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Alabama Workers' Compensation Law

§ 25-5-1. Definitions.

Throughout this chapter, the following words and phrases as used therein shall be considered to have the following meanings, respectively, unless the context shall clearly indicate a different meaning in the connection used:

(1) COMPENSATION. The money benefits to be paid on account of injury or death, as provided in Articles 3 and 4. The recovery which an employee may receive by action at law under Article 2 of this chapter is termed "recovery of civil damages," as provided for in Sections 25-5-31 and 25-5-34. "Compensation" does not include medical and surgical treatment and attention, medicine, medical and surgical supplies, and crutches and apparatus furnished an employee on account of an injury.

(2) CHILD or CHILDREN. The terms include posthumous children and all other children entitled by law to inherit as children of the deceased; stepchildren who were members of the family of the deceased, at the time of the accident, and were dependent upon him or her for support; a grandchild of the deceased employee, whose father is dead or is an invalid, and who was supported by and a member of the family of the deceased grandparent at the time of the accident.

(3) DEPENDENT CHILD or ORPHAN. An unmarried child under the age of 18 years or one over that age who is physically or mentally incapacitated from earning.

(4) EMPLOYER. Every person who employs another to perform a service for hire and pays wages directly to the person. The term shall include a service company for a self-insurer or any person, corporation, copartnership, or association, or group thereof, and shall, if the employer is insured, include his or her insurer, the insurer being entitled to the employer's rights, immunities, and remedies under this chapter, as far as applicable. The inclusion of an employer's insurer within the term shall not provide the insurer with immunity from liability to an injured employee, or his or her dependent in the case of death to whom the insurer would otherwise be subject to liability under Section 25-5-11. Notwithstanding the provisions of this chapter, in no event shall a common carrier by motor vehicle operating pursuant to a certificate of public convenience and necessity be deemed the "employer" of a leased-operator or owner-operator of a motor vehicle or vehicles under contract to the common carrier.

(5) EMPLOYEE or WORKER. The terms are used interchangeably, have the same meaning throughout this chapter, and shall be construed to mean the same. The terms include the plural and all ages and both sexes. The terms include

every person in the service of another under any contract of hire, express or implied, oral or written, including aliens and also including minors who are legally permitted to work under the laws of this state, and also including all employees of Tannehill Furnace and Foundry Commission. Any reference in this chapter to a "worker" or "employee" shall, if the worker or employee is dead, include his or her dependent, as defined in this chapter, if the context so requires.

(6) WAGES or WEEKLY WAGES. The terms shall in all cases be construed to mean "average weekly earnings", based on those earnings subject to federal income taxation and reportable on the Federal W-2 tax form which shall include voluntary contributions made by the employee to a tax-qualified retirement program, voluntary contributions to a Section 125 cafeteria program, and fringe benefits as defined herein. Average weekly earnings shall not include fringe benefits if and only if the employer continues the benefits during the period of time for which compensation is paid. "Fringe benefits" shall mean only the employer's portion of health, life, and disability insurance premiums.

(7) ACCIDENT. The term, as used in the phrases "personal injuries due to accident" or "injuries or death caused by accident" shall be construed to mean an unexpected or unforeseen event, happening suddenly and violently, with or without human fault, and producing at the time injury to the physical structure of the body or damage to an artificial member of the body by accidental means.

(8) INJURIES BY AN ACCIDENT ARISING OUT OF AND IN THE COURSE OF THE EMPLOYMENT. Without otherwise affecting either the meaning or interpretation of the clause, the clause does not cover workers except while engaged in or about the premises where their services are being performed or where their service requires their presence as a part of service at the time of the accident and during the hours of service as workers.

(9) INJURY. "Injury and personal injury" shall mean only injury by accident arising out of and in the course of the employment, and shall not include a disease in any form, except for an occupational disease or where it results naturally and unavoidably from the accident. Injury shall include physical injury caused either by carpal tunnel syndrome disorder or by other cumulative trauma disorder if either disorder arises out of and in the course of the employment, and breakage or damage to eyeglasses, hearing aids, dentures, or other prosthetic devices which function as part of the body, when injury to them is incidental to an on-the-job injury to the body. Injury does not include an injury caused by the act of a third person or fellow employee intended to injure the employee because of reasons personal to him or her and not directed against him or her as an employee or because of his or her employment. Injury does not include a mental disorder or mental injury that has neither been produced nor been proximately caused by some physical injury to the body.

(10) SINGULAR and PLURAL. Wherever the singular is used, the plural shall be included.

(11) GENDER. Where the masculine gender is used, the feminine and neuter shall be included.

(12) LOSS OF HAND OR FOOT. Amputation between the elbow and wrist shall be considered as the equivalent to the loss of a hand, and the amputation between the knee and ankle shall be considered as the equivalent of the loss of a foot.

(13) PROVIDERS. A medical clinic, pharmacist, dentist, chiropractor, psychologist, podiatrist, physical therapist, pharmaceutical supply company, rehabilitation service, or other person or entity providing treatment, service, or equipment, or person or entity providing facilities at which the employee receives treatment.

(14) MEDICAL. All services, treatment, or equipment provided by a provider.

(15) PREVAILING. The most commonly occurring reimbursements for health services, other than those provided by federal and state programs for the elderly (Medicare) and economically disadvantaged (Medicaid). “Prevailing” shall include not only amounts per procedure code, but also commonly used adjudication rules as applied to multiple procedures, global procedures, use of assistant surgeons, and others as appropriate. For hospitals, “prevailing” rate of reimbursement or payment shall be established by the method contained in Section 25-5-77.

(16) PARTICIPATING AND NONPARTICIPATING HOSPITALS. Those hospitals that have a negotiated rate of reimbursement or payment with the Department of Industrial Relations. “Nonparticipating hospitals” means those hospitals that have not negotiated a rate of reimbursement or payment with the Department of Industrial Relations.

(17) HOSPITAL. A hospital, ambulatory surgical center, outpatient rehabilitation center licensed by the State of Alabama, and diagnostic facilities accredited by the Commission on Accreditation of Rehabilitation Facilities.

(18) THE COURT. The circuit court that would have jurisdiction in an ordinary civil action involving a claim for the injuries or death in question, and “the judge” means a judge of that court.

(19) UTILIZATION REVIEW. The determination of medical necessity for medical and surgical in-hospital, out-patient, and alternative settings treatments for acute and rehabilitation care. It includes precertification for elective treatments. Concurrent review and, if necessary, retrospective review are required for emergency cases.

(20) BILL SCREENING. The evaluation and adjudication of provider bills for appropriateness of reimbursement relative to medical necessity and prevailing rates of reimbursement, duplicate charges, unbundling of charges, relativeness of services to injury or illness, necessity of assistant surgeons, adjudication of multiple procedures, number of modalities, global procedures, and any other prevailing adjudication issues that may apply.

(21) ADJUDICATION. The review of claims to apply prevailing rules that adjust reimbursements for the amount of work required when multiple procedures are performed at the same time, when assisting surgeons are present, to eliminate duplicate billing from the unbundling of global fees, and to adjust for the most commonly occurring method adopted for total reimbursement.

(22) OMBUDSMAN. An individual who assists injured or disabled employees, persons claiming death benefits, employers, and other persons in protecting their rights and obtaining information available under the workers’ compensation law.

§ 25-5-2. Powers and duties of Director of Industrial Relations with respect to administration of chapter generally; "director" defined.

The Director of the Department of Industrial Relations of the State of Alabama shall gather statistics on accidents and their causes and shall generally be responsible for the efficient administration of this chapter. To this end, the director shall make the necessary investigations and examinations in connection with the settlement of all workers' compensation claims. As used in this chapter, the word "director" shall mean the Director of the "Department of Industrial Relations".

§ 25-5-3. Director to prepare and distribute forms, etc.

The director shall prepare and cause to be printed, at the expense of the state, and to be paid for as other supplies are paid for, and upon request furnish free sample copies to any employer or employee the blank forms and literature as he or she shall deem requisite to facilitate or promote the efficient administration of Articles 2, 3, and 4 of this chapter, other than the papers relating to court proceedings. The director shall adopt and cause a standardized claim reimbursement form to be used by providers. The director shall also assist providers in developing a system for electronic reporting, billing, and payment in workers' compensation cases. Standardized claim reimbursement forms for physicians licensed to practice medicine and for other providers shall be approved by the director and the Workers' Compensation Medical Services Board. If the board and the director are unable to agree on a standardized claim reimbursement form for physicians within three months following May 19, 1992, then the form shall be established under Section 27-1-16.

§ 25-5-4. Reports and records of injuries for which compensation claimed.

An employer shall keep a record of all injuries, fatal or otherwise, received by his or her employees arising out of and in the course of their employment and for which compensation is claimed or paid. Within 15 days after the occurrence of the injuries and knowledge thereof by the employer, a report of the same shall be made to the department on forms approved by the department. At the discretion of the director, reports received under this chapter may be destroyed after 12 years.

§ 25-5-5. Reports of settlements.

Every employer shall, within 10 days after the settlement of any case, other than a settlement approved by the court, make a report thereof in writing, giving the details of such settlement, and shall mail the same to the Department of Industrial Relations on forms approved by said department.

§ 25-5-6. Circuit court clerks to report disposition of cases.

The clerk of the circuit court shall, within 10 days after the disposition of any case in his court, make a report in writing, giving the details of such disposition, and shall mail the same to the Department of Industrial Relations on forms approved by said department.

§ 25-5-7. Supplementary reports as to initiation, cessation, etc., of compensation payments.

In all cases, upon making the first payment of compensation and upon cessation or termination of payment of compensation, for any reason whatever, the employer shall make a supplementary report within 10 days to the Department of Industrial Relations on forms approved by said department. If the first installment of compensation is not paid within 30 days after the employer has knowledge of a claim for compensation, the employer shall file a report, within 10 days of the expiration of the 30-day period, setting out the reason for such nonpayment with the Department of Industrial Relations on forms approved by said department.

§ 25-5-8. Employers' options to secure payment of compensation.

(a) Option to insure risks. An employer subject to this chapter may secure the payment of compensation under this chapter by insuring and keeping insured his or her liability in some insurance corporation, association, organization, insurance association, corporation, or association formed of employers and workers or formed by a group of employers to insure the risks under this chapter, operating by mutual assessment or other plans or otherwise. Notwithstanding the foregoing, the insurance association, organization, or corporation shall have first had its contract and plan of business approved in writing by the Commissioner of the Department of Insurance of Alabama and have been authorized by the Department of Insurance to transact the business of workers' compensation insurance in this state and under the plan. Notwithstanding any other provision of the law to the contrary, the obligations of employers under law for workers' compensation benefits for injury of employees may be insured by any combination of life, disability, accident, health, or other insurance provided that the coverages insure without limitation or exclusion the workers' compensation benefits of this state.

(b) Option to operate as self-insurer. An employer subject to this chapter who elects not to insure his or her liability thereunder shall furnish satisfactory proof to the director of his or her financial ability to pay directly compensation in the amount and manner and when due as provided by this chapter. Upon receiving satisfactory proof, the director shall authorize the employer to operate as a self-insurer. The director may prescribe other reasonable rules and regulations for the purpose of protecting the injured employee or the employee's dependents and set reasonable fees to accompany self-insurance applications.

(c) Evidence of compliance. An employer subject to this chapter shall file with the director, on a form prescribed by the director, annually or as often as the director in his or her discretion deems necessary, evidence of compliance with the requirements of this section. In cases where insurance is taken with a carrier duly authorized to write such insurance in this state, notice of insurance coverage filed by the carrier shall be sufficient evidence of compliance by the insured.

(d) Certificate of compliance.

(1) ISSUANCE, REVOCATION. Upon the employer's complying with subsection (b) of this section relating to self-insurance, the director shall issue to the employer a certificate, which shall remain in force for a period fixed by the director. Upon 60 days' notice and hearing to the employer, the director may,

for financial reasons, for failure of the employer to faithfully discharge his or her obligations according to the agreements contained in his or her application for self-insurance, or for the violation of any reasonable rule or regulation prescribed by the director, revoke the self-insurance certificate, in which case the employer shall immediately insure his or her liability. Certificates of self-insurance issued prior to September 17, 1973, shall continue in force but shall become subject to revocation as provided in this subsection. At any time after the revocation, the director may grant a new certificate to the employer upon application by the employer.

(2) APPEALS. An appeal may be taken from any ruling of the director under subsection (b) of this section or under this subsection to the circuit court. The presiding judge shall, within 10 days after notification of appeal, assign a member of the court to hear the case and the matter shall be set for hearing at the earliest available time. Trial shall be de novo. The taking of an appeal shall not stay the ruling or order appealed from unless good and sufficient bond approved by the judge of the court to which the appeal is taken shall be filed with the court, conditioned on complying with such order as may be legally made effective and further conditioned upon payment by the employer of all final orders for compensation that may be rendered against the employer pending the disposition of the appeal.

(e) Penalties for failure to secure payment of compensation; injunctions. An employer required to secure the payment of compensation under this section who fails to secure compensation shall be guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not less than $100.00 nor more than $1,000.00. In addition, an employer required to secure the payment of compensation under this section who fails to secure the compensation shall be liable for two times the amount of compensation which would have otherwise been payable for injury or death to an employee. The director may apply to a court of competent jurisdiction for an injunction to restrain threatened or continued violation of any provisions relating to the requirements of insurance or self-insurance. The court may impose civil penalties against an employer in noncompliance with this amendatory act, in an amount not to exceed $100.00 per day. Subsequent compliance with this amendatory act shall not be a defense.

(f) Employer insurance policies.

(1) REQUIRED AND PROHIBITED PROVISIONS. Insurance policies written pursuant to this section shall contain a clause to the effect that, as between the worker and the insurer, notice to and knowledge by the employer of the occurrence of the injury shall be deemed notice and knowledge on the part of the insurer; that jurisdiction of the employer for the purpose of this chapter shall be jurisdiction of the insurer; and that the insurer will in all things be bound by and subject to the award or judgment rendered against the employer upon the risk so insured. The policies shall provide that the worker shall have an equitable lien upon any amount that shall become owing, on account of the policy, to the employer from the insurer, and in case of legal incapacity or inability of the employer to receive the amount owing and pay it over to the worker or his or her dependent, that the insurer will pay the same direct to the worker or dependent, thereby discharging all obligations under the policy to the employer and all the obligations of the employer and the insurer to the worker. Such policies, however, shall contain no obligations relieving the insurance company from payment of

obligations if the employer becomes insolvent or discharged in bankruptcy or otherwise during the period the policy is in force, if the compensation remains owing. The insurer shall be one authorized by law to conduct business in the State of Alabama, and all insurance companies writing such insurance may include in their policies, in addition to the requirements now provided by law, the additional requirements, terms, and conditions provided in this section.

(2) FILING OF AND APPROVAL OF PREMIUM AND RISK CLASSIFICATIONS. An insurance corporation, mutual corporation, reciprocal exchange, or association authorized to transact the business of workers' compensation insurance in this state and which insures employers against liability for compensation under this chapter shall file with the Department of Insurance its classification of risks and premiums relating thereto and any subsequent proposed classification of risks and premiums, together with the basic rates and merit-rating schedules, if a system of schedule rating or merit rating is used by the insurance corporation, exchange, or association, none of which shall take effect until the Commissioner of the Department of Insurance shall have approved the same as reasonable, adequate, and not excessive. All filings with the Department of Insurance containing aggregate industry data of classifications of risks and premiums, rates, and merit-rating schedules pertaining to workers' compensation insurance shall be public records, notwithstanding any other provisions of Alabama law. The Commissioner of the Department of Insurance shall convene a public hearing with reasonable public notice for the purpose of considering public testimony and other evidence relevant to any filing prior to approval of any bureau loss cost or rate filing related to workers' compensation insurance. Within 10 days after approval, the Commissioner of the Department of Insurance shall make or cause to be made a sufficient number of copies of same for that purpose, and shall mail at least one copy of each of the same to every insurance carrier writing workers' compensation business in the State of Alabama, at the carrier's last address or at the last address of its designated agent to receive the same. The insurance carrier shall (or if it is a member of or associated with a rating or inspection bureau, either or both of them, or a concern or aggregation of like character, it shall cause the rating and inspection bureau, either or both, or concern or aggregation of like character with which it is affiliated to do so) file with the Department of Insurance a full and complete statement of the actuarial and underwriting experience data and the like in its possession, from which and upon which the rates, schedules, and systems so filed were ascertained, calculated, and constructed, and within six months after the expiration of each succeeding six months, shall file a like statement of all actuarial and underwriting data and the like, pertaining to the rates, schedules, and system accumulated or acquired by it during the preceding six months. Upon failure to file the statement within the time specified above, the rates, schedules, and systems may be presumed by the Commissioner of the Department of Insurance, without more, to be excessive, unreasonable, inadequate to provide the necessary reserves, or discriminatory, as the case may be. The Commissioner of the Department of Insurance may withdraw his or her approval of any premium rate or schedule made by an insurance corporation, association, mutual corporation, or reciprocal exchange, if, in his or her judgment, the premium rate or schedule is excessive, unreasonable, discriminatory, or inadequate to provide the necessary reserves.

The commissioner shall withdraw approval of any premium rate or schedule shown by a motor common carrier employer to be conditioned on the motor common carrier accepting the coverage of owner-operators or lease-operators as a condition to providing coverage for the motor common carrier employer's employees.

Nothing contained in this chapter or in any other law of this state shall affect the right of an insurance corporation or a mutual or reciprocal insurance corporation or association to issue participating policies or contracts or to pay savings, refunds, or dividends upon the policies or contracts.

(3) PAYMENT OF INSURANCE COSTS BY EMPLOYEES. No agreement by an employee to pay to an employer any portion of the cost of insuring his or her risk under this chapter shall be valid unless the agreement between the employer and employee, the plan of which is part of a contract, is approved in writing by the commissioner. But the employer and the worker may agree to carry the risks and to provide other and greater benefits, such as additional compensation; accident, sickness, or old age insurance; or benefits, and the fact that the plan involves a contribution by the worker shall not prevent its validity if the plan has been approved in writing by the commissioner. An employer who makes any charge or deduction prohibited by this section is guilty of a misdemeanor.

(4) DIRECT ACTIONS AGAINST INSURERS. If the employer insures the payment of the compensation provided by this chapter and according to the full benefits thereof and with full coverage under this chapter in a corporation or association authorized to do business in Alabama and approved by the commissioner, and if the employer posts a notice or notices in a conspicuous place or in conspicuous places about his or her place of employment, stating that he or she is insured and by whom insured; and if the employer files a copy of the notice with the Department of Insurance, then, and in such case, any civil actions brought by an injured employee or the employee's dependent shall be brought directly against the insurer, and the employer, or insured, shall be released from any further liability. If the insurance company is insolvent or bankrupt, or if it cannot be reached by due diligence by process in this state, the employer shall not be released from liability under this chapter. Should any recovery be had in excess of the amount of the insurance carried, the employer shall be liable for the excess. The return of execution upon a judgment of an employee against an insurance company, unsatisfied in whole or in part, shall be conclusive evidence of the insolvency of the insurance company for the purposes of this chapter, and if the insurance company is adjudged to be bankrupt or insolvent by a court of competent jurisdiction, proceedings may be brought by the employee against the employer in the first instance or against the employer and the insurance company jointly or severally or in a pending proceeding against the insurance company, and the employer may be joined at any time after the adjudication.

(g) Employer bill of rights -- Penalty.

(1) Every insurance carrier and self-insurer, individual and group, shall, on written request of the insured employer, provide the employer with a list of claims made against the employer. The information provided to the employer shall include amounts paid for closed claims and, if requested, details regarding the treatment and condition of the injured or disabled worker. The employer shall

also receive notice of any proposed settlement of any claim against the employer if the employer so requests in writing.

(2) In the event the court determines and makes a finding that a worker has filed a fraudulent claim for workers' compensation benefits under this amendatory act, Section 25-5-11.1 shall not apply to the employer. In addition to the denial of workers' compensation benefits under this amendatory act, the employer, upon such a finding that a worker has filed a fraudulent claim for workers' compensation benefits under this amendatory act, may terminate the worker.

(3) Failure to comply with subdivision (1) may subject the violator to a fine, upon hearing by a court, of not less than $25.00 nor more than $100.00.

§ 25-5-9. Pooling of employers' liabilities for qualification as self-insurers.

(a) The Director of Industrial Relations may, under such rules and regulations as he may prescribe, permit two or more employers, as such term is defined in Section 25-5-1, to enter into agreements to pool their liabilities under this chapter for the purpose of qualifying as self-insurers under this chapter. Each employer member of such approved group shall be authorized to operate as a self-insurer under this chapter.

(b) Two or more employer groups as described in (a) above may enter into agreements to pool their liabilities under this chapter for the purpose of providing excess coverage above the self-insured retention levels maintained by the individual employer groups.

(c) This section is supplemental and shall insofar as possible be construed in pari materia with this chapter; however, any law or part thereof in conflict herewith is repealed.

§ 25-5-10. Liabilities of persons engaged in schemes, etc., to avoid liability to workers.

(a) A person who creates or carries into operation any fraudulent scheme, artifice, or device to execute work without being responsible to the worker for the benefits provided by this chapter shall be included in the term "employer" and shall be subject to all the liabilities of employers under this chapter.

(b) When compensation is claimed from or proceedings taken against a person under subsection (a) of this section, the compensation shall be calculated with reference to the wage the worker was receiving from the person by whom he or she was immediately employed at the time of the injury.

(c) The employer shall not be liable or required to pay compensation for injuries due to the acts or omissions of third persons not at the time in the service of the employer nor engaged in the work in which the injury occurs, except as provided in Section 25-5-11.

§ 25-5-11. Actions against third parties jointly liable with employers for injuries or death; actions for injury or death resulting from willful conduct; attorney's fees in settlements with third parties.

(a) If the injury or death for which compensation is payable under Articles 3 or 4 of this chapter was caused under circumstances also creating a legal liability for damages

on the part of any party other than the employer, whether or not the party is subject to this chapter, the employee, or his or her dependents in case of death, may proceed against the employer to recover compensation under this chapter or may agree with the employer upon the compensation payable under this chapter, and at the same time, may bring an action against the other party to recover damages for the injury or death, and the amount of the damages shall be ascertained and determined without regard to this chapter. If a party, other than the employer, is a workers' compensation insurance carrier of the employer or any person, firm, association, trust, fund, or corporation responsible for servicing and payment of workers' compensation claims for the employer, or any officer, director, agent, or employee of the carrier, person, firm, association, trust, fund, or corporation, or is a labor union, or any official or representative thereof, or is a governmental agency providing occupational safety and health services, or an employee of the agency, or is an officer, director, agent, or employee of the same employer, or his or her personal representative, the injured employee, or his or her dependents in the case of death, may bring an action against any workers' compensation insurance carrier of the employer or any person, firm, association, trust, fund, or corporation responsible for servicing and payment of workers' compensation claims for the employer, labor union, or the governmental agency, or person, or his or her personal representative, only for willful conduct which results in or proximately causes the injury or death. If the injured employee, or in case of death, his or her dependents, recovers damages against the other party, the amount of the damages recovered and collected shall be credited upon the liability of the employer for compensation. If the damages recovered and collected are in excess of the compensation payable under this chapter, there shall be no further liability on the employer to pay compensation on account of the injury or death. To the extent of the recovery of damages against the other party, the employer shall be entitled to reimbursement for the amount of compensation theretofore paid on account of injury or death. If the employee who recovers damages is receiving or entitled to receive compensation for permanent total disability, then the employer shall be entitled to reimbursement for the amount of compensation theretofore paid, and the employer's obligation to pay further compensation for permanent total disability shall be suspended for the number of weeks which equals the quotient of the total damage recovery, less the amount of any reimbursement for compensation already paid, divided by the amount of the weekly benefit for permanent total disability which the employee was receiving or to which the employee was entitled. For purposes of this amendatory act, the employer shall be entitled to subrogation for medical and vocational benefits expended by the employer on behalf of the employee; however, if a judgment in an action brought pursuant to this section is uncollectible in part, the employer's entitlement to subrogation for such medical and vocational benefits shall be in proportion to the ratio the amount of the judgment collected bears to the total amount of the judgment.

(b) If personal injury or death to any employee results from the willful conduct, as defined in subsection (c) herein, of any officer, director, agent, or employee of the same employer or any workers' compensation insurance carrier of the employer or any person, firm, association, trust, fund, or corporation responsible for servicing any payment of workers' compensation claims for the employer, or any officer, director, agent, or employee of the carrier, person, firm, association, trust, fund, or corporation,

or of a labor union, or an official or representative thereof, the employee shall have a cause of action against the person, workers' compensation carrier, or labor union.

(c) As used herein, "willful conduct" means any of the following:

(1) A purpose or intent or design to injure another; and if a person, with knowledge of the danger or peril to another, consciously pursues a course of conduct with a design, intent, and purpose of inflicting injury, then he or she is guilty of "willful conduct."

(2) The willful and intentional removal from a machine of a safety guard or safety device provided by the manufacturer of the machine with knowledge that injury or death would likely or probably result from the removal; provided, however, that removal of a guard or device shall not be willful conduct unless the removal did, in fact, increase the danger in the use of the machine and was not done for the purpose of repair of the machine or was not part of an improvement or modification of the machine which rendered the safety device unnecessary or ineffective.

(3) The intoxication of another employee of the employer if the conduct of that employee has wrongfully and proximately caused injury or death to the plaintiff or plaintiff's decedent, but no employee shall be guilty of willful conduct on account of the intoxication of another employee or another person.

(4) Willful and intentional violation of a specific written safety rule of the employer after written notice to the violating employee by another employee who, within six months after the date of receipt of the written notice, suffers injury resulting in death or permanent total disability as a proximate result of the willful and intentional violation. The written notice to the violating employee shall state with specificity all of the following:

a. The identity of the violating employee.

b. The specific written safety rule being violated and the manner of the violation.

c. That the violating employee has repeatedly and continually violated the specific written safety rule referred to in b. above with specific reference to previous times, dates, and circumstances.

d. That the violation places the notifying employee at risk of great injury or death.

A notice that does not contain all of the above elements shall not be valid notice for purposes of this section. An employee shall not be liable for the willful conduct if the injured employee himself or herself violated a safety rule, or otherwise contributed to his or her own injury. No employee shall be held liable under this section for the violation of any safety rule by any other employee or for failing to prevent any violation by any other employee.

(d) In the event the injured employee, or his or her dependents, in case of death, do not file a civil action against the other party to recover damages within the time allowed by law, the employer or the insurance carrier for the employer shall be allowed an additional period of six months within which to bring a civil action against the other party for damages on account of the injury or death. In the event the employer or the insurance carrier has paid compensation to the employee or his or her dependent, or in the event a proceeding is pending against the employer to require the payment of

the compensation, the civil action may be maintained either in the name of the injured employee, his or her dependent in case of death, the employer, or the insurance carrier. In the event the damages recovered in the civil action are in excess of the compensation payable by the employer under this chapter and costs, attorney's fees, and reasonable expenses incurred by the employer in making the collection, the excess of the amount shall be held in trust for the injured employee or, in case of death, for the employee's dependents. If the injured employee has no dependent, the personal representative, in the event of death, may bring a civil action against the other party to recover damages without regard to this chapter.

(e) In a settlement made under this section with a third party by the employee or, in case of death, by his or her dependents, the employer shall be liable for that part of the attorney's fees incurred in the settlement with the third party, with or without a civil action, in the same proportion that the amount of the reduction in the employer's liability to pay compensation bears to the total recovery had from the third party. For purposes of the subrogation provisions of this subsection only, "compensation" includes medical expenses, as defined in Section 25-5-77, if and only if the employer is entitled to subrogation for medical expenses under subsection (a) of this section.

(f) For the purpose of this section, a carrier, person, firm, association, trust, fund, or corporation includes a company or a governmental agency making a safety inspection on behalf of a self-insured employer or its employees, and an officer, director, agent, or employee of the company or a governmental agency.

§ 25-5-11.1. Employee not to be terminated solely for action to recover benefits nor for filing notice of safety rule violation.

No employee shall be terminated by an employer solely because the employee has instituted or maintained any action against the employer to recover workers' compensation benefits under this chapter or solely because the employee has filed a written notice of violation of a safety rule pursuant to subdivision (c)(4) of Section 25-5-11.

§ 25-5-12. Chief Justice of Supreme Court to prepare uniform rules for circuit courts.

The Chief Justice of the Supreme Court of Alabama, from time to time as he deems it is necessary, may prepare uniform rules for the circuit judges and circuit courts which may be necessary for carrying out the provisions of this chapter, including such forms for orders and judgments as said Chief Justice of the Supreme Court deems best. Such rules and forms when so prepared and promulgated by the chief justice shall be followed and used by the said judges and courts.

§ 25-5-13. Applicability of chapter.

(a) This chapter shall be applicable to the employees of all counties and all municipalities having populations greater than 2,000 according to the most recent federal decennial census, and shall govern in their employment. This chapter shall be applicable also to the employees of all county and city boards of education, the Alabama Institute for the Deaf and Blind, and all employees of the two-year colleges under the control of the State Board of Education, and shall govern in their employment. The employees of all school systems and institutions, counties, and each municipality covered under this

section shall have available to them all the rights and remedies provided under this chapter. The governing bodies of all school systems and institutions, counties, and of each municipality covered under this section shall file all necessary employer reports and notices required at the times and in the manner prescribed in this chapter.

(b) Notwithstanding subsection (a) of this section, this chapter shall not apply to any city (excepting school districts and institutions) which has a population of 250,000 or more according to the last or any subsequent decennial federal census, to any park and recreation board now or hereafter established for those cities, to any board or agency now or hereafter authorized and established by the governing body of those cities, nor to employees of the city or of any board or agency.

§ 25-5-14. Legislative findings and intent as to actions filed by injured employee against officers, etc., of same employer.

The Legislature finds that actions filed on behalf of injured employees against officers, directors, agents, servants, or employees of the same employer seeking to recover damages in excess of amounts received or receivable from the employer under the workers' compensation statutes of this state and predicated upon claimed negligent or wanton conduct resulting in injuries arising out of and in the course of employment are contrary to the intent of the Legislature in adopting a comprehensive workers' compensation scheme and are producing a debilitating and adverse effect upon efforts to retain existing, and to attract new industry to this state. Specifically, the existence of such causes of action places this state at a serious disadvantage in comparison to the existing laws of other states with whom this state competes in seeking to attract and retain industrial operations which would provide better job opportunities and increased employment for people in this state. The existence of such causes of action, and the consequent litigation resulting therefrom, results in substantial costs and expenses to employers which, as a practical matter, must either procure additional liability insurance coverage for supervisory and management employees or fund the costs of defense, judgment or settlement from their own resources in order to retain competent and reliable personnel. The existence of such causes of action has a disruptive effect upon the relationship among employees and supervisory and management personnel. There is a total absence of any reliable evidence that the availability of such causes of action has resulted in any reduction of the number or severity of on-the-job accidents or of any substantial improvement on providing safe working conditions and work practices. The intent of the Legislature is to provide complete immunity to employers and limited immunity to officers, directors, agents, servants, or employees of the same employer and to the workers' compensation insurance carrier and compensation service companies of the employer or any officer, director, agent, servant, or employee of such carrier or company and to labor unions and to any official or representative thereof, from civil liability for all causes of action except those based on willful conduct and such immunity is an essential aspect of the workers' compensation scheme. The Legislature hereby expressly reaffirms its intent, as set forth in Section 25-5-53, as amended herein, and Sections 25-5-144 and 25-5-194, regarding the exclusivity of the rights and remedies of an injured employee, except as provided for herein.

§ 25-5-15. Safety committee.

Upon the written request of any employee, each employer subject to the workers' compensation law shall appoint a safety committee. The safety committee shall consist

of not less than three committee members, one of whom must be a nonsupervisory employee. The safety committee shall advise the employer regarding safety in the work place, including suggestions from employees regarding safety conditions in the work place. Any employee shall have the right to notify the safety committee of a safety condition in the work place. The safety committee shall develop procedures by which an employee may give such notification. The provisions of this section shall not apply to any employer who now or in the future has an established safety committee pursuant to contract or agreement with its employees or their representative.

§ 25-5-15.1. State safety program; legislative intent; creation.

(a) It is the intent of the Legislature to promote safety education, safety planning, and to provide any needed technical assistance.

(b) The Director of the Department of Industrial Relations shall coordinate with the safe state program, the safety and health consulting service, to establish a safety program for cooperating with industry to promote safety and provide technical assistance. Emphasis shall be placed on unsafe acts in both small industry and high risk industry.

(c) Qualified safety management specialists shall be employed in the safe state program to assist employers in developing or improving their safety programs. Safe state program personnel shall, upon referral by the director of an employer's request, make inspections for safety monitoring and report the resulting findings and recommendations to the employer and to the director.

(d) The safe state program shall establish and collect reasonable fees for technical and consultative safety services that are not required by law, provided to persons requesting the services from or through the Workers' Compensation Division of the Department of Industrial Relations.

§ 25-5-17. Severability.

The provisions of this act are expressly declared not to be severable. If any provision of this act shall be adjudged to be invalid by any court of competent jurisdiction, then this entire act shall be invalid and held for naught.

§ 25-5-30. Applicability of article; article deemed extension or modification of common law.

This article shall not apply in cases where Article 3 of this chapter becomes operative in accordance with the provisions thereof, but shall apply in all other cases, and in such cases shall be an extension or modification of the common law.

§ 25-5-31. Right of action for damages for injuries or death of employee.

When personal injury or death is caused to an employee by an accident arising out of and in the course of his employment, of which injury the actual or lawfully imputed negligence of the employer is the natural and proximate cause, he, or in case of death, his personal representative, for the exclusive benefit of the surviving spouse and next of kin, shall receive compensation by way of damages therefor from the employer; provided,

that the injury or death was not caused by the wilful misconduct of the employee or was not due to misconduct on his part, as defined in Section 25-5-51.

§ 25-5-32. Excluded defenses.

In all cases brought under this article, it shall not be a defense:

(1) That the employee was negligent, unless and except it shall also appear that such negligence was wilful or that such employee was guilty of wilful misconduct as defined in Section 25-5-51.

(2) That the injury was caused by the negligence of a fellow employee.

(3) That the employee had assumed the risks inherent in or incidental to the work, or arising out of his employment, or arising from the failure of the employer to provide and maintain safe premises and suitable appliances, which grounds of defense are hereby abolished.

§ 25-5-33. Applicability of Sections 25-5-31 and 25-5-32 to other claims for personal injury or death.

The provisions of Sections 25-5-31 and 25-5-32 shall apply to any claims for death of an employee as covered by Sections 6-5-391, 6-5-410, and 25-6-3, and to personal injuries arising under Sections 6-5-390 and 25-6-1.

§ 25-5-34. Applicability of this article and Article 3 of chapter to minors; double compensation when minor illegally employed.

The provisions of this article and Article 3 of this chapter shall apply to employees who are minors and who have been employed in accordance with or contrary to laws regulating the employment of minors. If at the time of injury the minor was employed in violation of or contrary to the law regulating the employment or any part thereof, then the compensation shall be two times what it would be if the employment had been legal.

§ 25-5-35. Recovery where accident occurs outside state; effect of compensation under law of another state, etc., upon compensation under this article and Article 3 of chapter, etc.; recovery under this article and Article 3 of chapter for accident occurring within state where employment principally localized outside state.

(a) As used in this section:

(1) The term “United States” includes only the states of the United States and the District of Columbia; and

(2) The term “state” includes any state of the United States or the District of Columbia.

(b) For the purposes of this section, a person’s employment is principally localized in this or another state when his employer has a place of business in this or such other state and he regularly works at or from such place of business, or if he is domiciled and spends a substantial part of his working time in the service of his employer in this or such other state.

(c) An employee whose duties require him to travel regularly in the service of his employer in this and one or more other states may, by written agreement with his employer, provide that his employment is principally localized in this or another such state; and, unless such other state refuses jurisdiction, such agreement shall be given effect under this section.

(d) If an employee, while working outside of this state, suffers an injury on account of which he or, in the event of his death, his dependents, would have been entitled to the benefits provided by this article and Article 3 of this chapter had such injury occurred within this state, such employee or, in the event of his death resulting from such injury, his dependents, shall be entitled to the benefits provided by this article and Article 3 of this chapter, provided that at the time of such injury:

(1) His employment was principally localized in this state;

(2) He was working under a contract of hire made in this state in employment not principally localized in any state;

(3) He was working under a contract of hire made in this state in employment principally localized in another state whose workers' compensation law was not applicable to his employer; or

(4) He was working under a contract of hire made in this state for employment outside the United States.

(e) The payment or award of benefits under the workers' compensation law of another state, territory, province, or foreign nation to an employee or his dependents otherwise entitled on account of such injury or death to the benefits of this article and Article 3 of this chapter shall not be a bar to a claim for benefits under this article and Article 3 of this chapter; provided that claim under this article is filed within the time limits set forth in Section 25-5-80. If compensation is paid or awarded under this article and Article 3 of this chapter:

(1) The medical and related benefits furnished or paid for by the employer under such other workers' compensation law on account of such injury or death shall be credited against the medical and related benefits to which the employee would have been entitled under this article and Article 3 of this chapter had claim been made solely under this article and Article 3 of this chapter;

(2) The total amount of compensation paid or awarded the employee under such other workers' compensation law shall be credited against the total amount of compensation which would have been due the employee under this article and Article 3 of this chapter, had claim been made solely under this article and Article 3 of this chapter; and

(3) The total amount of death benefits paid or awarded under such other workers' compensation law shall be credited against the total amount of death benefits due under this article and Article 3 of this chapter.

(f) The recovery of any compensation benefits under the law of any other state shall bar any common-law or statutory right of action for damages that an employee or his dependents might otherwise have had against the employer or the officers, directors, or employees of the employer as a result of the injury or death on account of which such compensation benefits were paid.

(g) If, as a result of an employment principally localized in another state, an employee of an employer who would have been subject to this article or Article 3 of this chapter,

had the contract of employment been entered into in this state for performance in this state, suffers injury or death as a result of an accident occurring in this state, compensation and medical, surgical, and hospital benefits on account of such injury or death may be recovered under this article or Article 3 of this chapter.

§ 25-5-36. Burden of proof as to misconduct of employee.

In all actions of law brought pursuant to this article, the burden of proof to establish the wilful misconduct or other misconduct as defined in Section 25-5-51, of the injured employee shall be upon the defendant.

§ 25-5-50. Applicability; exemption for corporate officers; coverage for school boards, volunteer fire departments, and rescue squads; sports officials.

(a) This article and Article 2 of this chapter shall not be construed or held to apply to an employer of a domestic employee; an employer of a farm laborer; an employer of a person whose employment at the time of the injury is casual and not in the usual course of the trade, business, profession, or occupation of the employer; an employer who regularly employs less than five employees in any one business, other than the business of constructing or assisting on-site in the construction of new single-family, detached residential dwellings; or a municipality having a population of less than 2,000 according to the most recent federal decennial census. An employer who regularly employs less than five employees in any one business; a farm-labor employer; an employer of a domestic employee; or a municipality having a population of less than 2,000 according to the most recent federal decennial census, may accept and become subject to this article and Article 4 of this chapter by filing written notice thereof with the Department of Labor, a copy thereof to be posted at the place of business of the employer; provided further, that an employer who has so elected to accept this article and Article 4 of this chapter may at any time withdraw the acceptance by giving like notice of withdrawal. Notwithstanding the foregoing, an employer electing not to accept coverage under this article and Article 4 of this chapter shall notify in writing each employee of the withdrawal of coverage. Additionally, the employer shall post a notice in a conspicuous place notifying all employees and applicants for employment that workers' compensation insurance coverage is not available.

(b) Notwithstanding subsection (a), an officer of a corporation may elect annually to be exempt from coverage by filing written certification of the election with the department and the employer's insurance carrier.

At the end of any calendar year, a corporate officer who has been exempted, by proper certification from coverage, may revoke the exemption and thereby accept coverage by filing written certification of his or her election to be covered with the department and the employer's insurance carrier.

The certification for exemption or reinstatement of coverage shall become effective on the first day of the calendar month following the filing of the certification of exemption or reinstatement of coverage with the department.

If the corporate officer elects to be exempt from coverage, the election shall not relieve the employer from continuing coverage for all other eligible employees who

may have been covered prior to the election or who may subsequently be employed by the firm.

(c) This section shall not be construed to mandate any school board to provide coverage until sufficient funds are appropriated from the Education Trust Fund to implement the provisions. Nothing contained herein shall prohibit any school board that voluntarily elects to provide such coverage from doing so with local or other available funds.

(d) This section shall provide for voluntary coverage of certified volunteer fire departments as described in Section 9-3-17 and legally organized rescue squads that meet the minimum personnel and equipment standards as established by the Alabama Association of Rescue Squads, that are engaged in fighting a fire or performing other duties involving any emergency incident and while performing any official supervised duties of the organization, including maintaining equipment and attending official training classes, and while traveling to and from an emergency incident.

(e) In all cases where an injury that is compensable under the terms of the Alabama Workers' Compensation Law is received by a volunteer fire fighter or rescue squad member, the wages for purposes of computing the average weekly wage shall be equal to 66 ⅔ percent of what he or she is earning at his or her regular place of employment or 66 ⅔ percent of the minimum wage, whichever is greater.

(f) State certified volunteer fire departments and legally organized rescue squads are herein granted the right to purchase workers' compensation medical or disability insurance, or both, but in no event are they required to do so.

In no event shall the regular employer of a volunteer fire fighter or rescue squad member be liable for a compensable injury under this section.

(g) A licensed real estate agent operating under a licensed broker shall not be considered an employee for the purposes of this chapter.

(h) An individual who performs services as a product demonstrator shall not be considered an employee for purposes of this chapter. The term "product demonstrator" shall mean any individual who satisfies both of the following requirements:

(1) Is engaged in the trade or business of demonstrating, exhibiting, or soliciting the purchase of food, food-related products offered for sale, or other consumer products offered for sale to any buyer on the premises of a grocery store, dry good store, or similar retail establishment, or trade show;

(2) Who performs those services pursuant to a written contract between the individual and a person whose principal business is providing demonstrators to third parties for such purposes and the contract provides that the individual will not be treated as an employee with respect to the services for federal tax purposes.

(i) (1) For purposes of this subsection, sports official means an individual who is a neutral participant in a sports event, including, without limitation, an umpire, a referee, judge, linesman, scorekeeper, or timekeeper. Sports official does not include any person, otherwise employed by an organization or entity sponsoring a sports event, who performs services as a sports official as a part of his or her regular employment.

(2) A person who performs services as a sports official for an entity sponsoring an interscholastic or intercollegiate sports event or if such person performs services as a sports official for a public entity or a private, nonprofit organization which

sponsors an amateur sports event shall be an independent contractor and not an employee.

(3) Any sports official who officiates a sports event at any level of competition in Alabama shall not be liable to any person or entity in any civil action for injuries or damages claimed to have arisen by virtue of actions or inaction related in any manner to officiating duties at a sports event, provided the official does not act willfully, maliciously, fraudulently, or in a manner that is contrary to how a reasonably prudent official would act under the same or similar circumstances.

§ 25-5-51. Right to compensation for injuries or death; grounds for denial of compensation.

If an employer is subject to this article, compensation, according to the schedules hereinafter contained, shall be paid by the employer, or those conducting the business during bankruptcy or insolvency, in every case of personal injury or death of his or her employee caused by an accident arising out of and in the course of his or her employment, without regard to any question of negligence. Notwithstanding the foregoing, no compensation shall be allowed for an injury or death caused by the willful misconduct of the employee, by the employee's intention to bring about the injury or death of himself or herself or of another, his or her willful failure or willful refusal to use safety appliances provided by the employer or by an accident due to the injured employee being intoxicated from the use of alcohol or being impaired by illegal drugs.

A positive drug test conducted and evaluated pursuant to standards adopted for drug testing by the U.S. Department of Transportation in 49 C.F.R. Part 40 shall be a conclusive presumption of impairment resulting from the use of illegal drugs. No compensation shall be allowed if the employee refuses to submit to or cooperate with a blood or urine test as set forth above after the accident after being warned in writing by the employer that such refusal would forfeit the employee's right to recover benefits under this chapter.

No compensation shall be allowed if, at the time of or in the course of entering into employment or at the time of receiving notice of the removal of conditions from a conditional offer of employment, the employee knowingly and falsely misrepresents in writing his or her physical or mental condition and the condition is aggravated or reinjured in an accident arising out of and in the course of his or her employment.

At the time an employer makes an unconditional offer of employment or removes conditions previously placed on a conditional offer of employment, the employer shall provide the employee with the following written warning in bold type print, "Misrepresentations as to preexisting physical or mental conditions may void your workers' compensation benefits." If the employer defends on the ground that the injury arose in any or all of the last above stated ways, the burden of proof shall be on the employer to establish the defense.

§ 25-5-52. Manner of compensation, etc., provided by chapter exclusive.

Except as provided in this chapter, no employee of any employer subject to this chapter, nor the personal representative, surviving spouse, or next of kin of the employee shall have a right to any other method, form, or amount of compensation or damages for an injury or death occasioned by an accident or occupational disease proximately resulting

from and while engaged in the actual performance of the duties of his or her employment and from a cause originating in such employment or determination thereof.

§ 25-5-53. Rights and remedies of employees, etc., exclusive; civil and criminal liability of employers, etc.

The rights and remedies granted in this chapter to an employee shall exclude all other rights and remedies of the employee, his or her personal representative, parent, dependent, or next of kin, at common law, by statute, or otherwise on account of injury, loss of services, or death. Except as provided in this chapter, no employer shall be held civilly liable for personal injury to or death of the employer's employee, for purposes of this chapter, whose injury or death is due to an accident or to an occupational disease while engaged in the service or business of the employer, the cause of which accident or occupational disease originates in the employment. In addition, immunity from civil liability for all causes of action except those based upon willful conduct shall also extend to the workers' compensation insurance carrier of the employer; to a person, firm, association, trust, fund, or corporation responsible for servicing and payment of workers' compensation claims for the employer; to an officer, director, agent, or employee of the carrier, person, firm, association, trust, fund, or corporation; to a labor union, an official, or representative thereof; to a governmental agency providing occupational safety and health services, or an employee of the agency; and to an officer, director, agent, or employee of the same employer, or his or her personal representative. Nothing in this section shall be construed to relieve a person from criminal prosecution for failure or neglect to perform a duty imposed by law.

For the purpose of this section, a carrier, person, firm, association, trust, fund, or corporation shall include a company or a governmental agency making a safety inspection on behalf of a self-insured employer or its employees and an officer, director, agent, or employee of the company or a governmental agency.

§ 25-5-54. Presumptions as to applicability and acceptance of provisions of articles.

Every employer and employee, except as otherwise specifically provided in this article, shall be presumed to have accepted and come under this article and Article 4 of this chapter and the provisions thereof relating to the payment and acceptance of compensation.

§ 25-5-55. Rights and powers of minors under article generally; effect of payment of awards to minors.

For the purposes of this article and Article 4 of this chapter, minors shall have the same power to contract, make settlements and receive compensation as adult employees, subject to the power of the court, in its discretion, to require the appointment of a guardian to make the settlement and to receive moneys thereunder or under an award. Payments of awards made to minors or their guardians shall exclude any further compensation either to the minors or to their parents for loss of services or otherwise.

§ 25-5-56. Settlements between parties.

The interested parties may settle all matters of benefits, whether involving compensation, medical payments, or rehabilitation, and all questions arising under this article and Article 4 of this chapter between themselves, and every settlement shall be in an amount the same as the amounts or benefits stipulated in this article. No settlement for an amount less than the amounts or benefits stipulated in this article shall be valid for any purpose, unless a judge of the court where the claim for compensation under this chapter is entitled to be made, or upon the written consent of the parties, a judge of the court determines that it is for the best interest of the employee or the employee's dependent to accept a lesser sum and approves the settlement. The court shall not approve any settlement unless and until it has first made inquiry into the bona fides of a claimant's claim and the liability of the defendant; and if deemed advisable, the court may hold a hearing thereon. Settlements made may be vacated for fraud, undue influence, or coercion, upon application made to the judge approving the settlement at any time not later than six months after the date of settlement. Upon settlements being approved, judgment shall be entered thereon and duly entered on the records of the court in the same manner and have the same effect as other judgments or as an award if the settlement is not for a lump sum. All moneys voluntarily paid by the employer or insurance carrier to an injured employee in advance of agreement or award shall be treated as advance payments on account of the compensation. In order to encourage advance payments, it is expressly provided that the payments shall not be construed as an admission of liability but shall be without prejudice.

§ 25-5-57. Compensation for disability.

(a) Compensation schedule. Following is the schedule of compensation:

(1) TEMPORARY TOTAL DISABILITY. For injury producing temporary total disability, the compensation shall be 66 ⅔ percent of the average weekly earnings received at the time of injury, subject to a maximum and minimum weekly compensation as stated in Section 25-5-68, but if at the time of injury the employee received average weekly earnings of less than the minimum stated in Section 25-5-68, then he or she shall receive the full amount of the average weekly earnings per week. This compensation shall be paid during the time of the disability, but at the time as a temporary total disability shall become permanent, compensation for the continued total disability shall be governed by (a)(4) of this section with respect to permanent total disability. Payments are to be made at the intervals when the earnings were payable, as nearly as may be, unless the parties otherwise agree.

(2) TEMPORARY PARTIAL DISABILITY.

a. Amount and Duration of Compensation. For temporary partial disability, the compensation shall be 66 ⅔ percent of the difference between the average weekly earnings of the worker at the time of the injury and the average weekly earnings he or she is able to earn in his or her partially disabled condition. This compensation shall be paid during the period of the disability, but not beyond 300 weeks. Payments shall be made at the intervals when the earnings were payable, as nearly as may be, unless the parties otherwise agree, and shall be subject to the same maximum weekly compensation as stated in Section 25-5-68.

b. Effect of Change in Employment. If the injured employee who is receiving compensation for temporary partial disability leaves the employment of the employer by whom he or she was employed at the time of the accident for which the compensation is being paid, he or she shall, upon securing employment elsewhere, give to the former employer an affidavit in writing containing the name of his or her new employer, the place of employment, and the amount of wages being received at the new employment, and until he or she gives the affidavit, the compensation for temporary partial disability shall cease. The employer for whom the employee was employed at the time of the accident for which the compensation is being paid may also at any time demand of the employee an additional affidavit, in writing, containing the name of his or her employer, the place of his or her employment, and the amount of wages he or she is receiving; and if the employee upon demand fails or refuses to make and furnish the affidavit, his or her right to compensation for temporary partial disability shall cease until the affidavit is made and furnished.

(3) PERMANENT PARTIAL DISABILITY.

a. Amount and Duration of Compensation. For permanent partial disability, the compensation shall be based upon the extent of the disability. In cases included in the following schedule, the compensation shall be 66 ⅔ percent of the average weekly earnings, during the number of weeks set out in the following schedule:

1. For the loss of a thumb, 62 weeks.
2. For the loss of a first finger, commonly called the index finger, 43 weeks.
3. For the loss of a second finger, 31 weeks.
4. For the loss of a third finger, 22 weeks.
5. For the loss of a fourth finger, commonly called the little finger, 16 weeks.
6. The loss of the first phalange of the thumb or of any finger shall be considered as equal to the loss of one half of the thumb or finger, and compensation shall be paid at the prescribed rate during one half of the time specified above for the thumb or finger.
7. The loss of two or more phalanges shall be considered as the loss of the entire finger or thumb, but in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.
8. For the loss of a great toe, 32 weeks.
9. For the loss of any of the toes other than the great toe, 11 weeks.
10. The loss of the first phalange of any toe shall be considered to be equal to the loss of one half of the toe, and compensation shall be paid at the prescribed rate during one half the time prescribed above for the toe.
11. The loss of two or more phalanges shall be considered as the loss of an entire toe.

12. For the loss of a hand, 170 weeks.
13. For the loss of an arm, 222 weeks.
14. For the loss of a foot, 139 weeks.
15. Amputation between the elbow and wrist shall be considered as the equivalent to the loss of a hand, and amputation between the knee and ankle shall be considered as the equivalent of the loss of a foot.
16. For the loss of a leg, 200 weeks.
17. For the loss of an eye, 124 weeks.
18. For the complete and permanent loss of hearing in both ears, 163 weeks.
19. For the complete and permanent loss of hearing in one ear, 53 weeks.
20. For the loss of an eye and a leg, 350 weeks.
21. For the loss of an eye and one arm, 350 weeks.
22. For the loss of an eye and a hand, 325 weeks.
23. For the loss of an eye and a foot, 300 weeks.
24. For the loss of two arms, other than at the shoulder, 400 weeks.
25. For the loss of two hands, 400 weeks.
26. For the loss of two legs, 400 weeks.
27. For the loss of two feet, 400 weeks.
28. For the loss of one arm and the other hand, 400 weeks.
29. For the loss of one hand and one foot, 400 weeks.
30. For the loss of one leg and the other foot, 400 weeks.
31. For the loss of one hand and one leg, 400 weeks.
32. For the loss of one arm and one foot, 400 weeks.
33. For the loss of one arm and one leg, 400 weeks.
34. For serious disfigurement, not resulting from the loss of a member or other injury specifically compensated, materially affecting the employability of the injured person in the employment in which he or she was injured or other employment for which he or she is then qualified, 66 ⅔ percent of the average weekly earnings for the period as the court may determine, but not exceeding 100 weeks.

b. Successive or Concurrent Temporary Total and Permanent Partial Disabilities Resulting from Same Injury. When a permanent partial disability, the number of weeks compensation for which is scheduled in subdivision (a)(3) of this section, follows or accompanies a period of temporary total disability resulting from the same injury, the number of weeks of the temporary total disability shall not be deducted from the number of weeks payable for the permanent partial disability.

c. Concurrent Disabilities. If an employee sustains concurrent injuries resulting in concurrent disabilities, he or she shall receive compensation only for the injury which entitled him or her to the largest amount of compensation,

but this paragraph shall not affect liability for the concurrent loss of more than one member for which members compensation is provided in the specific schedule.

d. Loss of Use of Member. The permanent and total loss of the use of a member shall be considered as equivalent to the loss of that member, but in such cases the compensation specified in the schedule for such injury shall be in lieu of all other compensation, except as otherwise provided herein. For permanent disability due to injury to a member resulting in less than total loss of use of the member not otherwise compensated in this schedule, compensation shall be paid at the prescribed rate during that part of the time specified in the schedule for the total loss or total loss of use of the respective member which the extent of the injury to the member bears to its total loss.

e. Effect of Refusal of Suitable Employment. If an injured employee refuses employment suitable to his or her capacity offered to or procured for him or her, he or she shall not be entitled to any compensation at any time during the continuance of the refusal, unless at any time, in the opinion of the judge of the circuit court of the county of his or her residence, the refusal is justifiable.

f. Maximum and Minimum Compensation Awards. Compensation provided in this subsection (a) for loss of members or loss of use of members is subject to the same limitations as to maximum and minimum weekly compensation as stated in Section 25-5-68.

g. Compensation for Permanent Partial Disabilities Not Enumerated. For all other permanent partial disabilities not above enumerated, the compensation shall be 66 ⅔ percent of the difference between the average weekly earnings of the worker at the time of the injury and the average weekly earnings he or she is able to earn in his or her partially disabled condition, subject to the same maximum weekly compensation as stated in Section 25-5-68. If a permanent partial disability, compensation for which is not calculated by use of the schedule in subdivision (a)(3) of this section, follows a period of temporary total disability resulting from the same injury, the number of weeks of the temporary total disability shall be deducted from the number of weeks payable for the permanent partial disability. Compensation shall continue during disability, but not beyond 300 weeks.

h. Affidavit of New Employment. If the injured employee leaves the services of the employer for whom he or she was working at the time of the accident and accepts employment elsewhere, he or she shall make and furnish affidavit as to his or her new employment in the manner as required in (a)(2) of this section.

i. Return to Work. If, on or after the date of maximum medical improvement, except for scheduled injuries as provided in Section 25-5-57(a)(3), an injured worker returns to work at a wage equal to or greater than the worker's pre-injury wage, the worker's permanent partial disability rating shall be equal to his or her physical impairment and the court shall not consider any evidence of vocational disability. Notwithstanding the foregoing, if the employee has lost his or her employment under circumstances

other than any of the following within a period of time not to exceed 300 weeks from the date of injury, an employee may petition a court within two years thereof for reconsideration of his or her permanent partial disability rating:

(i) The loss of employment is due to a labor dispute still in active progress in the establishment in which he or she is or was last employed. For the purposes of this section only, the term "labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee. This definition shall not relate to a dispute between an individual worker and his or her employer.

(ii) The loss of employment is voluntary, without good cause connected with such work.

(iii) The loss of employment is for a dishonest or criminal act committed in connection with his or her work, for sabotage, or an act endangering the safety of others.

(iv) The loss of employment is for actual or threatened misconduct committed in connection with his or her work after previous warning to the employee.

(v) The loss of employment is because a license, certificate, permit, bond, or surety which is necessary for the performance of such employment and which he or she is responsible to supply has been revoked, suspended, or otherwise become lost to him or her for a cause.

The burden of proof is on the employer to prove, by clear and convincing evidence, that an employee's loss of employment was due to one of the causes (i) through (v) above. At the hearing, the court may consider evidence as to the earnings the employee is or may be able to earn in his or her partially disabled condition, and may consider any evidence of vocational disability. The fact the employee had returned to work prior to his or her loss of employment shall not constitute a presumption of no vocational impairment. In making this evaluation, the court shall consider the permanent restriction, if any, imposed by the treating physician under Section 25-5-77, as well as all available reasonable accommodations that would enable the employee in his or her condition following the accident or onset of occupational disease to perform jobs that he or she in that condition otherwise would be unable to perform, and shall treat an employee able to perform with such accommodation as though he or she could perform without the accommodation. Nothing contained in this section shall be construed as having any effect upon any evidentiary issues or claims made in third party actions pursuant to Section 25-5-11.

(4) PERMANENT TOTAL DISABILITY.

a. Amount, Duration, and Payment of Compensation. For permanent total disability, as defined in paragraph d. of this subdivision, the employee shall receive 66 ⅔ percent of the average weekly earnings received at the time of the injury, subject to a maximum and minimum weekly compensation as stated in Section 25-5-68. Notwithstanding the foregoing, if at the time of injury the employee was receiving earnings of less than the minimum as stated in Section 25-5-68, then he or she shall receive the full amount of his or her earnings per week. This compensation shall be paid during the permanent total disability, as defined in paragraph d. of this subdivision. Payment of the compensation shall be made at the intervals when the earnings were payable, as nearly as may be, unless the parties otherwise agree. The payments, with the approval of the circuit judge or by the agreement of the parties, may be made monthly, quarterly, or otherwise as the parties may agree. Payments for permanent total disability shall not be ordered to be paid in a lump sum without the consent of both the employer and the employee.

b. Alteration, Amendment, or Revision of Compensation. At any time, the employer may petition the court that awarded or approved compensation for permanent total disability to alter, amend, or revise the award or approval of the compensation on the ground that as a result of physical or vocational rehabilitation, or otherwise, the disability from which the employee suffers is no longer a permanent total disability and, if the court is so satisfied after a hearing, it shall alter, amend, or revise the award accordingly. If compensation for permanent total disability is being paid pursuant to a written agreement between employer and employee without approval, the employer may make application to the court that would have had jurisdiction to award the compensation to the employee to alter, amend, or revise the agreement on such grounds. If an employee is receiving benefits for permanent total disability other than as a result of an award or a written agreement between the employer and employee and if the employer terminates the payment of the benefits, the employee may, within two years of the last payment, petition the court to reinstate the benefits and, upon a showing that the permanent total disability still exists, shall be entitled to have the benefits reinstated effective the date of the last payment.

c. Employees in Public Institutions. In case an employee who is permanently and totally disabled becomes an inmate of a public institution, no compensation shall be payable unless the employee has wholly dependent on him or her for support a person or persons named in Sections 25-5-61 and 25-5-62, whose dependency shall be determined as if the employee were deceased, in which case the compensation provided for in this subdivision shall be paid for the benefit of the person so dependent, during dependency, in the manner so ordered by the court, while the employee is an inmate in the institution. Nothing contained herein shall be construed to deprive a permanently and totally disabled employee who has no dependent named in Sections 25-5-61 and 25-5-62 from receiving benefits to which he or she would otherwise be entitled if the employee, although an inmate of a public institution, is paying or on whose behalf funds are paid from any

source to the public institution the normal and customary charge for the services rendered by the public institution. Normal and customary charge shall mean that charge actually made by the public institution to persons able to pay for the services rendered them whether the charge actually covers the expense of the upkeep of the inmate or not. If the employee has had a guardian appointed by a court of competent jurisdiction, the workers' compensation payments shall be directly paid to the guardian.

d. Definition. The total and permanent loss of the sight of both eyes or the loss of both arms at the shoulder or any physical injury or mental impairment resulting from an accident, which injury or impairment permanently and totally incapacitates the employee from working at and being retrained for gainful employment, shall constitute prima facie evidence of permanent total disability but shall not constitute the sole basis on which an award of permanent total disability may be based. Any employee whose disability results from an injury or impairment and who shall have refused to undergo physical or vocational rehabilitation or to accept reasonable accommodation shall not be deemed permanently and totally disabled.

e. Second Permanent Injuries Generally. If an employee has a permanent disability or has previously sustained another injury than that in which the employee received a subsequent permanent injury by accident, as is specified in this section defining permanent injury, the employee shall be entitled to compensation only for the degree of injury that would have resulted from the latter accident if the earlier disability or injury had not existed.

f. Second Permanent Injury in Same Employment Resulting in Permanent Total Disability. If an employee receives a permanent injury as specified in this section after having sustained another permanent injury in the same employment, and if the previous and subsequent injuries result in permanent total disability, compensation shall be payable for permanent total disability only.

g. Concurrent Compensation Payments. If an employee receives an injury for which compensation is payable while he or she is still receiving or entitled to receive compensation for a previous injury in the same employment, he or she shall not at the same time be entitled to compensation for both injuries, unless the later injury is a permanent injury, as specified in this section, but he or she shall be entitled to compensation for that injury and from the time of that injury which will cover the longest period and the largest amount payable under this article and Article 4 of this chapter.

   If an employee receives a permanent injury as specified in this section, after having sustained another permanent injury in the same employment, he or she shall be entitled to compensation for both injuries, subject to paragraph e. of this subdivision, but the total compensation shall be paid by extending the period and not by increasing the amount of weekly compensation, and in no case for permanent partial disability exceeding 700 weeks.

h. Effect of Rehabilitation or Recovery on Permanent Total Disability Benefits. If an employee who is receiving benefits for permanent total disability shall,

as a result of physical or vocational rehabilitation or otherwise, obtain gainful employment, the obligation to pay permanent total disability benefits shall thereupon terminate; provided, that at any time that the employee's weekly wage from the employment shall be less than the employee's average weekly wage at the time of injury, the employer shall remain obligated to pay to the employee as compensation an amount equal to 66 ⅔ percent of the difference, subject to each of the following limitations:

1. The employer's liability for the payment of 66 ⅔ percent of the difference shall continue for 200 weeks from the date of reemployment or 300 weeks from the date of injury, whichever is the longer period.
2. In no event shall the amount of weekly benefits paid by the employer to the employee exceed the weekly benefit the employee was receiving for permanent total disability.
3. No payments shall be due for any week the employee earns as much as or more than his or her average weekly wage at the time of injury. If the employee who obtains gainful employment suffered a permanent partial disability as specified in subsection (a), subdivision (3) of this section, the total amount of compensation paid for permanent total disability shall not be less than that amount which would have been payable for the permanent partial disability.

i. Affidavit of Gainful Employment. If an employee who is receiving benefits for permanent total disability shall, as the result of physical or vocational rehabilitation, accommodation, or otherwise, obtain gainful employment with an employer other than with his or her former employer, he or she shall, upon securing employment, give to his or her former employer an affidavit in writing containing the name of his or her new employer, the place of employment and the amount of wages being received at the new employment. Until he or she gives the affidavit, the compensation for permanent total disability shall cease. The employer for whom the employee was employed at the time of the accident for which compensation is being paid may also at any time demand of the employee additional affidavit, in writing, containing the name of his or her employer, the place of his or her employment, and the amount of wages he or she is receiving. If the employee, upon demand, fails or refuses to make and furnish the affidavit, his or her rights to compensation shall cease until the affidavit is made and furnished.

(5) DEATH FOLLOWING DISABILITY. If an employee sustains an injury occasioned by an accident arising out of and in the course of his or her employment and, during the period of disability caused thereby, death results proximately therefrom, all payments previously made as compensation for the injury shall be deducted from the compensation, if any, due on account of death. If an employee who sustains a permanent partial or permanent total disability, the degree of which has been agreed upon by the parties or has been ascertained by the court, and death results not proximately therefrom, the employee's surviving spouse or dependent children or both shall be entitled to the balance of the payments which would have been due and payable to the worker, whether or not the

decedent employee was receiving compensation for permanent total disability, not exceeding, however, the amount that would have been due the surviving spouse or dependent children or both if death had resulted proximately from an injury on account of which compensation is being paid to an employee.

(6) HERNIA.

a. Proof. For hernia resulting from injury by an accident arising out of and in the course of the employee's employment, it must be definitely proven to the satisfaction of the court all of the following:

1. That there was an injury resulting in hernia.
2. That the hernia appeared suddenly.
3. That it was accompanied by pain.
4. That the hernia immediately followed an accident.
5. That the hernia did not exist prior to the accident for which compensation is claimed.

b. Treatment. All hernia, inguinal, femoral, or otherwise, proved to be the result of an injury by accident arising out of and in the course of the employment, shall be treated in a surgical manner by radical operation. If the injured employee refuses to undergo the radical operation for the cure of the hernia, no compensation will be allowed during the time the refusal continues. If, however, it is shown that the employee has some chronic disease or is otherwise in physical condition that the court considers it unsafe for the employee to undergo the operation, the employee shall be paid as otherwise provided in this chapter.

(b) Computation of compensation; determination of average weekly earnings. Compensation under this section shall be computed on the basis of the average weekly earnings. Average weekly earnings shall be based on the wages, as defined in Section 25-5-1(6) of the injured employee in the employment in which he or she was working at the time of the injury during the period of 52 weeks immediately preceding the date of the injury divided by 52, but if the injured employee lost more than seven consecutive calendar days during the period, although not in the same week, then the earnings for the remainder of the period, although not in the same week, then the earnings for the remainder of the 52 weeks shall be divided by the number of weeks remaining after the time so lost has been deducted. Where the employment prior to the injury extended over a period of less than 52 weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed, provided results just and fair to both parties will thereby be obtained. Where by reason of the shortness of the time during which the employee has been in the employment of his or her employer or the casual nature or terms of the employment it is impracticable to compute the average weekly earnings as above defined, regard shall be had to the average weekly amount which during the 52 weeks prior to the injury was being earned by a person in the same grade, employed at the same work by the same employer, and if there is no person so employed, by a person in the same grade employed in the same class of employment in the same district. Whatever allowances of any character made to an employee in lieu of wages are specified as part of the wage contract shall be deemed a part of his or her earnings.

(c) Setoff for other recovery. In calculating the amount of workers' compensation due:

(1) The employer may reduce or accept an assignment from an employee of the amount of benefits paid pursuant to a disability plan, retirement plan, or other plan providing for sick pay by the amount of compensation paid, if and only if the employer provided the benefits or paid for the plan or plans providing the benefits deducted.

(2) The employee shall forfeit to the employer all compensation paid for any period to which is attributed any award of back pay either by a court, administrative agency, arbitration, or settlement, provided, however, social security payments shall not be included herein.

(3) If an employer continues the salary of an injured employee during the benefit period or pays similar compensation during the benefit period, the employer shall be allowed a setoff in weeks against the compensation owed under this article. For the purposes of this section, voluntary contributions to a Section 125-cafeteria plan for a disability or sick pay program shall not be considered as being provided by the employer.

§ 25-5-58. Effect of preexisting injuries or infirmities.

If the degree or duration of disability resulting from an accident is increased or prolonged because of a preexisting injury or infirmity, the employer shall be liable only for the disability that would have resulted from the accident had the earlier injury or infirmity not existed.

§ 25-5-59. Waiting period for compensation; penalty for overdue compensation payments.

(a) For purposes of this article, except for scheduled injuries as provided in Section 25-5-57(a)(3), compensation for the first three days of disability shall not be payable, nor shall compensation be paid in any case unless the employer has actual knowledge of the injury or is notified thereof within the period specified in Section 25-5-78.

(b) Compensation shall begin with the fourth day after disability, and if the disability from the injury exists for a period as much as 21 days, compensation for the first three days after the injury shall be added to and payable with the first installment due the employee after the expiration of the 21 days. If any installment of compensation payable is not paid without good cause within 30 days after it becomes due, there shall be added to the unpaid installment an amount equal to 15 percent thereof, which shall be paid at the same time as, but in addition to, the installment.

§ 25-5-60. Compensation for death.

In death cases, where the death results proximately from the accident within three years, compensation payable to dependents shall be computed on the following basis and shall be paid to the persons entitled thereto without administration, or to a guardian or other person as the court may direct, for the use and benefit of the person entitled thereto.

(1) PERSONS ENTITLED TO BENEFITS; AMOUNT OF BENEFITS.

a. If the deceased employee leaves one dependent, there shall be paid to the dependent 50 percent of the average weekly earnings of the deceased.

b. If the deceased employee leaves two or more dependents, there shall be paid to the dependents 66 ⅔ percent of the average weekly earnings of the deceased.

c. If one of two or more dependents is a widow or widower, the compensation may be paid to the widow or widower for the benefit of herself or himself and the dependent child or children. In its discretion and when it considers appropriate to do so, the court shall at any time have the power to determine, without the appointment of any guardian or guardians, what portion of the compensation shall be applied for the benefit of any child or children and may order the same paid to a guardian or custodian of the child or children.

d. Partial dependents shall be entitled to receive only that proportion of the benefits provided for total dependents which the average amount of the earnings regularly contributed by the deceased employee to the partial dependent, at and for a reasonable time immediately prior to the injury, bore to the total income of the dependent during the same time. If there is one dependent and one or more partial dependents and the dependent is not entitled to the maximum amount of compensation provided in Section 25-5-68, there shall be paid to the partial dependent or partial dependents that percentage of the benefit paid to a full dependent which the contribution of the decedent to the partial dependent's support bears to the total income of the partial dependent. Notwithstanding the foregoing, the compensation payable to the partial dependent or dependents shall not exceed the lesser of 16 ⅔ percent of the decedent's average weekly wage or the difference between the compensation payable to the full dependent and the maximum weekly compensation benefit payable as provided in Section 25-5-68.

e. If compensation is being paid under this article to any dependent, the compensation shall cease upon the death or marriage of the dependent, unless otherwise provided in this article.

f. Upon the cessation of compensation to or for any dependent, for any cause, the compensation of the remaining dependents entitled to compensation shall, for the unexpired period during which their compensation is payable, be that which would have been payable to them had they been the only persons entitled to compensation at the time of death of the deceased employee.

g. If, however, the deceased employee at the time of his or her death has no dependents as herein defined, then within 60 days of his or her death, the employer shall pay a one-time lump sum payment of seven thousand five hundred dollars ($7,500) to the deceased worker's estate.

(2) MAXIMUM AND MINIMUM COMPENSATION AWARDS. The compensation payable in case of death to persons wholly dependent shall be subject to a maximum and minimum weekly compensation as stated in Section 25-5-68, but if at the time of injury the employee receives earnings of less than the minimum stated in Section 25-5-68, then the compensation shall be the full amount of such earnings per week. The compensation payable to partial dependents shall be subject to a maximum and minimum weekly compensation as stated in Section

25-5-68, but if the income loss of the partial dependents by the death is less than the minimum weekly compensation stated in Section 25-5-68, then the dependents shall receive the full amount of their income loss. This compensation shall be paid during dependency, not exceeding 500 weeks. Payments shall be made at the intervals when the earnings were payable, as nearly as may be, unless the parties otherwise agree.

§ 25-5-61. Persons presumed wholly dependent.

For the purposes of this article, the following described persons shall be conclusively presumed to be wholly dependent:

(1) The wife, unless it is shown that she was voluntarily living apart from her husband at the time of his injury or death, or unless it is shown that the husband was not in any way contributing to her support and had not in any way contributed to her support for more than 12 months next preceding the occurrence of the injury causing his death;

(2) The husband, unless it is shown that he was voluntarily living apart from his wife at the time of her injury or death, or unless it is shown that the wife was not in any way contributing to his support and had not in any way contributed to his support for more than 12 months next preceding the occurrence of the injury causing her death; and

(3) Minor children under the age of 18 years and those over 18, if physically or mentally incapacitated from earning.

§ 25-5-62. Total dependents -- Designated; order of compensation.

A wife, child, husband, mother, father, grandmother, grandfather, sister, brother, mother-in-law or father-in-law who was wholly supported by the deceased workman at the time of his death and for a reasonable period of time immediately prior thereto shall be considered his total dependents, and payment of compensation shall be made to such total dependents in the order named.

§ 25-5-63. Total dependents -- Maximum compensation.

Total dependents shall be entitled to take compensation in the order named in Section 25-5-62 until the percentage of the average weekly earnings of the deceased, during the time and as specified in Section 25-5-60, shall have been exhausted; but the total compensation to be paid to all total dependents of a deceased employee shall not exceed in the aggregate the maximum weekly compensation stated in Section 25-5-68, except as otherwise provided in this article.

§ 25-5-64. Partial dependents.

Any member of a class named in Section 25-5-62 who regularly derived part of his support from the earnings of the deceased workman at the time of his death and for a reasonable period of time immediately prior thereto shall be considered his partial dependent, and payment of compensation shall be made to such partial dependents in the order named.

§ 25-5-65. Compensation of orphans or other children.

In computing and paying compensation to orphans or other children, in all cases, only those under 18 years of age or those over 18 years of age who are physically or mentally incapacitated from earning shall be included; the former to receive compensation only during the time they are under 18, the latter for the time they are so incapacitated, within the applicable period for which benefits are payable.

§ 25-5-66. Disposition of compensation upon remarriage of widow of employee who has another dependent.

In case of the remarriage of a widow of an employee who has another dependent, the unpaid balance of compensation, which would otherwise become due her, shall be paid to the dependent or may, on approval by the court, be paid to some suitable person designated by the court for the use and benefit of the dependent. Payment to that person shall discharge the employer from any further liability.

§ 25-5-67. Burial expenses.

If death results to an employee as the result of an accident or an occupational disease arising out of and in the course of the employment, the employer shall pay, in addition to the medical and hospital expenses provided for in Section 25-5-77, the expenses of burial, not exceeding in amount six thousand five hundred dollars ($6,500). If a dispute arises as to the reasonable value of the services rendered in connection with the burial, the same shall be approved by the court before payment after reasonable notice to interested parties as the court may require.

§ 25-5-68. Maximum and minimum weekly compensation.

(a) The compensation paid under this article shall be not less than, except as otherwise provided in this article, 27 ½ percent of the average weekly wage of the state as determined by the director, rounded to the nearest dollar, pursuant to subsection (b) of this section and, in any event, no more than 100 percent of the average weekly wage. Notwithstanding the foregoing, the maximum compensation payable for permanent partial disability shall be no more than the lesser of $220.00 per week or 100 percent of the average weekly wage.

(b) For the purpose of this section, the average weekly wage of the state shall be determined by the director as follows: On or before June 1 of each year, the total wages reported on contribution reports to the unemployment compensation division of the department for the preceding calendar year shall be divided by the average monthly number of insured workers, which shall be determined by dividing the sum of the number of insured workers reported for each month of the preceding year by 12. The average annual wage thus obtained shall be divided by 52, and the average weekly wage thus determined rounded to the nearest cent. The average weekly wage as so determined shall be applicable for the 12-month period beginning July 1 following the June 1 determination. If the determination shall not be made on or before June 1, the effective date of the average weekly wage when determined shall be the first day of the month next following 30 days after the determination is made.

(c) The maximum and minimum weekly benefit shall not be changed on any July 1 or as a result of any annual determination, unless the computation provided for in subsection (b) of this section results in an increase or decrease of two dollars ($2) or more in the amount of either the maximum or minimum benefit.

(d) In no event, except as provided for permanent total disability in subdivision (a)(4) of Section 25-5-57 or except for compensation benefits payable for permanent partial and temporary total disability in connection with a disability scheduled in subdivisions (1) and (3) of subsection (a) of Section 25-5-57, shall the total amount of compensation payable for an accident or an occupational disease exceed the product of 500 times the maximum weekly benefit applicable on the date of the accident.

(e) The minimum and maximum benefits that are in effect on the date of the accident which results in injury or death shall be applicable for the full period during which compensation is payable.

§ 25-5-69. Compensation to cease upon death or marriage of dependent; proportional benefits for dependents.

If compensation is being paid under this article to any dependent, such compensation shall cease upon the death or marriage of such dependent. Where compensation is being paid under this chapter to any dependent, in no event shall such dependent receive more than the proportion which the amount received of the deceased employee's income during his life bears to the compensation provided under this article.

§ 25-5-76. Liability of joint employers.

In case any employee for whose injury or death compensation is payable under this article shall, at the time of the injury, be employed and paid jointly by two or more employers subject to this chapter, such employers shall contribute the payment of such compensation in the proportion of their several earnings liability to such employee. If one or more, but not all of such employers, should be subject to this article, and otherwise subject to liability for compensation hereunder, then the liability of such of them as are so subject shall be to pay the proportion of the entire compensation which their proportionate earnings liability bears to the entire earnings of the employee. Nothing in this section shall prevent any arrangement between such employers for a different distribution, as between themselves, of the ultimate burden of such compensation.

§ 25-5-77. Expenses of medical and surgical treatment, vocational rehabilitation, medicine, etc.; medical examinations; review by ombudsman of medical services.

(a) In addition to the compensation provided in this article and Article 4 of this chapter, the employer, where applicable, shall pay the actual cost of the repair, refitting, or replacement of artificial members damaged as the result of an accident arising out of and in the course of employment, and the employer, except as otherwise provided in this amendatory act, shall pay an amount not to exceed the prevailing rate or maximum schedule of fees as established herein of reasonably necessary medical and surgical treatment and attention, physical rehabilitation, medicine, medical and surgical supplies, crutches, artificial members, and other apparatus as the result of an accident arising out of and in the course of the employment, as may be obtained

by the injured employee or, in case of death, obtained during the period occurring between the time of the injury and the employee's death therefrom. If the employee is dissatisfied with the initial treating physician selected by the employer and if further treatment is required, the employee may so advise the employer, and the employee shall be entitled to select a second physician from a panel or list of four physicians selected by the employer. If surgery is required and if the employee is dissatisfied with the designated surgeon, he or she may so advise the employer, and the employee shall be entitled to select a second surgeon from a panel or list of four surgeons selected by the employer. If four physicians or surgeons are not available to be listed, the employer shall include on the list as many as are available. The four physicians or surgeons selected by the employer hereunder shall not be from or members of the same firm, partnership, or professional corporation. The total liability of the employer shall, unless otherwise provided in this chapter, not exceed the prevailing rate or the maximum schedule of fees as established herein. Notwithstanding the foregoing, in ascertaining the prevailing rate of reimbursement or payment with regard to participating hospitals and ambulatory surgical centers or outpatient rehabilitation centers licensed by the State of Alabama, as well as diagnostic facilities accredited by the Commission on Accreditation of Rehabilitation Facilities, the prevailing rate shall be negotiated with each individual hospital, ambulatory surgical center, licensed outpatient rehabilitation facility, or diagnostic facility based on that institution's treatment of comparable type cases for the 12-month period immediately preceding August 1, 1992. These rates shall be updated every 12 months thereafter. Initial rates shall be established within six months of August 1, 1992. For those non-participating hospitals the prevailing rate shall be determined by a committee. In the first year following August 1, 1992, the committee shall be composed of five members. The director shall appoint one member from the Department of Industrial Relations and two members from the community in which the non-participating hospital is located. The non-participating hospital shall appoint two members. This committee shall by a majority vote establish the maximum rates of reimbursement or payment for the non-participating hospital, and the hospital shall be bound for one year by the determined rates of reimbursement or payment for workers' compensation cases. If, following the first year after the rates were established by this committee, the hospital is again non-participating, then another committee shall be appointed. This second committee shall have three members selected by the non-participating hospital and two members selected by the director. The committee composition shall alternate as above described each year the hospital is non-participating. The total liability of the employer shall not exceed the rates established by the committee. This committee, in determining the rates of reimbursement or payments to the hospital, may consider such factors as the size, staffing, and medical equipment of the hospital, and any other factors which the committee may consider relevant. If an insurer of the employee or a benefit association has paid or is liable for the employee's medical, surgical, and hospital service or for a part thereof, or if the employee is entitled to the same or a part thereof, from any source whatever by virtue of any agreement or understanding or law, state or federal, without any loss of benefit to the employee, the employer shall not be required to pay any part of the expense. If the benefits are insufficient to pay all the employee's expense, the employer shall be liable for the deficiency only. All cases of dispute as to the necessity and value of the services shall be

determined by the tribunal having jurisdiction of the claim of the injured employee for compensation.

(b) If requested to do so by the employer, the injured employee shall submit to examination by the employer's physician at all reasonable times, but the employee shall have the right to have a physician of his or her own selection present at the examination, in which case the employee shall be liable to the physician of his or her own selection for his or her services. The employer shall pay for the services of the physician making the examination at the instance of the employer. If a dispute arises as to the injury, or as to the extent of the disability therefrom, the court may, at the instance of either party or of its own motion, appoint a neutral physician of good standing and ability to make an examination of the injured employee and to report his or her findings to the court, the expense of which examination shall be borne equally by the parties. If the injured employee refuses to comply with reasonable request for examination, or refuses to accept the medical service or physical rehabilitation, which the employer elects to furnish under this chapter, the employee's right to compensation shall be suspended and no compensation shall be payable for the period of the refusal. A physician whose services are furnished or paid for by the employer, or a physician of the injured employee who treats or makes or is present at any examination of an injured employee may be required to testify as to any knowledge obtained by him or her in the course of the treatment or examination as the treatment or examination related to the injury or the disability arising therefrom. The physician shall, upon written request of the injured employee or his or her employer and without consent of or notice to the employee or employer not making the request, furnish the injured employee or his or her employer a written statement of his or her professional opinion as to the extent of the injury and disability. In all death claims where the cause of death is obscure or is disputed, any interested party may require an autopsy, the cost of which is to be borne by the party demanding the autopsy. The term "physicians" shall include medical doctor, surgeon, and chiropractor. A hospital, medical clinic, rehabilitation service, or other person or entity providing treatment to an employee or providing facilities at which the employee receives treatment shall, upon the written request of the employee or of the employer, furnish, at a reasonable cost, the employee or the employer a copy of the records, including X-rays and laboratory reports, relating to the treatment of the injured employee. The copy may be furnished without the consent of or notice to the employee or employer not making the request. A physician, hospital, medical clinic, rehabilitation service, or other person or entity providing written statement of professional opinion or copies of records pursuant to this subsection shall not be liable to any person for a claim arising out of the release of medical information concerning the employee.

(c) If the employer so elects, the employee shall submit to and undergo vocational rehabilitation at the employer's expense through a vocational rehabilitation specialist, who shall be qualified to render competent vocational rehabilitation service. If an employee who is unable in the opinion of the treating physician to return to his or her former employment shall request vocational rehabilitation and if both a vocational rehabilitation specialist and a treating physician, the cost of whose service is the obligation of the employer under this section, shall express their opinions in writing that in the judgment of each of them vocational rehabilitation is reasonably calculated to restore the employee to gainful employment and is in the best interest of the employee, the cost of the rehabilitation shall be borne by the employer. The

cost, where rehabilitation requires residence at or near a facility or institution away from the employee's customary residence, shall include reasonable charges for the employee's necessary board, lodging, and travel.

(d) If an employee refuses, without the consent of the court, to accept vocational rehabilitation at the employer's request, the refusal shall result in loss of compensation for the period of refusal.

(e) All disputes with regard to vocational rehabilitation may be submitted to the court for resolution.

(f) The employer shall pay mileage costs to and from medical and rehabilitation providers at the same rate as provided by law for official state travel.

(g) In a compensable workers' compensation claim, the injured employee shall not be liable for payment of any authorized and compensable medical expenses associated with the workers' compensation claim.

(h) All undisputed medical reimbursements or payments shall be made within 25 working days of receipt of claims in the form specified in Section 25-5-3. There shall be added to any undisputed medical invoice which is not paid within 25 working days an amount equal to 10 percent of the unpaid balance.

If the employer or insurer responsible for payment of the claim fails to add the additional 10 percent to the claim as required by this section, the person, firm, corporation, or partnership providing the medical service for which payment has been delayed beyond the period specified in this section may file a written complaint stating that fact with the director. Upon investigation, if the director determines that the facts stated in the complaint are true, then in that event the director shall order the employer or insurer to pay to the provider the amount of the claim and any applicable penalty, and in addition may assess a civil monetary penalty in amount not to exceed $500 against the employer or insurer, payment of which shall be made to the director within 30 days of the notice of assessment.

(i) Any party, including a health care provider, is entitled to a review by an ombudsman of medical services that are provided or for which authorization of payment is sought if any party or the health care provider has any of the following:

(1) Been denied payment or had the charge reduced for medical services rendered.

(2) Been denied authorization for the payment of services requested or performed when authorization is required.

(3) Been ordered by the director to refund payments received for the provision of medical services.

(4) A party to a medical dispute that remains unresolved after a review of medical services as provided by this section may petition the court for relief.

(5) In any review under this subsection of medical services provided by a physician, any party to a dispute may request that the ombudsman consult with an independent medical expert for the purpose of obtaining advice and consultation on the resolution of any issue involving medical practice. If such a request is made, the ombudsman shall select an independent medical expert from among a list of at least three names provided by the Workers' Compensation Medical Services Board in a medical specialty appropriate to the issues raised in the

dispute and shall secure a written opinion from the independent medical expert. In rendering a decision or recommendation, the ombudsman shall give full consideration to the opinion of the independent medical expert but shall not be bound by that opinion. The independent medical expert shall be compensated at a rate set by the Workers' Compensation Medical Services Board and approved by the director.

§ 25-5-78. Written notice to employer of accident -- Required.

For purposes of this article only, an injured employee or the employee's representative, within five days after the occurrence of an accident, shall give or cause to be given to the employer written notice of the accident. If the notice is not given, the employee or the employee's dependent shall not be entitled to physician's or medical fees nor any compensation which may have accrued under the terms of this article, unless it can be shown that the party required to give the notice had been prevented from doing so by reason of physical or mental incapacity, other than minority, fraud or deceit, or equal good reason. Notwithstanding any other provision of this section, no compensation shall be payable unless written notice is given within 90 days after the occurrence of the accident or, if death results, within 90 days after the death.

§ 25-5-79. Written notice to employer of accident -- Service and contents.

The notice referred to in Section 25-5-78 may be served personally upon the employer or upon any agent of the employer upon whom a summons may be served in civil actions or by sending it by registered or certified mail to the employer at his last known residence or business place within the state and shall be substantially in the following form:

"Notice -- You are hereby notified that an injury was received by ..... who was in your employ at ..... while engaged as ....., under the superintendency of ....., on or about the ..... day of ....., 20..., at about ... o'clock, ... m., and who is now located at ..... (give town, street and number), that so far as now known, the nature of the injury was ..... and that compensation may be claimed therefor. (Signed ..... (giving address) ..... dated ....., 20..."

No variation from this form shall be material if the notice is sufficient to advise the employer that a certain employee, by name, received a specified injury in the course of his employment on or about a specified time, at or near a certain place specified.

§ 25-5-80. Limitation period for claims or actions for compensation.

In case of a personal injury not involving cumulative physical stress, all claims for compensation under this article shall be forever barred unless within two years after the accident the parties shall have agreed upon the compensation payable under this article or unless within two years after the accident one of the parties shall have filed a verified complaint as provided in Section 25-5-88. In cases involving personal injury due to cumulative physical stress, compensation under this article shall be forever barred unless within two years after the date of the injury one of the parties shall have filed a verified complaint as provided in Section 25-5-88. In cases involving claims for lost earning capacity under Section 25-5-57(a)(3)i., other than those involving cumulative physical stress, following termination of employment as outlined therein, compensation under this article

and Article 4 shall be forever barred unless brought within two years of the termination. In case of death, all claims for compensation shall be forever barred unless within two years after death, when the death results proximately from the accident within three years, the parties shall have agreed upon the compensation under this article or unless within two years after the death one of the parties shall have filed a verified complaint as provided in Section 25-5-88. Where, however, payments of compensation, as distinguished from medical or vocational payments, have been made in any case, the period of limitation shall not begin to run until the time of making the last payment. In case of physical or mental incapacity, other than the minority of the injured person or his or her dependents, to perform or cause to be performed any act required within the time in this section specified, the period of limitation in any case shall be extended to become effective two years from the date when the incapacity ceases.

§ 25-5-81. Determination of disputed compensation claims generally.

(a) Commencement of action in circuit court.

(1) PROCEDURE. In case of a dispute between employer and employee or between the dependents of a deceased employee and the employer with respect to the right to compensation under this article and Article 2 of this chapter, or the amount thereof, either party may submit the controversy to the circuit court of the county which would have jurisdiction of a civil action in tort between the parties. The controversy shall be heard and determined by the judge who would hear and determine a civil action between the same parties arising out of tort, and, in case there is more than one judge of the court, the controversies shall be set and assigned for hearing under the same rules and statutes that civil actions in tort are set and assigned. The court may hear and determine the controversies in a summary manner. The decision of the judge hearing the same shall be conclusive and binding between the parties, subject to the right of appeal provided for in this article.

(2) RIGHT TO JURY TRIAL. When willful misconduct on the part of the employee is set up by the employer, as it is provided for in this article, the employer may, upon appearing, demand a jury to hear and determine, under the direction of the court, the issues involved in this defense. If the employer fails to demand a jury upon appearing, the employee may demand a jury to try the issues by filing a demand within five days after the appearance of the employer. When a jury is demanded by either party, the court shall submit the issues of fact as to willful misconduct set up by the employer to the jury, for a special finding of the facts subject to the usual powers of the court over verdicts rendered contrary to the evidence or the law, but the judge shall determine all other questions involved in the controversy without a jury. Upon setting up the defense, the employer shall serve a copy of the answer, setting up the defense, upon the employee or the attorney of record.

(b) Court deemed open at all times. For the purpose of hearing and determining controversies between an employer and employee or the dependents of a deceased employee and the employer arising under this article and Article 2 of this chapter, the circuit court shall be deemed always in session.

(c) Evidence. The decision of the court shall be based on a preponderance of the evidence as contained in the record of the hearing, except in cases involving injuries which have resulted from gradual deterioration or cumulative physical stress disorders, which shall be deemed compensable only upon a finding of clear and convincing proof that those injuries arose out of and in the course of the employee's employment.

For the purposes of this amendatory act, "clear and convincing" shall mean evidence that, when weighted against evidence in opposition, will produce in the mind of the trier of fact a firm conviction as to each essential element of the claim and a high probability as to the correctness of the conclusion. Proof by clear and convincing evidence requires a level of proof greater than a preponderance of the evidence or the substantial weight of the evidence, but less than beyond a reasonable doubt.

(d) Interpleader of adverse claimants to compensation. If at any time there are adverse claimants to compensation under this article, the employer, in submitting the claim to the circuit court, may suggest in writing the claimants, and they shall be required to interplead. The court shall determine and order to which claimant or claimants compensation is justly due, and the employer, upon complying with the order of the judge, shall be released from the claims of any other claimants thereto.

(e) Review. From an order or judgment, any aggrieved party may, within 42 days thereafter, appeal to the Court of Civil Appeals and review shall be as in cases reviewed as follows:

(1) In reviewing the standard of proof set forth herein and other legal issues, review by the Court of Civil Appeals shall be without a presumption of correctness.

(2) In reviewing pure findings of fact, the finding of the circuit court shall not be reversed if that finding is supported by substantial evidence.

(f) Discovery. Methods of discovery shall be determined and established in rules promulgated by this amendatory act and the rules established by the Alabama Rules of Civil Procedure with the limitations of pre-trial discovery as set forth below. Additionally, the following rules of discovery shall apply to workers' compensation cases:

(1) Two depositions for each side shall be permitted without leave of court, however, any additional depositions shall not be permitted except with leave of court for good cause shown including, but not limited to, a claim by the employee for permanent total disability.

(2) Notwithstanding the limitations in (1) above, each party may take the deposition of every other party.

(3) No more than 25 interrogatory questions with each sub-part to be considered a question shall be permitted without leave of court for good cause shown.

(4) Certified sealed copies of records of medical treatment and charges therefor, whether from a physician, hospital, clinic, or other provider, shall be authenticated in accordance with Alabama Rules of Civil Procedure, Rule 44(h), without further need for authenticating testimony. Copies of records obtained by one party shall be furnished by certified mail to the other party not less than 21 days prior to trial, unless the party offering the records can establish unusual circumstances justifying their admission despite the failure to make the exchange after receiving the records of a physician's treatment prior to trial, the party not offering the records of a physician's treatment shall, without regard to the limitation set forth

herein, have the right to depose prior to trial the physician whose records of treatment are to be offered by any other party.

It is the intent of this section that limited discovery shall be available.

§ 25-5-82. Compensation for death to be paid only to United States residents.

Compensation for the death of an employee shall be paid only to dependents who, at the time of the death of the injured employee, were actually residents of the United States. No right of action to recover damages for the death of an employee shall exist in favor or for the benefit of any person who was not a resident of the United States at the time of the death of such employee.

§ 25-5-83. Commutation of compensation to lump sum payments.

By agreement of the parties and with approval of the court, the amounts of compensation payable periodically, under this article and Article 4 of this chapter, may be commuted to one or more lump sum payments. No commutation shall be approved by the court unless the court is satisfied that it is in the best interest of the employee or the employee's dependent, in case of death, to receive the compensation in a lump sum rather than in periodic payments. In making the commutations, the lump sum payment shall, in the aggregate, amount to a sum equal to the present value of all future installments of compensation calculated on a six percent basis.

§ 25-5-84. Modification of payments.

All amounts paid by the employer and received by the employee or his dependents under settlements made under Section 25-5-56 shall be final, but the amount of any award payable periodically for more than six months may be modified at any time by agreement of the parties and approved by the court.

§ 25-5-85. Procedure for and effect of payment of compensation to court appointed trustee.

At any time after the amount of an award has been agreed upon by the parties or found and ordered by the court, a sum equal to the present value of all future installments of compensation calculated on a six percent basis may, where death or the nature of the injury renders the amount of future payments certain, by leave of court, be paid by the employer to a bank or trust company of this state or a national bank doing business in this state to be approved and designated by the court, and the sum, together with all interest thereon, shall thereafter be held in trust for the employee or dependent of the employee, who shall have no further recourse against the employer. The payment of the sum by the employer, evidenced by the receipts in duplicate of the trustees, one of which shall be filed with the probate judge of the county in which the injury or death occurred and the other filed with the court, shall operate as a satisfaction of the award as to the employer, and the trustee designated by the court shall be allowed to pay itself from the fund a reasonable compensation for acting as the trustee, which compensation shall be fixed by the court in the order making the designation. Payments from the fund shall be made by the trustee in the same amounts and at the same time as are required in this article of the employer until the fund, after deducting the trustee's compensation as above provided, and inter-

est shall be exhausted. In the appointment of the trustee, preference shall be given, in the discretion of the court, to the choice of the injured employee or the dependent of the deceased employee. If the right to receive compensation should terminate on account of death, becoming of age, or marriage, or for any other cause as provided in this article, the balance remaining in the bank or trust company after the termination should be returned by them to the employer, his or her successor, or assigns.

§ 25-5-86. Remedy for default upon periodic compensation payments; exemption of compensation claims, etc., from garnishment, etc.

For purposes of this article and Article 4 of this chapter:

(1) If the award, order, or settlement agreement is payable in installments and default has been made in the payment of an installment, the owner or interested party may, upon the expiration of 30 days from the default and upon five days' notice to the defaulting employer or defendant, move for a modification of the award or settlement agreement by ascertaining the present value of the case, including the 15 percent penalty provision of Section 25-5-59, under the rule of computation contained in Section 25-5-85, and upon which execution may issue. The defaulting employer may relieve itself of the execution by entering into a good and sufficient bond, to be approved by the judge, securing the payment of all future installments, and forthwith paying all past due installments with interest and penalty thereon since due. The bond shall be recorded upon the minutes of the court.

(2) Claims for compensation, awards, judgments, or agreements to pay compensation owned by an injured employee or his or her dependent shall not be assignable and shall be exempt from seizure or sale or garnishment for the payment of any debt or liability.

§ 25-5-87. Preference of right to compensation, etc.

The right to compensation and of compensation awarded any injured employee or for death claims to his dependents shall have the same preference against the assets of the employer as other unpaid wages for labor; but such compensation shall not become a lien upon the property of third persons by reason of such preference.

§ 25-5-88. Proceedings for determination of disputed claims for compensation -- Commencement of action, etc.

Either party to a controversy arising under this article and Article 2 of this chapter may file a verified complaint in the circuit court of the county which would have jurisdiction of an action between the same parties arising out of tort, which shall set forth the names and residences of the parties and the circumstances relating to the employment at the time of the injury, with a full description of the injury, its nature and extent, the amount of the average earnings received by the employee which would affect his compensation under this article and Article 2 of this chapter, the knowledge of the employer of the injury or the notice to him thereof, which must be of the kind provided for in this article and Article 2 of this chapter and such other facts as may be necessary to enable the court to determine what, if any, compensation the employee or, in case of a deceased employee, his

dependents, are entitled to under this article and Article 2 of this chapter. The complaint shall be filed with the clerk of the circuit court, who shall cause summons to be issued thereon requiring the defendant to come in and answer said complaint within 30 days of the service thereof. Thereafter, said action shall proceed in accordance with and shall be governed by the same rules and statutes as govern civil actions, except as otherwise provided in this article and Article 2 of this chapter, and except that all civil actions filed hereunder shall be preferred actions and shall be set down and tried as expeditiously as possible. At the hearing or any adjournment thereof the court shall hear such witnesses as may be presented by each party, and in a summary manner without a jury, unless one is demanded to try the issue of willful misconduct on the part of the employee, shall decide the controversy. This determination shall be filed in writing with the clerk of said court, and judgment shall be entered thereon in the same manner as in civil actions tried in the said circuit court and shall contain a statement of the law and facts and conclusions as determined by said judge. Subsequent proceedings thereon shall only be for the recovery of moneys thereby determined to be due, but nothing in this section contained shall be construed as limiting the jurisdiction of the Court of Civil Appeals to review questions of law by certiorari.

§ 25-5-89. Proceedings for determination of disputed claims for compensation -- Costs and fees.

Costs may be awarded by said court in its discretion, and, when so awarded, the same costs shall be allowed, taxed and collected as for like services and proceedings in civil cases, but if it shall appear that the employer, prior to the commencement of the action, made to the person or persons entitled thereto a written offer of compensation in specific terms, which terms were in accordance with the provisions of this article and Article 2 of this chapter, then no costs shall be awarded or taxed against such employer.

§ 25-5-90. Proceedings for determination of disputed claims for compensation -- Attorney's fees.

(a) Unless otherwise provided in this chapter, no part of the compensation payable under this article and Article 4 of this chapter shall be paid to an attorney for the plaintiff for legal services, unless upon the application of the plaintiff, the judge shall order or approve of the employment of an attorney by the plaintiff; and in such event, the judge, upon the hearing of the complaint for compensation, either by law or by settlement, shall fix the fee of the attorney for the plaintiff for his or her legal services and the manner of its payment, but the fee shall not exceed 15 percent of the compensation awarded or paid.

(b) All expenses of litigation and attorney's fees charged by any attorney in any representation under this chapter while representing any employer, insurance company, or self-insurer shall be reported to the Department of Industrial Relations.

§ 25-5-91. Forwarding of copy of judgment, etc., to probate court; creation of judgment lien.

Whenever any decision or order is made and filed by the court upon any matter arising under this article, the clerk of the court shall forthwith make and forward to the

judge of probate of the county in which the complaint was filed a certified copy of such decision or order with any memorandum of the judge and of any judgment entered. No fee or other charge shall be collected therefor. The plaintiff or owner of any judgment so certified may have the same registered by the probate judge upon the payment of the fee fixed by law for registering judgments, and the same shall become a lien in like manner as other registered judgments, unless the same is made a preferred lien by other provisions of some law.

§ 25-5-92. Discharge of lien upon judgment payable periodically.

When the judgment, however, is for a sum not due, that is, payable periodically, the defendant may discharge the registered lien by giving a bond for the payment of same to be approved by the probate judge and recorded, and he shall receive the same for registration. No execution shall issue where such judgment is payable periodically unless default is made in the payment of one or more of such periodical payments.

§ 25-5-93. Judgments discharged and marked satisfied upon proof of release or satisfaction of judgment.

Any judgment entered under the provisions of this article and Article 2 of this chapter, either by award or by settlement, and entered on the minutes of any court, shall be discharged by said court and marked satisfied upon presentment to said court or the clerk thereof of a release or discharge of said judgment, executed by the party in whose favor the same runs and acknowledged in the same manner as conveyances are acknowledged or upon presentment by the employer or his representative of an affidavit that said judgment has been, in accordance with its terms, fully satisfied and discharged, together with satisfactory proof in the way of vouchers or checks duly endorsed by the party in whose favor such judgment ran.

§ 25-5-110. Definitions.

For the purposes of this article, the following terms shall have the meanings respectively ascribed to them by this section:

(1) OCCUPATIONAL DISEASE. A disease arising out of and in the course of employment, including occupational pneumoconiosis and occupational exposure to radiation as defined in subdivisions (2) and (3), respectively, of this section, which is due to hazards in excess of those ordinarily incident to employment in general and is peculiar to the occupation in which the employee is engaged but without regard to negligence or fault, if any, of the employer. A disease, including, but not limited to, loss of hearing due to noise, shall be deemed an occupational disease only if caused by a hazard recognized as peculiar to a particular trade, process, occupation, or employment as a direct result of exposure, over a period of time, to the normal working conditions of the trade, process, occupation, or employment.

(2) OCCUPATIONAL PNEUMOCONIOSIS. A disease of the lungs caused by inhalation of minute particles of dust over a period of time, which dust is due to causes and conditions arising out of and in the course of the employment, without regard to whether the causes or conditions are inherent in the employment or can be eliminated or reduced by due care on the part of the employer. The

term “occupational pneumoconiosis” shall include, but without limitation, such diseases as silicosis, siderosis, anthracosis, anthrasilicosis, anthracosilicosis, anthraco-tuberculosis, tuberculosilicosis, silico-tuberculosis, aluminosis, and other diseases of the lungs resulting from causes enumerated in this section.

(3) OCCUPATIONAL EXPOSURE TO RADIATION. Gradual exposure to radiation over a period of time from the use of or direct contact with radium, radioactive substances, roentgen rays (Xrays), or ionizing radiation, arising out of and in the course of the employment and resulting from the nature of the employment in which the employee is engaged, without regard to whether the exposure is inherent in the employment or can be eliminated or reduced by due care on the part of the employer.

(4) NATURE OF EMPLOYMENT. With respect to subdivisions (2) and (3) above, this term shall mean that, as to the industry in which the employee is engaged, there is attached a particular hazard of the exposure that distinguishes it from the usual run of occupations and is in excess of the hazards of the exposure attending employment in general.

(5) CONTRACTION OF AN OCCUPATIONAL DISEASE. This term shall include any aggravation of the disease without regard to the employment in which the disease was contracted.

§ 25-5-111. Right to compensation for death or disablement.

Where the employer and employee are subject to this chapter, the disablement or death of an employee caused by the contraction of an occupational disease, as defined in Section 25-5-110, shall be treated as an injury by accident, and the employee or, in case of his death, his dependents shall be entitled to compensation as provided in this article. In no case, however, shall an employer be liable for compensation by reason of the contraction of an occupational disease, as defined in Section 25-5-110, or for disability or death resulting therefrom unless such disease arose out of and in the course of the employment and resulted from the nature of the employment in which the employee was engaged.

§ 25-5-112. Presumptions as to applicability and acceptance of provisions of article.

All contracts of employment made on or after September 1, 1971, shall be presumed to have been made with reference to and subject to the provisions of this article. All contracts of employment made prior to and existing on September 1, 1971, shall be presumed to continue from and after said date, subject to and under the provisions of this article. Every employer and every employee shall be presumed to have accepted and come under this article and the provisions thereof relating to the payment and acceptance of compensation.

§ 25-5-113. Manner of compensation, etc., provided by article exclusive.

No employee of any employer subject to this article, nor the personal representative, surviving spouse, or next of kin of any such employee shall have any right to any other method, form, or amount of compensation or damages for the contraction of an

occupational disease, as defined in this article, or for injury, disability, loss of service, or death resulting from such disease, arising out of and in the course of employment, or determination thereof, in any manner other than as provided in this article.

§ 25-5-114. Rights and remedies of employees, etc., under article exclusive; civil and criminal liability of employers, etc.

The rights and remedies granted in this article shall exclude all other rights and remedies of an employee, his personal representative, parent, surviving spouse, dependents, or next of kin, at common law, by statute, contract, or otherwise on account of the contraction of an occupational disease, as defined in this article, and on account of any injury, disability, loss of service or death resulting from an occupational disease, as defined in this article. Except as provided in this article, no employer included within the terms of this chapter and no officer, director, agent, servant, or employee of such employer shall be held civilly liable for the contraction of an occupational disease, as defined in this article, or for injury, disability, loss of service, or death of any employee due to an occupational disease while engaged in the service or business of the employer, the cause of which occupational disease originates in the employment; but nothing in this section shall be construed to relieve any person from criminal prosecution for failure or neglect to perform any duty imposed by law. The immunity from civil liability shall extend to any workers' compensation insurance carrier of such employer and to any officer, director, agent, servant, or employee of such carrier, and such immunity shall further extend to any labor union, or any official or representative thereof, making a safety inspection for the benefit of the employer or the employees.

§ 25-5-115. False written representation to employer as to previous compensation for occupational disease.

If an employee, at the time of or in the course of entering into the employment of the employer by whom the compensation would otherwise be paid, wilfully and falsely represented himself in writing to such employer as not having previously been compensated in damages, or under this article, because of occupational disease, as defined in this article, such employee, his personal representative, parents, surviving spouse, dependents, and next of kin shall be barred from compensation or other benefits provided by this article or from recovery at common law by statute, contract, or otherwise on account of occupational disease as defined in this article, resulting from exposure to the hazards of such disease subsequent to such representation and while in the employ of such employer.

§ 25-5-116. Which employer liable for compensation of employee; contribution.

(a) If compensation is payable for an occupational disease other than pneumoconiosis or radiation, the only employer liable, if any, shall be the employer in whose employment the employee was last exposed to the hazards of the disease. The employer who is liable shall not be entitled to contribution from any other employer of the employee except one who furnished workers' compensation for the employee during the employment of last exposure.

(b) If compensation is payable for pneumoconiosis or radiation, the only employer liable, if any, shall be the employer in whose employment the employee was last exposed

in each of at least 12 months, within a period of five years prior to the date of the injury, to the hazards of the disease and, in addition, any employer who furnished workers' compensation coverage during this period.

§ 25-5-117. Limitation period for claims or actions for compensation.

(a) In case of the contraction of an occupational disease, as defined in this article, or of injury or disability resulting therefrom, a claim for compensation, as defined in Section 25-5-1, shall be forever barred, unless within two years after the date of the injury, as hereinafter defined, the parties shall have agreed upon the compensation payable under this article, or unless within two years after the date of the injury, one of the parties shall have filed a verified complaint as provided in Section 25-5-88. In case of death, the claim shall be forever barred, unless within two years after death, if death results proximately from the occupational disease, as defined in this article, and death occurs within three years of the date of the injury, as hereinafter defined, the parties have agreed upon the compensation under this article, or unless within two years after death, one of the parties shall have filed a verified complaint as provided in Section 25-5-88. Notwithstanding the foregoing, if upon the date of death the employee's claim is barred, any claim by his or her dependents likewise shall be barred. If, however, payments of compensation have been made, the limitations as to compensation shall not take effect until the expiration of two years from the time of making the last payment. In case of physical or mental incapacity, other than the minority of the injured employee or his or her dependent, to perform or cause to be performed any act required within the time specified in this section, the period of limitation in any case shall be extended to become effective two years from the date when the incapacity ceases. No agreement, express or implied, to shorten or to extend the limitations shall be valid or binding on either of the parties if the employment, at the time of the exposure, is or was subject to this article.

(b) For the purposes of occupational diseases other than pneumoconiosis or radiation, "the date of the injury" shall mean the date of the last exposure to the hazards of the disease in the employment of the employer in whose employment the employee was last exposed to the hazards of the disease.

(c) For purposes of pneumoconiosis and radiation, "the date of the injury" shall mean the date of the last exposure to the hazards of the disease in the employment of the employer in whose employment the employee was last exposed to the hazards of the disease in each of at least 12 months, within a period of five years prior to the date of the injury.

§ 25-5-118. Rights and remedies as to exposures to hazards of occupational disease occurring prior to September 1, 1971.

All exposures of the employee occurring prior to September 1, 1971, to the hazards of an occupational disease, as defined in this article, while in the employ of the employer, shall be deemed for all purposes to be subject to the provisions of this article, and the employee, his personal representative, parents, surviving spouse, dependents, and next of kin shall be entitled to compensation or other benefits and barred from other rights and remedies as provided in this article for exposures occurring after September 1, 1971.

§ 25-5-119. Computation of compensation and benefits payable under article.

The compensation payable for death or disability caused by an occupational disease, as defined in this article, shall be computed in the same manner and in the same amounts as provided in Article 3 of this chapter for computing compensation for disability or death resulting from an accident arising out of and in the course of the employment and the medical, surgical, hospital, and burial benefits payable under this article caused by said disease shall be computed in the same manner and in the same amounts as provided in Article 3 of this chapter for computing like benefits. The date of injury, as defined in Section 25-5-117, shall be considered the date of the accident for determining the applicable medical, surgical, and hospital benefits, the minimum and maximum weekly benefits and the limitation on the total amount of compensation payable for such occupational disease.

§ 25-5-120. Presumptions and burden of proof as to right to compensation.

There shall not be a presumption that disablement or death from any cause or infirmity is the result of an occupational disease, nor that an occupational disease will result in disablement or death, and any person claiming compensation or other benefits under this article shall have the burden of establishing that he or she is entitled to the benefits.

§ 25-5-121. Settlements between parties; determination of disputed compensation claims.

The interested parties shall have the right to settle all matters of compensation and all questions arising hereunder between themselves in accordance with and subject to the provisions of Article 3 of this chapter, and, in case of a dispute, either party may submit the controversy to the circuit court in accordance with and subject to the provisions of Article 3 of this chapter.

§ 25-5-122. Applicability of article.

The provisions of this article shall apply to all cases of occupational disease, as defined in this article, or injury, disability, or death therefrom, in which the last exposure to hazards of such disease occurred after September 1, 1971, except as otherwise provided in this article.

§ 25-5-123. Applicability of other provisions of chapter to article.

All of the provisions of Articles 1, 2, 3, and 8 of this chapter, except Section 25-5-78, shall be applicable to this article, unless otherwise provided or inconsistent herewith.

§ 25-5-190. Definitions.

For the purposes of this article, the following terms shall have the meanings respectively ascribed to them by this section:

(1) OCCUPATIONAL EXPOSURE TO RADIATION. Gradual exposure to radiation over a period of time from the use of or direct contact with radium, radioactive substances, roentgen rays (X rays), or ionizing radiation, arising out of and in the course of the employment and resulting from the nature of the employment in

which the employee is engaged, without regard to whether or not said exposure is inherent in the employment or can be eliminated or reduced by due care on the part of the employer. The term "occupational exposure to radiation" shall not include accidents involving sudden and violent injuries within the meaning of subdivision (9) of Section 25-5-1, such accidents being covered by such section.

(2) NATURE OF EMPLOYMENT. Such term shall mean that, as to the industry in which the employee is engaged, there is attached a particular hazard of such exposure that distinguishes it from the usual run of occupations and is in excess of the hazards of such exposure attending employment in general.

§ 25-5-191. Right to compensation for injury or death.

Where the employer and employee are subject to the provisions of this chapter, the disablement or death of an employee caused by occupational exposure to radiation, as defined in this article, shall be treated as an injury by accident, and the employee or, in case of his death, his dependents shall be entitled to compensation as provided in this article. In no case, however, shall an employer be liable under this article for compensation by reason of exposure to radiation or for disability or death resulting therefrom unless such exposure arose out of and in the course of the employment and resulted from the nature of the employment in which the employee was engaged.

§ 25-5-192. Presumptions as to applicability and acceptance of provisions of article.

All contracts of employment made on or after September 7, 1967, shall be presumed to have been made with reference to and subject to the provisions of this article. All contracts of employment made prior to and existing on September 7, 1967, shall be presumed to continue from and after said date, subject to and under the provisions of this article. Every employer and every employee shall be presumed to have accepted and come under this article and the provisions thereof relating to the payment and acceptance of compensation.

§ 25-5-193. Manner of compensation, etc., provided by article exclusive.

No employee of any employer subject to this article, nor the personal representative, surviving spouse, or next of kin of any such employee shall have any right to any other method, form, or amount of compensation or damages for occupational exposure to radiation, or for injury, disability, loss of service, or death resulting from such exposure, arising out of and in the course of employment, or determination thereof, in any manner other than as provided in this article.

§ 25-5-194. Rights and remedies of employees, etc., under article exclusive; civil and criminal liability of employers, etc.

The rights and remedies granted in this article shall exclude all other rights and remedies of an employee, his personal representative, parent, surviving spouse, dependents, or next of kin, at common law, by statute, contract, or otherwise on account of occupational exposure to radiation and on account of any injury, disability, loss of service, or death

resulting from occupational exposure to radiation. Except as provided in this article, no employer included within the terms of this chapter and no officer, director, agent, servant, or employee of such employer shall be held civilly liable for the occupational exposure to radiation or for injury, disability, loss of service, or death of any employee due to occupational exposure to radiation while engaged in the service or business of the employer, the cause of which occupational exposure to radiation originates in the employment, but nothing in this section shall be construed to relieve any person from criminal prosecution for failure or neglect to perform any duty imposed by law; provided, however, that nothing in this article shall be interpreted so as to deprive an employee or, in case of death, his dependents of any rights or remedies he may have under Articles 2 and 3 of this chapter. The immunity from civil liability shall extend to any worker's compensation insurance carrier of such employer and to any officer, director, agent, servant, or employee of such carrier, and such immunity shall further extend to any labor union, or any official or representative thereof, making a safety inspection for the benefit of the employer or its employees.

§ 25-5-195. False written representation to employer as to previous compensation for exposure to radiation.

If any employee, at the time of or in the course of entering into the employment of the employer by whom the compensation would otherwise be paid, wilfully and falsely represented himself in writing to such employer as not having previously been disabled, laid off or compensated in damages, worker's compensation, or otherwise, because of occupational exposure to radiation, or as not having previously been subjected to occupational exposure to radiation, such employee, his personal representative, parents, surviving spouse, dependents, and next of kin shall be barred from compensation or other benefits provided by this article or from recovery at common law, by statute, contract, or otherwise on account of occupational exposure to radiation subsequent to such representation and while in the employ of such employer.

§ 25-5-196. Which employer liable for compensation of employee; contribution not required from nonliable employer.

Where compensation is payable under this article, the only employer liable, if any, shall be the employer in whose employment the employee was last exposed within a period of five years prior to the date of the injury, to the hazards of said radiation, in each of at least 12 months. The employer who is liable shall not be entitled to contribution from any other employer of such employee.

§ 25-5-197. Limitation period for claims or actions for compensation.

In case of occupational exposure to radiation, as defined in this article, or of injury or disability resulting therefrom, all claims for compensation shall be forever barred, unless within one year after the employee first suffered disability therefrom and either knew or in the exercise of reasonable diligence should have known that the disability was caused therefrom, but in no event more than three years after date of the injury as hereinafter defined, the parties shall have agreed upon the compensation payable under this article, or unless within such period of time one of the parties shall have filed a verified complaint as provided in Section 25-5-88. In case of death, all claims for compensation shall be forever barred, unless the death results proximately from occupational exposure to radia-

tion, as defined in this article, and occurs within three years of the date of the injury, as hereinafter defined, and unless within one year after such death the parties shall have agreed upon the compensation under this article, or unless within one year after such death one of the parties shall have filed a verified complaint as provided in Section 25-5-88; provided, however, that if upon the date of the death of the employee the employee's claim is barred, any claim by or for his dependents shall likewise be barred. Where, however, payments of compensation have been made in any case, said limitations shall not take effect until the expiration of one year from the time of making the last payment. In case of the mental incapacity of the injured employee or his dependents to perform or cause to be performed any act required within the time in this section specified, the period of limitation in any such case shall be extended to become effective one year from the date when such incapacity ceases. No agreement, express or implied, to shorten or to extend said limitations shall be valid or binding on either of the parties when said employment, at the time of said exposure, is or was subject to the provisions of this article. The "date of the injury" shall mean, for all purposes of this article, the date of the last exposure to the hazards of radiation in the employment of the employer in whose employment the employee was last exposed, within a period of five years prior to the date of the injury, to the hazards of radiation in each of at least 12 months.

§ 25-5-198. Rights and remedies as to exposures to hazards of radiation occurring prior to September 7, 1967.

All exposures of the employee occurring prior to September 7, 1967, to the hazards of radiation while in the employ of the employer shall be deemed for all purposes to be subject to the provisions of this article, and the employee, his personal representative, parents, surviving spouse, dependents, and next of kin shall be entitled to compensation, or other benefits and barred from other rights and remedies as provided in this article for exposures occurring after September 7, 1967.

§ 25-5-199. Computation of compensation and benefits payable under article.

The compensation payable for death or disability caused by occupational exposure to radiation shall be computed in the same manner and in the same amounts as provided in Article 3 of this chapter for computing compensation for disability or death resulting from an accident arising out of and in the course of the employment, and the medical, surgical, hospital, and burial benefits payable under this article caused by said exposure shall be computed in the same manner and in the same amounts as provided in Article 3 of this chapter for computing like benefits. The date of injury, as defined in Section 25-5-197, shall be considered the date of the accident for determining the applicable medical, surgical, and hospital benefits, the minimum and maximum weekly benefits and the limitation on the total amount of compensation payable for occupational exposure to radiation.

§ 25-5-200. Presumptions and burden of proof as to right to compensation.

There shall be no presumption that disablement or death from any cause or infirmity is the result of occupational exposure to radiation, nor that occupational exposure to radiation will result in disablement or death, and any person claiming compensation or other benefits under this article shall have the burden of establishing that he is entitled to such.

§ 25-5-201. Settlements between parties; determination of disputed compensation claims.

The interested parties shall have the right to settle all matters of compensation and all questions arising under this article between themselves in accordance with and subject to the provisions of Article 3 of this chapter, and, in case of a dispute, either party may submit the controversy to the circuit court in accordance with and subject to the provisions of Article 3 of this chapter.

§ 25-5-202. Applicability of article.

The provisions of this article shall apply to all cases of occupational exposure to radiation, or injury, disability, or death therefrom, in which the last exposure to hazards of such radiation occurred after September 7, 1967, except as provided in Section 25-5-198.

§ 25-5-203. Applicability of other provisions of chapter to article.

All of the provisions of Articles 1, 2, 3, and 8 of this chapter, except Section 25-5-78, shall be applicable to this article, unless otherwise provided or inconsistent herewith.

§ 25-5-226. Solicitation of employment or acceptance of solicited employment by attorneys.

Any attorney who in person solicits employment to collect for a consideration any claim of any employee for compensation under this chapter, or who solicits for a consideration employment to defend such claims, or who knowingly accepts such claim after it has been solicited by some other person, or who employs any other person for the purpose of soliciting or obtaining such claim or claims shall be guilty of a misdemeanor and, on conviction, may be imprisoned in the county jail or sentenced to hard labor for the county for not more than 12 months and must also be fined not more than $500.00. Any attorney convicted under this section must be removed and disbarred from the practice of law in this state, and the record of his conviction is conclusive evidence thereof. The commission by any attorney of any of such acts shall also be a cause for the removal and disbarment of such attorney.

§ 25-5-227. Solicitation of claims or representation of claimants by persons not authorized to practice law.

Any person who is not authorized by law to practice the profession of law within this state, who solicits for a consideration or traffics in for a consideration or represents for a consideration any claimant, claimants or claim for compensation under this chapter, shall be guilty of a misdemeanor and, on conviction, may be imprisoned in the county jail or sentenced to hard labor for the county for not more than 12 months and must also be fined not more than $500.00.

§ 25-5-229. Solicitation or writing of workers' compensation insurance by insurance companies, etc., not in compliance with Code.

Any insurance corporation, organization or association, or any officer, employee or agent of such insurance corporation, organization or association who solicits or writes any

workers' compensation insurance in this state without complying with the law as set forth in this Code in reference to filing with the Commissioner of Insurance its classifications of risks and premiums relating thereto or without having received from said Commissioner of Insurance approval of its plan of business or who fails to comply with any other requisites set out in this chapter to make reports in writing, who conducts business in the State of Alabama, shall be guilty of a misdemeanor and, on conviction, may be imprisoned in the county jail or sentenced to hard labor for the county for not more than 12 months and must also be fined not more than $500.00.

§ 25-5-231. Acceptance of assignment of employee compensation claim, etc.

Any person, other than a beneficiary under this chapter, who for a consideration takes or accepts from an employee an assignment of his claim or award or judgment for, or agreement to pay, compensation, or who accepts or takes same as security for a loan or a debt, or who takes a power of attorney to collect the same, retaining any interest in the amount to be collected, shall be guilty of a misdemeanor and, on conviction, may be imprisoned in the county jail or sentenced to hard labor for the county for not more than 12 months and must also be fined not more than $500.00.

§ 25-5-250. Creation; purpose; powers.

There is created a nonprofit corporation to be known as the "Alabama Workmen's Compensation Self-Insurers Guaranty Association, Incorporated," hereinafter referred to as "the association." The purpose of the association shall be to create and fund an insolvency fund to assure payment of worker's compensation claims due from self-insuring employers who are members of the association and who become insolvent. The association shall have those powers granted or permitted nonprofit corporations, as provided in Title 10. In addition, the corporation shall have the power to borrow funds as necessary to carry out its purposes, and to purchase such insurance and reinsurance as is deemed necessary.

§ 25-5-251. Membership requirements.

(a) All employers who elect to be self-insurers for workers' compensation as provided in Article 1, other than self-insurers which are governmental entities, or public utilities, shall be members of the association as a condition of their authority to self-insure. Membership shall be sufficient security for self-insurance.

(b) Membership in the association shall cease when the employer terminates its self-insurance election. However, terminating members shall be and remain liable for the period of time in which they were members of the association and for any subsequent assessments made for that period.

(c) Membership in the association may be terminated for nonpayment of assessments.

(d) The association shall not issue stock and its members shall not, as such, be liable for its obligations.

§ 25-5-252. Board of directors; eligibility; length of term; vacancies; reimbursement; registered agent.

The affairs of the association shall be managed by a board of directors which shall consist of nine persons appointed by the Director of the Department of Industrial Relations. To be eligible for appointment, a person must be an owner, employee, or agent of a member self-insurer, and should be experienced in the field. In the initial appointments, four directors shall be appointed for a two year term and five shall be appointed for a four-year term. Subsequent terms shall be for a period of four years. Vacancies on the board shall be filled for the unexpired portion of the term in the same manner. Directors shall be entitled to no compensation for their services as such, but shall be entitled to reimbursement from the association of expenses incurred in carrying out their duties. The board of directors shall designate a registered office and appoint a registered agent and shall continuously maintain the same, and shall file with the Secretary of State a certification thereof.

§ 25-5-253. Bylaws.

(a) Within 120 days after their appointment, the board of directors shall propose to the Director of the Department of Industrial Relations a set of bylaws for the operation and administration of the association. The bylaws shall not be effective until approved by the Director of the Department of Industrial Relations. If the board of directors fails to submit bylaws or if the Director of the Department of Industrial Relations does not approve the submitted bylaws, then the Director of the Department of Industrial Relations may promulgate, subject to the provisions of the Administrative Procedure Act, appropriate rules and regulations for the administration of the association.

(b) The bylaws may be amended from time to time by proposal of the board of directors approved by the Director of the Department of Industrial Relations.

(c) The bylaws shall contain:

(1) Provisions governing the administration of the association.

(2) Provisions governing managing the assets of the association and its financial record keeping.

(3) Procedures by which claims may be filed with the association.

(4) Provisions for the times and places for call of and conduct of meetings of the board of directors.

(5) Procedures for terminating the membership of a member who does not pay assessments when due.

(6) Procedures for recommendations by members of candidates for the board of directors for submission to the Director of the Department of Industrial Relations.

(7) Such additional provisions as are necessary or proper for carrying out the purposes of the association.

§ 25-5-254. Annual assessments for administration of association.

(a) To the extent necessary to secure funds for the payment of covered claims and costs of administration, the association may levy annual assessments on members of the association at a rate not to exceed $15.00 per $1,000.00 of security amount established by the department for the respective members. Assessments shall be

remitted to and administered by the association as provided in the bylaws. The rate of annual assessments against members of the association may vary by duration of membership so that the cumulative contribution rate of recently admitted members becomes the same as previously admitted members.

(b) If, at any time, the insolvency fund is not sufficient to make the payments or reimbursements then owing, the association may levy a special assessment on members of the association at a rate not to exceed $15.00 per $1,000.00 of security amount established by the department for each member, but such special assessment may not be levied more than once in each calendar year.

(c) No state funds shall be allocated or paid to the association except those funds which may accrue to the association by or through assignments of rights of an insolvent employer. All moneys in the fund shall be held in trust and shall not be money or property of the state or the participants in the association.

§ 25-5-255. Insolvency fund.

Upon receipt of the funds assessed on members, the association may set aside funds for the administration of its affairs, and the balance of the funds shall be deposited to an insolvency fund under the following terms:

(1) The fund is created for the purpose of assuring payment of workers' compensation claims against members of the association who become insolvent; but only those claims which accrue while the insolvent employer is a member of the association and accrue prior to the determination of insolvency or within 30 days thereafter. The obligation of the fund shall be limited to the obligation of the insolvent employer under the Workers' Compensation Act, in an amount not to exceed 150 percent of the amount of security as determined by the department as of the last annual financial review. The fund shall have all defenses of and shall be subrogated to all rights of the insolvent employer. The fund shall not be liable for any penalties or interest assessed against the employer.

(2) It shall be the duty of the Department of Industrial Relations to determine insolvency of any self-insurer employers, and to notify the association of its determination. Members and directors of the association are specifically forbidden to be given information on the financial condition of any members except the fact of determination of insolvency.

(3) The Director of the Department of Industrial Relations, or his representative, will at all reasonable times have full and free access to the books and records of the association and may audit the association's financial affairs as he deems necessary. Should the director deem the balance in the insolvency fund insufficient to meet projected liabilities, he shall inform the board of directors, and after consultation with them, he shall set the amount which he deems sufficient and the board of directors shall levy assessments as provided herein to secure that amount.

(4) The association shall be subrogated to all rights of any claimant whose claim it pays and shall have a claim against the member employer for all such claims and expenses of administration.

(5) If at any time the insolvency fund is insufficient to pay all claims then owing, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as sufficient funds become available.

§ 25-5-256. Association subject to examination and regulation by Department of Industrial Relations.

The association shall be subject to examination and regulation by the Department of Industrial Relations. No later than March 30 of each year, the board of directors shall submit a financial report for the preceding calendar year in a form approved by the department.

§ 25-5-257. Assessments deductible as business expenses.

A member may deduct as a business expense for state income tax purposes any assessment levied under Section 25-5-254 in the year such assessments are paid.

§ 25-5-270. Certain employers authorized to purchase insurance with optional deductibles.

(a) Each insurer issuing a policy under this article shall offer, as a part of the policy or as an optional endorsement to the policy, deductibles optional to the policyholder for benefits payable under this article. Deductible amounts offered shall be fully disclosed to the prospective policyholder in writing in the amount of $100.00, $200.00, $300.00, $400.00, $500.00, or increments of $500.00 up to a maximum of $2,500.00 per compensable claim. The policyholder exercising the deductible option shall choose only one deductible amount.

(b) If the policyholder exercises the option and chooses a deductible, the insured employer shall be liable for the amount of the deductible for benefits paid for each compensable claim of work injury suffered by an employee. The insurer shall pay all or part of the deductible amount, whichever is applicable to a compensable claim, to the person or medical provider entitled to the benefits conferred by this article and then seek reimbursement from the insured employer for the applicable deductible amount. The payment or nonpayment of deductible amounts by the insured employer to the insurer shall be treated under the policy insuring the liability for workers' compensation in the same manner as payment or nonpayment of premiums.

§ 25-5-271. Optional deductibles to be offered in policy; exception.

Optional deductibles shall be offered in each policy insuring liability for workers' compensation that is issued, delivered, issued for delivery, or renewed under this article on or after July 29, 1991, unless an insured employer and insurer agree to renegotiate a workers' compensation policy in effect on July 29, 1991, so as to include a provision allowing for a deductible.

§ 25-5-272. Premium reduction to be determined before application of experience modification, premium surcharge, etc.

Premium reduction for deductibles shall be determined before the application of any experience modification, premium surcharge, or premium discounts. To the extent that an

employer's experience rating or safety record is based on benefits paid, money paid by the insured employer under a deductible as provided in this article shall not be included as benefits paid so as to harm the experience rating of such employer.

§ 25-5-273. Applicability.

This article shall not apply to employers who are approved to self-insure against liability for workers' compensation or group self-insurance funds for workers' compensation established pursuant to this chapter.

§ 25-5-290. Ombudsman program, creation; purpose; members; notification of service; benefit review conferences.

(a) The Department of Industrial Relations shall establish an Ombudsman Program to assist injured or disabled employees, persons claiming death benefits, employers, and other persons in protecting their rights and obtaining information available under the Workers' Compensation Law.

(b) Providing that the employer and the employee agree to participate in the benefit review conference, the ombudsmen shall meet with or otherwise provide information to injured or disabled employees, investigate complaints, and communicate with employers, insurance carriers, and health care providers on behalf of injured or disabled employees.

(c) Ombudsmen shall be Merit System employees and demonstrate familiarity with the Workers' Compensation Law. An ombudsman shall not be an advocate for any person who shall assist a claimant, employer, or other person in any proceeding beyond the benefit review conference, but may, at all times, provide appropriate information regarding this chapter and rules and regulations promulgated thereunder.

(d) Each employer shall notify his or her employees of the ombudsman's service in a manner prescribed by the Director of the Department of Industrial Relations. The notice shall include the posting of a notice in one or more conspicuous places. The director shall also describe clearly the availability of the ombudsman on the first report of accident form required by this article. The ombudsman shall give each employee with a lost-time accident claim written notice of workers' compensation assistance that is available. The notice shall include a toll-free phone number for employees to reach an ombudsman.

(e) Ombudsmen may conduct benefit review conferences. A benefit review conference may be held between the parties involved in a dispute over any claim arising after January 1, 1993. Such benefit review conference shall be held only by agreement of the employer and employee and shall not be deemed mandatory. The director shall institute and maintain an education and training program for ombudsmen. The ombudsmen shall be trained in the principles and procedures of dispute mediation and the director may consult or contract with the federal Mediation and Conciliation Service or other appropriate organizations to accomplish this purpose.

(f) In conducting benefit review conferences, the ombudsman:

(1) Shall mediate disputes between the parties and assist with the claim consistent with this article and the policies of the department.

(2) Shall inform all parties of their rights and responsibilities under this article, especially in cases in which either party is not represented by an attorney or

other representative. An employee shall be advised, in writing which shall be notarized, of his or her right to be represented by counsel and of his or her right to have any settlement of his or her claim reviewed by a court of competent jurisdiction at any time within 60 days after the date of the settlement and at the end of 60 days it shall be final and irrevocable.

(3) Shall ensure that all documents and information relating to the employee's wages, medical condition, and any other information pertinent to the resolution of disputed issues are contained in the claim file at the conference, especially in cases in which the employee is not represented by an attorney or other representative.

(4) May reschedule a benefit review conference if he or she determines that available information pertinent to the resolution of disputed issues is not produced at the benefit review conference.

(5) May not take testimony but may direct questions to an employee, an employer, or a representative of an insurance carrier to supplement or clarify information in a claim file.

(6) May not make a formal record.

(7) May issue a statement with regard to an award of attorney fees in accordance with the amount as provided by Section 25-5-90.

§ 25-5-291. Benefit review conferences.

A benefit review conference is a nonadversarial, informal dispute resolution proceeding designed to:

(1) Explain, orally and in writing, the rights of the respective parties to a workers' compensation claim and the procedures necessary to protect those rights.

(2) Discuss the facts of the claim, review available information in order to evaluate the claim, and delineate the disputed issues.

(3) Mediate and resolve disputed issues by mutual agreement of the parties in accordance with this article and the policies of the department.

§ 25-5-292. Resolution of disputes, settlement agreements; written reports; interlocutory orders; final determinations of liability.

(a) A dispute may be resolved either in whole or in part at the benefit review conference. If the conference results in the resolution of some of the disputed issues by mutual agreement or in a settlement, the ombudsman shall reduce the agreement or the settlement to writing. The ombudsman and each party or the designated representative of the party shall sign the agreement or settlement. A settlement reached hereunder shall, unless otherwise provided herein, be effective on the date the settlement is signed unless one of the parties submits the settlement to the court for approval as provided in this article.

(b) An agreement signed pursuant to this section shall be binding on all parties through the final conclusion of all matters relating to the claim, unless within 60 days after the agreement is signed or approved the court on a finding of fraud, newly discovered evidence, or other good cause, shall relieve all parties of the effect of the agreement.

(c) If the dispute is entirely resolved at the benefit review conference, the ombudsman shall prepare a written report, which shall not be admissible into evidence in any court, that includes:

(1) A statement of each resolved issue.

(2) The ombudsman's recommendations regarding the payment or denial of benefits.

(3) No permission of the court is required by an attorney to represent any party before an ombudsman.

(d) If there is a dispute as to which of two or more insurance carriers is liable for compensation for one or more compensable injuries, the ombudsman may issue an interlocutory order directing each insurance carrier to pay a proportionate share of benefits due pending a final decision on liability. The proportionate share shall be determined by dividing the compensation due by the number of insurance carriers involved.

(e) On final determination of liability, any insurance carrier that has been determined not to be liable for the payment of benefits is entitled to reimbursement from the share paid by the insurance carrier that has been determined to be liable.

(f) The ombudsman shall file the signed agreement and the report with the Department of Industrial Relations.

§ 25-5-293. Duties of director; continuing education, accounting; recovery of expenses; advisory committees; legislative intent regarding reimbursements.

(a) The Director of the Department of Industrial Relations may prescribe rules and regulations for the purpose of conducting continuing education seminars for all personnel associated with workers' compensation claims and collect registration fees in order to cover the related expenditures. The director may adopt rules and regulations setting continuing education standards for workers' compensation claims personnel employed by insurance companies and self-insured employers and groups.

(b) The director shall file annually with the Governor and the presiding officer of each house of the Legislature a complete and detailed written report accounting for all funds received and disbursed during the preceding fiscal year. The annual report shall be in the form and reported in the time provided by law.

(c) The director shall establish reasonable charges to recover expenses for services not required by law or rule provided to persons requesting the services from the Department of Industrial Relations.

(d) The director shall appoint appropriate advisory committees on workers' compensation matters, including: An advisory committee consisting of three administrators who are members of the Alabama Hospital Association, who shall be selected by the director from nominations submitted by the Alabama Hospital Association; an advisory committee consisting of three chiropractors who are members in good standing with the Alabama State Chiropractic Association, who shall be selected by the director from nominations submitted by the Alabama State Chiropractic Association; an advisory committee consisting of three pharmacists who are members in good standing with

the Alabama Pharmaceutical Association who shall be selected by the director from nominations submitted by the Alabama Pharmaceutical Association; and an advisory committee consisting of three optometrists who are members in good standing with the Alabama Optometric Association who shall be selected by the director from nominations submitted by the Alabama Optometric Association. These committees shall guide the director and make recommendations to ascertain the prevailing rate of reimbursement or payment of medical costs in the State of Alabama. These committees shall make recommendations with regard to the implementation of all other rules and regulations, including, but not limited to, utilization review by like peers. These committees shall also advise and guide the director in determining all other rules and regulations required to accomplish the intent of the Legislature in assuring the quality of medical care and achieving medical cost control.

The director shall also appoint a vocational rehabilitation advisory committee consisting of at least five professional licensed rehabilitation specialists. These rehabilitation specialists shall be selected by the director from nominations from the rehabilitation associations in the State of Alabama, including, but not limited to, the Alabama Physical Therapy Association. The committee shall guide the director and make recommendations to ascertain the prevailing rate of reimbursement or payment of rehabilitation costs in the State of Alabama. The committee shall also make recommendations with regard to the implementation of all other rules and regulations, including but not limited to, utilization review, and with regard to rehabilitation policies as provided by this article. The committee shall also advise and guide the director in determining all other rules and regulations required to accomplish the intent of the Legislature in assuring the quality of rehabilitation care and achieving rehabilitation cost control.

(e) The director shall appoint an advisory committee consisting of attorneys who are members in good standing of the Alabama State Bar. This committee shall guide and assist the director in creating and promulgating rules and regulations for the efficient administration of the Ombudsman Program.

Members of the advisory committee shall receive State of Alabama mileage expense which shall be paid by the Department of Industrial Relations.

(f) It is the intent of the Legislature that final reimbursements related to workers' compensation claims be commensurate and in line with the prevailing rate of reimbursement or payment in the State of Alabama, or as otherwise provided in this article. The director shall conduct field audits as necessary to assist the private sector to gain compliance with the legislative intent. The department shall develop administrative rules to facilitate implementation and continuity of the legislative intent of this article. The director, except as otherwise provided in this article, shall not establish the prevailing rate of payment or reimbursement, but may collect data which are construed to be statistically significant as defined by an independent, disinterested consultant. By definition, the prevailing rate of payment or reimbursement is self-defining and self-setting and shall be updated annually. The director may create a statistically valid data base from which prevailing rates of reimbursement or payment shall be ascertained. Except as otherwise provided herein, the prevailing rate of reimbursement or payment for medical services provided under this article shall be effective 30 days after the prevailing rate of reimbursement or payment is discovered, but in no event earlier than six months from May 19, 1992.

(g) Insurance carriers and self-insurers, individual and group, are required to make appropriate payment for services provided under this article. Unless otherwise provided in this article, an insurance carrier or self-insurer, individual or group, shall not pay more than the applicable prevailing rate of reimbursement for medical services. Insurance carriers and self-insurers, individual and group, may have utilization review and medical bill screenings. Utilization review and bill screening shall be performed by qualified individuals or entities to insure the integrity of the services and the quality of cost containment. It is the express legislative intent of this article to ensure that the highest quality health care is available to employees who become injured or ill as the result of employment, at an appropriate rate of provider reimbursement. All insurers, claims adjusters, self-administered employers, and any entity involved in the administration or payment of workers' compensation claims may, but are not required to, implement utilization review and bill screening for health services provided to employees covered under this article. In this regard, employers' liability for reimbursement shall be limited to the prevailing rate or maximum fee schedule established by the Workers' Compensation Services Board for similar treatment. Services provided that are deemed not medically necessary are not reimbursable and the employer is held harmless. In no event is the employee responsible or held liable for any charges associated with an authorized workers' compensation claim. To ensure compliance of providers, insurance carriers, and self-insurers, the director may provide by rule for the review and audit of insurance carriers and self-insurers, individual and group, of payments for medical services. The director may maintain a statewide data base from insurance carriers and self-insurers, individual and group, on medical charges, actual payments, and adjudication methods for use in administering this article.

(h) Claims payors, and insurers operating in Alabama shall, at the director's request, provide the director such data as he or she deems necessary to evaluate costs and quality. The data shall be provided in the form and content to the director's specifications and in a manner deemed timely by the director. The director may gather from health care claims intermediaries that operate in Alabama any claims data related to diagnoses and procedures encountered in the treatment of workers'-compensation-type injury and illness in Alabama. Results from all data gathered shall be made available to employers or their representatives for use in decisions regarding the direction of care or to determine appropriateness of reimbursement.

(i) Beginning immediately after May 19, 1992, and to be completed within six months thereafter, the director may engage an independent firm to identify the initial costs for the program. These initial expenses shall include, but not be limited to, the establishment of a data base to determine prevailing rates, and the conducting of cost analysis for appropriate reimbursement rates to hospitals and other facilities.

(j) A person who performs services for the director pertaining to the policies of any advisory committee or board is immune from civil liability against any claim arising out of, or related to, any decision made in good faith, and without malice, and predicated upon information which was then available to the person. Immunity from liability under this section does not apply to a person providing medical treatment to an injured employee.

(k) Notwithstanding any other provision of this section to the contrary, it is the intent of this section that any and all utilization review, bill screening, medical necessity determinations, or audits which relate to the services of physicians as defined in

Section 25-5-310 shall only be conducted under and in accordance with policies, guidelines, or regulations which have been jointly approved by the Workers' Compensation Medical Services Board and the director under the provisions of Section 25-5-312, as and when such policies, guidelines, criteria, and regulations are adopted in a final and effective form pursuant to the Alabama Administrative Procedure Act. Not later than six months from May 19, 1992, the director, with the approval of the board, shall publish a notice of the intended action in Alabama Administrative Monthly to adopt initial policies, guidelines, criteria, or regulations for utilization review, medical necessity determinations, and bill screenings; however, each insurer, self-insured employer, claims administrator, or other payor may continue utilization review, medical necessity determinations, and bill screenings unaffected by this article during the first six months from May 19, 1992, or until such policies, guidelines, criteria, or regulations may become effective in a final adopted form within that initial six-month period. If such above referenced pending policies, guidelines, criteria, or regulations have not become effective in a final form pursuant to the Administrative Procedure Act after six months from May 19, 1992, then until such time as they are finally adopted, each insurer, self-insured employer, or claims administrator shall conduct utilization review, medical necessity determinations, and bill screenings in a manner that is consistent with similar practices of a majority of commercial insurance companies authorized to issue policies of health insurance in this state. Any amendments, including additions or deletions, to the initial policies, guidelines, criteria, or regulations shall be adopted in accordance with the requirements of this section and Section 25-5-312.

§ 25-5-294. Communications, etc. privileged; documentation; release of records or information; penalty for obtaining information under false pretenses.

(a) All letters, reports, communications, and other matters, written or oral, from employer or employee to each other, to the Director of the Department of Industrial Relations, any of his or her agents, representatives, or employees, or to any official or board functioning under this article, which have been written, sent, delivered, or made in connection with the requirements and administration of this article, shall be absolutely privileged. Information obtained from the above mentioned matters shall be held confidential, except to the extent necessary for the proper presentation of the contest of a claim, and shall not be published or open to public inspection in any manner. Any person violating this section shall be fined not less than $20.00 nor more than $200.00, or imprisoned for not longer than 30 days, or both.

(b) The director may make summaries, compilations, photographs, duplications, or reproductions of any records as he or she may deem advisable for the effective and economical preservation of the information contained therein. The documentation, duly authenticated, shall be admissible in any proceeding under this article if the original record or records would have been admissible therein.

(c) The director may, upon specific request therefor, furnish to any public agency a workers' compensation record in his or her custody, if the agency makes payment of a reasonable cost therefor.

(d) At his or her discretion, the director may release information for the purpose of making economic analyses to institutions of higher education, or a federal government

corporation upon payment of a reasonable cost therefor. The institution or federal government corporation shall agree in writing that information so obtained shall not be published or released by it to any person in a manner to permit the identification of any specific individual or employing unit.

(e) The director may afford reasonable cooperation with any agency of the United States or any state agency charged with the administration of any workers' compensation laws.

(f) The director may upon specific request release a workers' compensation record or information therein to any public official or to any law enforcement officer if the release is deemed by the director to be necessary for the performance of the official's or officer's duties and upon payment of a reasonable cost therefor in accordance with any regulations the director may prescribe.

(g) Any person who willfully makes a false statement or representation to obtain any information under this section, either for himself or herself or for any other person, who uses any information for any purpose other than in the performance of his or her official duties, or in any other manner misuses the information, shall be guilty of a misdemeanor and upon conviction, shall be punished by a fine of not less than $200.00 nor more than $1,000.00, or by imprisonment for not less than three nor more than 12 months, or by both fine and imprisonment.

§ 25-5-310. Definitions.

For the purposes of this article the following words and phrases have the following meanings:

(1) BOARD. The Workers' Compensation Medical Services Board.

(2) MEDICAL or MEDICAL SERVICES. Any and all medical or surgical services provided by physicians under this new article.

(3) PHYSICIAN. A doctor of medicine or doctor of osteopathy licensed to practice medicine.

§ 25-5-311. Workers' Compensation Medical Services Board; creation, members, functions.

There is established a Workers' Compensation Medical Services Board composed of five physicians licensed to practice medicine in the State of Alabama who shall be appointed by the Director of the Department of Industrial Relations. The initial board shall be selected from a list of 15 physicians who are members of the Medical Association of the State of Alabama, submitted by the association.

Members of the board shall serve terms of five years. In order that the appointments be staggered, one member shall serve an initial term of six years, one member shall serve an initial term of two years, one member shall serve an initial term of three years, one member shall serve an initial term of four years, and the remaining member shall serve an initial term of five years. Thereafter, successors shall be appointed by the director from among a list of three nominees submitted by the Medical Association of the State of Alabama to serve full five-year terms. A member of the board shall continue to serve beyond the expiration of his or her term of office until his or her successor is legally appointed. Members of the Workers' Compensation Medical Services Board shall be eligible to serve two five-year terms of office in addition to an initial or unexpired term of less than three

years, but shall not serve thereafter. Members of the board shall be entitled to receive per diem at the rate of $100.00 for each day or portion thereof spent in the performance of the duties of their office, and in addition, shall be reimbursed for expenses of travel in the same manner as employees of the State of Alabama.

The Workers' Compensation Medical Services Board shall function as a part of the Department of Industrial Relations and shall have the authority, duties, and responsibilities as prescribed in this article. The board may meet quarterly at a time and place designated by the chair, and may meet more frequently at the call of the chair. The board shall elect one of its members as chair who shall serve a term of one year. The board may adopt rules governing its own proceedings. The department shall provide the board with necessary meeting and office space, secretarial and clerical support, reimbursement for travel expenses and per diem as specified in this article. Upon approval of the director, the Lieutenant Governor, and the Speaker of the House of Representatives, additional funding as required by the board for the employment of consultants, attorneys, and other professional staff necessary to accomplish the purposes and objectives stated in this article may be provided.

§ 25-5-312. Powers and duties of the board.

The board shall exercise general supervision in all matters related to the provision of medical services provided by physicians, as defined in Section 25-5-310, rendered to workers under this article. The duties of the board shall include, but are not limited to, the following:

(1) Study, develop, and implement any necessary and reasonable guidelines for medical services and physician care provided by physicians. In addition, with respect to services provided by physicians, the board shall study, develop, and recommend to the director uniform medical criteria and policies for the conduct of utilization review, bill screenings, and medical necessity determinations for use by insurance carriers, self-insurers, and claims administrators.

(2) Study, design, and implement standardized uniform claims processing forms and forms for the reporting of medical information to employers and insurance companies by physicians.

(3) Address and give consideration to those matters referred to it by the director.

(4) The board shall contract with physicians, health care providers, professional associations of physicians, and health-related organizations to provide the board with consultation, and research and development expertise in discharging its duties and responsibilities under this article. Any contract entered into by the board shall be approved by the director and submitted as are other state contracts.

(5) The board may establish, by regulations promulgated by the department, regional committees of physicians appointed by the board to perform any duties and responsibilities specified by the board in programs established for the delivery of medical services under this article. In addition the board shall appoint board certified physicians in any of the medical or surgical specialties to act as independent expert medical consultants to the ombudsman in connection with the resolution of disputes involving physicians providing medical services to injured workers. Members of the regional committees shall be physicians and

shall serve at the pleasure of the board. Physicians serving as members of the regional committees as constituted under this section or independent expert medical consultants to the ombudsman shall be granted the same immunities as provided members of the board under this article and existing state law.

(6) Implementation of this section shall be governed by and subject to the Alabama Administrative Procedure Act. Rules and regulations relating to the duties and authority of the board, enumerated herein, may be promulgated only with the consent of both the director and the board.

§ 25-5-313. Schedule of maximum fees.

Within 60 days from May 19, 1992, the Workers' Compensation Medical Services Board shall submit to the Governor an initial schedule of maximum fees for medical services covered by this article, which schedule shall become effective immediately upon submission to the Governor. The initial schedule of maximum fees shall be established by the board in the manner prescribed in this section. The fee for each service in the schedule shall be exactly equal to an amount derived by multiplying the preferred provider reimbursement customarily paid on May 19, 1992, by the largest health care service plan incorporated pursuant to Sections 10-4-100 to 10-4-115, inclusive, by a factor of 1.075, which product shall be the maximum fee for each such service. In addition the board may submit to the Governor for approval on or before January 31, 1993, a revised schedule of selected fees for medical services covered by this article, which fees shall not exceed the fees established in the initial schedule of fees by more than 2 ½ percent. The revised schedule of fees, but not individual fees or separate portions thereof, shall be subject to acceptance or rejection by the Governor. If the revised schedule of fees is rejected by the Governor, it shall be referred to the board for further consideration and the initial schedule of maximum fees shall continue to be in effect until the Governor and the board reach agreement; provided, however, the schedule of maximum fees in effect on January 31, 1993, shall not be subject to further revision through this process.

The schedule of maximum fees and any additions, deletions, corrections, or changes thereto shall not be considered a rule or regulation requiring publication under the Alabama Administrative Procedure Act. It is the express legislative intent that the Workers' Compensation Medical Services Board may establish a system of maximum fees under this section for services rendered by physicians to employees covered by the Workers' Compensation Law and that the schedule of fees shall replace and supplant traditional competitive market mechanisms in the interest of obtaining quality physician services in a cost effective manner. The board shall annually adjust the schedule of fees established pursuant to this section by increases which shall be no more than the annual increase in the cost of living as reflected by the U.S. Department of Labor consumer price index. The board may, from time to time, add to or adjust the schedule of fees in response to changes in technology and medical practice, subject only to the right of the Governor to accept or reject the addition or adjustment made by the board, and to refer to the board for further consideration any additions or adjustments which he or she may reject. In the event that at any time a state or federal tax, levy, fee, or assessment is imposed or assessed on physicians licensed to practice medicine which tax, levy, fee, or assessment is based in whole or in part upon the provision of professional services in connection with the practice of medicine, then, in that event, the board may, subject to the approval of the Governor, within three months of the effective date of the tax, levy, fee, or assessment issue a revised schedule of maximum fees which increases the maximum fee for each

service reflected therein by an amount which shall be no more than the rate fixed by law of the tax, levy, fee, or assessment. This provision shall not be construed to include income or sales tax increases. The liability of the employer for the payment of services rendered by physicians shall not exceed those maximum fees established by the board and approved by the Governor. The employees shall not be liable to the physician for any amount in excess of the schedule of maximum fees established by the board and approved by the Governor.

§ 25-5-314. Contracts for medical services at mutually agreed rates.

Notwithstanding any other provisions of this article to the contrary, any employer, workers' compensation insurance carrier, self-insured employer, or group fund, may contract with physicians, hospitals, and any other health care provider for the provision of medical services to injured workers at any rates, fees, or levels of reimbursement which shall be mutually agreed upon between the physician, hospitals, and any other health care provider and the employer, workers' compensation insurance carrier, self-insured employer, or group fund.

§ 25-5-315. Immunity from liability.

The Workers' Compensation Medical Services Board, the individual members thereof, the agents, servants, employees, consultants, or attorneys of the board, and any person, firm, or corporation contracting with the board for the specific purpose of implementing the duties, obligations, and responsibilities of the board under this article, shall each be immune from civil liability against the claims of any and all individuals, firms, corporations, institutions, or other entities for any claims of any nature whatsoever arising out of or related to the decisions, opinions, deliberations, reports, or publications which are made, rendered, or entered by the board, the individual members of the board, or the agents, servants, employees, consultants, or attorneys of the board or any person, firm, or corporation contracting with the board which decisions, opinions, deliberations, reports, or publications were made in good faith, without malice, and predicated upon information which was then available to the board.

§ 25-5-316. Workers' Compensation Administrative Trust Fund; creation; management; trustee and custodian; assessments; penalties.

(a) There is established in the State Treasury a fund entitled the Workers' Compensation Administrative Trust Fund, into which shall be deposited certain assessments provided under Chapter 5 (commencing with Section 25-5-1) of Title 25 collected by the Department of Industrial Relations. The fund shall constitute a separate fund to be disbursed by the state Comptroller on order of the Director of the Department of Industrial Relations. All expenses incurred by the department under the Workers' Compensation Law, including the salaries of all employees, travel cost, and any other cost of administration and enforcement as may become necessary, either within or without the state, shall be paid from the separate fund in the State Treasury upon warrants of the state Comptroller drawn upon the State Treasury from time to time when vouchers therefor are approved by the director. The State Treasurer shall pay moneys from the separate fund upon the order of the director. The total expense for every purpose incurred shall not exceed the total assessment collected and paid into

the fund. The total expense for every purpose incurred in implementing this article shall not exceed the amount appropriated by the Legislature in the general fund appropriation act. No funds shall be withdrawn or expended except those budgeted and allocated in accordance with Article 4 (commencing with Section 41-4-80) of Chapter 4 of Title 41. All moneys remaining unexpended in the separate fund at the end of the fiscal year shall remain in the State Treasury to be expended as herein provided. Included in the budget shall be an amount of money allocated for the specific and exclusive purpose of paying only benefits to the claimants who have qualified to receive benefits from the Second Injury Trust Fund on May 19, 1992. Payments of these benefits shall be made weekly. The director shall each week make requisitions to the state Comptroller who shall draw warrants on the State Treasurer for the weekly compensation amount. The warrants shall be drawn only if there are sufficient moneys in the Treasury for immediate payment. Claims shall take priority in an ascending numerical order according to the time of the accident, and the time shown in the settlement between the employer and employee shall be prima facie evidence of the time of the accident. No funds allocated for the payment of benefits from the fund shall be used to pay lump-sum attorney's fees. Payment shall resume at the end of the first week of the fiscal year in which the Legislature approves the requested budget for the Workers' Compensation Administrative Trust Fund. The claimants who were receiving weekly benefits from the Second Injury Trust Fund as of August 31, 1991, shall be paid all weekly benefits due to date and the benefits shall be continued for the duration of claim. Those amounts shall be paid from the moneys as allocated.

(b) The State Treasurer shall determine if the money in the trust fund shall be kept in cash or invested. The moneys in the fund may be invested by the State Treasurer and all moneys and interest remaining unexpended in the separate fund provided at the end of the fiscal year shall remain in the State Treasury to be expended as herein provided.

(c) The director is designated as trustee of the fund and the State Treasurer is designated as custodian of the fund, and both shall furnish bonds in amounts deemed appropriate. The cost of bonds for the trustee, custodian, and other employees or officials required to post bond in connection with the program shall be paid out of the fund.

(d) Each insurance carrier, self-insured employer, and group fund shall be assessed $250.00. The gross claims for compensation and medical payments paid by the carriers, self-insured employers, and group funds are the basis for computing the amount to be assessed. The amount of assessment shall be based upon the proportion that the total gross claims for compensation and medical payments paid by the carrier, self-insured employer, or group fund during the preceding calendar year bore to the total gross claims for compensation and medical payments paid by all carriers, self-insured employers, and group funds during that period. The total assessment shall not exceed $5,000,000.00 per year. The director shall determine if the assessment shall be a specific amount or shall be a percentage of gross claims for compensation and medical payments paid by the insurance carriers, self-insured employers, and group funds. An assessment shall not exceed an amount reasonably necessary to defray the necessary administration expense.

(e) The department shall provide by regulation for the collection of the amounts assessed against each insurance carrier, self-insured employer, and group fund. The amounts shall be paid within 30 days from the date that the notice is served upon the insurance

carrier, self-insured employer, and group fund. If the amounts are not paid within that period, there may be assessed, for each 30 days that the amount so assessed remains unpaid, a civil penalty equal to 10 percent of the amount unpaid. The amount of the civil penalty shall be collected at the same time the amount assessed is collected.

(f) If an insurance carrier, self-insured employer, or group fund fails to pay the amounts assessed against it within 60 days from the time the notice is served, the department may suspend or revoke the authorization to the self-insurer and may request that the Department of Insurance revoke the authority of the insurance company to insure workers' compensation.

(g) The department may require from each insurance carrier, self-insured employer, and group fund reports with respect to all payments of compensation and medical payments by the insurance carriers, self-insured employers, or group funds during each calendar year, and may determine the amounts paid by each insurance carrier, self-insured employer, and group fund and may determine the amounts paid by all insurance carriers, self-insured employers, and group funds during the period.

(h) On or before the first day of March of each year, every insurance carrier, self-insured employer, and group fund shall file with the department a statement on the prescribed forms showing the gross claims for compensation and medical payments paid by the insurance carrier, self-insured employer, or group fund during the preceding one-year period ending on the 31st day of December. Any insurance carrier, self-insured employer, or group fund which neglects to file its annual written statement within the time provided in this manner shall pay to the Workers' Compensation Administrative Trust Fund a penalty for each day's neglect in an amount prescribed by rule of the director.

(i) All money collected under this section shall be deposited in the Workers' Compensation Administrative Trust Fund.

§ 25-5-317. Assessment of pro rata share; disposition of unexpended balance.

(a) Within 60 days after May 19, 1992, the Director of the Department of Industrial Relations shall assess each insurance carrier, self-insured employer, and group fund its pro rata share of the total amount of up to $4,500,000.00 according to the method set out in Section 25-5-316(d). Of the total amount, $800,000.00 shall be allocated to pay weekly benefits to the claimants of the Second Injury Trust Fund until an appropriate budget is approved in accordance with Chapter 4 of Title 41. The assessment shall be deposited into the Workers' Compensation Administrative Trust Fund and disbursed by the state Comptroller on order of the director.

(b) The assessment is appropriated and made available for the initial implementation costs and expenses of the workers' compensation program to fund activities not included in the general fund appropriation for fiscal year 1991-1992 and fiscal year 1992-1993, which are peculiar to this article.

(c) Any unexpended balance remaining at the end of the fiscal year will be credited to the insurance carriers and self-insured employers at the end of the next fiscal year.

§ 25-5-318. One-time discount to small employers.

(a) For purposes of this article, "small employer" means an employer who is not experienced-rated for workers' compensation insurance purposes and whose annual workers' compensation premium is less than $5,000.00.

(b) The Department of Insurance shall promulgate a plan by which all insurance companies writing workers' compensation insurance in this state shall grant a one-time discount to small employers who qualify under this article and by which surcharges are assessed against small employers who experience two or more employee on-the-job injuries resulting in payment of indemnity or medical payments during a one-year period.

(c) A small employer who has not experienced an employee on-the-job injury resulting in payment of indemnity or medical payments during the most recent one-year period for which statistics are available shall receive a one-time discount of 10 percent on the amount of the employer's workers' compensation insurance premium.

(d) A small employer who has not experienced an employee on-the-job injury resulting in payment of indemnity or medical payments during the most recent two-year period for which statistics are available shall receive a one-time discount of 15 percent on the amount of the employer's workers' compensation insurance premium.

(e) A small employer who has experienced one employee on-the-job injury resulting in payment of indemnity or medical payments during the most recent one-year period for which statistics are available is not eligible for a discount on the amount of the employer's workers' compensation insurance premium, as otherwise would be available under subsections (c) or (d) of this section.

(f) A small employer who has experienced two or more employee on-the-job injuries resulting in payment of indemnity or medical payments during the most recent one-year period for which statistics are available shall be assessed a surcharge of 10 percent on the amount of the employer's workers' compensation premium; provided, however, no surcharge shall be assessed unless the small employer has received a discount, under subsections (c) or (d) of this section for the previous policy year.

(g) The discounts and surcharges under this article are not cumulative. For any annual workers' compensation premium, a small employer may not receive a discount of more than 15 percent, and a small employer may not be required to pay a surcharge of more than 10 percent.

(h) Within 30 days after one year following May 19, 1992, the Insurance Commissioner shall make a report to the Governor, with copies to the Lieutenant Governor and the Speaker of the House of Representatives on the Premium Incentives for Small Employers Program. This report shall include, but not be limited to, the number of employers participating in this program, the numbers and amounts of discounts and surcharges and any recommendations regarding this program.

§ 25-5-330. Legislative intent.

It is the intent of the Legislature to promote drug-free workplaces in order that employers in this state be afforded the opportunity to maximize their levels of productivity, enhance their competitive positions in the marketplace, and reach their desired levels of success without experiencing the costs, delays, and tragedies associated with work related accidents resulting from substance abuse by employees.

§ 25-5-331. Definitions.

As used in this article, the following words and terms shall have meanings as follows:

(1) ALCOHOL. Ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

(2) CHAIN OF CUSTODY. The methodology of tracking specified materials, specimens, or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all of the materials, specimens, or substances and providing for accountability at each stage in handling, testing, and storing materials, specimens, or substances and reporting test results.

(3) CONFIRMATION TEST or CONFIRMED TEST. A second analytical procedure used to identify the presence of a specific drug or metabolite in a specimen. The confirmation test shall be different in scientific principle from that of the initial test procedure. The confirmation method shall be capable of providing requisite specificity, sensitivity, and quantitative accuracy.

(4) DRUG. Amphetamines, cannabinoids, cocaine, phencyclidine (PCP), methadone, methaqualone, opiates, barbituates, benzodiazepines, propoxyphene, or a metabolite of any of the substances.

(5) EMPLOYEE. Any person who works for salary, wages, or other remuneration for an employer.

(6) EMPLOYEE ASSISTANCE PROGRAM. A program designed to assist in the identification and resolution of job performance problems associated with employees impaired by personal concerns. A minimum level of core services shall include consultation and training; professional, confidential, appropriate, and timely problem assessment services; short-term problem resolution; referrals for appropriate diagnosis, treatment, and assistance; follow-up and monitoring; employee education; and quality assurance.

(7) EMPLOYER. A person or entity that is subject to the Alabama Workers' Compensation Law, except that this article shall not apply to individual self-insurers or members of group self-insurance funds.

(8) INITIAL TEST. A sensitive, rapid, and reliable procedure to identify negative and presumptive positive specimens. All initial tests shall use an immunoassay procedure or an equivalent procedure or shall use a more accurate scientifically accepted method approved by the National Institute on Drug Abuse as more accurate technology becomes available in a cost-effective form.

(9) JOB APPLICANT. A person who has applied for a position with an employer and has been offered employment conditioned upon successfully passing a substance abuse test and may have begun work pending the results of the substance abuse test.

(10) NONPRESCRIPTION MEDICATION. A drug or medication authorized pursuant to federal or state law for general distribution and use without a prescription in the treatment of human disease, ailments, or injuries.

(11) PRESCRIPTION MEDICATION. A drug or medication lawfully prescribed by a physician for an individual and taken in accordance with the prescription.

(12) REASONABLE SUSPICION TESTING. Substance abuse testing based on a belief that an employee is using or has used drugs or alcohol in violation of the policy of the employer drawn from specific objective and articulate facts and reasonable inferences drawn from the facts in light of experience. Among other things, the facts and inferences may be based upon, but not limited to, the following:

a. Observable phenomena while at work such as direct observation of substance abuse or of the physical symptoms or manifestations or being impaired due to substance abuse.

b. Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance.

c. A report of substance abuse provided by a reliable and credible source.

d. Evidence that an individual has tampered with any substance abuse test during his or her employment with the current employer.

e. Information that an employee has caused or contributed to an accident while at work.

f. Evidence that an employee has used, possessed, sold, solicited, or transferred drugs while working or while on the premises of the employer or while operating the employer's vehicle, machinery, or equipment.

(13) REHABILITATION PROGRAM. An established program capable of providing expert identification, assessment, and resolution of employee drug or alcohol abuse in a confidential and timely service. The service shall in all cases be provided by persons licensed or appropriately certified as health professionals to provide drug or alcohol rehabilitative services.

(14) SPECIMEN. Tissue, blood, breath, urine, or other product of the human body capable of revealing the presence of drugs or their metabolites or of alcohol.

(15) SUBSTANCE. Drugs or alcohol.

(16) SUBSTANCE ABUSE TEST or TEST. Any chemical, biological, or physical instrumental analysis administered for the purpose of determining the presence or absence of a drug or its metabolites or of alcohol.

§ 25-5-332. Premium discount where drug-free workplace program implemented.

(a) If an employer implements a drug-free workplace program substantially in accordance with this article, the employer shall qualify for certification for a five percent premium discount under the employer's workers' compensation insurance policy.

(b) For each policy of workers' compensation insurance issued or renewed in the state on and after July 1, 1996, there shall be granted by the insurer a five percent reduction in the premium for the policy if the insured has been certified by the Department of Industrial Relations, Workers' Compensation Division, as having a drug-free workplace program which complies with the requirements of this article and has notified its insurer in writing of the certification.

(c) (1) The premium discount provided by this section shall be applied to an insured's policy of workers' compensation insurance pro rata as of the date the insured receives certification by the Department of Industrial Relations, Workers'

Compensation Division, and shall continue for a period not to exceed four years. Notwithstanding the foregoing, an insurer shall not be required to credit the actual amount of the premium discount to the account of the insured until the final premium audit under the policy. Certification of an insured shall be required for each of the four years in which the premium discount is granted. Thereafter, any premium discount pursuant to this article shall be determined from the experience rating plan of the insured, or in the case of an insured not rated upon experience, as provided in subdivision (2).

(2) With respect to an insured which is not rated upon experience, any premium discount given an insured pursuant to this article after the initial four-year period provided in subdivision (1) shall be determined by the State Insurance Commissioner based upon data received from the rating and statistical organization designated by the commissioner pursuant to this article.

(d) The workers' compensation insurance policy of an insured shall be subject to an additional premium for the purposes of reimbursement of a previously granted premium discount and to cancellation in accordance with the policy if it is determined by the Department of Industrial Relations, Workers' Compensation Division, that the insured misrepresented the compliance of its drug-free workplace program.

(e) Each insurer shall make an annual report to the rating and statistical organization designated by the state Insurance Commissioner pursuant to this article illustrating the total dollar amount of drug-free workplace premium credit. Standard earned premium figures reported pursuant to this subsection on the aggregate calls for experience shall reflect the effects of the credits. The net standard premium shall then be the basis of any premium adjustment. The drug-free workplace credits shall be reported under a unique classification code or unit statistical reports submitted to the rating and statistical organization designated by the state Insurance Commissioner.

(f) The state Insurance Commissioner may promulgate rules and regulations necessary for the implementation and enforcement of this article.

§ 25-5-333. Elements of program.

(a) A drug-free workplace program shall contain all the following elements:

(1) A written policy statement as provided in Section 25-5-334.

(2) Substance abuse testing as provided in Section 25-5-335.

(3) Resources of employee assistance providers maintained in accordance with Section 25-5-336.

(4) Employee education as provided in Section 25-5-337(a).

(5) Supervisor training in accordance with Section 25-5-337(b).

(b) In addition to the requirements of subsection (a), a drug-free workplace program shall be implemented in compliance with the confidentiality standards provided in Section 25-5-339.

§ 25-5-334. Notice of testing; written policy statement.

(a) One time only, prior to testing, all employees and job applicants for employment shall be given a notice of testing. In addition, all employees shall be given a written policy statement from the employer which contains all of the following:

(1) A general statement of the employer's policy on employee substance abuse which shall identify:

a. The types of testing an employee or job applicant may be required to submit to, including reasonable suspicion or other basis used to determine when the testing will be required.

b. The actions the employer may take against an employee or job applicant on the basis of a positive confirmed test result.

(2) A statement advising an employee or job applicant of the existence of this article.

(3) A general statement concerning confidentiality.

(4) The consequences of refusing to submit to a drug test.

(5) A statement advising an employee of the Employee Assistance Program, if the employer offers the program, or advising the employee of the employer's resource file of assistance programs and other persons, entities, or organizations designed to assist employees with personal or behavioral problems.

(6) A statement that an employee or job applicant who receives a positive confirmed test result may contest or explain the result to the employer within five working days after written notification of the positive test result.

(7) A statement informing an employee of the provisions of the federal Drug-Free Workplace Act, if applicable to the employer.

(b) An employer not having a substance abuse testing program in effect on July 1, 1996, shall ensure that at least 60 days elapse between a general one-time notice to all employees that a substance abuse testing program is being implemented and the beginning of the actual testing. An employer having a substance abuse testing program in place prior to July 1, 1996, shall not be required to provide a 60-day notice period.

(c) An employer shall include notice of substance abuse testing on vacancy announcements for those positions for which testing is required. A notice of the employer's substance abuse testing policy shall also be posted in an appropriate and conspicuous location on the employer's premises, and copies of the policy shall be made available for inspection by the employees or job applicants of the employer during regular business hours in the employer's personnel office or other suitable locations. All testing conducted by an employer shall be in conformity with the standards and procedures established in this article and all applicable rules adopted by the state Department of Industrial Relations pursuant to this article. Notwithstanding the foregoing, an employer shall not have a legal duty under this article to request an employee or job applicant to undergo testing.

§ 25-5-335. Types of tests; procedures for specimen collection and testing; laboratory; confirmation of tests.

(a) An employer is required to conduct the following types of tests in order to qualify for the workers' compensation insurance premium discounts provided under this article:

(1) An employer shall require job applicants to submit to a substance abuse test after extending an offer of employment. Limited testing of job applicants by an

employer shall qualify under this article if the testing is conducted on the basis of reasonable classifications of job positions.

(2) An employer shall require an employee to submit to reasonable suspicion testing.

(3) An employer shall require an employee to submit to a substance abuse test if the test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination that is part of the employer's established policy or that is scheduled routinely for all members of an employment classification or group.

(4) If the employee, in the course of employment, enters an employee assistance program or a rehabilitation program as the result of a positive test, the employer shall require the employee to submit to a substance abuse test as a follow-up to the program. Notwithstanding the foregoing, if an employee voluntarily entered the program, follow-up testing shall not be required. If follow-up testing is conducted, the frequency of the testing shall be at least once a year for a two-year period after completion of the program and advance notice of the testing date shall not be given to the employee.

(5) If the employee has caused or contributed to an on-the-job injury which resulted in a loss of work time, the employer shall require the employee to submit to a substance abuse test.

(b) Nothing in this article shall prohibit a private employer from conducting random testing or other lawful testing of employees.

(c) All specimen collection and testing under this article shall be performed in accordance with the following procedures:

(1) A specimen shall be collected with due regard to the privacy of the individual providing the specimen, and in a manner reasonably calculated to prevent substitution or contamination of the specimen.

(2) Specimen collection shall be documented, and the documentation procedures shall include all of the following:

a. Labeling of specimen containers so as to reasonably preclude the likelihood of erroneous identification of test results.

b. An opportunity for the employee or job applicant to record any information he or she considers relevant to the test, including identification of currently or recently used prescription or nonprescription medication or other relevant medical information. The providing of information shall not preclude the administration of the test, but shall be taken into account in interpreting any positive confirmed results.

(3) Specimen collection, storage, and transportation to the testing site shall be performed in a manner which reasonably precludes specimen contamination or adulteration.

(4) Each initial and confirmation test conducted under this article, not including the taking or collecting of a specimen to be tested, shall be conducted by a laboratory as described in subsection (d).

(5) A specimen for a test may be taken or collected by any of the following persons:

a. A physician, a physician's assistant, a registered professional nurse, a licensed practical nurse, a nurse practitioner, or a certified paramedic who is present at the scene of an accident for the purpose of rendering emergency medical service or treatment.

b. A qualified person certified or employed by a laboratory certified by the National Institute on Drug Abuse, the College of American Pathologists, or the Alabama Department of Human Resources.

(6) Within five working days after receipt of a positive confirmed test result from the laboratory, an employer shall inform the employee or job applicant in writing of the positive test result, the consequences of the results, and the options available to the employee or job applicant.

(7) The employer shall provide to the employee or job applicant, upon request, a copy of the test results.

(8) An initial test having a positive result shall be verified by a confirmation test.

(9) An employer who performs drug testing or specimen collection shall use chain of custody procedures to ensure proper record keeping, handling, labeling, and identification of all specimens to be tested.

(10) An employer shall pay the cost of all drug tests, initial and confirmation, which the employer requires of employees.

(11) An employee or job applicant shall pay the cost of any additional tests not required by the employer.

(12) If testing is conducted based on reasonable suspicion, the employer shall promptly detail in writing the circumstances which formed the basis of the determination that reasonable suspicion existed to warrant the testing. A copy of this documentation shall be given to the employee upon request and the original documentation shall be kept confidential by the employer as provided in this article and retained by the employer for at least one year.

(d) (1) No laboratory may analyze initial or confirmation drug specimens unless:

a. The laboratory is approved by the National Institute on Drug Abuse or the College of American Pathologists.

b. The laboratory has written procedures to ensure the chain of custody.

c. The laboratory follows proper quality control procedures including, but not limited to:

1. The use of internal quality controls including the use of samples of known concentrations which are used to check the performance and calibration of testing equipment, and periodic use of blind samples for overall accuracy.

2. An internal review and certification process for drug test results, conducted by a person qualified to perform that function in the testing laboratory.

3. Security measures implemented by the testing laboratory to preclude adulteration of specimens and drug test results.

4. Other necessary and proper actions taken to ensure reliable and accurate drug test results.

(2) a. A laboratory shall disclose to the employer a written test result report within seven working days after receipt of the sample. All laboratory reports of a substance abuse test result shall, at a minimum, state all of the following:

1. The name and address of the laboratory which performed the test and the positive identification of the person tested.
2. Positive results on confirmation tests only, or negative results, as applicable.
3. A list of the drugs for which the drug analyses were conducted.
4. The type of tests conducted for both initial and confirmation tests and the minimum cut-off levels of the tests.

b. No report shall disclose the presence or absence of any drug other than a specific drug and its metabolites listed pursuant to this article.

(3) Laboratories shall provide technical assistance to the employer, employee, or job applicant for the purpose of interpreting any positive confirmed test results which could have been caused by prescription or nonprescription medication taken by the employee or job applicant.

(e) If an initial drug test is negative, the employer may seek a confirmation test. Only those laboratories described in subsection (d) shall conduct confirmation drug tests.

(f) All positive initial tests shall be confirmed using the gas chromatography/mass spectrometry (GC/MC) method or an equivalent or more accurate scientifically accepted methods approved by the National Institute on Drug Abuse as the technology becomes available in a cost-effective form.

§ 25-5-336. Employee assistance program or resource file of employee assistance providers.

(a) If an employer has an employee assistance program, the employer shall inform the employee of the benefits and services of the employee assistance program. In addition, the employer shall provide the employee with notice of the policies and procedures regarding access to and utilization of the program.

(b) If an employer does not have an employee assistance program, the employer shall maintain a resource file of providers of other employee assistance including drug and alcohol abuse programs, mental health providers, and other persons, entities, or organizations available to assist employees with personal or behavioral problems and shall notify the employee of the availability of the resource file. In addition, the employer shall post in a conspicuous place a listing of providers or employee assistance in the area.

§ 25-5-337. Semiannual education program; supervisor training.

(a) An employer shall provide all employees with a semiannual education program on substance abuse, in general, and its effects on the workplace, specifically. An education program for a minimum of one hour should include, but is not limited to, the following information:

(1) The explanation of the disease model of addiction for alcohol and drugs.

(2) The effects and dangers of the commonly abused substances in the workplace.

(3) The policies of the company and procedures regarding substance abuse in the workplace and how employees who wish to obtain substance abuse treatment can do so.

(b) In addition to the education program provided in subsection (a), an employer shall provide all supervisory personnel with a minimum of two hours of supervisor training, which includes, but is not limited to, the following information:

(1) How to recognize signs of employee substance abuse.

(2) How to document and collaborate signs of employee substance abuse.

(3) How to refer substance abusing employees to the proper treatment providers.

§ 25-5-338. Construction of article.

(a) No physician-patient relationship is created between an employee or job applicant and an employer, medical review officer, or any person performing or evaluating a drug test solely by the establishment, implementation, or administration of a drug-testing program.

(b) Nothing in this article shall be construed to prevent an employer from establishing reasonable work rules related to employee possession, use, sale, or solicitation of drugs, including convictions for drug related offenses, and taking action based upon a violation of any of those rules.

(c) Nothing in this article shall be construed to operate retroactively, and nothing in this article shall abrogate the right of an employer under state or federal law to conduct drug tests, or implement employee drug-testing programs. Notwithstanding the foregoing, only those programs that meet the criteria outlined in this article qualify for reduced workers' compensation insurance premiums under this article.

(d) Nothing in this article shall be construed to prohibit an employer from conducting medical screening or other tests required, permitted, or not disallowed by any statute, rule, or regulation for the purpose of monitoring exposure of employees to toxic or other unhealthy materials in the workplace or in the performance of job responsibilities. The screening or tests shall be limited to the specific materials expressly identified in the statute, rule, or regulation, unless prior written consent of the employee is obtained for other tests.

(e) No cause of action shall arise in favor of any person based upon the failure of an employer to establish or conduct a program or policy for substance abuse testing.

§ 25-5-339. Confidentiality of information.

(a) All information, interviews, reports, statements, memoranda, and test results, written or otherwise, received by the employer through a substance abuse testing program are confidential communications, but may be used or received in evidence, obtained in discovery, or disclosed in any civil or administrative proceeding, except as provided in subsection (c).

(b) Employers, laboratories, medical review officers, employee assistance programs, drug or alcohol rehabilitation programs, and their agents who receive or have access

to information concerning test results shall keep all information confidential. Release of such information under any other circumstance shall be solely pursuant to a written consent form signed voluntarily by the person tested, unless the release is compelled by an agency of the state or a court of competent jurisdiction or unless deemed appropriate by a professional or occupational licensing board in a related disciplinary proceeding. The consent form shall contain at a minimum all of the following:

(1) The name of the person who is authorized to obtain the information.

(2) The purpose of the disclosure.

(3) The precise information to be disclosed.

(4) The duration of the consent.

(5) The signature of the person authorizing release of the information.

(c) Information on test results shall not be released or used in any criminal proceeding against the employee or job applicant. Information released contrary to this subsection shall be inadmissible as evidence in the criminal proceeding.

(d) Nothing contained in this article shall be construed to prohibit the employer or laboratory conducting a test from having access to employee test information when consulting with legal counsel when the information is relevant to its defense in a civil or administrative matter.

§ 25-5-340. Department of Industrial Relations to perform administrative duties for certification of employers.

The Department of Industrial Relations, Workers' Compensation Division, shall promulgate by rule or regulation procedures and forms for the certification of employers who establish and maintain a drug-free workplace which complies with this article. The department may charge a fee for the certification of a drug-free workplace program in an amount which shall approximate the administrative costs to the department of the certification. The certification fees shall be deposited in a revolving account to fund the administrative costs of certification and are hereby appropriated solely for that purpose. Certification of an employer shall be required for each year in which a premium discount is granted.