

§ 97-94. Employers required to give proof that they have complied with preceding section; penalty for not keeping liability insured; review; liability for compensation; criminal penalties for failure to secure payment of compensation.

(a) Every employer subject to the compensation provisions of this Article shall file with the Commission, in form prescribed by it, as often as the Commission determines to be necessary, evidence of its compliance with the provisions of G.S. 97-93 and all other provisions relating thereto.

(b) Repealed by Session Laws 2018-5, s. 22.1, effective July 1, 2018.

(b1) Any employer required to secure the payment of compensation under this Article who refuses or neglects to secure such compensation shall be punished by a penalty of one dollar (\$1.00) for each employee, but not less than twenty dollars (\$20.00) nor more than one hundred dollars (\$100.00), for each day of such refusal or neglect and until the same ceases.

(b2) As an alternative to the penalty imposed in subsection (b1) of this section, the employer may submit to the Commission evidence that the employer has obtained workers' compensation insurance coverage from either an insurer licensed to do business in North Carolina or the North Carolina Workers' Compensation Insurance Plan. In addition to submitting such evidence, the employer shall submit to the Commission all payroll records for the period or periods of noncompliance. The Commission shall, after verifying the coverage and upon the request of the employer, rescind the penalty assessed under subsection (b1) of this section and impose a penalty by:

- (1) First, determining the per employee cost of the current policy by dividing the cost of the policy by the number of employees covered by the policy.
- (2) Second, determining the average number of employees during the period of noncompliance.
- (3) Third, multiplying the per employee cost of the current policy by the average number of employees during the period of noncompliance and, to that total, by applying an additional penalty of ten percent (10%).

The alternate penalty provided by this subsection is available only to an employer not previously penalized under this section.

(c) Any penalty imposed by this section may be assessed by the Industrial Commission administratively, with the right to a hearing if requested within 30 days after notice of the assessment of the penalty and the right of review and appeal as in other cases. For the purposes of assessing the penalties set forth in subsections (b1) and (b2) of this section, the penalty shall not apply to a period of noncompliance that occurred more than three years prior to the date the Industrial Commission first assessed the penalty. Enforcement of the penalty shall be made by the Office of the Attorney General. The clear proceeds of penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

In addition to any penalty under this section, the employer shall be liable, during the continuance of the refusal or neglect, to an employee for compensation under this Article or at law at the election of the injured employee. The Industrial Commission shall prioritize the payment of any compensation due an injured employee under this Article over the payment of any penalty owed pursuant to this section.

Any employer required to secure the payment of compensation under this Article who willfully fails to secure such compensation shall be guilty of a Class H felony. Any employer required to secure the payment of compensation under this Article who neglects to secure the payment of compensation shall be guilty of a Class 1 misdemeanor.

(d) Any person who, with the ability and authority to bring an employer in compliance with G.S. 97-93, willfully fails to bring the employer in compliance, shall be guilty of a Class H felony. Any person who, with the ability and authority to bring an employer in compliance with G.S. 97-93, neglects to bring the employer in compliance, shall be guilty of a Class 1
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misdemeanor. Any person who violates this subsection may be assessed a civil penalty by the Commission in an amount up to one hundred percent (100%) of the amount of any compensation due the employer's employees injured during the time the employer failed to comply with G.S. 97-93.

(e) Notwithstanding the provisions of G.S. 97-101, the Commission may suspend collection or remit all or part of any civil penalty imposed under this section on condition that the employer or person pays any compensation due and complies with G.S. 97-93. (1929, c. 120, s. 68; 1945, c. 766; 1963, c. 499; 1973, c. 1291, s. 13; 1985, c. 119, s. 4; 1985 (Reg. Sess., 1986), c. 1027, s. 54; 1987, c. 729, s. 17; 1993, c. 539, s. 681; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 679, s. 8.1; 1997-353, s. 2; 1998-215, s. 115; 2018-5, s. 22.1.)