

House Bill 971

By: Representative Hembree of the 67<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 certain provisions relating to awards and benefits of  
3 workers' compensation; to change certain provisions relating to settlement agreements  
4 between parties; to change certain provisions relating to statistical data submitted by  
5 insurance companies to rating organizations, verification by employer, and issuance of  
6 experience modification worksheets to insureds; to change certain provisions relating to  
7 compensation for medical care, artificial members, and other treatment and supplies, effect  
8 of employee's refusal of treatment, and employer's liability for temporary care; to change  
9 provisions relating to an employee's waiver of confidentiality of communications with  
10 physicians and release for medical records and information; to revise certain provisions  
11 relating to procedure, payments controverted by employers, delinquency charge, and  
12 enforcement; to change certain provisions relating to the appointment of a conservator for  
13 a minor or an incompetent claimant; to change the maximum weekly compensation benefit  
14 for total disability; to change the maximum weekly compensation benefit for temporary  
15 partial disability; to revise certain provisions relating to compensation for loss of hearing  
16 caused by harmful noise; to provide for related matters; to repeal conflicting laws; and for  
17 other purposes.

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

20 Chapter 9 of Title 34 of the Official Code of Georgia Annotated, relating to workers'  
21 compensation, is amended by revising subsection (c) of Code Section 34-9-15, relating to  
22 procedure for settlement between parties generally, approval by the board, finality of  
23 settlement, and lump sum settlement, as follows:

24 "~~(c) The parties by agreement and with the approval of the board may enter into a~~  
25 ~~compromise lump sum settlement resolving all issues~~ The board or any party to the  
26 settlement agreement may require that the settlement documents contain language which

27 prorates the lump sum settlement over the life expectancy of the injured worker. When  
 28 such an agreement has been approved, neither the weekly compensation rate paid  
 29 throughout the case nor the maximum statutory weekly rate applicable to the injury shall  
 30 apply. No compensation rate shall exceed the maximum statutory weekly rate as of the  
 31 date of injury. Instead, the prorated rate set forth in the approved settlement documents  
 32 shall control and become the rate for that case. This subsection shall be retroactive in  
 33 effect."

34 **SECTION 2.**

35 Said title is further amended by revising Code Section 34-9-136, relating to statistical data  
 36 submitted by insurance company to rating organization, verification by employer, and  
 37 issuance of experience modification worksheets to insured, as follows:

38 "34-9-136.

39 ~~(a) Before an insurance company is authorized to submit statistical data on an employer~~  
 40 ~~to any licensed rating organization for purposes of determining the employer's experience~~  
 41 ~~modification factor, the insurance company must verify with the employer the accuracy of~~  
 42 ~~the data. In so verifying, the insurance company shall provide to the employer: (1) the data~~  
 43 ~~to be submitted, and (2) a statement in boldface type, to be signed by an authorized~~  
 44 ~~representative of the employer, and submitted by the insurance company to the licensed~~  
 45 ~~rating organization along with the statistical data. Said statement shall indicate that the~~  
 46 ~~statistical data to be submitted have been reviewed by the authorized representative of the~~  
 47 ~~employer, that said data are accurate, and that an insurance company representative has~~  
 48 ~~explained to the employer's representative that the statistical data to be submitted may~~  
 49 ~~affect the employer's premium for workers' compensation insurance coverage. Within 30~~  
 50 ~~days of receipt of a written request directly from the employer or agent of record, the~~  
 51 ~~insurance company shall provide the employer or agent of record with the statistical data~~  
 52 ~~submitted to the statistical agent for purposes of determining the employer's experience~~  
 53 ~~modification factor.~~

54 (b) When a licensed rating organization issues an insured's experience modification  
 55 worksheet to the insured's workers' compensation insurance company, the licensed rating  
 56 organization shall ~~submit~~ make available a copy of the worksheet to the insured."

57 **SECTION 3.**

58 Said chapter is further amended by revising Code Section 34-9-207, relating to an employee's  
 59 waiver of confidentiality of communications with physicians and release for medical records  
 60 and information, by adding a new subsection to read as follows:

61 "(d) Nothing contained in this Code section shall preclude an employer, its insurer, or a  
 62 third party administrator, from communicating orally, in writing, or electronically, directly  
 63 with an employee's medical provider without affirmative consent of the employee where  
 64 the purpose of communication is to assess, plan, implement, coordinate, monitor, or  
 65 evaluate options and healthcare services reasonably related to the condition for which such  
 66 employee claims compensation. In the absence of other legal authorization, medical  
 67 records and information obtained pursuant to this Code section shall not be used by anyone  
 68 for any purpose other than for the administration of the employee's claim for compensation  
 69 and medical care under this chapter."

70 **SECTION 4.**

71 Said title is further amended by revising subsection (f) of Code Section 34-9-221, relating  
 72 to procedure, payment controverted by employer, delinquency charge, and enforcement, as  
 73 follows:

74 "(f) If income benefits payable under the terms of an award are not paid within 20 days  
 75 after becoming due, there shall be added to the accrued income benefits an amount equal  
 76 to 20 percent thereof, which shall be paid at the same time as, but in addition to, the  
 77 accrued benefits unless review of the award is granted by the board or unless this  
 78 nonpayment is excused by the board after a showing by the employer that due to conditions  
 79 beyond the control of the employer the income benefits could not be paid within the period  
 80 prescribed."

81 **SECTION 5.**

82 Said chapter is further amended by revising Code Section 34-9-226, relating to the  
 83 appointment of a guardian for a minor or an incompetent claimant, as follows:

84 "34-9-226.

85 (a) Except as provided in this Code section, the only person capable of representing a  
 86 minor or legally incompetent claimant entitled to workers' compensation benefits shall be  
 87 (1) a conservator duly appointed and qualified by the probate court of the county of  
 88 residence of such minor or legally incompetent person or by any court of competent  
 89 jurisdiction within this state, or (2) a conservator or the equivalent thereof duly appointed  
 90 by a court of competent jurisdiction outside the State of Georgia. ~~Said~~ Such conservator  
 91 shall be required to file with the board a copy of the conservatorship returns filed annually  
 92 with the probate court or with a court of competent jurisdiction outside the State of Georgia  
 93 and give notice to all parties within 30 days of any change in status.

94 (b) The board shall have authority in and shall establish procedures for appointing  
 95 ~~temporary~~ conservators for purposes of administering workers' compensation rights and

96 benefits without such conservator becoming the legally qualified conservator of any other  
 97 property, without such conservator's actions being approved by a court of record, and  
 98 without the posting of a bond, in only the following circumstances:

99 (1) The board may, in its discretion, authorize and appoint a ~~temporary~~ conservator of  
 100 a minor or legally incompetent person to receive and administer weekly income benefits  
 101 on behalf of and for the benefit of said minor or legally incompetent person ~~for a period~~  
 102 ~~not to exceed 52 weeks unless renewed or extended by order of the board;~~

103 (2) The board may, in its discretion, authorize and appoint a ~~temporary~~ conservator of  
 104 a minor or legally incompetent person to compromise and terminate any claim and  
 105 receive any sum paid in settlement for the benefits and use of said minor or legally  
 106 incompetent person where the net settlement amount approved by the board is less than  
 107 ~~\$50,000.00~~ \$100,000.00; however, where the natural parent is the guardian of a minor  
 108 and the settlement amount is less than \$15,000.00, no board appointed conservator shall  
 109 be necessary. After settlement, the board shall retain the authority to resolve disputes  
 110 regarding continuing representation of a board appointed conservator of a minor or  
 111 legally incompetent person; and

112 (3) If a minor or legally incompetent person does not have a duly appointed  
 113 representative or conservator, the board may, in its discretion, appoint a guardian ad litem  
 114 to bring or defend an action under this chapter in the name of and for the benefit of said  
 115 minor or legally incompetent person ~~to serve for a period not to exceed 52 weeks, unless~~  
 116 ~~renewed or extended by order of the board.~~ However, no guardian ad litem appointed  
 117 pursuant to this Code section shall be permitted to receive the proceeds from any such  
 118 action except as provided in this Code section and the board shall have the authority to  
 119 determine compensation, if any, for any guardian ad litem appointed pursuant to this  
 120 Code section."

## 121 SECTION 6.

122 Said title is further amended by revising Code Section 34-9-261, relating to compensation  
 123 for total disability, as follows:

124 "34-9-261.

125 While the disability to work resulting from an injury is temporarily total, the employer shall  
 126 pay or cause to be paid to the employee a weekly benefit equal to two-thirds of the  
 127 employee's average weekly wage but not more than ~~\$500.00~~ \$525.00 per week nor less  
 128 than \$50.00 per week, except that when the weekly wage is below \$50.00, the employer  
 129 shall pay a weekly benefit equal to the average weekly wage. The weekly benefit under  
 130 this Code section shall be payable for a maximum period of 400 weeks from the date of  
 131 injury; provided, however, that in the event of a catastrophic injury as defined in

132 subsection (g) of Code Section 34-9-200.1, the weekly benefit under this Code section shall  
 133 be paid until such time as the employee undergoes a change in condition for the better as  
 134 provided in paragraph (1) of subsection (a) of Code Section 34-9-104."

135 **SECTION 7.**

136 Said chapter is further amended by revising Code Section 34-9-262, relating to compensation  
 137 for temporary partial disability, as follows:

138 "34-9-262.

139 Except as otherwise provided in Code Section 34-9-263, where the disability to work  
 140 resulting from the injury is partial in character but temporary in quality, the employer shall  
 141 pay or cause to be paid to the employee a weekly benefit equal to two-thirds of the  
 142 difference between the average weekly wage before the injury and the average weekly  
 143 wage the employee is able to earn thereafter but not more than ~~\$334.00~~ \$350.00 per week  
 144 for a period not exceeding 350 weeks from the date of injury."

145 **SECTION 8.**

146 Said chapter is further amended by revising paragraphs (1) and (2) of subsection (b) of Code  
 147 Section 34-9-264, relating to compensation for loss of hearing caused by harmful noise under  
 148 workers' compensation, as follows:

149 "(1) In the evaluation of occupational hearing loss, only the hearing levels at the  
 150 frequencies of 500, 1,000, ~~and 2,000,~~ and 3,000 cycles per second shall be considered.  
 151 Hearing losses for frequencies below 500 and above ~~2,000~~ 3,000 cycles per second are  
 152 not to be considered as constituting compensable hearing disability. No consideration  
 153 shall be given to the question of whether or not the ability of an employee to understand  
 154 speech is improved by the use of a hearing aid. The board may order the employer to  
 155 provide the employee with an original hearing aid if it will materially improve the  
 156 employee's ability to hear;

157 (2) The percentage of hearing loss shall be calculated as the average, in decibels, of the  
 158 thresholds of hearing for the frequencies of 500, 1,000, ~~and 2,000,~~ and 3,000 cycles per  
 159 second. Pure tone air conduction audiometric instruments, properly calibrated according  
 160 to accepted national standards such as ~~American Standards Association, Inc. (ASA),~~  
 161 International Standards Organization (ISO); or American National Standards Institute,  
 162 Inc. (ANSI), shall be used for measuring hearing loss. If more than one audiogram is  
 163 taken, the audiogram having the lowest threshold will be used to calculate occupational  
 164 hearing loss. If the losses of hearing average ~~15~~ 25 decibels (~~26 db if ANSI or ISO~~) or  
 165 less in the ~~three~~ four frequencies, such losses of hearing shall not constitute any  
 166 compensable hearing disability. If the losses of hearing average ~~82~~ 92 decibels (~~93 db~~)

167 ~~if ANSI or ISO~~) or more in the ~~three~~ four frequencies, then the same shall constitute and  
168 be total or 100 percent compensable hearing loss. In measuring hearing impairment, the  
169 lowest measured losses in each of the ~~three~~ four frequencies shall be added together and  
170 divided by ~~three~~ four to determine the average decibel loss. For each decibel of loss  
171 exceeding ~~15~~ 25 decibels (~~26 db if ANSI or ISO~~) an allowance of 1 1/2 percent shall be  
172 made up to the maximum of 100 percent which is reached at ~~82~~ 92 decibels (~~93 db if~~  
173 ~~ANSI or ISO~~). In determining the binaural percentage of loss, the percentage of  
174 impairment in the better ear shall be multiplied by five. The resulting figure shall be  
175 added to the percentage of impairment in the poorer ear, and the sum of the two divided  
176 by six. The final percentage shall represent the binaural hearing impairment;"

177

**SECTION 9.**

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