:

"34-9-108.

(a) The fee of an attorney for service to a claimant in an amount of more than \$100.00 shall be subject to the approval of the board, and no attorney shall be entitled to collect any fee or gratuity in excess of \$100.00 without the approval of the board. The board shall approve no fee of an attorney for services to a claimant in excess of 25 percent of the claimant's award of weekly benefits or settlement.

(b)(1) Upon a determination that proceedings have been brought, prosecuted, or defended in whole or in part without reasonable grounds, the administrative law judge or the board may assess the adverse attorney's fee against the offending party.

(2) If any provision of Code Section 34-9-221, without reasonable grounds, is not complied with and a claimant engages the services of an attorney to enforce his or her rights under that Code section and the claimant prevails, the reasonable quantum meruit fee of the attorney, as determined by the board, and the costs of the proceedings may be assessed against the employer.

(3) Any assessment of attorney's fees made under this subsection shall be in addition to the compensation ordered.

(4) Upon a determination that proceedings have been brought, prosecuted, or defended in whole or in part without reasonable grounds, the administrative law judge or the board may, in addition to reasonable attorney's fees, award to the adverse party in whole or in part reasonable litigation expenses against the offending party. Reasonable litigation expenses under this subsection are limited to witness fees and mileage pursuant to Code Section 24-10-24; reasonable expert witness fees subject to the fee schedule; reasonable deposition transcript costs; and the cost of the hearing transcript.

(c) An attorney shall not advertise to render services to a potential claimant when he or she or his or her firm does not intend to render said services and shall not divide a fee for legal services with another attorney who is not a partner in or associate of his or her law firm or law office, unless:

(1) The client consents to employment of the other attorney after a full disclosure that a fee division will be made;

(2) The division is made in proportion to the services performed and the responsibility assumed by each; and

(3) The total fee of the attorneys does not clearly exceed reasonable compensation for all legal services such attorneys rendered to the client.

1 (d) When attorney's fees or reasonable litigation expenses are awarded under this Code  
 2 section, the administrative law judge or the board shall have the authority to order payment  
 3 of such fees or expenses on terms acceptable to the parties or within the discretion of the  
 4 board."

### 5 SECTION 3.

6 Said chapter is further amended by striking subsection (e) of Code Section 34-9-202, relating  
 7 to examination of an injured employee, and inserting in lieu thereof the following:

8 "(e) Notwithstanding the rights afforded an employee under Code Section 34-9-201, the  
 9 employee, after an accepted compensable injury and within ~~60~~ 120 days of receipt of any  
 10 income benefits, shall have the right to one examination at a reasonable time and place,  
 11 within this state or within 50 miles of the employee's residence, by a duly qualified  
 12 physician or surgeon designated by the employee and to be paid for by the employer. Such  
 13 examination, of which the employer or insurer shall be notified in writing in advance, shall  
 14 not repeat any diagnostic procedures which have been performed since the date of the  
 15 employee's injury unless the costs of such diagnostic procedures which are in excess of  
 16 \$250.00 are paid for by a party other than the employer or the insurer."

### 17 SECTION 4.

18 Said chapter is further amended by striking subsection (c) of Code Section 34-9-203, relating  
 19 to an employer's pecuniary liability for medical charges, and inserting in lieu thereof the  
 20 following:

21 ~~"(c) The board may, in its discretion, assess a penalty of up to 20 percent of reasonable~~  
 22 ~~medical charges not paid within 30 days from the date that the employer or the employer's~~  
 23 ~~workers' compensation insurance carrier receives the charges and reports required by the~~  
 24 ~~board where there has been compliance with the requirements of law and board rules. Said~~  
 25 ~~penalty shall be payable to the medical provider.~~

26 (1) All reasonable charges for medical, surgical, hospital, and pharmacy goods and  
 27 services shall be payable by the employer or its workers' compensation insurer within 30  
 28 days from the date that the employer or the insurer receives the charges and reports  
 29 required by the board. The employer or insurer shall, within 30 days after receipt of  
 30 charges for health care goods or services, mail to the provider of such health care goods  
 31 or services payment of such charges or a letter or other written notice that states the  
 32 reasons the employer or insurer has for not paying the claim, either in whole or in part,  
 33 and which also gives the person so notified a written itemization of any documents or  
 34 other information needed to process the claim or any portion thereof.

1 (2) The health care goods or services provider's failure to include with its submission of  
 2 charges any reports or other documents required by the board shall constitute a defense  
 3 for the employer's or insurer's failure to pay the submitted charges within 30 days of  
 4 receipt of the charges. However, if the employer or insurer fails to send the health care  
 5 goods or services provider the requisite notice indicating a need for further  
 6 documentation within 30 days of receipt of the charges, the employer and insurer will be  
 7 deemed to have waived the right to defend a claim for failure to pay such charges in a  
 8 timely fashion on the grounds that the charges were not appropriately accompanied by  
 9 required reports. Such waiver shall not extend to any other defense the employer and  
 10 insurer may have with respect to a claim of untimely payment.

11 (3) If any charges for health care goods or services are not paid when due, penalties shall  
 12 be added to such charges and paid at the same time as and in addition to the charges  
 13 claimed for the health care goods or services. For any payment of charges paid more than  
 14 30 days after their due date, but paid within 60 days of such date, there shall be added to  
 15 such charges an amount equal to 10 percent of the charges. For any payment of charges  
 16 paid more than 60 days after their due date, but paid within 90 days of such date, there  
 17 shall be added to such charges an amount equal to 20 percent of the charges. For any  
 18 charges not paid within 90 days of their due date, in addition to the 20 percent add-on  
 19 penalty, the employer or insurer shall pay interest on that combined sum in an amount  
 20 equal to 12 percent per annum from the ninety-first day after the date the charges were  
 21 due until full payment is made. All such penalties shall be paid to the provider of the  
 22 health care goods or services."

## 23 SECTION 5.

24 Said chapter is further amended by striking Code Section 34-9-261, relating to compensation  
 25 for total disability, and inserting in lieu thereof the following:

26 "34-9-261.

27 While the disability to work resulting from an injury is temporarily total, the employer  
 28 shall pay or cause to be paid to the employee a weekly benefit equal to two-thirds of the  
 29 employee's average weekly wage but not more than ~~\$375.00~~ \$400.00 per week nor less  
 30 than ~~\$37.50~~ \$40.00 per week, except that when the weekly wage is below ~~\$37.50~~ \$40.00  
 31 the employer shall pay a weekly benefit equal to the average weekly wage. The weekly  
 32 benefit under this Code section shall be payable for a maximum period of 400 weeks from  
 33 the date of injury; provided, however, in the event of a catastrophic injury as defined in  
 34 subsection (g) of Code Section 34-9-200.1, the weekly benefit under this Code section  
 35 shall be paid until such time as the employee undergoes a change in condition for the  
 36 better as provided in paragraph (1) of subsection (a) of Code Section 34-9-104."

**SECTION 6.**

Said chapter is further amended by striking Code Section 34-9-262, relating to compensation for temporary partial disability, and inserting in lieu thereof the following:

"34-9-262.

Except as otherwise provided in Code Section 34-9-263, where the disability to work resulting from the injury is partial in character but temporary in quality, the employer shall pay or cause to be paid to the employee a weekly benefit equal to two-thirds of the difference between the average weekly wage before the injury and the average weekly wage the employee is able to earn thereafter, but not more than ~~\$250.00~~ \$268.00 per week for a period not exceeding 350 weeks from the date of injury."

**SECTION 7.**

Said chapter is further amended by striking subsection (d) of Code Section 34-9-263, relating to compensation for permanent partial disability, and inserting in lieu thereof the following:

"(d) *Impairment ratings.* In all cases arising under this chapter, any percentage of disability or bodily loss ratings shall be based upon *Guides to the Evaluation of Permanent Impairment*, ~~fourth~~ fifth edition, published by the American Medical Association."

**SECTION 8.**

This Act shall become effective on July 1, 2001, except Section 3, which shall become effective January 1, 2002.

**SECTION 9.**

All laws and parts of laws in conflict with this Act are repealed.