



2023-2024 General Assembly

# HOUSE BILL 259: 2023 Appropriations Act, Sec. 31.3: Industrial Commission/Extended Compensation/Clarify Meaning of Total Loss of Wage-Earning Capacity.

<b>Committee:</b>		<b>Date:</b>	November 29, 2023
<b>Introduced by:</b>		<b>Prepared by:</b>	Karyl Smith Staff Attorney
<b>Analysis of:</b>	Sec. 31.3 of S.L. 2023-134		

**OVERVIEW:** Section 31.3 of S.L. 2023-134 does the following:

- Clarifies the meaning of the term "total loss of wage-earning capacity" for purposes of determining an employee's entitlement to extended compensation.
- Allows the North Carolina Industrial Commission (Commission) to consider various factors in determining whether an employee has sustained a total loss of wage-earning capacity.
- States the intent of the General Assembly when it enacted G.S. 97-29(c).

*This section became effective July 1, 2023, and applies to claims accrued or pending prior to, on, or after that date.*

**CURRENT LAW:** According to G.S. 97-29(c) of the North Carolina Workers' Compensation Act, as amended by S.L. 2011-287, an employee receiving temporary total disability benefits under G.S. 97-29(b) can qualify for extended compensation in excess of the 500-week limitation on temporary total disability only if (i) 425 weeks have passed at the time the employee makes application to the Commission to exceed the 500-week limitation on temporary total disability benefits and (ii) pursuant to the provisions of G.S. 97-84, unless agreed to by the parties, the employee must prove by a preponderance of the evidence that the employee has sustained a total loss of wage-earning capacity.

**BACKGROUND:** On April 18, 2023, in Sturdivant v. North Carolina Department of Public Safety, the North Carolina Court of Appeals concluded that a plaintiff-employee's burden of proof for showing "total loss of wage-earning capacity" to receive extended compensation under G.S. 97-29(c) is the same as the plaintiff-employee's burden of proof for showing "total disability" to receive temporary total disability benefits under G.S. 97-29(b).

**BILL ANALYSIS:** Section 31.3(a) of S.L. 2023-134 clarifies that the term "total loss of wage-earning capacity," as used in G.S. 97-29(c), means the complete elimination of the capacity to earn any wages. The terms "disability" (G.S. 97-2(9)) and "suitable employment" (G.S. 97-2(22)) do not apply to this provision. This section also allows the Commission to consider preexisting and injury-related physical and mental limitations, vocational skills, education, and experience in determining whether an employee has sustained a total loss of wage-earning capacity.

**Section 31.3(b)** of S.L. 2023-134 states that the General Assembly's intent in enacting Section 31.3(a) is to clarify, in response to Sturdivant v. North Carolina Department of Public Safety, that an employee has a different standard for establishing the burden of proof for extended compensation pursuant to G.S. 97-29(c) to reflect the General Assembly's intent when it enacted S.L. 2011-287.

Jeffrey Hudson  
Director



Legislative Analysis  
Division  
919-301-1976

# House Bill 259

*Page 2*

**EFFECTIVE DATE:** This section became effective July 1, 2023, and applies to claims accrued or pending prior to, on, or after that date.