

House Bill 971

By: Representative Hembree of the 67th

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.