

House Bill 1355

By: Representative Werkheiser of the 157th

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 update workers' compensation law on experience
3 modification factors, refusal of suitable employment procedures, and certain benefits; to
4 prohibit certain accidents from affecting an employer's experience modification factor; to
5 prohibit certain accidents from being used to surcharge, cancel, or decline to renew an
6 employer's workers' compensation insurance policy; to provide for rules and regulations; to
7 provide for a referral physician to release an employee to return to work; to provide for
8 procedures when an injured employee is unable to perform a proffered job; to provide for
9 petitions, notices, teleconferences, and signed sworn statements; to permit an interlocutory
10 order; to increase weekly benefits for a maximum weekly wage compensation for total
11 disability; to increase weekly benefits for a maximum weekly wage compensation for
12 temporary partial disability; to increase the maximum amounts for certain death benefits; to
13 repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 9 of Title 34 of the Official Code of Georgia Annotated, relating to workers' compensation, is amended in Article 4, relating to insurance of compensation liability generally, by revising Code Section 34-9-137, relating to considerations in employer's experience modification factor, as follows:

"34-9-137.

(a) Whenever an experience modification factor is applied to the premium of an employer's policy of workers' compensation insurance, consideration shall be given to:

(1) Any amounts recovered by such employer or its insurer pursuant to Code Section 34-9-11.1, relating to rights of action against third parties and subrogation; and

(2) Code Section 34-9-360, relating to reimbursements from the Subsequent Injury Trust Fund. In addition, the insurer shall not include in the computation of such factor any penalties which were incurred pursuant to this chapter by the actions of the insurer or its representative.

(b) No experience modification factors shall be affected, and no insurer shall surcharge the premium of an employer's policy of workers' compensation insurance or cancel or decline to renew such policy, as a result of the employer's or its employee's involvement in a multivehicle accident when such employer or employee was not at fault in such accident. As used in this subsection, the term 'not at fault' means less than 50 percent at fault.

(c) The board and the Commissioner of Insurance shall promulgate such rules and regulations as necessary to implement the provisions of this Code section."

SECTION 2.

Said chapter is further amended in Part 3 of Article 6, relating to limitations on payment of compensation, by revising Code Section 34-9-240, relating to effect of refusal of suitable employment by injured employee and attempting or refusing to attempt work with restrictions, as follows:

41 "34-9-240.

42 (a) If an injured employee refuses employment procured for him or her and suitable to his
43 or her capacity, such employee shall not be entitled to any compensation, except benefits
44 pursuant to Code Section 34-9-263, at any time during the continuance of such refusal
45 unless in the opinion of the board such refusal was justified.

46 (b) Notwithstanding the provisions of subsection (a) of this Code section, if the authorized
47 treating physician or a referral physician releases an employee to return to work with
48 restrictions and the employer tenders a suitable job to such employee within those
49 restrictions, then:

50 (1) If such employee attempts the proffered job for eight cumulative hours or one
51 scheduled workday, whichever is greater, but is unable to perform the job for more than
52 ~~15 ten~~ working days, ~~then weekly benefits shall be immediately reinstated, and the~~
53 ~~burden shall be upon the employer to prove that such employee is not entitled to~~
54 ~~continuing benefits~~ the employee may, within ten days of such attempt, petition the board
55 for an order immediately reinstating weekly benefits. Such petition shall be filed on a
56 form prescribed by the board and shall include a sworn statement by the employee stating
57 the reason or reasons such employee is unable to perform such proffered job. Upon the
58 filing of such petition, the board shall issue a notice of a show-cause teleconference
59 before an administrative law judge to be scheduled at a date and time not more than five
60 business days from the date of the petition. The employer may submit a sworn statement
61 in response to the employee's petition, and the burden shall be upon the employer to show
62 good cause as to why the employee is not entitled to continuing benefits. Following the
63 teleconference, the administrative law judge may issue an interlocutory order suspending
64 or reinstating weekly benefits pending a hearing; or

65 (2) If such employee attempts the proffered job for less than eight cumulative hours or
66 one scheduled workday, whichever is greater, or refuses to attempt the proffered job, then
67 the employer may unilaterally suspend benefits upon filing with the board the appropriate

68 form with supporting documentation of the release to return to work with restrictions by
69 the authorized treating physician or a referral physician, the tender of a suitable job
70 within those restrictions, and a statement that such employee did not attempt the proffered
71 job. Under those circumstances, the burden shall shift to the employee to prove
72 continuing entitlement to benefits."

73 **SECTION 3.**

74 Said chapter is further amended in Article 7, relating to compensation schedules, by revising
75 Code Section 34-9-261, relating to compensation for total disability, as follows:

76 "34-9-261.

77 While the disability to work resulting from an injury is temporarily total, the employer shall
78 pay or cause to be paid to the employee a weekly benefit equal to two-thirds of the
79 employee's average weekly wage but not more than ~~\$800.00~~ \$900.00 per week nor less
80 than \$50.00 per week, except that when the weekly wage is below \$50.00, the employer
81 shall pay a weekly benefit equal to the average weekly wage. The weekly benefit under
82 this Code section shall be payable for a maximum period of 400 weeks from the date of
83 injury; provided, however, that in the event of a catastrophic injury as defined in
84 subsection (g) of Code Section 34-9-200.1, the weekly benefit under this Code section shall
85 be paid until such time as the employee undergoes a change in condition for the better as
86 provided in paragraph (1) of subsection (a) of Code Section 34-9-104."

87 **SECTION 4.**

88 Said chapter is further amended in said article by revising Code Section 34-9-262, relating
89 to compensation for temporary partial disability, as follows:

90 "34-9-262.

91 Except as otherwise provided in Code Section 34-9-263, where the disability to work
92 resulting from the injury is partial in character but temporary in quality, the employer shall

93 pay or cause to be paid to the employee a weekly benefit equal to two-thirds of the
94 difference between the average weekly wage before the injury and the average weekly
95 wage the employee is able to earn thereafter but not more than ~~\$533.00~~ \$600.00 per week
96 for a period not exceeding 350 weeks from the date of injury."

97 **SECTION 5.**

98 Said chapter is further amended in said article by revising Code Section 34-9-265, relating
99 to compensation for death resulting from injury and other causes, penalty for death from
100 injury proximately caused by intentional act of employer, and payment of death benefits
101 where no dependents found, as follows:

102 "34-9-265.

103 (a) When an employee is entitled to compensation under this chapter for an injury received
104 and death ensues from any cause not resulting from the injury for which he or she was
105 entitled to compensation, payments of the unpaid balance for such injury shall cease and
106 all liability therefor shall terminate.

107 (b) If death results instantly from an accident arising out of and in the course of
108 employment or if during the period of disability caused by an accident death results
109 proximately therefrom, the compensation under this chapter shall be as follows:

110 (1) The employer shall, in addition to any other compensation, pay the reasonable
111 expenses of the employee's burial not to exceed ~~\$7,500.00~~ \$10,000.00. If the employee
112 leaves no dependents, this shall be the only compensation;

113 (2) The employer shall pay the dependents of the deceased employee, which dependents
114 are wholly dependent on his or her earnings for support at the time of the injury, a weekly
115 compensation equal to the compensation which is provided for in Code Section 34-9-261
116 for total incapacity;

117 (3) If the employee leaves dependents only partially dependent on his or her earnings for
118 their support at the time of the injury, the weekly compensation for these dependents shall

119 be in the same proportion to the compensation for persons wholly dependent as the
120 average amount contributed weekly by the deceased to the partial dependents bears to the
121 deceased employee's average weekly wages at the time of the injury; and

122 (4) When weekly payments have been made to an injured employee before his or her
123 death, compensation to dependents shall begin on the date of the last of such payments;
124 but the number of weekly payments made to the injured employee under Code
125 Section 34-9-261, 34-9-262, or 34-9-263 shall be subtracted from the maximum 400
126 week period of dependency of a spouse provided by Code Section 34-9-13; and in no
127 case shall payments be made to dependents except during dependency.

128 (c) The compensation provided for in this Code section shall be payable only to
129 dependents and only during dependency.

130 (d) The total compensation payable under this Code section to a surviving spouse as a sole
131 dependent at the time of death and where there is no other dependent for one year or less
132 after the death of the employee shall in no case exceed ~~\$320,000.00~~ \$360,000.00.

133 (e) If it shall be determined that the death of an employee was the direct result of an injury
134 proximately caused by the intentional act of the employer with specific intent to cause such
135 injury, then there shall be added to the weekly income benefits paid to the dependents, if
136 any, of the deceased employee a penalty of 20 percent; provided, however, such penalty
137 in no case shall exceed \$20,000.00. For the purpose of this subsection, an employer shall
138 be deemed to have intended an injury only if the employer had actual knowledge that the
139 intended act was certain to cause such injury and knowingly disregarded this certainty of
140 injury. Nothing in this subsection shall limit the effect of Code Section 34-9-11.

141 (f) Each insurer or self-insurer which, in a compensable death case, finds no dependent or
142 dependents qualifying to receive dependency benefits shall pay to the State Board of
143 Workers' Compensation one-half of the benefits which would have been payable to such
144 dependent or dependents or the sum of \$10,000.00, whichever is less. All such funds paid
145 to the board shall be deposited in the general fund of the state treasury. If, after such

146 payment has been made, it is determined that a dependent or dependents qualified to
147 receive benefits exist, then the insurer or self-insurer shall be entitled to reimbursement by
148 refund for moneys collected in error."

149

SECTION 6.

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