

House Bill 497 (AS PASSED HOUSE AND SENATE)

By: Representatives Smith of the 12th, Martin of the 47th, Howard of the 118th, Hammontree of the 4th and Shanahan of the 10th

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 provide for an exception; to allow an injured employee the right to an independent medical
6 examination within 120 days of receipt of income benefits, rather than the current 60 days;
7 to change provisions relating to the penalty for nonpayment of medical charges by an
8 employer or an insurer; to increase the maximum temporary total disability benefits from
9 \$375.00 per week to \$400.00 per week; to increase the minimum temporary total disability
10 benefits from \$37.50 per week to \$40.00 per week; to increase the maximum temporary
11 partial disability benefits from \$250.00 per week to \$268.00 per week; to provide that
12 impairment ratings shall be based on the fifth edition of *Guides to the Evaluation of*
13 *Permanent Impairment*; to provide for related matters; to provide an effective date; to repeal
14 conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 style="text-align:center">**SECTION 1.**

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

21 "34-9-107.

22 Any final award for compensation entered by the board shall bear interest at the legal rate
23 of 7 12 percent on all accrued amounts and on all amounts accruing prior to final judgment
24 in the event of an appeal being taken from the board in the same manner in which it is now

1 provided that interest shall run on a judgment of the superior court in the event an appeal
2 is taken therefrom."

3 **SECTION 2.**

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

6 "34-9-108.

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

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

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

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

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

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

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

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

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

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

7 SECTION 3.

8 Said chapter is further amended by striking paragraph (1) of subsection (b) of Code Section
9 34-9-201, relating to the selection of a physician from a panel of physicians, and inserting
10 in lieu thereof the following:

11 "(1) The employer shall maintain a list of at least ~~four~~ six physicians or professional
12 associations or corporations of physicians who are reasonably accessible to the employees;
13 provided, however, that the board may grant exceptions to the required size of the panel
14 where it is demonstrated that more than four physicians or groups of physicians are not
15 reasonably accessible. This list shall be known as the 'Panel of Physicians.' At least one
16 of the physicians must practice the specialty of orthopedic surgery. Not more than two
17 industrial clinics shall be included on the panel. An employee may accept the services of
18 a physician selected by the employer from the panel or may select another physician from
19 the panel. The physicians selected under this subsection from the panel may arrange for
20 any consultation, referral, and extraordinary or other specialized medical services as the
21 nature of the injury shall require without prior authorization from the board; provided,
22 however, that any medical practitioner providing services as arranged by a primary
23 authorized treating physician under this subsection shall not be permitted to arrange for any
24 additional referrals. The employee may make one change from one physician to another
25 on the same panel without prior authorization of the board;"

26 SECTION 4.

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

29 "(e) Notwithstanding the rights afforded an employee under Code Section 34-9-201, the
30 employee, after an accepted compensable injury and within ~~60~~ 120 days of receipt of any
31 income benefits, shall have the right to one examination at a reasonable time and place,
32 within this state or within 50 miles of the employee's residence, by a duly qualified
33 physician or surgeon designated by the employee and to be paid for by the employer. Such
34 examination, of which the employer or insurer shall be notified in writing in advance, shall
35 not repeat any diagnostic procedures which have been performed since the date of the

1 employee's injury unless the costs of such diagnostic procedures which are in excess of
2 \$250.00 are paid for by a party other than the employer or the insurer."

3 **SECTION 5.**

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

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

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

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

31 (3) If any charges for health care goods or services are not paid when due, penalties shall
32 be added to such charges and paid at the same time as and in addition to the charges
33 claimed for the health care goods or services. For any payment of charges paid more than
34 30 days after their due date, but paid within 60 days of such date, there shall be added to
35 such charges an amount equal to 10 percent of the charges. For any payment of charges

1 paid more than 60 days after their due date, but paid within 90 days of such date, there
 2 shall be added to such charges an amount equal to 20 percent of the charges. For any
 3 charges not paid within 90 days of their due date, in addition to the 20 percent add-on
 4 penalty, the employer or insurer shall pay interest on that combined sum in an amount
 5 equal to 12 percent per annum from the ninety-first day after the date the charges were
 6 due until full payment is made. All such penalties and interest shall be paid to the
 7 provider of the health care goods or services."

8 **SECTION 6.**

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

11 "34-9-261.

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

22 **SECTION 7.**

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

25 "34-9-262.

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

32 **SECTION 8.**

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

