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# Louisiana Workers' Compensation Law

## § 1020.1. Citation, purpose; legislative intent; construction

Effective: August 1, 2012

A. Citation. This Chapter shall be cited as the "Louisiana Workers' Compensation Law".

B. Purpose. The legislature declares that the purpose of this Chapter is all of the following:

(1) To provide for the timely payment of temporary and permanent disability benefits to all injured workers who suffer an injury or disease arising out of and in the course and scope of their employment as is provided in this Chapter.

(2) To pay the medical expenses that are due to all injured workers pursuant to this Chapter.

(3) To return such workers who have received benefits pursuant to this Chapter to the work force.

C. Legislative intent. The legislature finds all of the following:

(1) That the Louisiana Workers' Compensation Law is to be interpreted so as to assure the delivery of benefits to an injured employee in accordance with this Chapter.

(2) To facilitate injured workers' return to employment at a reasonable cost to the employer.

D. Construction. The Louisiana Workers' Compensation Law shall be construed as follows:

(1) The provisions of this Chapter are based on the mutual renunciation of legal rights and defenses by employers and employees alike; therefore, it is the specific intent of the legislature that workers' compensation cases shall be decided on their merits.

(2) Disputes concerning the facts in workers' compensation cases shall not be given a broad, liberal construction in favor of either employees or employers; the laws pertaining to workers' compensation shall be construed in accordance with the basic principles of statutory construction and not in favor of either employer or employee.

(3) According to Article III, Section 1 of the Constitution of Louisiana, the legislative powers of the state are vested solely in the legislature; therefore, when the workers' compensation statutes of this state are to be amended, the legislature acknowledges its responsibility to do so. If the workers' compensation statutes are to be liberalized, broadened, or narrowed, such actions shall be the exclusive purview of the legislature.

## § 1021. Terms defined

Effective: August 1, 2013

As used in this Chapter, unless the context clearly indicates otherwise, the following terms shall be given the meaning ascribed to them in this Section:

(1) "Accident" means an unexpected or unforeseen actual, identifiable, precipitous event happening suddenly or violently, with or without human fault, and directly producing at the time objective findings of an injury which is more than simply a gradual deterioration or progressive degeneration.

(2) "Brother" and "sister" includes step-brothers and step-sisters, and brothers and sisters by adoption.

(3) "Child" or "children" covers only children born of marriage, step-children, posthumous children, adopted children, and children born outside of marriage who have been acknowledged under the provisions of the Civil Code.

(4) "Dependent" means the person or persons to whom, under the provisions of Part II of this Chapter, compensation shall be paid upon the death of the injured employee.

(5) "Director" means the director of the office of workers' compensation administration.

(6) "Health care provider" means a hospital, a person, corporation, facility, or institution licensed by the state to provide health care or professional services as a physician, hospital, dentist, registered or licensed practical nurse, pharmacist, optometrist, podiatrist, chiropractor, physical therapist, occupational therapist, psychologist, graduate social worker or licensed clinical social worker, psychiatrist, or licensed professional counselor, and any officer, employee, or agent thereby acting in the course and scope of his employment.

(7) "Independent contractor" means any person who renders service, other than manual labor, for a specified recompense for a specified result either as a unit or as a whole, under the control of his principal as to results of his work only, and not as to the means by which such result is accomplished, and are expressly excluded from the provisions of this Chapter unless a substantial part of the work time of an independent contractor is spent in manual labor by him in carrying out the terms of the contract, in which case the independent contractor is expressly covered by the provisions of this Chapter. The operation of a truck tractor or truck tractor trailer, including fueling, driving, connecting and disconnecting electrical lines and air hoses, hooking and unhooking trailers, and vehicle inspections are not manual labor within the meaning of this Chapter.

(8) (a) "Injury" and "personal injuries" include only injuries by violence to the physical structure of the body and such disease or infections as naturally

result therefrom. These terms shall in no case be construed to include any other form of disease or derangement, however caused or contracted.

(b) Mental injury caused by mental stress. Mental injury or illness resulting from work-related stress shall not be considered a personal injury by accident arising out of and in the course of employment and is not compensable pursuant to this Chapter, unless the mental injury was the result of a sudden, unexpected, and extraordinary stress related to the employment and is demonstrated by clear and convincing evidence.

(c) Mental injury caused by physical injury. A mental injury or illness caused by a physical injury to the employee's body shall not be considered a personal injury by accident arising out of and in the course of employment and is not compensable pursuant to this Chapter unless it is demonstrated by clear and convincing evidence.

(d) No mental injury or illness shall be compensable under either Subparagraph (b) or (c) unless the mental injury or illness is diagnosed by a licensed psychiatrist or psychologist and the diagnosis of the condition meets the criteria as established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders presented by the American Psychiatric Association.

(e) Heart-related or perivascular injuries. A heart-related or perivascular injury, illness, or death shall not be considered a personal injury by accident arising out of and in the course of employment and is not compensable pursuant to this Chapter unless it is demonstrated by clear and convincing evidence that:

(i) The physical work stress was extraordinary and unusual in comparison to the stress or exertion experienced by the average employee in that occupation, and

(ii) The physical work stress or exertion, and not some other source of stress or preexisting condition, was the predominant and major cause of the heart-related or perivascular injury, illness, or death.

(9) "Office" means the office of workers' compensation administration established pursuant to R.S. 23:1291.

(10) "Owner operator" means a person who provides trucking transportation services under written contract to a common carrier, contract carrier, or exempt haulers which transportation services include the lease of equipment or a driver to the common carrier, contract carrier, or exempt hauler. An owner operator, and the drivers provided by an owner operator, are not employees of any such common carrier or exempt hauler for the purposes of this Chapter if the owner operator has entered into a written agreement with the carrier or hauler that evidences a relationship in which the owner operator identifies itself as an independent contractor. For purposes of this Chapter, owner operator does not include an individual driver who purchases his equipment from the carrier or hauler, and then directly leases the equipment back to the carrier or hauler with the purchasing driver.

(11) "Part-time employee" means an employee who as a condition of his hiring knowingly accepts employment that (a) customarily provides for less than forty

hours per work week, and (b) that is classified by the employer as a part-time position.

(12) "Payor" means the entity responsible, whether by law or contract, for the payment of benefits incurred by a claimant as a result of a work related injury.

(13) "Wages" means average weekly wage at the time of the accident. The average weekly wage shall be determined as follows:

(a) Hourly wages.

(i) If the employee is paid on an hourly basis and the employee is employed for forty hours or more, his hourly wage rate multiplied by the average actual hours worked in the four full weeks preceding the date of the accident or forty hours, whichever is greater; or

(ii) If the employee is paid on an hourly basis and the employee was offered employment for forty hours or more but regularly, and at his own discretion, works less than forty hours per week for whatever reason, then, the average of his total earnings per week for the four full weeks preceding the date of the accident; or

(iii) If the employee is paid on an hourly basis and the employee is a part-time employee, his hourly wage rate multiplied by the average actual hours worked in the four full weeks preceding the date of the injury.

(iv) A part-time employee, as defined in R.S. 23:1021(9) and who is employed by two or more different employers in two or more successive employments, shall be entitled to receive benefits as follows:

(aa) If an employee is employed by two or more different employers in two or more successive employments and the employee incurs a compensable injury under the provisions of this Chapter in one of the employments, the employer in whose service the employee was injured shall pay the benefits due the employee as provided in this Chapter.

(bb) If the employee is a part-time employee in one of the successive employments, is injured in that employment, but as a result of the injury also incurs loss of income from other successive employments, that employee shall be entitled to benefits computed by determining wages under the provisions of this Subsection using his hourly rate in employment at the time of injury and using the total hours worked for all employers of the part-time employee, but not to exceed his average, actual weekly hours worked or forty hours weekly, whichever is less.

(v) For an employee in seasonal employment, his annual income divided by fifty-two.

(aa) For purposes of this Subparagraph, seasonal employment shall be any employment customarily operating only during regularly recurring periods of less than forty-four weeks annually.

(bb) If the employee was not engaged in the seasonal employment more than one year prior to the accident, his annual income shall be the average annual income of other employees of the same or most similar class working in the same or most similar employment for the same employer or, in the event that the employee was the only individual engaged in that specific employment, then his annual income shall be the average annual income of other employees of the same or most similar class working for a neighboring employer engaged in the same or similar employment.

(b) Monthly wages. If the employee is paid on a monthly basis, his monthly salary multiplied by twelve then divided by fifty-two.

(c) Annual wages. If the employee is employed at an annual salary, his annual salary divided by fifty-two.

(d) Other wages. If the employee is employed on a unit, piecework, commission, or other basis, his gross earnings from the employer for the twenty-six week period immediately preceding the accident divided by the number of days the employee actually worked for the employer during said twenty-six week period and multiplied by the average number of days worked per week; however, if such an employee has worked for the employer for less than a twenty-six week period immediately preceding the accident, his gross earnings from the employer for the period immediately preceding the accident divided by the number of days the employee actually worked for the employer during said period and multiplied by the average number of days worked per week.

(e) Exceptions. For municipal police officers, additional compensation paid by the state pursuant to R.S. 40:1667.3 shall not be included in the calculation and computation of total salary or average weekly wage to the extent such officer continues to receive such additional compensation during the period of his disability.

(f) Income tax. In the determination of "wages" and the average weekly wage at the time of the accident, no amount shall be included for any benefit or form of compensation which is not taxable to an employee for federal income tax purposes; however, any amount withheld by the employer to fund any nontaxable or tax-deferred benefit provided by the employer and which was elected by the employee in lieu of taxable earnings shall be included in the calculation of the employee's wage and average weekly wage including but not limited to any amount withheld by the employer to fund any health insurance benefit provided by the employer and which was elected by the employee in lieu of taxable earnings shall be included in the calculation of the employee's wage and average weekly wage.

(g) Date of accident. In occupational disease claims the date of the accident for purposes of determining the employee's average weekly wage shall be the date of the employee's last employment with the employer from whom benefits are claimed or the date of his last injurious exposure to conditions in his employment, whichever date occurs later.

## § 1031. Employee's right of action; joint employers, extent of liability; borrowed employees

A. If an employee not otherwise eliminated from the benefits of this Chapter receives personal injury by accident arising out of and in the course of his employment, his employer shall pay compensation in the amounts, on the conditions, and to the person or persons hereinafter designated.

B. In case any employee for whose injury or death payments are due is, at the time of the injury, employed and paid jointly by two or more employers subject to the provisions of this Chapter, such employers shall contribute to such payments in proportion to their several wage liabilities to the employee; but nothing in this Section shall prevent any arrangement between the employers for different distribution, as between themselves, of the ultimate burden of such payments. If one or more but not all the employers are subject to this Chapter, then the liability of such of them as are so subject shall be to pay that proportion of the entire payments which their proportionate wage liability bears to the entire wages of the employee; but such payment by the employers subject to this Chapter shall not bar the right of recovery against any other joint employer.

C. In the case of any employee for whose injury or death payments are due and who is, at the time of the injury, employed by a borrowing employer in this Section referred to as a "special employer", and is under the control and direction of the special employer in the performance of the work, both the special employer and the immediate employer, referred to in this Section as a "general employer", shall be liable jointly and in solido to pay benefits as provided under this Chapter. As between the special and general employers, each shall have the right to seek contribution from the other for any payments made on behalf of the employee unless there is a contract between them expressing a different method of sharing the liability. Where compensation is claimed from, or proceedings are taken against, the special employer, then, in the application of this Chapter, reference to the special employer shall be substituted for reference to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the employee under the general employer by whom he is immediately employed. The special and the general employers shall be entitled to the exclusive remedy protections provided in R.S. 23:1032.

D. An injury by accident shall not be considered as having arisen out of the employment and is thereby not covered by the provisions of this Chapter if the injured employee was engaged in horseplay at the time of the injury.

E. An injury by accident should not be considered as having arisen out of the employment and thereby not covered by the provisions of this Chapter if the employer can establish that the injury arose out of a dispute with another person or employee over matters unrelated to the injured employee's employment.

## § 1031.1. Occupational disease

A. Every employee who is disabled because of the contraction of an occupational disease as herein defined, or the dependent of an employee whose death is caused by an occupational disease, as herein defined, shall be entitled to the compensation provided in this Chapter the same as if said employee received personal injury by accident arising out of and in the course of his employment.

B. An occupational disease means only that disease or illness which is due to causes and conditions characteristic of and peculiar to the particular trade, occupation, process, or employment in which the employee is exposed to such disease. Occupational disease shall include injuries due to work-related carpal tunnel syndrome. Degenerative disc disease, spinal stenosis, arthritis of any type, mental illness, and heart-related or perivascular disease are specifically excluded from the classification of an occupational disease for the purpose of this Section.

C. Notwithstanding the limitations of Subsection B hereof, every laboratory technician who is disabled because of the contraction of any disease, diseased condition, or poisoning which disease, diseased condition, or poisoning is a result, whether directly or indirectly, of the nature of the work performed, or the dependent of a laboratory technician whose death is the result of a disease, diseased condition, or poisoning, whether directly or indirectly, of the nature of the work performed shall be entitled to the compensation provided in this Chapter the same as if said laboratory technician received personal injury by accident arising out of and in the course of his employment.

As used herein, the phrase "laboratory technician" shall mean any person who, because of his skills in the technical details of his work, is employed in a place devoted to experimental study in any branch of the natural or applied sciences; to the application of scientific principles of examination, testing, or analysis by instruments, apparatus, chemical or biological reactions or other scientific processes for the purposes of the natural or applied sciences; to the preparation, usually on a small scale, of drugs, chemicals, explosives, or other products or substances for experimental or analytical purposes; or in any other similar place of employment.

Except as otherwise provided in this Subsection, any disability or death claim arising under the provisions of this Subsection shall be handled in the same manner and considered the same as disability or death claims arising due to occupational diseases.

D. Any occupational disease contracted by an employee while performing work for a particular employer in which he has been engaged for less than twelve months shall be presumed not to have been contracted in the course of and arising out of such employment, provided, however, that any such occupational disease so contracted within the twelve months' limitation as set out herein shall become compensable when the occupational disease shall have been proved to have been contracted during the course of the prior twelve months' employment by a preponderance of evidence.

E. All claims for disability arising from an occupational disease are barred unless the employee files a claim as provided in this Chapter within one year of the date that:

(1) The disease manifested itself.

(2) The employee is disabled from working as a result of the disease.

(3) The employee knows or has reasonable grounds to believe that the disease is occupationally related.

F. All claims for death arising from an occupational disease are barred unless the dependent or dependents as set out herein file a claim as provided in this Chapter within one year of the date of death of such employee or within one year of the date the claimant has reasonable grounds to believe that the death resulted from an occupational disease.

G. Compensation shall not be payable hereunder to an employee or his dependents on account of disability or death arising from disease suffered by an employee who, at the time of entering into the employment from which the disease is claimed to have resulted, shall have willfully and falsely represented himself as not having previously suffered from such disease.

H. The rights and remedies herein granted to an employee or his dependent on account of an occupational disease for which he is entitled to compensation under this Chapter shall be exclusive of all other rights and remedies of such employee, his personal representatives, dependents or relatives.

I. Notice of the time limitation in which claims may be filed for occupational disease or death resulting from occupational disease shall be posted by the employer at some convenient and conspicuous point about the place of business. If the employer fails to post this notice, the time in which a claim may be filed shall be extended for an additional six months.

## § 1032. Exclusiveness of rights and remedies; employer's liability to prosecution under other laws

A. (1) (a) Except for intentional acts provided for in Subsection B, the rights and remedies herein granted to an employee or his dependent on account of an injury, or compensable sickness or disease for which he is entitled to compensation under this Chapter, shall be exclusive of all other rights, remedies, and claims for damages, including but not limited to punitive or exemplary damages, unless such rights, remedies, and damages are created by a statute, whether now existing or created in the future, expressly establishing same as available to such employee, his personal representatives, dependents, or relations, as against his employer, or any principal or any officer, director, stockholder, partner, or employee of such employer or principal, for said injury, or compensable sickness or disease.

(b) This exclusive remedy is exclusive of all claims, including any claims that might arise against his employer, or any principal or any officer, director, stockholder, partner, or employee of such employer or principal under any dual capacity theory or doctrine.

(2) For purposes of this Section, the word "principal" shall be defined as any person who undertakes to execute any work which is a part of his trade, business, or occupation in which he was engaged at the time of the injury, or which he had contracted to perform and contracts with any person for the execution thereof.

B. Nothing in this Chapter shall affect the liability of the employer, or any officer, director, stockholder, partner, or employee of such employer or principal to a fine or penalty under any other statute or the liability, civil or criminal, resulting from an intentional act.

C. The immunity from civil liability provided by this Section shall not extend to:

(1) Any officer, director, stockholder, partner, or employee of such employer or principal who is not engaged at the time of the injury in the normal course and scope of his employment; and

(2) To the liability of any partner in a partnership which has been formed for the purpose of evading any of the provisions of this Section.

## § 1032.1. Failure of employer to secure payment; penalties

A. When a direct employer, not the statutory employer or special employer, knowingly fails to secure workers' compensation insurance or proper certification of self-insured status pursuant to R.S. 23:1168, and fails to pay a final judgment for sixty days after the parties have exhausted their rights of appeal and no other insurance or self-insurance policy or contract of workers' compensation coverage has paid the benefits due under this Chapter, then the employee or the legal dependent of a deceased employee may elect to sue the direct employer for all legal damages. Should the direct employer offer to pay the judgment for workers' compensation benefits and the employee or the legal dependent of a deceased employee accepts the offer of payment, such payment shall also discharge and satisfy the direct employer's obligation for legal damages under this Section, if the direct employer also reimburses the employee or the legal dependent of a deceased employee for all costs and expenses, including attorney fees, incurred by the employee or the legal dependent of a deceased employee in connection with the claim for legal damages to the date of the payment of the workers' compensation judgment. Should the employee or the legal dependent of a deceased employee obtain a judgment on the cause of action for legal damages, the employee or the legal dependent of a deceased employee may elect to recover from the direct employer the greater of the judgment for legal damages or the judgment for workers' compensation benefits, but the employee or the legal dependent of a deceased employee shall be limited to recovery of only one such judgment, and the payment of the judgment elected shall discharge both judgments.

B. A statutory employer or special employer who has secured workers' compensation insurance or proper certification of self-insured status pursuant to R.S. 23:1168, as well as any public body or municipality, shall not be subject to the remedy provided in Subsection A of this Section and shall not be required to pay an increased weekly compensation penalty established in R.S. 23:1171.2 due to the failure of the direct employer to secure workers' compensation insurance or self-insured certification.

## § 1033. Contracts against liability prohibited

No contract, rule, regulation or device whatsoever shall operate to relieve the employer, in whole or in part, from any liability created by this Chapter except as herein provided.

## § 1034. Public employees; exclusiveness of remedy

A. The provisions of this Chapter shall apply to every person in the service of the state or a political subdivision thereof, or of any incorporated public board or commission authorized to hold property and to sue and be sued, under any appointment or contract of hire, express or implied, oral or written, except an official of the state or a political subdivision thereof or of any such incorporated public board or commission; and for such employee and employer the payment of compensation according to and under the terms, conditions, and provisions set out in this Chapter shall be exclusive, compulsory, and obligatory; provided that one employed by a contractor who has

contracted with the state or other political subdivision, or incorporated public board or commission through its proper representative, shall not be considered an employee of the state, or other political subdivision, or incorporated public board or commission; further, provided that members of the police department, or municipal employees performing police services for any municipality who are not elected officials shall be covered by this Chapter and shall be eligible for compensation; and provided further that criminal deputy sheriffs for the parish of Orleans shall be covered by this Chapter and shall be eligible for compensation as provided herein.

B. Except as expressly and specifically provided to the contrary in Subsection A hereof, the officials excepted from coverage under the provisions of this Chapter, in Subsection A of this Section, include all public officers as defined by R.S. 42:1. In this regard, sheriffs' deputies are, under R.S. 42:1, 13:5537, and 13:5901 et seq., appointed public officers and officials of their respective political subdivisions, the parish law enforcement districts.

C. Notwithstanding the provisions of Subsection A of this Section, any political subdivision may, in its own discretion and by using its own funds available for same, provide workers' compensation coverage for its officials, in addition to having to provide such coverage for its employees. When a political subdivision elects to provide workers' compensation for its officials, the provisions of R.S. 23:1032 regarding exclusiveness of remedies and employer's liability shall apply to any injury, illness, or disease compensable under this Chapter.

D. Employees of the state, but not those of political subdivisions, shall be provided compensation under this Section by the office of risk management of the Division of Administration in accordance with R.S. 39:1527, et seq. For purposes of this Section, "employees of the state" means the employees of "state agencies" as defined by R.S. 39:1527(1). Employees of political subdivisions shall be provided compensation under this Section by the governing authorities of their respective political subdivisions. The fact that the state may grant to an employee of a political subdivision any additional or supplemental pay or otherwise provide funds for the payment of such employee's salary shall not make such employee, in whole or in part or in any way, an employee of the state.

E. For the purposes of this Section, the compensation provided in Subsection A of this Section shall be the exclusive remedy when an employee of the state or a political subdivision incurs a compensable claim on the premises of another political subdivision who is required by law or cooperative endeavor agreement to provide the employer with the premises or amenities of the workplace. Neither the state nor any political subdivision, acting as an employer, shall have a subrogation claim against any other political subdivision for any compensable claim made by an employee.

F. For purposes of this Section, "employees of political subdivisions" means the employees of all departments, districts, or agencies operating under the same governing authority.

## § 1034.1. Law enforcement officers; coverage

Any law enforcement officer employed by any municipality, who, while on or off duty, and outside his jurisdiction, but within the State of Louisiana, performs any law enforcement action and is injured shall be entitled to the provisions for compensation as provided

herein and shall be paid such workers' compensation benefits by the municipality by which he is employed.

## § 1034.2. Reimbursement schedule

A. The director of the office of workers' compensation administration shall establish and promulgate a reimbursement schedule for drugs, supplies, hospital care and services, medical and surgical treatment, and any nonmedical treatment recognized by the laws of this state as legal and due under the Workers' Compensation Act and applicable to any person or corporation who renders such care, services, or treatment or provides such drugs or supplies to any person covered by Chapter 10 of Title 23 of the Louisiana Revised Statutes of 1950.

B. The director shall adopt, in accordance with the Administrative Procedure Act,1 rules and regulations necessary to establish and implement a reimbursement schedule for such care, services, treatment, drugs, and supplies.

C. (1) The reimbursement schedule shall include charges limited to the mean of the usual and customary charges for such care, services, treatment, drugs, and supplies. Any necessary adjustments to the reimbursement schedule adopted and established in accordance with the provisions of this Section may be made annually.

(2) The director shall have the authority to collect the information and data necessary to calculate the reimbursement schedule. The collection of information and data shall be governed by the following guidelines:

(a) The director shall create a written survey detailing the information requested.

(b) The survey shall be managed by the office of workers' compensation administration in conjunction with an academic institution.

(c) The information requested shall be based upon data at least six months old.

(d) There shall be a minimum of thirty health care providers reporting data upon which each disseminated statistic is based.

(e) No individual health care provider's data shall represent more than twenty-five percent on a weighted basis of each statistic.

(f) Any information disseminated shall be sufficiently aggregated such that it will not allow recipients to identify the prices charged or compensation paid by any particular health care provider.

(3) All information collected pursuant to this Subsection shall be confidential and privileged, shall not be public record, and shall not be subject to subpoena. Such confidentiality shall be strictly maintained by the director, all employees of the office, and by the academic institution and shall be used exclusively for the purpose of promulgating the workers' compensation reimbursement schedule. Whoever violates this Paragraph shall be guilty of a misdemeanor and fined not more than five hundred dollars for each offense.

(4) Notwithstanding any other provisions of this Section, reimbursement for dental services shall not exceed the seventieth percentile in the current edition of the National Dental Advisory Service (NDAS) Comprehensive Fee Report, utilizing

the average of geographic multipliers for Louisiana as published in the NDAS report.

D. Fees in excess of the reimbursement schedule shall not be recoverable against the employee, employer, or workers' compensation insurer.

E. Nothing in this Section shall prevent a health care provider from charging a fee for such care, services, treatment, drugs, or supplies that is less than the reimbursement established by the reimbursement schedule.

F. (1) Should a dispute arise between a health care provider and the employee, employer, or workers' compensation insurer, either party may submit the dispute to the office in the same manner and subject to the same procedures as established for dispute resolution of claims for workers' compensation benefits.

(2) In addition to any other occasion when consolidation of claims is otherwise allowed by applicable law, whenever multiple disputes exist between a single health care provider and a single "payor" as defined in R.S. 23:1142(A) concerning the proper amount payable pursuant to the reimbursement schedule, then either the health care provider or the payor shall have the right to have all such disputes between the payor and the health care provider consolidated and tried together. The venue for such consolidated claims shall be in either the workers' compensation district of the parish in which the domicile of the provider is located or the workers' compensation district of the parish in which the domicile of the payor or employer is located.

## § 1035. Employees covered

Effective: August 15, 2010

A. The provisions of this Chapter shall also apply to every person performing services arising out of and incidental to his employment in the course of his own trade, business, or occupation, or in the course of his employer's trade, business, or occupation, except that the bona fide president, vice president, secretary, or treasurer of a corporation who owns not less than ten percent of the stock therein, or a partner with respect to a partnership employing him, or a member of a limited liability company as defined in R.S. 12:1301(A)(13) who owns not less than a ten percent membership interest therein, or a sole proprietor with respect to such sole proprietorship may by written agreement with his insurer or group self-insurance fund elect not to be covered by the provisions of this Chapter. Such election shall not be limited, but shall apply to all trades, businesses, or occupations conducted by said corporation, partnership, limited liability company, or sole proprietorship. Such an election shall be binding upon the employing corporation, partnership, limited liability company, and sole proprietor and the surviving spouse, relatives, personal representative, heirs, or dependents of the officer, partner, member, or sole proprietor so electing. No salary or compensation received by any such bona fide corporate officer, partner, member, or sole proprietor so electing shall be used in computing the premium rate for workers' compensation insurance.

B. (1) There is exempt from coverage under this Chapter all labor, work, or services performed by any employee of a private residential householder in connection with the private residential premises of such householder or any employee of a private unincorporated farm, in connection with cultivating the soil, or in

connection with raising or harvesting of any agricultural commodity, including the management of livestock, when the employee's annual net earnings for labor, work, or services amounts to one thousand dollars or less and the total net earnings of all employees of such farm do not exceed two thousand five hundred dollars and which labor, work, or services are not incidental to and do not arise out of any trade, business, or occupation of such householder or private unincorporated farm. With respect to such labor, work, or services and any employee performing the same, a private residential householder or a private unincorporated farmer, shall have no liability under the provisions of this Chapter either as employer or as a principal; however, any person who is engaged in the trade, business, or occupation of furnishing labor, work, or services to private residential premises or farms, shall be liable under the provisions of this Chapter to his employees or their dependents for injury or death arising from and incidental to their employment in rendering such labor, work, or services.

(2) There is also exempt from coverage under this Chapter, musicians and performers who are rendering services pursuant to a performance contract.

C. Where applicable, an employee may seek tort recovery for injuries arising out of such labor, work, or services, or recovery from any insurance policy that the homeowner or employer may have which extends coverage to persons injured on the homeowner's or employer's premises, regardless of the employee's employment status, provided that the labor, work, or services performed by such employee are exempt from the provisions of this Chapter.

## § 1035.1. Extraterritorial coverage

(1) If an employee, while working outside the territorial limits 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 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 Chapter, provided that at the time of such injury

(a) his employment is principally localized in this state, or

(b) he is working under a contract of hire made in this state.

(2) 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 Chapter shall not be a bar to a claim for benefits under this act; provided that claim under this act is filed within the time limits set forth in R.S. 23:1209. If compensation is paid or awarded under this act:

(a) 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 act had claim been made solely under this act;

(b) The total amount of all income benefits paid or awarded the employee under such other workers' compensation law shall be credited against the

total amount of income benefits which would have been due the employee under this act, had the claim been made solely under this act;

(c) 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 act.

(3) "Workers' compensation law" includes "occupational disease law".

(4) Notwithstanding the above, an employee may elect as his exclusive state workers' compensation remedy the provisions of Louisiana's workers' compensation law provided all the following items occur:

(a) This election is clearly stated in a written employment contract signed by the employee prior to the occurrence of an accident or occupational disease as defined in this Chapter.

(b) Louisiana's workers' compensation law has jurisdiction over the accident or occupational disease under its conflict of laws or extraterritorial law.

(c) The employee was domiciled in the state of Louisiana at the time of the accident or the injurious exposure to conditions causing an occupational disease.

## § 1035.2. Claims covered by certain federal laws

No compensation shall be payable in respect to the disability or death of any employee covered by the Federal Employer's Liability Act, the Longshoremen's and Harbor Worker's Compensation Act, or any of its extensions, or the Jones Act.1

## § 1036. Volunteer firefighters

Effective: August 1, 2014

A. It is hereby declared by the Legislature of Louisiana that the fire prevention and suppression services provided by volunteer fire companies are vital to the protection of the safety of the citizens of the state. This Section is intended to present the state fire marshal with a means by which he shall provide workers' compensation coverage to volunteer members of fire companies. The remedies provided herein shall constitute the exclusive remedy of the volunteer member against the fire company as provided in R.S. 23:1032.

B. The provisions of this Chapter shall apply to claims brought under this Section to the extent that such provisions do not conflict with this Section.

C. (1) The state fire marshal shall obtain workers' compensation insurance for volunteer members, as defined herein, who participate in the normal functions of the fire company. Nothing shall prohibit the state fire marshal from obtaining an insurance policy to provide coverage for a single fire company or multiple fire companies.

(2) A person covered under this Subsection is entitled to medical benefits pursuant to R.S. 23:1203, which benefits shall not be subject to a copayment, deductible, or any other method to shift the cost of compensable medical care to the injured volunteer member.

(3) Any member who is not carried on the membership list of the organization as of the date of the member's injury shall not be entitled to the benefits of this Section.

(4) The fire chief shall by written affidavit attest to the fact that the injury to the volunteer member occurred while the volunteer member was in the line of duty.

D. As used in this Section, unless the context clearly indicates otherwise, the following terms shall be given the meaning ascribed to them in this Subsection:

(1) "Fire company" means any organization established to provide fire prevention and suppression services for the general public.

(2) "Normal functions" means any response to, participation in, or departure from an incident scene, training, meetings, performance of equipment maintenance, or participation in organization functions as authorized by the chief of the fire company.

(3) Repealed by Acts 2009, No. 304, § 3, eff. July 1, 2009.

(4) "Volunteer members" means individuals who are carried on the membership list of the organization as active participants in the normal functions of the organization and who receive nominal or no remuneration for their services.

E. Medical benefits payable under this Section shall be paid within sixty days after the fire company, its insurer, or third-party administrator receives written notice thereof. If the volunteer member or his representative knows or reasonably should know that the fire company's coverage is administered or underwritten by an insurance carrier or third-party administrator, then the sixty-day payment period begins when written notice is received by the carrier or third-party administrator.

F. Repealed by Acts 2009, No. 304, § 3, eff. July 1, 2009.

G. Repealed by Acts 2009, No. 304, § 3, eff. July 1, 2009.

H. For injury causing death within two years after the last treatment resulting from the accident, there shall be paid reasonable expenses of burial of the volunteer member, not to exceed seven thousand five hundred dollars.

I. In addition to all other defenses available under other provisions of the Louisiana Workers' Compensation Act, a fire company may assert any of the following as defenses to a claim for benefits under this Section:

(1) The presumption under R.S. 33:2581 relating to the development of heart and lung disease during fire service shall not be available to volunteer members claiming benefits under this Section.

(2) No fire company or its insurer shall be liable for benefits under this Section for injuries occurring within the course of, or arising out of, the volunteer member's other employment.

(3) No benefits shall be payable under this Section for a volunteer member's injury during his participation in a parade or other activity unless his participation is authorized by the chief of the fire company.

J. Repealed by Acts 2009, No. 304, § 3, eff. July 1, 2009.

K. Any written notice contemplated or required to be made to warrant any award of attorney fees or penalties must be received by the insurance carrier or third party

administrator for the fire company when the volunteer member knows or reasonably should know that the coverage provided by the fire company under this Section is administered or underwritten by a carrier or third party administrator, notwithstanding any other provision of law.

L. A fire company shall provide upon request and within a reasonable time period documents, materials, or other information to the state fire marshal in order to effectuate the provisions of this Section.

M. The state fire marshal is authorized to promulgate rules and regulations in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., necessary to administer the provisions of this Section.

## § 1037. Employees of railroads in interstate or foreign commerce; vessels in interstate or foreign commerce

This Chapter shall not apply to any employer acting as a common carrier while engaged in interstate or foreign commerce by railroad, where the employee of such common carrier was injured or killed while so employed; but if the injury or death of an employee of a railroad occurs while the employer and employee are both engaged and employed at the time in an intrastate operation or movement not controlled or governed by the laws, rule of liability, or method of compensation which has been or may be established by the Congress of the United States, then this Chapter shall govern and compensation shall be recovered hereunder; but nothing in this Chapter shall be construed to apply to any work done on, nor shall any compensation be payable to the master, officers or members of the crew of, any vessel used in interstate or foreign commerce not registered or enrolled in the State of Louisiana.

## § 1044. Presumption of employee status

A person rendering service for another in any trades, businesses or occupations covered by this Chapter is presumed to be an employee under this Chapter.

Every executive officer elected or appointed and empowered in accordance with the charter and by-laws of a corporation, other than a charitable, religious, educational or other non-profit corporation or an official of the state or other political subdivision thereof or of any incorporated public board or commission, shall be an employee of such corporation under this Chapter.

## § 1045. Persons exempt from coverage

A. (1) This Chapter shall not apply to, and there is specific exclusion from the operation thereof for, all members of the crew of any airplane engaged in dusting or spraying operations insofar as such members of an airplane crew might be regarded as independent contractors, subcontractors, or employees of any person, firm, or corporation engaged in the principal business of agriculture or farming operations.

(2) All rights of employers and employees in tort are reserved to the parties.

B. (1) The provisions of Subsection A of this Section shall not exempt or in any way apply to independent contractors, subcontractors, or employees of any person, firm, partnership, or corporation engaged in the business of applying any products by use of aircraft, either fixed wing or rotor craft, in connection with

commercial agricultural, aquacultural, horticultural, silvicultural, floricultural, or agronomic operations or vegetation suppression.

(2) The provisions of this Subsection shall apply to all independent contractors, subcontractors, and employees of such businesses irrespective of whether such person would be considered a member of the crew of such aircraft.

## § 1046. Chapter inapplicable to uncompensated officers and uncompensated members of the board of directors of certain nonprofit organizations

The provisions of this Chapter are inapplicable to uncompensated officers and uncompensated members of the board of directors of bona fide, nonprofit veterans and other bona fide, nonprofit organizations which are charitable, educational, religious, social, civic or fraternal in nature including, but not limited to, the Young Men's Christian Association, the Young Women's Christian Association and all scouting associations of the United States.

## § 1047. Real estate salesmen exempt from coverage

A. This Chapter shall not apply to and there is specifically excluded from the operation thereof, any real estate broker or salesman licensed to do business in the state of Louisiana and operating under the auspices of a licensed broker in the state of Louisiana and is working in the course and scope of his real estate business.

B. All rights of employers and employees in tort are reserved to the parties.

## § 1048. Landmen exempt from coverage

A. This Chapter shall not apply to, and there is specifically excluded from the operation thereof, any landman rendering services, under the circumstances described in R.S. 23:1472 (12)(H)(XIX), that is operating under the auspices of an independent or lead broker landman in the state of Louisiana and who is engaged primarily in negotiations for the acquisition or divestiture of mineral rights, or negotiating business agreements that provide for the exploration for or development of minerals.

B. All rights of employers and employees in tort are reserved to the parties.

## § 1061. Principal contractors; liability

A. (1) Subject to the provisions of Paragraphs (2) and (3) of this Subsection, when any "principal" as defined in R.S. 23:1032(A)(2), undertakes to execute any work, which is a part of his trade, business, or occupation and contracts with any person, in this Section referred to as the "contractor", for the execution by or under the contractor of the whole or any part of the work undertaken by the principal, the principal, as a statutory employer, shall be granted the exclusive remedy protections of R.S. 23:1032 and shall be liable to pay to any employee employed in the execution of the work or to his dependent, any compensation under this Chapter which he would have been liable to pay if the employee had been immediately employed by him; and where compensation is claimed from, or proceedings are taken against, the principal, then, in the application of this Chapter reference to the principal shall be substituted for reference to the employer, except that the amount of compensation shall be calculated with

reference to the earnings of the employee under the employer by whom he is immediately employed. For purposes of this Section, work shall be considered part of the principal's trade, business, or occupation if it is an integral part of or essential to the ability of the principal to generate that individual principal's goods, products, or services.

(2) A statutory employer relationship shall exist whenever the services or work provided by the immediate employer is contemplated by or included in a contract between the principal and any person or entity other than the employee's immediate employer.

(3) Except in those instances covered by Paragraph (2) of this Subsection, a statutory employer relationship shall not exist between the principal and the contractor's employees, whether they are direct employees or statutory employees, unless there is a written contract between the principal and a contractor which is the employee's immediate employer or his statutory employer, which recognizes the principal as a statutory employer. When the contract recognizes a statutory employer relationship, there shall be a rebuttable presumption of a statutory employer relationship between the principal and the contractor's employees, whether direct or statutory employees. This presumption may be overcome only by showing that the work is not an integral part of or essential to the ability of the principal to generate that individual principal's goods, products, or services.

B. When the principal is liable to pay compensation under this Section, he shall be entitled to indemnity from any person who independently of this Section would have been liable to pay compensation to the employee or his dependent, and shall have a cause of action therefor.

## § 1062. Sub-contractors; liability

Nothing in R.S. 23:1061 shall be construed as preventing an employee or his dependent from recovering compensation under this Chapter from the contractor instead of from the principal.

## § 1063. Suits against principal contractors; subcontractors as co-defendants

A. A principal contractor, when sued by an employee of a subcontractor or his dependent, may call that contractor, or any intermediate contractor or contractors, as a co-defendant, and the principal contractor shall be entitled to indemnity from his subcontractor for compensation payments paid by the principal contractor on account of an accidental injury to the employee of the subcontractor.

B. A principal contractor, when sued pursuant to the provisions of R.S. 23:1021(6) by an independent contractor who is a sole proprietor and who has elected by written agreement not to be covered by the provisions of this Chapter in accordance with R.S. 23:1035 or his dependent, may call such independent contractor as a co-defendant, and the principal contractor shall be entitled to indemnity from his independent contractor for compensation payments paid by the principal contractor on account of an accidental injury to the independent contractor.

## § 1081. Defenses

(1) No compensation shall be allowed for an injury caused:

(a) by the injured employee's willful intention to injure himself or to injure another, or

(b) by the injured employee's intoxication at the time of the injury, unless the employee's intoxication resulted from activities which were in pursuit of the employer's interests or in which the employer procured the intoxicating beverage or substance and encouraged its use during the employee's work hours, or

(c) to the initial physical aggressor in an unprovoked physical altercation, unless excessive force was used in retaliation against the initial aggressor.

(2) In determining whether or not an employer shall be exempt from and relieved of paying compensation because of injury sustained by an employee for any cause or reason set forth in this Subsection, the burden of proof shall be upon the employer.

(3) For purposes of proving intoxication, the employer may avail himself of the following presumptions:

(a) If there was, at the time of the accident, 0.05 percent or less by weight of alcohol in the employee's blood, it shall be presumed that the employee was not intoxicated.

(b) If there was, at the time of the accident, in excess of 0.05 percent but less than 0.08 percent by weight of alcohol in the employee's blood, such fact shall not give rise to any presumption that the employee was or was not intoxicated, but such fact may be considered with other competent evidence in determining whether the employee was intoxicated.

(c) If there was, at the time of the accident, 0.08 percent or more by weight of alcohol in the employee's blood, it shall be presumed that the employee was intoxicated.

(4) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred cubic centimeters of blood.

(5) If there was, at the time of the accident, evidence of either on or off the job use of a nonprescribed controlled substance as defined in 21 U.S.C. 812, Schedules I, II, III, IV, and V, it shall be presumed that the employee was intoxicated.

(6) The foregoing provisions of this Section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether the employee was under the influence of alcoholic beverages or any illegal or controlled substance.

(7) (a) For purposes of this Section, the employer has the right to administer drug and alcohol testing or demand that the employee submit himself to drug and alcohol testing immediately after the alleged job accident.

(b) If the employee refuses to submit himself to drug and alcohol testing immediately after the alleged job accident, then it shall be presumed that the employee was intoxicated at the time of the accident.

(8) In order to support a finding of intoxication due to drug use, and a presumption of causation due to such intoxication, the employer must prove the employee's

use of the controlled substance only by a preponderance of the evidence. In meeting this burden, the results of employer-administered tests shall be considered admissible evidence when those tests are the result of the testing for drug usage done by the employer pursuant to a written and promulgated substance abuse rule or policy established by the employer.

(9) All sample collection and testing for drugs under this Chapter shall be performed in accordance with rules and regulations adopted by the director which ensure the following:

(a) The collection of samples shall be performed under reasonably sanitary conditions.

(b) Samples shall be collected and tested with due regard to the privacy of the individual being tested, and in a manner reasonably calculated to prevent substitutions or interference with the collection or testing of reliable samples.

(c) Sample collection shall be documented, and the documentation procedures shall include:

(i) Labeling of samples so as reasonably to preclude the probability of erroneous identification of test result; and

(ii) An opportunity for the employee to provide notification of any information which he considers relevant to the test, including identification of currently or recently used prescription or nonprescription drugs, or other relevant medical information.

(d) Sample collection, storage, and transportation to the place of testing shall be performed so as reasonably to preclude the probability of sample contamination or adulteration; and

(e) Sample testing shall conform to scientifically accepted analytical methods and procedures. Testing shall include verification or confirmation of any positive test result by gas chromatography, gas chromatography-mass spectroscopy, or other comparably reliable analytical method, before the result of any test may be used as a basis for any disqualification pursuant to this Section. Test results which do not exclude the possibility of passive inhalation of marijuana may not be used as a basis for disqualification under this Chapter. However, test results which indicate that the concentration of total urinary cannabinoids as determined by immunoassay equals or exceeds fifty nanograms/ml shall exclude the possibility of passive inhalation.

(10) All information, interviews, reports, statements, memoranda, or test results received by the employer through its drug testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding, except in a proceeding related to an action under R.S. 23:1021 et seq. or R.S. 23:1601(10) in a claim for unemployment compensation proceeding, hearing, or civil litigation when drug use by the tested employee is relevant.

(11) No cause of action for defamation of character, libel, slander, or damage to reputation arises in favor of any person against an employer who has established

a program of drug or alcohol testing in accordance with this Chapter and rules and regulations adopted pursuant thereto, unless:

(a) The results of that test were disclosed to any person other than the employer, an authorized employee or agent of the employer, the tested employee, or the tested prospective employee or appropriate governmental agency or court.

(b) The information disclosed was based on a false test result; and

(c) All elements of an action for defamation of character, libel, slander, or damage to reputation as established by statute or jurisprudence, are satisfied.

(12) Notwithstanding any language to the contrary, once the employer has met the burden of proving intoxication at the time of the accident, it shall be presumed that the accident was caused by the intoxication. The burden of proof then is placed upon the employee to prove that the intoxication was not a contributing cause of the accident in order to defeat the intoxication defense of the employer.

(13) In the event a health care provider delivers emergency care to an injured worker later presumed or found to be intoxicated under this Section, the employer shall be responsible for the reasonable medical care provided the worker until such time as he is stabilized and ready for discharge from the acute care facility, at which time the employer's responsibility shall end for medical and compensation benefits.

## § 1101. Employee and employer suits against third persons; effect on right to compensation

A. When an injury or compensable sickness or disease for which compensation is payable under this Chapter has occurred under circumstances creating in some person (in this Section referred to as "third person") other than those persons against whom the said employee's rights and remedies are limited in R.S. 23:1032, a legal liability to pay damages in respect thereto, the aforesaid employee or his dependents may claim compensation under this Chapter and the payment or award of compensation hereunder shall not affect the claim or right of action of the said employee or his dependents, relations, or personal representatives against such third person, nor be regarded as establishing a measure of damages for the claim; and such employee or his dependents, relations, or personal representatives may obtain damages from or proceed at law against such third person to recover damages for the injury, or compensable sickness or disease.

B. Any person having paid or having become obligated to pay compensation under the provisions of this Chapter may bring suit in district court against such third person to recover any amount which he has paid or becomes obligated to pay as compensation to such employee or his dependents. The recovery allowed herein shall be identical in percentage to the recovery of the employee or his dependents against the third person, and where the recovery of the employee is decreased as a result of comparative negligence, the recovery of the person who has paid compensation or has become obligated to pay compensation shall be reduced by the same percentage. The amount of any credit due the employer may be set in the

judgment of the district court if agreed to by the parties; otherwise, it will be determined pursuant to the provisions of R.S. 23:1102(A).

C. For purposes of this Section, "third person" shall include any party who causes injury to an employee at the time of his employment or at any time thereafter provided the employer is obligated to pay benefits under this Chapter because the injury by the third party has aggravated the employment related injury.

D. Repealed by Acts 2005, No. 257, § 2.

## § 1102. Employee or employer suits against third persons causing injury; notice of filing

A. (1) If either the employee or his dependent or the employer or insurer brings suit against a third person as provided in R.S. 23:1101, he shall forthwith notify the other in writing of such fact and of the name of the court in which the suit is filed, and such other may intervene as party plaintiff in the suit.

(2) Any dispute between the employer and the employee regarding the calculation of the employer's credit may be filed with the office of workers' compensation and tried before a workers' compensation judge. However, any determination of the employer's credit shall not affect any rights granted to the employer or the employee pursuant to R.S. 23:1103(C).

B. If a compromise with such third person is made by the employee or his dependents, the employer or insurer shall be liable to the employee or his dependents for any benefits under this Chapter which are in excess of the full amount paid by such third person, only after the employer or the insurer receives a dollar for dollar credit against the full amount paid in compromise, less attorney fees and costs paid by the employee in prosecution of the third party claim and only if written approval of such compromise is obtained from the employer or insurer by the employee or his dependent, at the time of or prior to such compromise. Written approval of the compromise must be obtained from the employer if the employer is self-insured, either in whole or in part. If the employee or his dependent fails to notify the employer or insurer of the suit against the third person or fails to obtain written approval of the compromise from the employer and insurer at the time of or prior to such compromise, the employee or his dependent shall forfeit the right to future compensation, including medical expenses. Notwithstanding the failure of the employer to approve such compromise, the employee's or dependent's right to future compensation in excess of the amount recovered from the compromise shall be reserved upon payment to the employer or insurer of the total amount of compensation benefits, and medical benefits, previously paid to or on behalf of the employee, exclusive of attorney fees arising out of the compromise; except in no event shall the amount paid to the employer or insurer exceed fifty percent of the total amount recovered from the compromise. Such reservation shall only apply after the employer or insurer receives a dollar for dollar credit against the full amount paid in compromise, less attorney fees and costs paid by the employee in prosecution of the third party claim.

C. (1) When a suit has been filed against a third party defendant in which the employer or his insurer has intervened, if the third party defendant or his insurer fails to obtain written approval of the compromise from the employer or his insurer at the time of or prior to such compromise and the employee fails to pay to the employer or his insurer the total amount of compensation benefits and medical

benefits out of the funds received as a result of the compromise, the third party defendant or his insurer shall be required to reimburse the employer or his insurer to the extent of the total amount of compensation benefits and medical benefits previously paid to or on behalf of the employee to the extent said amounts have not been previously paid to the employer or his insurer by the employee pursuant to the provisions of Subsection B of this Section. Notwithstanding such payment, all rights of the employer or his insurer to assert the defense provided herein against the employee's claim for future compensation or medical benefits shall be reserved.

(2) Nothing herein shall be interpreted to affect the rights of the employer or his insurer to otherwise seek reimbursement for past or future compensation benefits and medical benefits against a third party defendant or his insurer without regard to the actions of the employee on whose behalf said compensation and medical benefits were paid.

(3) Repealed by Acts 1989, No. 454, § 10, eff. Jan. 1, 1990.

(4) Redesignated as C(2) by Acts 1989, No. 454, § 10, eff. Jan. 1, 1990.

## § 1103. Damages; apportionment of between employer and employee in suits against third persons; compromise of claims; credit

A. (1) In the event that the employer or the employee or his dependent becomes party plaintiff in a suit against a third person, as provided in R.S. 23:1102, and damages are recovered, such damages shall be so apportioned in the judgment that the claim of the employer for the compensation actually paid shall take precedence over that of the injured employee or his dependent; and if the damages are not sufficient or are sufficient only to reimburse the employer for the compensation which he has actually paid, such damages shall be assessed solely in his favor; but if the damages are more than sufficient to so reimburse the employer, the excess shall be assessed in favor of the injured employee or his dependent, and upon payment thereof to the employee or his dependent, the liability of the employer for compensation shall cease for such part of the compensation due, computed at six percent per annum, and shall be satisfied by such payment. The employer's credit against its future compensation obligation shall be reduced by the amount of attorney fees and court costs paid by the employee in the third party suit.

(2) No compromise with such third person by either the employer or the injured employee or his dependent shall be binding upon or affect the rights of the others unless assented to by him.

(3) Any dispute between the employer and the employee regarding the calculation of the employer's credit may be filed with the office of workers' compensation and tried before a workers' compensation judge. If a third party action has been filed in a district court, such dispute shall be filed in the district court and tried before a district judge unless the parties agree otherwise. However, any determination of the employer's credit shall not affect any rights granted to the employer or the employee pursuant to R.S. 23:1103(C).

B. The claim of the employer shall be satisfied in the manner described above from the first dollar of the judgment without regard to how the damages have been itemized or classified by the judge or jury. Such first dollar satisfaction shall be paid from the entire judgment, regardless of whether the judgment includes compensation for losses other than medical expenses and lost wages.

C. (1) If either the employer or employee intervenes in the third party suit filed by the other, the intervenor shall only be responsible for a share of the reasonable legal fees and costs incurred by the attorney retained by the plaintiff, which portion shall not exceed one-third of the intervenor's recovery for prejudgment payments or prejudgment damages. The amount of the portion of attorney fees shall be determined by the district court based on the proportionate services of the attorneys which benefitted or augmented the recovery from the third party. The employee as intervenor shall not be responsible for the employer's attorney fees attributable to postjudgment damages nor will the employer as intervenor be responsible for the attorney fees attributable to the credit given to the employer under Subsection A of this Section. Costs shall include taxable court costs as well as the fees of experts retained by the plaintiff. The pro rata share of the intervenor's costs shall be based on intervenor's recovery of prejudgment payments or prejudgment damages.

(2) When recovery of damages from a third party is made without filing of a suit, the employer shall be responsible for an amount, not to exceed one-third of his recovery on pre-compromise payments, for reasonable legal fees and costs incurred by the attorney retained by the employee or his dependent in pursuit of the third party matter. The responsibility for payment of this amount shall exist only if there is written approval of the compromise by the employer, his compensation carrier, or the compensation payor.

D. An insurer shall grant its insured a dollar-for-dollar credit for any amount on any claim paid pursuant to this Chapter on the employer's behalf and recovered in the current year, less any reasonable expenses incurred in the recovery by the insurer, in an action or compromise pursuant to this Section and R.S. 23:1102. The credit shall be used by the insurer in the calculation, including but not limited to loss experience ratios, of the annual premium paid by the employer for workers' compensation insurance under this Chapter.

## § 1104. Quantification of employer fault

In a suit brought pursuant to R.S. 23:1101, the fault of persons immune from suit in tort under R.S. 23:1032 shall be assessed as a percentage of the aggregate fault of all persons causing or contributing to the employee's injury, and the fault so assessed shall not be reallocated to any other person or party. The recovery had in such a suit by the employer or any other person having paid or having become obligated to pay compensation shall be reduced by the fault so assessed. This reduction is in addition to but not duplicative of any reduction made pursuant to Civil Code Articles 2323, 2324, and 2324.2 and R.S. 23:1101(B).

## § 1121. Examination of injured employee

Effective: August 1, 2013

A. An injured employee shall submit himself to an examination by a duly qualified medical practitioner provided and paid for by the employer, as soon after the accident as demanded, and from time to time thereafter as often as may be reasonably necessary and at reasonable hours and places, during the pendency of his claim for compensation or during the receipt by him of payments under this Chapter. The employer or his workers' compensation carrier shall not require the employee to be examined by more than one duly qualified medical practitioner in any one field or specialty unless prior consent has been obtained from the employee.

B. (1) The employee shall have the right to select one treating physician in any field or specialty. The employee shall have a right to an expedited summary proceeding pursuant to R.S. 23:1201.1(K)(8), when denied his right to an initial physician of choice. The workers' compensation judge shall set the hearing date for the matter within three days of receiving the employee's motion for the expedited hearing. The hearing shall be held not less than ten nor more than thirty days after the employee or his attorney files the motion for an expedited hearing. The workers' compensation judge shall provide notice of the hearing date to the employer and insurer at the same time and in the same manner that notice of the hearing date is provided to the employee or his attorney. For the purposes of this Section, an employee shall not be required to submit the dispute on the choice of physician to mediation nor go through a pretrial conference before obtaining a hearing. The hearing shall be conducted as a rule to show cause. The workers' compensation judge shall order the employer or payor to authorize the claimant's choice of physician unless the employer or payor can show good cause for his refusal. After his initial choice the employee shall obtain prior consent from the employer or his workers' compensation carrier for a change of treating physician within that same field or specialty. The employee, however, is not required to obtain approval for change to a treating physician in another field or specialty.

(2) (a) If the employee is treated by any physician to whom he is not specifically directed by the employer or insurer, that physician shall be regarded as his choice of treating physician.

(b) When the employee is specifically directed to a physician by the employer or insurer, that physician may also be deemed as the employee's choice of physician, if the employee has received written notice of his right to select one treating physician in any field or specialty, and then chooses to select the employer's referral as his treating specialist after the initial medical examination as signified by his signature on a choice of physician form. The notice required by this Subparagraph shall be on a choice of physician form promulgated by the director of the office of workers' compensation and shall contain the notice of the employee's rights provided under R.S. 23:1121(B)(1). Such form shall be provided to the employee either in person or by certified mail.

(3) Paragraph (2) of this Subsection shall not apply to other physicians to whom the employee is referred by the physician selected by the employer unless the employer or insurer has obtained the choice of physician form provided for under

Subparagraph (2)(b) separately for any such physician after the initial medical examination with that physician.

(4) In instances where the employee is illiterate or has a language barrier, an authorized representative of the employer or insurer shall attest by his signature on the form that he has reasonably read and explained the form to such employee prior to their signatures.

(5) If the employee fails or refuses to sign the form as provided in Subparagraph (2)(b) and Paragraph (3) of this Subsection, the employer or payor may suspend medical benefits until such time as the employee complies with Subparagraph (2)(b) and Paragraph (3) of this Subsection. Suspension of medical benefits by the employer or payor shall be made in accordance with the provisions of R.S. 23:1201.1(A)(4) and (5). When the employee has filed a disputed claim, the employer or payor may move for an order to compel the employee to return the form.

C. Repealed by Acts 2003, No. 1204, § 2.

D. After all examinations have been conducted but prior to any order directing the injured employee to return to work, the employee shall be permitted, at his own expense, to consult with and be examined by a physician of his own choosing. Such report shall be considered in addition to all other medical reports in determining the injured employee's fitness to return to work. Should disagreement exist, after such consultation and examination, as to the fitness of the employee to return to work, the provisions of R.S. 23:1123 shall be followed.

E. Nothing in this Section shall be construed so as to provide that a physician who, regarding the work-related injury, administered emergency treatment only shall be the physician of choice of either the employee or the employer.

## § 1122. Employer's duty to cause examination of employee; rights of employee

The employer shall cause the examination provided for in the preceding Section to be made immediately after knowledge or notice of the accident, and to serve a copy of the report of such examination made by the employer's physician upon the employee within six days after the employer's receipt of the report of such examination. If the examination is not made and the report is not furnished by the employer within that time, the employee shall furnish a report of the examination made by his own physician to the employer, for which the employee shall be entitled to receive from the employer the actual cost of the examination and the actual cost of the report. The physician's invoice or receipt shall be prima facie proof of the cost. Upon the receipt by either party of such a report from the other party, the party receiving it, if he disputes the report or any statement therein, shall notify the other of that fact within six days, otherwise the report shall be prima facie evidence of the facts therein stated in subsequent proceedings under this Chapter.

## § 1123. Disputes as to condition or capacity to work; examination under supervision of the director

Effective: August 1, 2012

If any dispute arises as to the condition of the employee, or the employee's capacity to work, the director, upon application of any party, shall order an examination of the

employee to be made by a medical practitioner selected and appointed by the director. The medical examiner shall report his conclusions from the examination to the director and to the parties and such report shall be prima facie evidence of the facts therein stated in any subsequent proceedings under this Chapter.

## § 1124. Refusal to submit to examination; effect on right to compensation

Effective: August 1, 2013

If the employee refuses to submit himself to a medical examination at the behest of the employer or an examination conducted pursuant to R.S. 23:1123, or in anywise obstructs the same, his right to compensation and to take or prosecute any further proceedings under this Chapter may be suspended by the employer or payor until the examination takes place. Such suspension of benefits by the employer or payor shall be made in accordance with the provisions of R.S. 23:1201.1(A)(4) and (5). When the employee has filed a disputed claim, the employer or payor may move for an order to compel the employee to appear for an examination. The employee shall receive at least fourteen days written notice prior to the examination. When a right to compensation is suspended no compensation shall be payable in respect to the period of suspension.

## § 1124.1. Cumulative medical testimony; medical examination

Neither the claimant nor the respondent in hearing before the workers' compensation judge shall be permitted to introduce the testimony of more than two physicians where the evidence of any additional physician would be cumulative testimony. However, the workers' compensation judge, on his own motion, may order that any claimant appearing before it be examined by other physicians.

## § 1125. Right of employee to written report of medical examination; penalty for failure to furnish

A. Whenever an employee who is being treated by his choice of medical provider shall, at the request of the employer, the employer's insurer, or the representative of the employer or its insurer, submit to any type of medical examination and a medical report is received by said requester, such employee or his representative shall be entitled to a copy of the written report of the results of said examination within thirty days from the date the requester receives the report.

B. Whenever an employee has accepted medical treatment by a health care provider referred by the employer, the employer's insurer, or the representative of the employer or its insurer, he shall be entitled to receive a copy of any medical records of the medical provider that are in the possession of the employer or its insurer within thirty days from the date of the written demand upon the employer, the employer's insurer, or the representative of the employer or its insurer.

C. Such written report or records shall be furnished to said employee or his representative at no cost to the employee. Any employer who without just cause fails to furnish such report or records to an employee so requesting same within the thirty-day period provided for above shall be liable to the employee for a civil penalty in the amount of two hundred fifty dollars, plus reasonable attorney fees for the collection of such penalty.

## § 1126. Monitoring procedures of toxic substances in places of employment; access to records; penalties

Whenever any employer shall order or permit to be performed any procedure for the purpose of monitoring, detection or otherwise establishing the presence of any toxic substance, it shall be the duty of said employer, within thirty days of written request therefor, to provide each employee or his representative access to such employer records as will indicate such employee's own exposure to such toxic substances. In those instances where, with just cause, the employer is unable to provide such access within the time specified, he shall have the obligation to provide such access when the records become available. Any employer who shall fail to so furnish such access without just cause within thirty days from demand therefor shall be liable to a civil penalty of one thousand dollars payable to the state together with all costs and attorney's fees for the enforcement of this Section in a civil proceeding brought by such employee or his representative.

## § 1127. Release of medical records and information

Effective: August 1, 2012

A. It is the policy for the efficient administration of the workers' compensation system that there be reasonable access to medical information for all parties to coordinate and manage the care for the injured worker and to facilitate his return to work.

B. (1) In any claim for compensation, a health care provider who has at any time treated the employee related to the compensation claim shall release any requested medical information and records relative to the employee's injury, to any of the following persons:

(a) The employee, his agent, or his representative.

(b) A licensed and approved vocational rehabilitation counselor assigned to the employee's claim.

(c) Another health care provider examining the employee.

(d) The employer, his agent, or his representative.

(e) The employer's workers' compensation insurer or its agent or representative.

(2) Any information relative to any other treatment or condition shall be available to the employer or his workers' compensation insurer by subpoena or through a written release by the claimant.

C. (1) Consistent with the policy of reasonable access to medical information for all parties and notwithstanding the provisions of Article 510 of the Louisiana Code of Evidence or any other law to the contrary, a health care provider, without the necessity of a subpoena or other discovery device, shall verbally discuss medical information regarding the injured employee with another health care provider examining the employee, a case manager, or a vocational rehabilitation counselor assigned to provide rehabilitation for that injured worker. No health care provider or his employee or agent shall be held civilly or criminally liable for disclosure of the medical information conveyed pursuant to this Section. This Paragraph shall not apply to examinations conducted by medical examiners appointed by the director pursuant to R.S. 23:1123.

(2) In any verbal communication or personal conference between the vocational rehabilitation counselor and any health care provider, for the purpose of providing rehabilitation services, the employee or his agent or representative shall cooperate in scheduling a reasonable date and time for such communication or conference and the employee or his agent or representative shall be given fifteen days notice of any such communication or conference, and shall be given the opportunity to attend or participate in the communication or conference. Irrespective of the number of persons attending the conference, the health care provider shall only charge a reasonable single fee.

(3) In addition to any other duty or responsibility provided by law, a case manager or vocational rehabilitation counselor who is a party to a verbal communication with the health care provider regarding an employee, as authorized by Paragraph (1) of this Subsection, shall, within five working days of the communication, mail a written summary of the communication and any work restrictions or modifications required for the employee's reasonable return to employment to the employee, his representative, and the health care provider. The summary shall be mailed by certified mail, return receipt requested, to the employee or his representative, or by electronic mail if the employee or his representative consents in writing to such method of transmission. It shall include a narration of any diagnosis or opinion given or discussed, any conclusions reached concerning the vocational rehabilitation plan, any return to work opportunities discussed consistent with the vocational rehabilitation plan, and the medical evaluation of the health care provider.

(4) Any medical information released in writing shall be furnished to the employee at no cost to him simultaneously with it being furnished to the employer, its insurer, agent, or representative. Any such records or information furnished to the employer or insurer or any other party pursuant to this Section shall be held confidential by them and the employer or insurer or any other party shall be liable to the employee for any actual damages sustained by him as a result of a breach of this confidence up to a maximum of one thousand dollars, plus all reasonable attorney fees necessary to recover such damages. An exception to this breach of confidentiality shall be any introduction or use of such information in a court of law, or before the Office of Workers' Compensation Administration or the Louisiana Workers' Compensation Second Injury Board.

D. Nothing in this Section shall be construed to authorize any case manager, vocational rehabilitation counselor assigned to provide rehabilitation services for the injured employee, or agent of the employer who is not treating the injured employee for his injuries to attend the injured employee's medical examinations.

## § 1141. Attorney fees; privilege on compensation awards

A. Claims of attorneys for legal services arising under this Chapter shall not be enforceable unless reviewed and approved by a workers' compensation judge. If so approved, such claims shall have a privilege upon the compensation payable or awarded, but shall be paid therefrom only in the manner fixed by the workers' compensation judge. No privilege shall exist or be approved by a workers' compensation judge on injury benefits as provided in R.S. 23:1221(4)(s).

B. The fees of an attorney who renders service for an employee coming under this Chapter shall not exceed twenty percent of the amount recovered.

## § 1142. Approval of health care providers; fees

Effective: August 1, 2012

A. Definitions. For the purposes of this Section, the following terms shall have the following meanings unless the context clearly indicates otherwise:

(1) "Payor" shall mean the entity responsible, whether by law or contract, for the payment of the medical expenses incurred by a claimant as a result of a work related injury.

(2) "Utilization review company" shall mean the company or entity which contracts with the payor, and which entity reviews the claimant's medical records and information and makes the determination of medical necessity in accordance with this Chapter, for the purposes of assisting the payor with the authorization of the claimant's medical care, services and treatment requested pursuant to this Chapter.

B. Nonemergency care.

(1) (a) Except as provided herein, each health care provider may not incur more than a total of seven hundred fifty dollars in nonemergency diagnostic testing or treatment without the mutual consent of the payor and the employee as provided by regulation. Except as provided herein, that portion of the fees for nonemergency services of each health care provider in excess of seven hundred fifty dollars shall not be an enforceable obligation against the employee or the employer or the employer's workers' compensation insurer unless the employee and the payor have agreed upon the diagnostic testing or treatment by the health care provider.

(b) (i) The payor may contract with a utilization review company to assist the payor in determining if the request for nonemergency diagnostic testing or treatment, in an amount which exceeds seven hundred fifty dollars, is a medical necessity as provided pursuant to this Chapter.

(ii) A medical necessity determination by a utilization review company and the payor's consent to authorize the requested nonemergency diagnostic testing and treatment shall require only a review of the claimant's medical records and shall not require an examination of the employee.

(2) (a) When the payor has agreed to the diagnostic testing or treatment, the health care provider shall not issue any demand for payment to the employee or his family until the payor denies liability for the diagnostic testing or treatment. Notwithstanding the foregoing, the health care provider may reasonably communicate with the employee or his attorney or representative for the purpose of pursuing its claim against the payor.

(b) A health care provider who knowingly and willfully violates this Paragraph may be ordered by the workers' compensation judge to pay penalties not to exceed two hundred fifty dollars per violation plus reasonable attorney fees. The penalty shall not exceed one thousand dollars for any demand

for payment to an employee or his family which is issued after the health care provider has been penalized for a previous demand for payment to that employee or his family.

C. Emergency care.

(1) In no event shall prior consent be required for any emergency procedure or treatment deemed immediately necessary by the treating health care provider. Any health care provider who authorizes or orders emergency diagnostic testing or treatment, when said diagnostic testing or treatment is held not to have been of an emergency nature, shall be responsible for all of the charges incurred in such diagnostic testing or treatment. Said health care provider shall bear the burden of proving the emergency nature of the diagnostic testing or treatment.

(2) Fees for those services of the health care provider held not to have been of an emergency nature shall not be an enforceable obligation against the employee or the employer or the employer's workers' compensation insurer unless the employee and the payor have agreed upon the treatment or diagnostic testing by the health care provider, except as provided in R.S. 23:1272(D).

D. Fees and expenses. If the payor has not consented to the request to incur more than a total of seven hundred fifty dollars for any and all nonemergency diagnostic testing or treatment when such consent is required by this Section, and it is determined by a court having jurisdiction in an action brought either by the employee or the health care provider that the withholding of such consent was arbitrary and capricious, or without probable cause, the employer or the insurer shall be liable to the employee or health care provider bringing the action for reasonable attorney fees related to this dispute and to the employee for any medical expenses so incurred by him for an aggravation of the employee's condition resulting from the withholding of such health care provider services.

E. Exception. In the event that the payor has denied that the employee's injury is compensable under this Chapter, then no approval from the payor is required prior to the provision of any diagnostic testing or treatment for that injury.

## § 1143. Excessive fees or solicitation of employment; penalty; withholding attorney fees; approval by workers' compensation judge

A. Whoever exacts or receives a fee or gratuity for any services rendered on behalf of a claimant for compensation, except in the amount determined by the workers' compensation judge, or solicits the business of appearing before the office on behalf of a claimant, or makes it a business to solicit employment for an attorney in connection with any claim for compensation under this Chapter, shall be fined not more than five hundred dollars or imprisoned for not more than twelve months, or both.

B. (1) An attorney may withhold, as proposed attorney fees, a sum not to exceed twenty percent of all amounts recovered in his trust account which funds shall remain the property of the claimant, pending approval of such fees by the workers' compensation judge.

(2) An application for approval of fees shall be filed by the attorney within thirty days after the payment of the final weekly benefit, settlement of the claim, or

payment of the judgment, whichever occurs later. Otherwise the funds shall be returned to the claimant.

## § 1161. Insurance policies; application of provisions; approval by insurance commissioner; admitted carriers; exceptions

Effective: January 1, 2009

A. Every policy for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this Chapter. No company or association shall enter into any such policy of insurance unless its form has been approved by the insurance commissioner, and no domestic insurance company shall be denied servicing carrier status.

B. Except as provided in R.S. 23:1195 et seq., every insurance policy or contract to provide workers' compensation insurance shall be written in accordance with either of the following:

(1) By an insurer organized pursuant to R.S. 22:61 through 69, or admitted pursuant to Subpart K of Part I of Chapter 2 of Title 22 of the Louisiana Revised Statutes of 1950, to do business in Louisiana, except policies of an industrial insured meeting one of the following qualifications, and electing to secure an insurance policy with an insurer which is not admitted to do business in Louisiana:

(a) An insured who procures the insurance policy by use of the services of a full-time employee acting as an insurance manager or buyer.

(b) An insured whose aggregate annual premium for insurance on all risks totals at least twenty-five thousand dollars.

(c) An insured having at least twenty-five full-time employees.

(2) Pursuant to and in accordance with R.S. 23:1167.

## § 1161.1. Workers' compensation claims office or licensed claims adjusters; waiver

A. Any insurer, authorized or unauthorized, domestic, foreign, or alien, who issues a policy for workers' compensation in this state shall either establish and maintain a claims office within the state or retain a licensed claims adjuster.

B. The claims office or the licensed claims adjuster shall maintain files on workers' compensation claims submitted to that insurer, and the personnel of that office or the licensed claims adjuster, if retained, shall be authorized by the insurer to issue checks and settle claims, and seek contraversion on behalf of the insurer concerning workers' compensation claims made to that office or to the licensed claims adjuster.

C. The insurer, or if applicable the surplus line broker who accepted and placed the policy, shall notify the commissioner of insurance and the office of workers' compensation of the address of such claims office or the address of the licensed claims adjuster retained by it.

D. Waiver requests from the provisions of this Section shall be submitted in writing by the insurer, or if applicable by the surplus line broker who placed the policy, to the commissioner of insurance and shall not be considered unless the insurer can demonstrate that it has exercised claims management and filing practices which evidence proper compliance with applicable laws and regulations. Proper compliance

will be measured by the commissioner through continued monitoring of the timeliness of reporting by the insurer of written complaints regarding noncompliance with all aspects of applicable laws and regulations. No insurer will be approved for waiver from the provisions of this Section unless the insurer has filed timely the documentation required by the commissioner and the office of workers' compensation at least fifty percent of the time during the year preceding the waiver request, and has also made timely first payments to claimants in cases where benefits are not contraverted at least seventy-five percent of the time during the year preceding the waiver request. Waivers granted by the commissioner shall remain in effect until such time as the insurer's measured performance record falls below that described above. Each year after such waiver has been granted, on or about the anniversary date of such waiver, the commissioner shall evaluate the performance record of each such insurer to determine if the waiver shall be continued.

## § 1162. Contents of insurance contract; enforcement by employee; subrogation of insurer

A. No policy of insurance against liability arising under this Chapter shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to compensation all installments of the compensation that may be awarded or agreed upon, and that this obligation shall not be affected by any default of the insured after the injury, or by any default in the giving of any notice required by such policy, or otherwise. This agreement shall be construed to be a direct obligation by the insurer to the person entitled to compensation, enforceable in his name. No policy of insurance against liability under this Chapter shall be made unless the policy covers the entire liability of the employer; provided, that as to the question of the liability as between the employer and the insurer the terms of the insurance contract shall govern, and provide, further, that a contract of indemnity may be issued to an employer qualified as a self-insured under this Chapter, by which contract an insurer may undertake to indemnify such employer against loss or losses arising with respect to his obligations under this Chapter in excess of a stated or determinable amount.

B. When an employer is engaged in more than one business for the purpose of insurance against his liability under this Chapter, each separate and distinct business may be covered by separate policies.

C. All policies insuring the payment of compensation must contain a clause to the effect that as between the employee and the insurer, the notice of the insured or the knowledge of the occurrence of the injury on the part of the insured, shall be deemed to be notice or knowledge on the part of the insurer, as the case may be.

D. The insurer shall be subrogated to all rights and actions which the employer is entitled to under this Chapter.

## § 1163. Premium; contribution by employees prohibited; penalty

A. It shall be unlawful for any employer, or his agent or representative, to collect from any of his employees directly or indirectly either by way of deduction from the employee's wages, salary, compensation, or otherwise, any amount whatever, or to demand, request, or accept any amount from any employee, either for the purpose of paying the premium in whole or in part on any liability or compensation insurance

of any kind whatever on behalf of any employee or to reimburse such employer in whole or in part for any premium on any insurance against any liability whatever to any employee or for the purpose of the employer carrying any such insurance for the employer's own account, or to demand or request of any employee to make any payment or contribution for any such purpose to any other person.

B. Nothing herein shall be construed to prevent any employer from carrying his own insurance towards his own employees; nothing herein shall apply to an employer qualified under the laws of this state to engage in the liability insurance business. In addition, nothing herein shall be construed to prevent an independent contractor who is a sole proprietor and who has elected by written agreement not to be covered by the provisions of this Chapter in accordance with R.S. 23:1035 from entering into a contract with his principal pursuant to which the independent contractor is responsible for securing insurance or self-insurance for the benefits provided pursuant to this Chapter or to reduce payments to the independent contractor for coverage of the independent contractor or his employees pursuant to a contract, nor shall it be a violation of this Section if a principal has agreed to provide workers' compensation insurance to all contractors working under a contract with the principal and for the cost of this coverage to be a consideration in the contract between the principal and the contractors.

C. Whoever violates any provision of this Section shall be fined not more than five hundred dollars, or imprisoned with or without hard labor for not more than one year, or both.

D. In addition to the criminal penalties provided for in Subsection C of this Section, any person violating the provisions of this Section shall be assessed civil penalties by the workers' compensation judge of not less than five hundred dollars and not more than five thousand dollars payable to the employee and reasonable attorney fees. Restitution shall be ordered up to the amount collected from the employee's wages, salary or other compensation. The award of penalties, attorney fees, and restitution shall have the same force and effect and may be satisfied as a judgment of a district court.

## § 1164. Insolvency of employer; employee's rights against insurer

If any employer carrying insurance against liability under this Chapter is or becomes insolvent, or if any execution upon a judgment for compensation against him is returned unsatisfied, any person entitled to payments may enforce his claim against the insurer of the employer to the same extent that the employer could have enforced his claim against such insurer had he made such payments, any provision contained in any policy or agreement of insurance written after January 1, 1915, to the contrary notwithstanding. And the making of accrued payments to the person entitled thereto, in accordance with the provisions of this Chapter, shall relieve such insurer from liability.

## § 1165. Additional compensation agreements; insurance

An employer and employee who have elected to come under the provisions of this Chapter or who may be subject thereto as provided for in R.S. 23:1034 may, by written agreement between themselves, provide for compensation in event of injury over and above the compensation to be awarded under the provisions hereof. Such additional compensation may be provided for by the employer insuring his liability therefor in any

insurance company or association authorized to do business in the State of Louisiana, but the premium therefor must be paid by the employer.

## § 1166. Issuance of policies; liability

When an insurance company issues a policy of insurance to an employer covering claims for injuries to employees that may arise within the scope of the employer's business, the insurance company shall be estopped to deny liability on the grounds that the employment was not hazardous and during the period such insurance is in effect, claims for injuries occurring during such period by such employees against the employer or the insurance company shall be exclusively under the workers' compensation act.

## § 1167. Insolvency of unauthorized ceding insurer; claim against assuming insurer

Effective: January 1, 2009

A. If workers' compensation insurance for an individual risk cannot be procured from an authorized insurer, such coverage may be procured from an unauthorized insurer pursuant to the provisions of R.S. 22:432 through 445 and 1902 through 1910; however, such workers' compensation insurance shall be placed with an unauthorized insurer pursuant to R.S. 22:432 through 445 and 1902 through 1910 only if, in addition, the following condition is met: if such unauthorized insurer cedes all or a part of such workers' compensation risk, the contract of reinsurance with the assuming insurer must provide that, only in the event of the insolvency of the ceding insurer, any reinsurance proceeds owing with respect to such risk shall be payable by the assuming insurer to the insured of the insolvent ceding insurer for the amount of loss sustained by the insured to the extent that the liability therefor was ceded by ceding insurer through a reinsurance agreement to the assuming insurer.

B. This Section shall apply only to an insurance policy or contract to provide workers' compensation insurance which is written on or after January 1, 1987.

## § 1168. Ways of securing compensation to employees

Effective: August 1, 2014

A. An employer shall secure compensation to his employees in one of the following ways:

(1) By insuring and keeping insured the payment of such compensation with any stock corporation, mutual association, or other concern authorized to transact the business of workers' compensation insurance in this state. When an insurer issues a policy to provide workers' compensation benefits pursuant to the provisions of the Workers' Compensation Act, the insurer shall report to the National Council on Compensation Insurance all policy information in accordance with the reporting guidelines established by the National Council on Compensation Insurance. Proof of coverage must be filed no later than thirty days after the effective date of coverage and include the name of each business entity operating in the state of Louisiana for which coverage is provided.

(2) By entering into an agreement with a group self-insurance fund as provided for in R.S. 23:1191 et seq.

(3) By entering into an agreement with an interlocal risk management agency as provided for in R.S. 33:1341 et seq.

(4) By furnishing satisfactory proof to the director of the employer's financial ability to pay such compensation. The director, pursuant to rules adopted by the office for an individual self-insured or own risk carrier, including but not limited to rules relative to security and excess coverage, shall require that an employer:

(a) Deposit with the director securities or a surety bond in an amount determined by the director which would be at least an average of the yearly claims for the last three years.

(b) Provide proof of excess coverage with such terms and conditions as is commensurate with their ability to pay the benefits required by the provisions of the Workers' Compensation Act.

B. (1) The director may waive the requirements of Paragraph A(4) of this Section if he finds any company able to pay benefits, and that the requirements of these provisions are unnecessary. He shall establish rules which set standards for such waiver.

(2) The director shall waive the requirements of Paragraph A(4) of this Section if any employer that is a municipality or other political subdivision of the state is able to demonstrate financial responsibility and ability to pay benefits by the filing of annual reports including statements of financial condition and summary loss data detailing past claims experience.

C. Any employer that knowingly provides false information to the director for purposes of becoming self-insured or own risk carrier or a group pool association shall be subject to the perjury laws of this state.

D. Repealed by Acts 2006, No. 49, § 2, eff. May 16, 2006.

## § 1168.1. Self-insurance

A. (1) Notwithstanding the provisions of R.S. 23:1168(A)(5)(a), an insurer with an A. M. Best rating of A-minus or better providing excess workers' compensation coverage to more than one employer shall be entitled to satisfy all of the initial and renewal certification requirements for self-insurer status and security obligations of all its insureds to the office of workers' compensation, by depositing and maintaining with the office a single surety bond, or other acceptable security as determined by the office, in an amount equal to the greater of:

(a) The aggregate average workers' compensation losses incurred over the most recent three-year period multiplied by one hundred fifty percent.

(b) The total amount of unpaid workers' compensation reserves at the time of the annual review of all self-insurers secured by the single security multiplied by one hundred fifty percent.

(2) For those employers that have not been in business for at least three calendar years, the single security provided for under this Subsection shall be increased for each such employer by the greater of three hundred thousand dollars or three times the estimated annual loss fund for the next year.

(3) The security deposited by an insurer under this Subsection shall serve to secure the obligations of its self-insured employers only for those years in which they were provided excess coverage by that one particular insurer.

B. (1) The insurer shall satisfy the self-insurer requirements of its insured employers under Subsection A by submitting to the office of workers' compensation written notification of excess workers' compensation coverage, the insured's workers' compensation losses incurred over the most recent three-year period and the insured's total unpaid workers' compensation reserves. For those employers that have not been in business for at least three calendar years, the insurer shall submit written notification of excess coverage and the employers estimated annual loss fund for the next year.

(2) Upon the insurer's supplying the information contained in Paragraph (1) of this Subsection to determine the appropriate security as required by Subsection A, the employer shall be deemed a self-insurer under Subsection A. The insurer shall thereafter provide the information contained in Paragraph (1) of this Subsection once per year at the time of the annual review of all self-insurers secured by the single security provided for in Subsection A.

C. In computing security requirements under this Section, a self- insured hospital against whom a workers' compensation claim has been filed and said self-insured hospital provides medical services to the claimant for which there is no cash outlay, the self-insured hospital shall be entitled to have the medical services portion of such workers' compensation claim deducted from any computation used in determining the hospital's surety bond or other acceptable security.

## § 1168.3. Grounds for default; forfeiture of security; records of claims

Effective: May 16, 2006

A. For purposes of this Section, "default" shall mean whenever a self-insured employer:

(1) Fails to pay benefits owed under this Chapter to an injured worker for undisputed claims and the employer is in bankruptcy or a state court receivership or liquidation;

(2) Fails to renew its irrevocable letter of credit; or

(3) Fails to substitute acceptable securities for workers' compensation benefits within thirty days prior to the expiration of the current security.

B. For purposes of R.S. 23:1168.3 through 1168.12, the following terms shall have the following meanings:

(1) "Administer"; or "administration"; shall mean the review and determination of the monetary value of a claim.

(2) "Claim"; shall mean a claim for workers' compensation benefits by an employee of the self-insured employer which the employer had at the time of default accepted as compensable and for which the employer was paying benefits.

C. (1) If for any reason there is a default by the self-insured employer in the payment of claims, the security posted with the director shall be forfeited, and in the case of a surety bond, the director may institute suit on such bond. All proceeds shall

be retained by the director for payment of such claims as may be entitled to receive compensation from said employer. The director may pay these funds on a periodic basis. In the event that the amount of the bond is insufficient to meet all of the outstanding claims, he may allocate them to particular claimants pro rata, in accordance with rules promulgated by the director.

(2) In the event an employer operating as a self-insurer pursuant to R.S. 23:1168.1 defaults on his workers' compensation obligations, the office shall demand that the excess insurer deposit a separate surety bond or other security equal to the amount of security attributable to the defaulting employer in the most recent calculation of the single security on deposit with the office. If the separate surety bond or other security is not deposited with the office within ten business days of demand, the entire single security on deposit shall be forfeited until the additional security is deposited. Upon depositing the separate security required by this Paragraph, the excess insurer shall be entitled to reduce the existing single security on deposit by the amount of the separate security.

D. Within thirty days of receiving written notice from the office, the employer whose security was forfeited shall provide the office with copies of any workers' compensation, medical or employment files requested by the office or summary information related to those files necessary to administer the claims for benefits under this Chapter.

## § 1168.4. Duties of the director

Effective: May 16, 2006

A. Upon the default of any self-insured employer, the director shall deposit the proceeds from the security or the bond into an interest-bearing account. The interest derived therefrom shall be used to offset the administration of claims. The office may thereafter contract for the administration of claims from the account.

B. The director shall immediately proceed to take such steps as are necessary to administer the claims for benefits owed under this Chapter.

C. The director, in addition to other powers, shall have the following powers:

(1) To audit the books and records of the employer insofar as those records are necessary to administer the claims for benefits owed under this Chapter.

(2) To enter into such agreements or contracts as are necessary to carry out the full or partial plan for distribution.

(3) To enter into such agreements or contracts as are necessary to carry out the administration of claims.

## § 1168.5. Deposit of monies collected

Effective: May 16, 2006

The monies collected by the director shall be deposited in one or more state or national banks, savings banks, trust companies, or savings and loan associations chartered to do business in this state. Any depository so selected shall provide the same security for such deposits as that required for the deposit of state funds pursuant to the provisions of R.S. 49:321. The director may in his discretion deposit such monies or any part thereof in a national bank or trust company as a trust fund. For the purposes of this Section, the director shall be considered a "depositing authority" pursuant to R.S. 49:321.

## § 1168.6. Appointment of assistants

Effective: May 16, 2006

A. The director shall have the power to contract with or employ such clerks or assistants as may by him be deemed necessary and to give each such powers to assist him as he may consider wise.

B. The director may contract with the department of insurance for the administration of claims.

C. (1) The attorney general shall provide representation for the director in all matters involving the seizure and distribution of the security.

(2) Attorneys employed by the attorney general for purposes of this Section shall be named by the director with the approval of the attorney general, and shall perform their duties under the supervision of the attorney general.

## § 1168.7. Priority of claims

Effective: May 16, 2006

The priorities of distribution of the security shall be as follows:

(1) Claims by injured employees of the self-insured employer.

(2) The director's costs and expenses of administration and any claims handling expenses.

(3) All other claims.

## § 1168.8. Time to file claims

Effective: May 16, 2006

A. Upon the default of a self-insured employer, the director shall notify all persons who may have claims against such employer and who have not filed proper proofs thereof, to present the same to him, at a place specified in such notice, within four months from the date of the seizure of the security, or, if the director shall certify that it is necessary, within such longer time as the director shall prescribe. The last day for the filing of proofs of claims shall be specified in the notice. Such notice shall be given in a manner determined by the director.

B. Proofs of claim may be filed subsequent to the date specified, but no such claim shall share in the distribution of the assets until all allowed claims, proofs of which have been filed before said date, have been paid in full.

## § 1168.9. Proof and allowance of claims

Effective: May 16, 2006

A proof of claim shall consist of a statement under oath, in writing, and signed by the injured employee or his representative, setting forth the claim, whether any payments have been made on the claim and that the sum claimed is justly owed from the employer to the injured employee.

## § 1168.10. Appeal of a decision of the director

Effective: May 16, 2006

In the event the director provides for pro rata distribution of security proceeds to injured employees or issues an order or decision which may be adverse to an injured employee who has a claim, he may within sixty days of the order or decision appeal to the Nineteenth Judicial District Court of this state.

## § 1168.11. Confidentiality of certain proceedings and records; immunity of certain staff

Effective: May 16, 2006

A. Notwithstanding any other provision of law, all proceedings, hearings, notices, correspondence, reports, and other information in the possession of the director or the office relating to the distribution of the security of a self-insured employer are confidential, except as otherwise provided in this Section.

B. The personnel of the office and its agents shall have access to these proceedings, hearings, notices, correspondence, reports, records, or information to the extent permitted by the director.

C. The director may open the proceedings or hearings, or disclose the notices, correspondence, reports, records, or information to any department, agency, or other instrumentality of the state or of the United States if the opening or disclosure is necessary or proper for the enforcement of the laws of this or any other state of the United States.

D. The provisions of this Section shall not apply to hearings, notices, correspondence, reports, records, or other information obtained upon the filing of a dispute over distribution as provided in R.S. 23:1168.10.

E. There shall be no liability on the part of and no cause of action of any nature shall arise against any employee, agent, contractor, or representative of the office for any action taken by him in the performance of his powers and duties under the proceedings of this Section.

## § 1168.12. Cooperation of officers, owners, and employees; civil penalties

Effective: May 16, 2006

A. Any officer, manager, director, trustee, owner, employee, or agent of any self-insured employer, or any other persons with authority over or in charge of any segment of the employer's affairs, shall cooperate with the director in the seizure of the security and administration of claims.

B. No person shall provide to the director statements, documents, or records which are fraudulent or materially false.

C. The Nineteenth Judicial District Court shall have jurisdiction to issue such orders, including injunctive relief, as appropriate, for the enforcement of this Section.

D. Failure to comply with such court order shall subject the violator to a fine not to exceed one hundred thousand dollars.

## § 1169. Failure of employer to secure payment; power of director

Failure on the part of any employer to secure the payment of compensation provided in the Workers' Compensation Act shall have the effect of enabling the executive director, or his designee, to proceed against the employer, and to collect penalties as provided in R.S. 23:1170 et seq.

## § 1170. Penalty for failure to secure workers' compensation insurance; assessment and collection

Effective: August 1, 2014

A. In addition to any other penalty prescribed by law, any employer who fails to secure compensation required by R.S. 23:1168 shall be liable for a civil penalty, to be assessed by the workers' compensation judge, of not more than two hundred fifty dollars per employee for a first offense, and liable for a civil penalty of not more than five hundred dollars per employee for a second or subsequent offense; however, the maximum civil penalty for a first offense shall not exceed ten thousand dollars for all related series of violations. All civil penalties collected shall be deposited in the Office of Workers' Compensation Administrative Fund established in R.S. 23:1291.1(E).

B. The workers' compensation judge shall assess any civil penalty incurred under Subsection A of this Section against any employer who fails to provide proof of compliance within fifteen days of any notice. Any penalty assessed and collected pursuant to this Section shall be forwarded to the fraud administrator for collection. In his discretion, the fraud administrator may remit, mitigate, or negotiate the penalty if proof of the mitigating circumstances is provided within fifteen days of notice of the assessment. In determining the amount of the penalty to be assessed, or the amount agreed upon in any negotiation, consideration shall be given to the appropriateness of such penalty in light of the life of the business of the employer charged, the gravity of the violation, and the extent to which the employer charged has complied with the provisions of R.S. 23:1168, or has otherwise attempted to remedy the consequences of the said violation. Individual proceedings shall be conducted pursuant to the provisions of R.S. 23:1171.

C. In addition to any penalties assessed in accordance with the provisions of this Chapter, the workers' compensation judge shall order the employer to provide proof of compliance with R.S. 23:1168 within forty-five days of the order.

## § 1171. Civil fine; hearing; appeal

Effective: August 1, 2014

An employer may appeal the decision of the workers' compensation judge in the manner provided in R.S. 23:1310.5(B) for appealing decisions regarding disputed claims.

## § 1171.1. Discontinuance of business; injunction; procedure

Effective: August 1, 2014

A. The director, or his designee, shall investigate an employer if he receives information from any person or entity that such employer has failed to provide security for compensation as required by R.S. 23:1168. If such allegations can be reasonably substantiated, and the employer has previously been subject to a civil penalty pursuant

to R.S. 23:1170 or criminal penalties pursuant to R.S. 23:1172, the director, or his designee, and the employer has previously been fined under R.S. 23:1170 or been penalized under R.S. 23:1172, the director shall notify the employer that, unless he can show proof of compliance with R.S. 23:1168 within fifteen days, he shall be subject to a civil penalty pursuant to the provisions of R.S. 23:1170.

B. If such allegations can be reasonably substantiated and the employer has been fined under R.S. 23:1170 or penalized under R.S. 23:1172, the director shall notify the employer that unless he can show proof of compliance with R.S. 23:1168 within fifteen days, he shall be subject to further fines and penalties, including but not limited to an injunction against further business operations.

C. If within fifteen days of the employer's receipt of such notice he has not submitted to the director satisfactory proof of such compliance, the director or his designee shall request the workers' compensation judge of any district where the employer does business to set the matter for hearing in accordance with the procedures set forth by law for claims for workers' compensation benefits. Upon the request of the director or his designee, the workers' compensation judge shall issue a rule to show cause to the employer why he should not be fined or penalized for failure to show proof of compliance with R.S. 23:1168 when requested.

D. (1) If at such hearing, it is determined that the employer is in violation of his obligation under R.S. 23:1168, the workers' compensation judge shall fine the employer in the manner provided pursuant to R.S. 23:1170(A) and shall order the employer to provide proof of compliance with R.S. 23:1168 within forty-five days of the order by securing the appropriate coverage. Should the employer fail to file such evidence, the workers' compensation judge shall assess a fine for a second offense and issue a cease and desist order prohibiting the employer from continuing its business operations until such time as the employer complies with R.S. 23:1168, and all fines issued are paid in full.

(2) Any cease and desist order issued by the workers' compensation judge under Paragraph (1) of this Subsection shall include specific findings of fact based upon evidence of all of the following:

(a) The employer received notice of the hearing.

(b) The employer employs employees for whom it must secure workers' compensation insurance or be authorized to self-insure under the provisions of this Chapter.

(c) The employer has willfully failed to provide security for compensation as required by R.S. 23:1168 and there has been a final determination in a matter in which the employer has been fined under R.S. 23:1170 or penalized under R.S. 23:1172.

(d) The employer continues to operate its business in the absence of such security for compensation.

(3) There shall be a presumption that an employer who has previously been civilly fined for a second offense, or has previously been criminally penalized, has willfully failed to secure his obligation under R.S. 23:1168.

(4) A cease and desist order shall not issue prior to a hearing and there shall be no interruption of an employer's business operation if he submits satisfactory

proof to the workers' compensation judge of his compliance with R.S. 23:1168, regardless of whether he may have been in violation thereof previously.

E. (1) After the issuance of a cease and desist order and upon the request of the director or the director's designee, the attorney general shall immediately institute proceedings for injunctive relief against the employer in the district court of any judicial district in this state where the employer does business. In such district court proceedings, a certified copy of any cease and desist order entered by the workers' compensation judge in accordance with this Section based upon evidence in the record shall be prima facie evidence of the facts found in such record.

(2) Such injunctive relief may include the issuance of a temporary restraining order under Louisiana Code of Civil Procedure Article 3601 et seq., which order shall enjoin the employer from continuing its business operations until it has procured the required insurance or authorization to self-insure or has posted adequate security with the court pending the procurement of such insurance or authorization. The court, in its discretion, shall determine the amount that shall constitute adequate security.

F. The issuance of an order to cease and desist or the issuance of a temporary restraining order or an injunction against an employer for failure to insure or keep insurance in force as required by R.S. 23:1168 shall be in addition to any civil or criminal penalties imposed by any other provision of law or Paragraph (D)(1) of this Section.

## § 1171.2. Default of employer; additional liability

The amount of weekly compensation provided in this Chapter shall be increased by fifty percent in any case where the employer has failed to provide security for compensation as required by R.S. 23:1168.

## § 1172. Criminal penalties

Effective: August 15, 2010

A. Any employer who willfully fails to provide security for compensation required by R.S. 23:1168 shall be subject to a fine of up to two hundred fifty dollars per day that the employer willfully failed to provide security for compensation or imprisonment with or without hard labor for not more than one year, or both such fine and imprisonment. All fines collected shall be deposited in the Office of Workers' Compensation Administrative Fund established in R.S. 23:1291.1(E).

B. Evidence of two prior penalties assessed by the Louisiana Workforce Commission pursuant to R.S. 23:1170 and 1171 in any given three-year period shall constitute a prima facie case of a willful violation.

C. (1) No person acting gratuitously and without malice, fraudulent intent, or bad faith, shall be subject to civil liability for libel, slander, or any other relevant tort, and no civil cause of action of any nature shall exist against such person or entity by virtue of the filing of reports or furnishing of other information, either orally or in writing, relative to a violation by any person of the provisions of R.S. 23:1168.

(2) The grant of immunity provided by this Subsection shall not abrogate or modify in any way any statutory or other privilege or immunity otherwise enjoyed by such person or entity.

## § 1172.1. Willful misrepresentation by employer; aid or abet; criminal penalties; civil immunity

Effective: August 15, 2010

A. It shall be unlawful for any employer in writing to willfully misrepresent to any person that he has provided or provides security for compensation as required by R.S. 23:1168.

B. It shall be unlawful for any person, whether present or absent, directly or indirectly, to aid and abet an employer, or directly or indirectly counsel an employer to willfully misrepresent that the employer has provided or provides security for compensation as required by R.S. 23:1168.

C. Whoever violates any provision of this Section shall be imprisoned, with or without hard labor, for not less than one year nor more than ten years, or fined up to two hundred fifty dollars per day that the employer willfully failed to provide security for compensation, or both. All fines collected shall be deposited in the Office of Workers' Compensation Administrative Fund established in R.S. 23:1291.1(E).

D. (1) No person acting gratuitously and without malice, fraudulent intent, or bad faith, shall be subject to civil liability for libel, slander, or any other relevant tort, and no civil cause of action of any nature shall exist against such person or entity by virtue of the filing of reports or furnishing of other information, either orally or in writing, relative to a violation by any person of the provisions of this Section.

(2) The grant of immunity provided by this Subsection shall not abrogate or modify in any way any statutory or other privilege or immunity otherwise enjoyed by such person or entity.

## § 1172.2. Unlawful practices

Effective: August 15, 2010

A. It shall be unlawful for any person to knowingly make any false, fraudulent, or misleading oral or written statement, or to knowingly omit or conceal material information for the purpose of obtaining workers' compensation coverage, or for the purpose of avoiding, delaying, or diminishing the amount of payment of any workers' compensation premiums.

B. It shall be unlawful for any person to knowingly misrepresent or conceal payroll, classification of workers, or information regarding any employer's loss history which would be material to the computation and application of an experience rating modification factor for the purpose of avoiding or diminishing the amount of payment of any workers' compensation premiums.

C. It shall be unlawful for any person, whether present or absent, directly or indirectly, to aid and abet any other person, or directly or indirectly counsel any other person, to engage in conduct in violation of this Section.

D. Whoever violates any provision of this Section shall be imprisoned, with or without hard labor, for not less than one year nor more than ten years, or fined up to two hundred fifty dollars per day that such person's violation of any provision of this Section resulted in failure to properly provide security for compensation, or both. All fines collected shall be deposited in the Office of Workers' Compensation Administrative Fund established in R.S. 23:1291.1(E).

E. (1) (a) Any person, insurer, or self-insurance fund who has knowledge of or who believes that a false, fraudulent, or misleading statement is knowingly made or is knowingly omitted for the purpose of avoiding, delaying, or diminishing the amount of payment of any workers' compensation premium shall, within sixty days of notice of such statement or omission, send to the office of workers' compensation administration, on a form prescribed by the director, the information requested and such additional information as may be requested by the office of workers' compensation administration.

(b) The office of workers' compensation administration shall review such reports and select such acts of misrepresentation as, in its judgment, may require further investigation.

(c) The office of workers' compensation administration shall then cause an independent examination of the facts surrounding such acts to be made to determine the extent, if any, to which fraud, deceit, or intentional misrepresentation of any kind exists.

(d) The office of workers' compensation administration shall report any alleged violations of law which its investigations disclose to the appropriate licensing agency and prosecuting authorities having jurisdiction with respect to such violation.

(2) No person or entity acting without malice, fraudulent intent, reckless disregard for the truth, or bad faith, shall be subject to civil liability for libel, slander, or any other relevant tort, and no civil cause of action of any nature shall exist against such person or entity by virtue of the filing of reports or furnishing of other information, either orally or in writing, relative to a violation by any employer of the provisions of this Section.

(3) The grant of immunity provided by this Subsection shall not abrogate or modify in any way any statutory or other privilege or immunity otherwise enjoyed by such person or entity.

(4) Any person or entity entitled by this Subsection to immunity from civil liability shall also be entitled to an award of attorney fees and costs if they are the prevailing party in a civil suit and the party bringing the action was not substantially justified in doing so. For purposes of this Section, a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time it was initiated.

## § 1173. Rules and regulations

A. The executive director shall have the authority to promulgate rules and regulations to implement the provisions of R.S. 23:1170 and 1171.

B. All such rules and regulations, including all fees otherwise authorized by this Part shall be subject to legislative oversight pursuant to the Administrative Procedure Act.

## § 1174. Certificate of compliance

Whenever a certificate of compliance is properly applied for with the office of workers' compensation, that office shall respond by issuing a certificate of authority without a charge or by rejecting the application within ten days of receipt of the application.

## § 1174.1. Workers' compensation programs; ability to contract

Effective: January 1, 2009

A. (1) No person, partnership, corporation, or other entity shall establish any unreasonable criteria, policies, or procedures designed to discriminate against a contractor or subcontractor based upon the contractor's or subcontractor's securing the employer's workers' compensation obligation by any method provided for in R.S. 23:1168 or R.S. 23:1195 et seq. Nothing herein shall prohibit any person, partnership, corporation, or other entity from establishing separate criteria, policies, or procedures to evaluate workers' compensation insurance providers which are members of the Louisiana Insurance Guaranty Association or any other state guaranty fund. Any violation of this provision shall constitute an unfair trade practice and subject the violator to the penalties of R.S. 22:1211 et seq.

(2) No insurance company writing umbrella insurance policies in this state shall establish any unreasonable criteria, policies, or procedures designed to discriminate against any employer in this state based upon the employer's securing the employer's workers' compensation obligation by any method provided for in R.S. 23:1168 or R.S. 23:1195. Acceptable criteria, policies, or procedures may include review of audited financial statements, actuarial evaluations, and specific and aggregate excess insurance. Nothing herein shall prohibit any such insurance company from establishing separate criteria, policies, or procedures to evaluate workers' compensation insurance providers which are members of the Louisiana Insurance Guaranty Association or any other state guaranty fund. Any violation of this provision shall constitute an unfair trade practice and subject the violator to the penalties of R.S. 22:1211 et seq.

B. This Section shall not prohibit the marketing of insurance in the ordinary course of business by practices which do not otherwise constitute an unfair trade practice.

## § 1175. Short title; legislative intent

A. This Subpart shall be known and may be cited as the "Workers' Compensation Cost Containment Act".

B. It is hereby declared to be the intent of the legislature that occupational accidents produce economic and social loss, impair productivity, retard the advancement of standards of living, and increase the cost of workers' compensation insurance. Both humane and economic considerations recommend the establishment and implementation of effective injury control measures. A dynamic program of health and safety education and training is the best known solution to reduce occupational accidents and to decrease workers' compensation insurance rates for employers in high rate classifications, resulting in the long-term reduction of rates of all employers of this state.

## § 1176. Definitions

As used in this Subpart, unless the context clearly indicates otherwise, the following terms shall be given the meaning ascribed to them in this Section:

(1) "Designated representative" is a person in a position of authority within the company he represents, such as a partner of a partnership, an officer or director

of a corporation, the proprietor of a proprietorship, or anyone who acts in a managerial capacity.

(2) "Eligible employers" are those Louisiana employers who have a workers' compensation insurance rate based on an experience modifier rate of one point five or greater on December thirty-first of the prior year, and who pay five thousand dollars or more per year in Louisiana workers' compensation premiums.

(3) "Insurers" means insurance companies and group self-insurance associations, by whatever names. It shall not mean individual self-insurers.

(4) "Meeting" means the cost containment meeting approved by the office of workers' compensation.

(5) "Program" means the occupational safety and health program approved by the OSHA section pursuant to R.S. 23:1291.

(6) "Reasonable time" is the amount of time determined by the OSHA section to be sufficient for the stated purpose.

(7) Repealed by Acts 1995, No. 124, § 2, eff. June 12, 1995.

## § 1177. Collection of information; target list

A. The office of workers' compensation shall have access to any statistical information involving the experience modifier rates for all Louisiana employers from any source.

B. The office shall collect information on experience modifier rates for Louisiana employers and compile a target list of employers with experience modifier rates of one point five or greater by January 1, 1992. Thereafter, the target list shall be updated on no less than an annual basis.

C. Any information gathered pursuant to the provisions of this Section shall be held confidential by the office and shall not be disseminated for any purpose.

## § 1178. Cost containment meeting; incentive discount

A. The office shall develop and implement informational cost containment meetings for all employers on the target list compiled pursuant to R.S. 23:1177 that shall, at a minimum:

(1) Educate employers on how the experience modifier is computed and what financial benefit the business may realize by lowering it. Include an explanation of immediate credits provided for by this Subpart, long-term cost savings that may be earned, and potential cost savings to all employers of this state.

(2) Educate employers on the correlation between safety, low accident rates, and low premiums.

(3) Educate employers on the correlation between a low accident rate and a good safety training program.

(4) Educate employers on monitoring and follow-up methods on claims filed against their insurance by their employee or former employee.

(5) Educate employers on methods which minimize unnecessary claims by treating injured employees with consideration and courtesy.

(6) Inform and encourage the employers to participate in the OSHA section's occupational safety and health program and notify them of cost credit that may be earned from satisfactory implementation pursuant to R.S. 23:1179.

B. The office shall inform all eligible employers on the target list of the dates and locations of cost containment meetings to be held in areas throughout the state, as determined by the office. The employers shall be informed that if a designated representative from the company attends the meeting, the company will be granted a reduction in its experience modifier at the rate determined in R.S. 23:1179(B).

C. All insurers writing workers' compensation insurance in this state shall allow a two percent reduction in the Louisiana workers' compensation premium for an eligible employer who attends, by a designated representative, a cost containment meeting sponsored by the OSHA section. This credit shall be granted only for a one-year period.

D. Any eligible employer who has been given notice of a cost containment meeting, and fails to attend shall be fined an amount equalling two percent of the Louisiana workers' compensation premium for the succeeding policy year. The fine shall be payable to the executive director of the commission and shall be remitted to the state treasurer for deposit in the Office of Workers' Compensation Administrative Fund.

E. Procedures to establish proof of attendance of a cost containment meeting by designated representatives of eligible employers shall be established by rule by the office. Employers who would otherwise be eligible shall be allowed to requalify for this reduction only once every four years.

## § 1179. Occupational safety and health program; incentive discount

A. The OSHA section shall implement an occupational safety and health program, pursuant to R.S. 23:1291, and consistent with but not limited to the requirements in this Section.

B. All insurers writing workers' compensation insurance shall allow a five percent reduction, in addition to any reduction granted in R.S. 23:1178(C), in the Louisiana workers' compensation premium for an eligible employer who has attended an authorized cost containment meeting and who has subsequently implemented the OSHA section's occupational safety and health program to the satisfaction of the OSHA section and pursuant to the provisions of this Subpart. Satisfactory implementation shall be defined as:

(1) Undergoing a safety and health hazard survey of the work place, including an evaluation of the employer's safety and health program and on-site interviews with employees by the OSHA section.

(2) Correction of all hazards identified during the on-site visit within a reasonable time.

(3) Establishing an occupational safety and health program approved by the OSHA section and implementing program provisions within a reasonable time.

C. Determination of attendance at an authorized cost containment meeting and satisfactory implementation of the program shall be the responsibility of the OSHA section. Upon attendance at an authorized cost containment meeting and successful participation in the program, an employer shall be issued a certificate by the OSHA section which shall be the basis of qualification for the reduction provided for in

Subsection B of this Section. The certificate shall qualify the employer for this reduction for a one-year period. Eligible employers shall be allowed to requalify for this reduction only once every four years from the date the certificate is issued.

## § 1180. Evaluation

A. The Workers' Compensation Advisory Council shall evaluate the quality of the cost containment meeting prior to its initial implementation and thereafter annually reevaluate the program.

B. The office shall prepare and submit a status report on the progress of the program to the House Committee on Labor and Industrial Relations, the Senate Committee on Labor and Industrial Relations, and the Workers' Compensation Advisory Council.

C. All annual reports and presentations provided for in this Section shall be due at least sixty days before the Regular Session of the Legislature each year.

## § 1181. Insured experience information

A. Every insurance company, individual self-insurer, group self-insurer association, or similar entity which provides workers' compensation insurance coverage or which provides for payment of workers' compensation benefits under the provisions of this Chapter shall maintain a record of the loss and expense statistics for each insured and such other data as may be required by the commissioner of insurance.

B. Each insurer shall forward a copy of the loss and expense statistics for each insured and such other statistical data as may be required by the commissioner of insurance to a national rating or statistical compilation organization which is authorized by the commissioner of insurance to provide such information to insurers in this state when any one of the following conditions occurs:

(1) Termination of a policy of workers' compensation insurance or other workers' compensation coverage or benefits by an insurance company, an individual self-insurer, a group self-insurer association, or other similar entity which provides workers' compensation insurance coverage or benefits.

(2) Financial insolvency of an insurer, self-insurer, or other entity which provides workers' compensation coverage or benefits.

(3) Discontinuance of workers' compensation benefits to an insured.

(4) Any change by the insured to another insurer, self-insurer, or other entity providing workers' compensation coverage or benefits.

## § 1191. Definitions

Effective: June 14, 2008

For the purposes of this Subpart, the following terms have the following meaning:

(1) "Department" means the Louisiana Department of Insurance.

(2) "Public entities" means political subdivisions as defined in Section 44 of Article VI of the Constitution of Louisiana. However, "public entities" does not include hospital service districts and health care facilities established by local governing authorities.

## § 1195. Authorization; trade or professional association; initial financial requirements

Effective: August 15, 2010

A. (1) Any five or more Louisiana employers who are not public entities, each of whom has a positive net worth, is financially solvent, and is capable of assuming the obligations set forth under this Chapter, and who are all members of the same bona fide trade or professional association may agree to pool their liabilities to their employees on account of personal injury and occupational disease arising out of or incurred during the course and scope of the employment relationship. This arrangement shall not be an insurer, shall not be deemed to be insurance and shall not be subject to the Louisiana Insurance Code. The member employers of the arrangement likewise shall not be insurers or be subject to the Louisiana Insurance Code.

(2) An agreement to pool liabilities under this Chapter shall be set forth in an indemnity agreement signed by the employer and fund representative acknowledging and agreeing to the assumption of the liabilities as set forth in this Subpart.

(3) The arrangement shall not be a member insured of the Louisiana Insurance Guaranty Association, nor shall the Louisiana Insurance Guaranty Association be liable under any circumstances for any claims, or increments of any claims, made against the arrangement.

(4) The arrangement may include the establishment of a trust fund by a trade or professional association for its members, and the arrangement, whether established by association members or by an association, shall be known as a group self-insurance fund for workers' compensation and shall be governed by a board of trustees.

(5) (a) The arrangement shall be domiciled in the state of Louisiana. All books, records, documents, accounts, and vouchers shall be kept in such a manner that the arrangement's financial condition, affairs, and operations can be ascertained and so that its financial statements filed with the commissioner of insurance can be readily verified and its compliance with the law determined. Any or all books, records, documents, original indemnity agreements, accounts, and vouchers may be photographed or reproduced on film. Any photographs, microphotographs, optical imaging, or film reproductions of any original books, records, documents, original indemnity agreements, accounts, and vouchers shall for all purposes, including but not limited to admission into evidence in any court or adjudicatory proceeding, be considered the same as the originals thereof, and a transcript, exemplification, or certified copy of any such photograph, microphotograph, optical imaging, or film reproduction shall for all purposes be deemed to be a transcript, exemplification, or certified original. Any original so reproduced may thereafter be disposed of or destroyed, as provided for in Subparagraph (b) of this Paragraph, if provision is made for preserving and examining the reproduction.

(b) Except as otherwise provided in Subparagraph (a) of this Paragraph, original books, records, documents, accounts, and vouchers, or such repro-

ductions thereof, shall be preserved and kept in this state for the purpose of examination and until the authority to destroy or otherwise dispose of the records is secured from the commissioner of insurance. All original records, or certified reproductions thereof, shall be maintained for the period commencing on the first day following the last period examined by the commissioner of insurance through the subsequent examination period, or three years, whichever is greater, except that any original, or certified reproduction thereof, whereby the member agrees to or acknowledges such member's in solido liability for liabilities of fund shall be permanently maintained.

(6) At all times throughout the existence of the fund, two or more members of the arrangement shall maintain a minimum combined net worth of one million dollars and a ratio of current assets to current liabilities of at least one-to-one.

(7) Notwithstanding the provisions of this Subsection, employers who have pooled their liabilities under Subparagraph (1)(a) of this Subsection may also pool their liabilities under the United States Longshore and Harbor Worker's Compensation Act, when the liability is clearly identified with the course and scope of employment of the employee of the member employer under this Chapter and their fund has been authorized by the United States Department of Labor to insure payment of such compensation.

B. For the purposes of this Subpart, a "bona fide trade or professional association" means an active trade or professional association which:

(1) Meets either of the following criteria:

(a) Is a tax exempt organization approved by the Internal Revenue Service under the provisions of 26 United States Code Section 501.

(b) Is a nonprofit corporation organized under Chapter 2 of Title 12 of the Louisiana Revised Statutes.

(2) Provides services to its membership so that the primary function of the trade or professional association is not the sponsorship, operation, or management of a fund, or related employee safety program, or other related activities. The association shall for a period of five years prior to the date of application do all of the following:

(a) Hold regular meetings of the board on no less than an annual basis.

(b) Produce a newsletter, on no less than an annual basis, which is mailed, via United States mail or sent by electronic mail, to each member.

(3) Is either:

(a) Chartered and domiciled in the state of Louisiana and has been in existence for a period of five years or more.

(b) Chartered and domiciled in the state of Louisiana and whose members, prior to April 15, 1991, organized and placed in operation a fund.

C. Each fund shall submit to the Department of Insurance an application for authority to act as a group self-insurance fund for workers' compensation, including evidence of the fund's inception, which establishes financial strength and liquidity of the members to pay compensation claims promptly and support the financial ability of the fund to satisfy its obligations upon the establishment of the fund, including:

(1) Financial statements, dated not less than one year prior to the application, audited by an independent certified public accountant, of at least two members, showing at the inception of the fund a combined worth of those members of not less than the amount required by Subsection A of this Section.

(2) Current financial statements of all other members dated not less than one year prior to the application.

(3) Schedules of the entire membership showing:

(a) The ratio of current assets to current liabilities of all members combined to be greater than one-to-one.

(b) The working capital of all members combined to be of an amount establishing financial strength and liquidity of the members to pay compensation claims promptly.

(c) The net worth of all members combined to be not less than the amount required by Subsection A of this Section.

(4) Other financial information and documents as required by the department.

(5) Such application shall be in writing on a form provided by the department, and shall contain the following information:

(a) Applications shall be submitted to the department at least ninety days prior to the effective date of the establishment of a fund. Any application submitted with less than ninety days remaining before the desired effective date, or which does not contain answers to all questions, or which is not sworn to and subscribed before a notary public, or which does not contain all required documents, statements, reports, and required information, may be returned without review by the department.

(b) All applications shall be accompanied by the following items:

(i) The properly completed indemnity agreement in a form acceptable to the department pursuant to Paragraph A(2) of this Section.

(ii) Security as required by this Subpart.

(iii) Copies of acceptable excess insurance or reinsurance, as required by this Subpart. All excess insurance or reinsurance must be approved by the department prior to use.

(iv) A bond covering each third party administrator as provided by this Subpart. Funds which employ their own administrator shall be required to purchase a bond, errors and omission insurance, directors and officers insurance, or other security approved by the department for the administration of the fund.

(v) A certification from a designated depository attesting to the amount of monies on hand.

(vi) Copies of fund bylaws and trust agreement or other governance documents.

(vii) Individual application of each member of the fund applying for membership in the fund on the effective date of the fund, and copies of their executed indemnity agreements.

(viii) Evidence of financial strength and liquidity of the members dated as of the date of the filing of the application to satisfy the financial strength and liquidity requirements of this Chapter.

(ix) Proof that the fund shall have the minimum annual earned normal premium required by this Subpart.

(x) The current annual report or financial statement of any casualty insurance company providing excess or reinsurance coverage for the fund meeting the requirements of this Subpart if such statement is not already on file with the department.

(xi) The name, address, and telephone number of the attorney representing the fund; the name, address, and telephone number of the qualified actuary for the fund; and the name, address, and telephone number of the certified public accountant who will be auditing the annual financial statements of the fund, as well as evidence of appointment of each by the fund.

(xii) The domicile address in this state where the books and records of the fund will be maintained, and the state from which the fund will be administered.

(xiii) Proof of advance payment to the fund by each initial member of the fund of not less than twenty-five percent of that member's first year estimated annual earned normal premium.

(xiv) A feasibility study, or other analysis, prepared by a qualified actuary utilizing actual loss history of the initial members of the fund.

(xv) Pro forma financial statements projecting the first three years of operations of the fund based upon a feasibility study or other analysis prepared by a qualified actuary. Such pro forma financial statements shall include a pro forma balance sheet, income statement, and statement of cash flow. Each shall be prepared in accordance with generally accepted accounting principles.

(xvi) A copy of the fund's premium billing policy indicating whether the premium payments to the fund will be paid by members annually, monthly, quarterly, or any combination thereof.

D. Repealed by Acts 2007, No. 384, § 2.

## § 1196. Requirements; excess insurance; administrative and service companies; status; liability; refunds

Effective: January 1, 2009

A. Each fund established pursuant to R.S. 23:1195 shall:

(1) File rates in accordance with R.S. 23:1199 and maintain at least five hundred thousand dollars in earned premium in the first fund year. For the second and each subsequent year, the fund shall maintain at least two million dollars in earned premium. These amounts maintained shall be documented on the fund's audited financial statement prepared in accordance with generally accepted accounting principles.

(2) (a) Conduct a premium audit annually and within four months from the termination of any employer's participation in the fund, to be conducted by either an independent payroll audit firm or by the fund.

(b) If requested, each employer shall submit a copy of state and federal reports of employee income on each employee at the end of each quarter to the fund.

(c) (i) Employers shall make available to the payroll auditor all records necessary for the payroll verification audit, including but not limited to payroll records, accounting records, certificates of insurance maintained by subcontractors, and duties of employees, and permit the payroll auditor to make a physical inspection of the employer's operation.

(ii) If the employer fails to make such records available on the date and time of an audit requested and scheduled by the payroll auditor, and the payroll auditor cannot complete the audit as a result, the fund may charge the employer to pay five hundred dollars to the fund to defray the costs of the audit together with reasonable attorney fees incurred by the fund in collection thereof.

(iii) If, within thirty days from written request of the payroll auditor, the employer fails to provide reasonable access to such records, refuses to allow a physical inspection of the employer's operation, or otherwise fails to cooperate with the audit, the fund may charge the employer to pay a premium of up to two times the most recent estimated annual premium together with reasonable attorney fees incurred by the fund in obtaining compliance with the required audit or in collecting such premium.

(d) If an employer intentionally understates or conceals payroll, or intentionally misrepresents or conceals employee duties so as to avoid proper classification for premium calculations, the fund may charge the employer to pay the fund an additional premium of up to five times the amount of the difference in premium paid and the amount the employer should have paid together with reasonable attorney fees incurred by the fund in collecting such premium.

(e) A fund may institute a civil action to enforce the obligations of the employer and collect the amount specified in Subparagraphs (b), (c), and (d) of this Paragraph. The fund shall be entitled to proceed by use of summary proceedings. The penalties provided for herein shall not be assessed unless the potential penalty and the method of imposition are disclosed in the written request to the employer required by this Subparagraph.

(3) (a) During the first fund year, deposit with the department a safekeeping or trust receipt from a bank doing business in this state or from a savings and loan association chartered to do business in the state indicating that the fund has deposited and has pledged one hundred thousand dollars in money or bonds of the United States, the state of Louisiana, or any political subdivision thereof, of the par value of one hundred thousand dollars or post a surety bond issued by a corporate surety authorized to do business

within the state, in the amount of one hundred thousand dollars, to secure the obligations of the fund under this Chapter.

(b) During the second and subsequent fund years, deposit with the department a safekeeping or trust receipt from a bank doing business in this state or from a savings and loan association chartered to do business in this state indicating that the fund has deposited and has pledged two hundred fifty thousand dollars in money or bonds of the United States, the state of Louisiana, or any political subdivision thereof, of the par value of two hundred fifty thousand dollars or post a surety bond issued by a corporate surety authorized to do business within the state, in the amount of two hundred fifty thousand dollars, to secure the obligations of the fund under this Chapter.

(4) Provide statutory workers' compensation benefits.

(5) Maintain at all times, on a fund-year basis, a contract or contracts of specific excess insurance or reinsurance of not less than two million dollars per occurrence and aggregate excess insurance or reinsurance of not less than two million dollars. The maximum retention under the excess insurance or reinsurance contracts shall not exceed amounts as may be provided by the department by regulation. Solely for the purposes of authorizing the purchase of reinsurance permitted under this Subsection, each fund shall be deemed an insurer. Such excess insurance or reinsurance shall only be purchased from companies having a minimum rating of A- by A.M. Best Company, A- by Fitch Ratings, A by Weiss Ratings, A- by Standard & Poor's, or A3 by Moody's Investors Services, or better, and such reinsurance may be purchased from admitted or nonadmitted companies, provided that the provisions of R.S. 22:651 through 661, and Financial Accounting Standard Number 113 as promulgated and updated by the Financial Accounting Standards Board, shall apply to all such reinsurance. All excess insurance policies or reinsurance agreements must be approved by the department prior to use.

(6) (a) Not permit advance premium discounts to any member in excess of fifteen percent of the gross premium of the member, calculated in accordance with the applicable manual premium rate or rates approved by the department, plus or minus applicable National Council on Compensation Insurance or Insurance Data Resources Statistical Services, Inc. experience modifiers or other experience modifiers approved by the department. A fund which has been in existence for more than three years shall be permitted to establish a schedule rating plan which is subject to approval by the department.

(b) In addition to the maximum discount allowed under Subparagraph (a) of this Paragraph, the fund may utilize a maximum debit of twenty-five percent or a maximum credit of twenty-five percent of premium per member per fund year if the fund shows to the satisfaction of the department that the premium amount, after the application of the allowable twenty-five percent scheduled rating debits or credits for all members on an annualized basis, is not less than ninety percent of the premium amount after the application of the allowable fifteen percent discount, but before the application of the allowable twenty-five percent scheduled rating debits or credits. Plans

based on the following enumerated factors may utilize scheduled debits or credits as follows:

Underwriting Issues Maximum Credit to Debit

(i) Premises and operation -10% to 10%

(ii) Classifications, hazards, exposure -10% to 10%

(iii) Medical facilities -5% to 5%

(iv) Safety devices; safety procedures -5% to 5%

(v) Employees-selection, training supervision, turnover -10% to 10%

(vi) Management-cooperation with insurance carrier -5% to 5%

(vii) Loss history, loss ratio, large loss experience -10% to 10%

(viii) Experience modifier -5% to 5%

(7) Timely file and report employer loss experience to the National Council on Compensation Insurance in accordance with its procedures or as otherwise approved by the department.

(8) File with the department financial statements and reports, including financial statements audited by an independent certified public accountant, and actuarial reports, as may be required by the department through duly promulgated regulations.

B. For any casualty insurance company to be eligible to write excess coverage for the fund, the company shall at all times have on file with the department its current financial statement showing assets, including surplus to policyholders, at least equal to the current requirements by the department for admission of a new company to do business in the state. Contracts or policies for excess insurance coverage written by active underwriters of Lloyd's of London may also be acceptable.

C. Any fund administrator contracted by the fund and whose acts are not covered by the fund's bond, errors and omissions insurance, directors and officers insurance, or other security approved by the department, and any person, which shall include individuals, partnerships, corporations, and all other entities contracting, either directly or indirectly with a fund, to provide claims adjusting, underwriting, safety engineering, loss control, marketing, investment advisory, or administrative services to the fund or its membership, other than bookkeeping, or auditing, or claims investigation services to a fund shall:

(1) Post with the department a surety bond issued by a corporate surety authorized to do business in the state of not less than fifty thousand dollars or deposit with the department a safekeeping or trust receipt from a bank doing business in this state or from a savings and loan association chartered to do business in the state indicating that the person has deposited fifty thousand dollars in money or bonds of the United States, the state of Louisiana, or any political subdivision thereof, of the par value of fifty thousand dollars, to secure the performance of its obligations under the contract and under this Chapter.

(2) Place all terms, agreements, fee arrangements, and any other conditions in a written agreement, which shall constitute the entire agreement between the parties, signed by the person and the fund.

D. Any funds under this Subpart shall not be considered a partnership under the laws of the state.

E. The provisions of this Subpart shall not be construed to reduce or limit the rights or obligations of a member with respect to the employees of the member under the other provisions of this Chapter.

F. A fund member shall be liable in solido for liabilities of the fund incurred by the fund after the inception of the fund year in which the employer becomes a member of the fund.

G. Any monies in excess of the amount necessary to fund all obligations of the fund may be declared as refundable to the members of the fund by the board of trustees. The board of trustees shall be authorized to distribute the refund at their discretion, in accordance with the agreement establishing the fund and the following limitations:

(1) The amount of the distribution shall not exceed the member distributions payable recorded on the balance sheet as indicated by the most recently completed audited financial statements of the fund.

(2) No later than ten days after the payment of a distribution, the fund shall provide written notification to the department.

H. Repealed by Acts 2007, No. 384, § 2.

I. Any funds which are not guaranteed by a guaranty fund shall give written notice of the lack of a guaranty to the department and the members of the fund.

## § 1196.1. Investments

A. No security or other investment shall be eligible for purchase or acquisition by a fund unless it is interest-bearing or interest-accruing or dividend- or income-paying, is not then in default in any respect, and the fund is entitled to receive for its exclusive account and benefit the interest or income accruing thereon.

B. Amounts not needed for current obligations may be invested by the board of trustees as provided in this Section, and not otherwise, in any or all of the following:

(1) Deposits in federally insured banks or savings and loan associations when:

(a) Such deposits are insured by the Federal Deposit Insurance Corporation; or

(b) Such deposits are collateralized by direct obligations of the United States government.

(2) Bonds or securities not in default as to principal or interest, which are obligations of the United States government or of any agency of the United States government, without limitation.

(3) Pass-through mortgage-backed securities and collateralized mortgage obligations issued by the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal Housing Administration, without limitation, provided that such collateralized mortgage obligations have a minimum rating of “A” by Moody’s, Standard & Poor’s, or Fitch.

(4) Obligations of the state of Louisiana or its subdivisions having a minimum rating of “A” by Moody’s, Standard & Poor’s, or Fitch. No more than five percent of the fund’s assets may be invested in any one issue.

(5) Repurchase agreements, without limitation, when the collateral for the agreement is a direct obligation of the United States government, provided that the repurchase agreement shall:

(a) Be in writing.

(b) Have a specific maturity date.

(c) Adequately identify each security to which the agreement applies.

(d) State that in the event of default by the party agreeing to repurchase the securities described in the agreement at the term contained in the agreement, title to the described securities shall pass immediately to the fund without recourse.

(6) Corporate bonds, subject to the following limitations:

(a) The bonds must have a minimum rating of "A" by Moody's, Standard & Poor's, or Fitch.

(b) Except as provided in Subparagraph (6)(d), not more than five percent of a fund's assets may be invested in corporate bonds of any one issue or issuer.

(c) Except as provided in Subparagraph (6)(d), not more than fifty percent of a fund's assets may be invested in corporate bonds of all types.

(d) The five percent and fifty percent limitations specified in Subparagraphs (6)(b) and (c), respectively, may be exceeded up to an additional ten percent of a fund's assets in the event, and only in the event, of financial circumstances acceptable to the Department of Insurance, such as an increase in market value after initial purchase of a corporate bond, provided that:

(i) The initial purchase of corporate bonds was within the limitations specified in Subparagraphs (6)(b) and (c); and

(ii) For the purpose of determining the financial condition of a fund, the Louisiana Department of Insurance will not include as assets of a fund corporate bonds which exceed fifty percent of a fund's total assets.

C. A fund may not invest in rental assets, which for the purposes of this Section, shall include but not be limited to the following:

(1) Any item carried as an asset on the fund's balance sheet which is not, in fact, actually owned by the fund.

(2) Any item carried as an asset on the fund's balance sheet, the ownership of which is subject to resolution, rescission, or revocation upon the fund's insolvency, receivership, bankruptcy, statutory supervision, rehabilitation, liquidation, or upon the occurrence of any other contingency.

(3) Any item carried as an asset on the fund's balance sheet for which the fund pays a regular or periodic fee for the right to carry such items as an asset, whether or not such fee is characterized as a rental, a management fee, or a dividend not previously approved by the department, or other periodic payment for such right. This provision is not intended to apply to leases capitalized under generally accepted accounting principles.

(4) Any asset purchased for investment by the fund on credit whereby the interest rate paid by the fund on its credit instrument is greater than the interest rate or yield generated by the purchased asset.

(5) Any item carried by the fund as an asset on its balance sheet which is subject to a mortgage, lien, privilege, preference, pledge, charge, or other encumbrance which is not accurately reflected in the liability section of the fund's balance sheet.

(6) Any asset received by the fund as a contribution to capital or surplus from any person, which meets any of the criteria set forth in Paragraphs (1) through (5) while in the hands of such contributing person, or at the moment of such contribution to capital, or thereafter.

## § 1197. Authority of Department of Insurance

Effective: August 15, 2010

A. No fund shall become operative until issued a certificate of authority by the department.

B. The certificate of authority shall be continuous until revoked or suspended by the department, or until it is voluntarily surrendered by the fund.

C. (1) The department shall have the authority to examine the affairs, books, transactions, workpapers, files, accounts, records, assets, and liabilities of a fund to determine compliance with this Subpart and with any rules and regulations promulgated by the department or orders and directives issued by the commissioner. In addition, to the extent necessary and material to the examination of a fund, the department shall have the authority to examine the affairs, books, transactions, workpapers, files, accounts, and records of any fund's administrator, service company, certified public accountant, and actuary generated in the course of transacting business on behalf of the group self-insured fund being examined. All examinations shall be conducted in accordance with provisions of this Subpart. The reasonable expenses of the examinations shall be paid by the fund being examined.

(2) Upon the request of the commissioner of insurance, each group self-insurance fund established pursuant to this Subpart shall cause a rate review to be conducted by a national independent actuarial firm, provided that the commissioner shall not make more than two requests in any calendar year for a rate review under the provisions of this Subsection. Such firm shall report its findings to the commissioner of insurance.

(3) All work papers, recorded information, documents, information, and copies thereof produced by, obtained by, or disclosed to the commissioner or any other person, pursuant to the authority of the commissioner under this Subpart, shall be given confidential treatment and shall not be subject to subpoena and may not be made a part of the response to any public records request, except in the following circumstances:

(a) Information has been provided pursuant to R.S. 23:1200.6(C) or R.S. 23:1200.7(I).

(b) Documents are audited financial statements which have been filed with the Department of Insurance.

D. The department shall have authority to issue cease and desist orders and suspend or revoke the certificate of authority of any fund which the department determines is not in compliance with this Subpart or with any rules and regulations issued by the department or orders and directives issued by the commissioner.

E. Upon the determination that a fund failed to comply with the provisions of this Subpart, any rules and regulations promulgated by the department or orders and directives issued by the commissioner, the department may levy a fine not to exceed two thousand dollars for each violation.

F. The department shall conduct a hearing in accordance with the provisions of this Subpart:

(1) Within sixty days of the revocation or suspension by the department of a certificate of authority held by a fund; or

(2) When requested by written demand by a fund aggrieved by any action of the department, if submitted to the department within thirty days after receipt of notice of the action by the department.

G. Nothing in this Section shall prohibit the legislative auditor from reviewing records and conducting an audit in accordance with R.S. 24:513.

## § 1198. Licensing of agents; claims against insurance agents

A. Any person soliciting membership for a fund shall be licensed by the department as a property and casualty agent. No employees of a bona fide trade or professional association which has established a fund or employees of a fund shall be required to be so licensed if the solicitation of membership for the fund is not the primary duty of the employees.

B. No action shall lie against an insurance agent, insurance broker, or other person involved in the marketing, selling, or solicitation of participation in funds authorized by this Subpart for any claims arising out of the insolvency of any fund or the inability of a fund to pay claims as the claims become due unless and until any claimant shall have first exhausted all remedies available to him against the members of the fund as provided by R.S. 23:1196.

## § 1199. Rates

Each fund shall file rates on an actuarially justified class code basis with the department and may use the rates ninety days after filing, unless the department disapproves the use of rates within the ninety-day period.

## § 1200. Review of rate determination

Effective: August 15, 2010

Any fund shall provide a reasonable procedure for any member aggrieved by the fund to request in written form a review of the application of the rating system for the coverage afforded by the fund. The fund shall have thirty days from receipt to grant or deny the request in written form. If the fund rejects the request or fails to grant or reject the request within the thirty-day period, the member may, within thirty days of the expiration of the thirty-day period, appeal to the department for a hearing. The hearing before the department

shall be conducted in accordance with the provisions of this Subpart, and the department, after the hearing, may affirm, modify, or reverse the action taken by the fund.

## § 1200.1. Rules and regulations

The department may issue rules and regulations which establish the duties of a board of trustees, set forth the standards and authority of the department under which funds may be deemed to be in hazardous financial condition, prohibit potential conflicts of interest, and otherwise provide for the implementation and administration of the provisions of this Subpart.

## § 1200.2. Prohibited activities and sanctions; duties of group self-insurance funds and others; civil immunity; definitions

A. Any person who, with the intent to injure, defraud, or deceive any group self-insurance fund, or any member employer, or other party in interest, or any third party claimant:

(1) Presents or causes to be presented any written or oral statement including computer-generated documents as part of or in support of or denial of a claim for payment or other benefit pursuant to a coverage agreement, knowing that such statement contains any false, incomplete, or fraudulent information concerning any fact or thing material to such claim; or

(2) Assists, abets, solicits, or conspires with another to prepare or make any written or oral statement that is intended to be presented to any group self-insurance fund, member employer, or other party in interest or third party claimant in connection with, or in support of or denial, or any claim for payment of other benefit pursuant to a coverage agreement, knowing that such statement contains any false, incomplete, or fraudulent information concerning any fact or thing material to such claim;

is guilty of a felony and shall be subjected to a term of imprisonment, with or without hard labor, not to exceed five years, or a fine not to exceed five thousand dollars, or both, on each count.

B. Any person, group self-insurance fund, or other legal entity subject to this Subpart who believes that a fraudulent claim is being made, shall within sixty days of the receipt of such notice, send to the section of insurance fraud of the Department of Insurance, on a form prescribed by the section, the information requested and such additional information relative to the claim and the parties claiming loss or damages because of an occurrence and/or accident as the section may require. The section of insurance fraud shall review such reports and select such claims as, in its judgment, may require further investigation. It shall then cause an independent examination of the facts surrounding such claim to be made to determine the extent, if any, to which fraud, deceit, or intentional misrepresentation of any kind exists in the submission of the claim. The section of insurance fraud shall report any alleged violations of law which its investigations disclose to the appropriate licensing agency and prosecutive authority having jurisdiction with respect to any such violation.

C. (1) No group self-insurance fund, its employees, agents, or any other person acting without malice, fraudulent intent, or bad faith, shall be subject to civil liability for libel, slander, or any other relevant tort, and no civil cause of action

of any nature shall exist against such person or entity by virtue of the filing of reports or furnishing other information, either orally or in writing, concerning suspected, anticipated, or completed fraudulent insurance acts when such reports or information are required by this Subpart or required by the section of insurance fraud as a result of the authority herein granted or when such reports or information are provided to or received from:

(a) Law enforcement officials, their agents, and employees.

(b) The National Association of Insurance Commissioners, the state Department of Insurance, a federal or state agency or bureau established to detect and prevent fraudulent insurance acts, as well as any other organization established for the same purpose, their agents, employees, or designees.

(2) The immunity herein granted does not abrogate or modify in any way any statutory or other privilege or immunity otherwise enjoyed by such person or entity.

(3) Any person or entity covered by the provisions of this Section shall be entitled to an award of attorney fees and costs if they are the prevailing party in a civil suit and the party bringing the action was not substantially justified in doing so. For the purposes of this Subsection, a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time it was initiated.

D. As used in this Subpart the following terms shall have the meanings indicated herein:

(1) "Fraudulent insurance act" shall include but not be limited to acts or omissions committed by any person who, knowingly and with intent to defraud:

(a) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, reinsurer, purported insurer or reinsurer, broker, group self-insurance fund, or any agent thereof, any oral or written statement which he knows to contain materially false information as part of, or in support of, or denial of, or concerning any fact material to or conceals any information concerning any fact material to the following:

(i) An application for the issuance of any insurance policy or coverage agreement.

(ii) The rating of any insurance policy or coverage agreement.

(iii) A claim for payment or benefit pursuant to any insurance policy or coverage agreement.

(iv) Premiums paid on any insurance policy or coverage agreement.

(v) Payments made in accordance with the terms of any insurance policy or coverage agreement.

(vi) The financial condition of any insurer, reinsurer, purported insurer or reinsurer.

(vii) The acquisition of any insurer or reinsurer.

(b) Solicits or accepts new or renewal group self-insurance risks by or for an insolvent group self-insurance fund.

(c) Removes or attempts to remove the assets or record of assets, transactions, and affairs of such material part thereof, from the home office or other

place of business of the group self-insurance fund, or from the place of safekeeping of the group self-insurance fund or who conceals or attempts to conceal the same from the department.

(d) Diverts, attempts to divert, or conspires to divert funds of a group self-insurance fund, in connection with:

(i) The transaction of group self-insurance.

(ii) The conduct of business activities by a group self-insurance fund.

(iii) The formation, acquisition, or dissolution of a group self-insurance fund.

(e) Supplies false or fraudulent material or information pertaining to any document or statement required by the Department of Insurance.

(2) "Statement" includes but is not limited to any notice, statement, proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or doctor records, test results, X-rays, or other evidence of loss, injury, or expense.

## § 1200.3. Exclusive use of expirations

A. (1) Except as otherwise provided herein, for purposes of soliciting, selling, or negotiating the renewal or sale of group self-insurance coverage, products, or insurance services, an insurance agent or insurance broker shall have the exclusive use of expirations, records, or other written or electronic information directly related to a group self-insurance application submitted by or a group self-insurance policy written through an insurance agent or insurance broker. No group self-insurance fund shall use expirations, records, or other written or electronic information to solicit, sell, or negotiate the renewal or sale of insurance coverage, insurance products, or insurance services to the insured, either directly or by providing such information to others without the express written consent of the insurance agent or insurance broker.

(2) Such expirations, records, or other written or electronic information may be used to review a group self-insurance application, issue a policy, or for any other purpose necessary for placing such business through the insurance agent or insurance broker. Such expirations, records, or other written or electronic information may also be used for any other purpose which does not involve the soliciting, selling, or negotiating the renewal or sale of group self-insurance coverage, products, or services.

B. This Section shall not apply:

(1) When the insured requests, individually or through another agent, that the group self-insurance company renew the policy or write other insurance business.

(2) When the insurance agent has, by contract, agreed to act exclusively for one company or group of affiliated companies, in which case the rights of the agent shall be determined by the terms of the agent's contract with that company or affiliated group.

(3) When the insurance agent or insurance broker is in default for nonpayment of premiums under the insurance agent's or insurance broker's contract or other

agreement with the group self-insurer, unless there is a legitimate dispute as to monies owed.

(4) When the agency contract is terminated and the insurance company is required by law to continue coverage for the insured; however, in that event, the insurance company shall continue to pay the insurance agent or the insurance broker commissions on such policies that the company is required to renew during the thirty-six-month period following the effective date of the termination or three years, whichever is sooner. The commission shall be at the insurer's prevailing commission rates in effect on the date of renewal for that class or line of business in effect on the date of renewal for brokers or agents whose contracts are not terminated.

C. The insurance agent or insurance broker and insurer may in a written agreement, separate from the agency contract, mutually agree to terms different from the provisions set forth in this Section. The terms of any such agreement shall be negotiated in good faith between the parties.

D. (1) The commissioner of insurance may adopt rules, in accordance with the Administrative Procedure Act, to enforce the provisions of this Section, and any violation of this Section or the rules adopted thereunder shall be subject to regulation by the commissioner of insurance under R.S. 23:1197.

(2) In addition the insurance agent or insurance broker shall have a right to a claim for lost commissions. Such claim shall be resolved in accordance with the dispute resolution terms in the applicable contract or agreement. In the absence of any dispute resolution term, the parties shall attempt to resolve their dispute through mediation. If the claim is not resolved through mediation, the claim may be resolved through binding arbitration if the parties agree. In the absence of an agreement to resolve the claim through binding arbitration, the agent or broker may maintain an action for lost commissions.

(3) Except as provided in this Section, nothing in this Section shall be interpreted as impairing any rights in law or contract currently enjoyed by any party.

## § 1200.4. Consecutive net losses

Effective: August 15, 2007

A fund with three years of consecutive net losses on the audited financial statements of the fund, or two years of consecutive net losses on the audited financial statements of the fund in excess of five hundred thousand dollars or five percent of the premium of the latest audited financial statement, whichever is greater, shall:

(1) Attend a meeting between the department, the administrator of the fund, any third party administrator contracted or performing services to the fund, and the fund's board of trustees to discuss the financial condition of the fund, and to advise the department the course of action the fund will take to obtain net incomes on subsequent audited financial statements.

(2) File with the department a written and signed plan from the fund's board of trustees describing the actions the fund will take to generate net incomes on subsequent audited financial statements.

(3) Obtain an actuarial rate analysis if an actuarial rate analysis was not performed for the previous fund year.

## § 1200.5. Insolvencies

Effective: August 15, 2007

A. In the event a fund is insolvent, then in addition to any other provision of law or regulation, the department shall require that the fund file in writing within sixty days a plan signed by the board of trustees. For purposes of this Subpart, an insolvency shall be defined as the condition existing when the fund's liabilities before member distribution payable or dividend payable are greater than the fund's assets determined in accordance with generally accepted accounting principles as delineated in the fund's financial statement audited by an independent certified public accountant. For the purpose of determining insolvency, assets will not include intangible property, such as patents, trade names or goodwill. The plan submitted by the fund to eliminate the insolvency shall set forth in detail the means by which the fund intends to eliminate the insolvency which may include an assessment of the members of the fund. The fund shall also include the timetable for the implementation of the plan and requirements for reporting to the department. The department shall review the plan submitted by the fund and notify the fund of the plan's approval or disapproval within thirty days of the department's receipt of the plan.

B. Upon determination by the department that a plan submitted by the fund is disapproved or that a fund is not implementing a plan in accordance with the terms of the plan, it shall so notify the fund in writing of such determination.

C. Should a fund fail to file a plan to eliminate an insolvency as called for under this Section, or should the department notify a fund that such plan has been disapproved or that the fund is not implementing the plan according to the plan, the department shall have the following powers and authority in addition to any other powers and authority granted under law:

   (1) The department may order the fund to immediately levy an assessment upon its members, sufficient to eliminate the insolvency;

   (2) Should the fund fail or refuse to levy said assessment, the department may, in the name of the fund, levy such assessment upon the members of the fund sufficient to eliminate the insolvency.

## § 1200.6. Examination of group self-insurance fund for workers' compensation program

Effective: August 15, 2010

A. The commissioner of insurance shall make an examination, not less frequently than once every five years, of all group self-insurance funds established pursuant to this Subpart doing business in this state and at any other time when in the opinion of the commissioner it is necessary for such an examination to be made.

B. Upon determining that an examination should be conducted, the commissioner shall appoint one or more examiners to perform the examination and instruct them as to the scope of the examination. In conducting the examination, the examiner or examiners shall observe those guidelines and procedures as the commissioner may deem appropriate.

C. Nothing contained in this Part shall be construed to limit the commissioner's authority to use any final or preliminary examination report, any examiner or fund work papers

or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the commissioner may, in his sole discretion, deem appropriate.

D. Nothing contained in this Part shall be construed to limit the authority of the commissioner to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to the applicable laws of this state. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

## § 1200.7. Examination reports

Effective: August 15, 2010

A. All examination reports shall be comprised only of facts appearing upon the books, records, or other documents of the group self-insurance fund or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts.

B. Not later than sixty days following completion of the examination, the examiner in charge shall file with the Department of Insurance a verified written report of examination under oath. Upon receipt of the verified report, the Department of Insurance shall transmit the report to the fund examined, together with a notice, which shall afford the fund examined a reasonable opportunity, of not more than thirty days, to make a written submission or rebuttal with respect to any matters contained in the examination report.

C. Within thirty days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's work papers and enter an order for one of the following:

(1) Adopt the examination report as filed, or with modification or corrections. If the examination report reveals that the group self-insurance fund is operating in violation of any law, rule, regulation, or prior order or directive of the commissioner, the commissioner may order the fund to take any action the commissioner considers necessary and appropriate to cure such violation.

(2) Reject the examination report with direction to the examiners to reopen the examination for purposes of obtaining additional documentation, data, information, and testimony.

D. Within thirty days of rejection by the commissioner of an examination report in accordance with Paragraph (C)(2) of this Section, unless the commissioner extends such time for reasonable cause, the examiner in charge shall refile with the Department of Insurance a verified written report of examination, as may be modified or corrected, under oath. Upon receipt of the refiled verified report, the Department of Insurance shall transmit the refiled report to the fund examined, together with a notice similar to the notice provided for in Subsection B of this Section, except that the notice shall indicate that the report is a refiled report.

E. Within thirty days of the end of the period allowed for the receipt of written submissions or rebuttals, as provided for in Subsections B and D of this Section, the commissioner shall fully consider and review the refiled report, together with any written submissions

or rebuttals and any relevant portions of the work papers of the examiner and enter an order for one of the following:

(1) Adopt the examination report as refiled or with modification or corrections. If the refiled examination report reveals that the group self-insurance fund is operating in violation of any law, rule, regulation, or prior order or directive of the commissioner, the commissioner may order the fund to take any action the commissioner considers necessary and appropriate to cure such violations.

(2) Reject the examination report and order a hearing in accordance with the provisions of this Subpart, for purposes of obtaining additional documentation, data, information, and testimony.

F. All orders entered pursuant to Paragraph (C)(1) or (E)(1) of this Section shall be accompanied by findings and conclusions resulting from consideration by the commissioner and review of the examination report, relevant examiner work papers, and any written submissions or rebuttals. Any order shall be served upon the company by certified mail, together with a copy of the adopted examination report. Within thirty days of the issuance of the adopted report, the group self-insurance fund shall file affidavits executed by each of its trustees stating, under oath, that they have received a copy of the adopted report and related orders.

G. Within thirty days of receipt of notification of the order of the commissioner to the group self-insurance fund made pursuant to Subsection F of this Section, the fund may make written demand for a hearing in accordance with the provisions of this Subpart.

H. (1) The hearing provided for under Paragraph (E)(2) or Subsection G both of this Section shall be a confidential proceeding. At the conclusion of the hearing, the commissioner shall enter an order adopting the examination report as filed or refiled, or with modification or corrections, and may order the fund to take any action the commissioner considers necessary and appropriate to cure any violation of any law, regulation, or prior order of the commissioner.

(2) The commissioner shall issue such order within thirty days after the termination of a hearing and shall, subject to Subsection E of this Section, give a copy of the order to each person to whom notice of the hearing was given or required to be given.

I. (1) Upon the adoption of the examination report under either Paragraph (C)(1), or (E)(1), or Subsection H all of this Section, the commissioner shall continue to hold the content of the examination report as private and confidential information for a period not to exceed thirty consecutive days, except to the extent provided in R.S. 23:1200.6(C) and Subsection B of this Section. Thereafter, the commissioner may open the report for public inspection provided no court of competent jurisdiction has stayed its publication.

(2) Notwithstanding any provision to the contrary, nothing shall prevent, or be construed as prohibiting, the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the insurance department of this or any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time, provided such agency or office receiving the report or matters relating thereto agrees, in writing, to hold it confidential and in a manner consistent with this Subpart.

(3) If the commissioner determines that regulatory action is appropriate as a result of any examination, he may initiate any proceedings or actions as provided by law.

J. All work papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner, or any other person, in the course of an examination made under this Subpart, or pursuant to the authority of the commissioner under this Subpart, shall be given confidential treatment and are not subject to subpoena and may not be made public by the commissioner or any other person, except to the extent provided in R.S. 22:1200.6(C) and Subsection I of this Section. The parties shall agree, in writing prior to receiving the information, to provide to it the same confidential treatment as required by this Section, unless the prior written consent of the fund to which it pertains has been obtained.

K. (1) No examiner may be appointed by the commissioner if such examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person or entity subject to examination under this Subpart.

(2) Notwithstanding the requirements of this Section, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though said persons may from time to time be similarly employed or retained by persons subject to examination under this Subpart.

L. (1) No cause of action shall arise nor shall any liability be imposed against the commissioner, the authorized representatives of the commissioner, or any examiner appointed by the commissioner, for any statements made or conduct performed in good faith while carrying out the provisions of this Subpart.

(2) No cause of action shall arise, nor shall any liability be imposed, against any person for the act of communicating or delivering information or data to the commissioner, or the authorized representative of the commissioner, or examiner, pursuant to an examination made under this Subpart, if such act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.

M. (1) In addition to those examinations performed by the commissioner of insurance pursuant to R.S. 23:1200.6, the commissioner of insurance shall conduct financial reviews of all group self-insurance funds authorized to do business in this state. Such reviews shall include the audited financial statements of the group self-insurance fund rendered pursuant to good and acceptable accounting practices, results of prior examinations and office reviews, management changes, consumer complaints, and such other relevant information as from time to time may be required by the commissioner.

(2) Failure by a group self-insurance fund to supply information requested by the Department of Insurance during the course of a financial review shall subject the group self-insurance fund to revocation or suspension of its license or, in lieu thereof, a fine not to exceed ten thousand dollars per occurrence.

(3) All work papers, recorded information, documents and copies thereof produced by, obtained by, or disclosed to the commissioner, or any other person in the course of conducting a financial review shall be given confidential treatment and

are not subject to subpoena and may not be made public by the commissioner or any other person, except that any access may be granted to insurance departments of other states, international, federal or state law enforcement agencies or international, federal or state regulatory agencies with statutory oversight over the financial services industry, if the recipient agrees to maintain the confidentiality of those documents which are confidential under the laws of this state.

(4) In conducting financial reviews, the examiner or examiners shall observe those guidelines and procedures as the commissioner may deem appropriate.

(5) Nothing contained in this Part shall be construed to limit the commissioner's authority to use any final or preliminary analysis findings, any Department of Insurance or fund work papers or other documents, or any other information discovered or developed during the course of any analysis in the furtherance of any legal or regulatory action which the commissioner may, in his sole discretion, deem appropriate.

(6) Any group self-insurance fund against whom a fine has been levied shall be given ten days notice of such action. Upon receipt of this notice, this aggrieved party may apply for and shall be entitled to a hearing pursuant to this Subpart.

N. Nothing in this Section shall prohibit the legislative auditor from reviewing records and conducting an audit in accordance with R.S. 24:513.

## § 1200.8. Review and examination expense; how paid

Effective: August 15, 2010

A. Whenever the commissioner of insurance makes an examination or investigation pursuant to this Subpart, all expenses incurred by the commissioner of insurance in conducting such examination or investigation, including the expenses and fees of examiners, auditors, accountants, actuaries, attorneys, or clerical or other assistants who are employed by the commissioner of insurance to make the examination, shall be paid by the group self-insurance fund.

B. The commissioner of insurance may recover all expenses incurred from the examination or investigation of any person or entity acting as an administrator or third-party administrator in this state for any group self-insurance fund not authorized to transact business in this state.

## § 1200.9. Authority to employ examiners and other assistants

Effective: August 15, 2010

A. The commissioner of insurance shall employ such examiners, auditors, accountants, actuaries, attorneys, and clerical or other assistants as are necessary to conduct the examination and to compile and prepare a report thereon, and the compensation for such examination shall be fixed according to the time actually devoted to the work of conducting the examination and compiling the report thereon as now required by law. Such compensation shall always be reasonable and commensurate with the value of the services performed.

B. Upon completion of the examination of any group self-insurance fund or at stated periods during such examinations, the commissioner of insurance shall forward to the group self-insurance fund a statement showing the amount of expenses incurred in

such examination to the date of such statement. Whereupon, the group self-insurance fund shall pay the amount so shown to the commissioner of insurance. Upon receipt of such payment the commissioner of insurance shall deposit same in an account styled "commissioner of insurance, revolving fund account", and withdrawals from said account shall be made by the commissioner of insurance for the purpose of payment to examiners, auditors, accountants, actuaries, attorneys, and clerical or other assistants of their salaries and necessary expenses incurred in the conduction of such examination.

## § 1200.10. Group self-insurance fund's right to contest expense

Effective: August 15, 2010

If the group self-insurance fund deems the amount of expenses billed to it unreasonable or contrary to the provisions of this Subpart, it may within fifteen days after the receipt of such billing, file a rule in a court of competent jurisdiction upon the commissioner of insurance to test the reasonableness and legality under this Subpart of the amount of expenses billed to it by the commissioner of insurance which rule shall be tried by preference, and upon appeal, shall be given preference in the appellate court, as provided by the laws of this state for other state cases.

## § 1200.11. Failure to pay expenses; penalty

Effective: August 15, 2010

If any group self-insurance fund fails or refuses to pay the expenses of examination as billed by the commissioner of insurance after fifteen days upon receipt of such billing or after final judgment where a rule has been filed as provided in this Part, then the commissioner of insurance may revoke the certificate of authority of such group self-insurance fund to do business in this state until the full amount of the bill is paid.

## § 1200.12. Scope of examination

Effective: August 15, 2010

In conducting such an examination, the commissioner of insurance shall examine the affairs, transactions, accounts, records, documents and assets of each authorized group self-insurance fund. For the purpose of ascertaining its condition or compliance with this Subpart, the commissioner of insurance may as often as he deems advisable, examine the accounts, records, documents and transactions of (a) any insurance agent, solicitor or broker, but only insofar as such accounts, records, documents and transactions relate to group self-insurance funds, or of (b) any person having a contract under which he enjoys, in fact, the exclusive or dominant right to manage or control a group self-insurance fund.

## § 1200.13. Production of books and records

Effective: August 15, 2010

Every group self-insurance fund being examined, its officers, trustees, employees, administrators and representatives, shall produce and make freely accessible to the commissioner of insurance the accounts, records, documents and files in its possession or control relating to the subject of the examination, and shall otherwise facilitate the examination.

## § 1200.14. Power to examine under oath; subpoena witnesses

Effective: August 15, 2010

The commissioner of insurance may take depositions, subpoena witnesses or documentary evidence, administer oaths and examine under oath any individual relative to the affairs of any group self-insurance fund being examined. Any person who testifies falsely or makes any false affidavit during the course of such an examination shall be guilty of perjury.

## § 1200.15. Commissioner of insurance authorized to employ investigators

Effective: August 15, 2010

The commissioner of insurance shall have authority to employ investigators to investigate complaints received against group self-insurance funds authorized to do business in this state and against any unauthorized group self-insurance funds who are reported to be operating in this state.

## § 1200.16. Disclosure

Effective: August 15, 2010

A. It shall be unlawful for any person who is an officer, trustee, employee, administrator, agent, or representative of a group self-insurance fund; or any person, partnership, corporation, banking corporation, or any other legal entity which performs any service for a group self-insurance fund, or prepares any report, audit, financial statement or report for, or makes any representation on behalf of, for, or with regard to a group self-insurance fund, in connection with any hearing, investigation, or examination authorized by this Subpart, to act with the specific intent to do any of the following items:

(1) Represent falsely, directly or indirectly, to the Department of Insurance or any employee, trustee or administrator thereof, that an asset of such group self-insurance fund is unencumbered, or to misrepresent any other material fact pertaining to the status of any asset or liability of a group self-insurance fund.

(2) Materially misrepresent to the Department of Insurance, or any employee, trustee or administrator thereof, the value of any asset or the amount of any liability of such group self-insurance fund, or any affiliate, subsidiary, or holding fund associated therewith; provided that with regard to a material misrepresentation of the value of any asset or liability, any deviation from the actual value of such asset or liability which results from utilization of and compliance with generally accepted insurance accounting and reporting procedures shall not be deemed a violation of this Section.

(3) Fail to disclose to the Department of Insurance the existence of any liability of a group self-insurance fund, or affiliate, subsidiary, or holding company associated therewith when such disclosure is properly requested or required in writing by an examiner or administrator of the Department of Insurance.

(4) Materially misrepresent, withhold, deny access to, or otherwise preclude the obtainment of any information properly requested in writing and in accordance with provisions of law affecting dissemination or disclosure of information

by specific institutions by an examiner or administrator of the Department of Insurance, which is material and relevant to an examination properly conducted by the Department of Insurance and examiners and administrators of the Department of Insurance.

B. Whoever violates any provision of this Section, upon conviction, shall be fined not more than fifty thousand dollars, or imprisoned with or without hard labor for not more than five years, or both.

## § 1200.17. Departmental complaint directives; failure to comply; fines; hearing

Effective: August 15, 2010

A. Any person subject to the regulatory authority of this department who fails to comply with any directive issued by the commissioner in connection with a consumer complaint shall be fined an amount not to exceed two hundred fifty dollars for each occurrence.

B. Any person against whom a fine has been levied shall be given ten days notice of such action. Upon receipt of this notice, the person aggrieved may apply for and shall be entitled to a hearing conducted in accordance with the provisions of this Subpart.

## § 1201. Time and place of payment; failure to pay timely; failure to authorize; penalties and attorney fees

Effective: August 1, 2013

A. (1) Payments of compensation under this Chapter shall be paid as near as may be possible, at the same time and place as wages were payable to the employee before the accident; however, when the employee is not living at the place where the wages were paid, or is absent therefrom, such payments shall be made by mail, upon the employee giving to the employer a sufficient mailing address. However, a longer interval, not to exceed one month, may be substituted by agreement without approval of the director. An interval of more than one month must be approved by the director.

(2) Notwithstanding the requirement to make payments by mail in Paragraph (1) of this Subsection, electronic transfer of funds, including but not limited to direct deposit or use of a debit card, is an appropriate method of payment of compensation under this Chapter. Where a payor or insurer elects to issue debit cards and makes weekly payments by way of electronic funds transfers, an injured worker represented by an attorney may elect to have his weekly indemnity check deposited directly into his attorney's trust account. Where such an election is made, the payor or insurer shall provide notice by way of email only to the injured worker's attorney containing a list of all claims and amounts included in the direct deposit within forty-eight hours of the direct deposit.

B. The first installment of compensation payable for temporary total disability, permanent total disability, or death shall become due on the fourteenth day after the employer or insurer has knowledge of the injury or death, on which date all such compensation then due shall be paid.

C. Installment benefits payable pursuant to R.S. 23:1221(3) shall become due on the fourteenth day after the employer or insurer has knowledge of the compensable supplemental earnings benefits on which date all such compensation then due shall be paid.

D. Installment benefits payable pursuant to R.S. 23:1221(4) shall become due on the thirtieth day after the employer or insurer receives a medical report giving notice of the permanent partial disability on which date all such compensation then due shall be paid.

E. (1) Medical benefits payable under this Chapter shall be paid within sixty days after the employer or insurer receives written notice thereof, if the provider of medical services is not utilizing the electronic billing rules and regulations provided for in R.S. 23:1203.2.

(2) For those providers of medical services who utilize the electronic billing rules and regulations provided for in R.S. 23:1203.2, medical benefits payable under this Chapter shall be paid within thirty days after the employer or insurer receives a complete electronic medical bill, as defined by rules promulgated by the Louisiana Workforce Commission.

F. Except as otherwise provided in this Chapter, failure to provide payment in accordance with this Section or failure to consent to the employee's request to select a treating physician or change physicians when such consent is required by R.S. 23:1121 shall result in the assessment of a penalty in an amount up to the greater of twelve percent of any unpaid compensation or medical benefits, or fifty dollars per calendar day for each day in which any and all compensation or medical benefits remain unpaid or such consent is withheld, together with reasonable attorney fees for each disputed claim; however, the fifty dollars per calendar day penalty shall not exceed a maximum of two thousand dollars in the aggregate for any claim. The maximum amount of penalties which may be imposed at a hearing on the merits regardless of the number of penalties which might be imposed under this Section is eight thousand dollars. An award of penalties and attorney fees at any hearing on the merits shall be res judicata as to any and all claims for which penalties may be imposed under this Section which precedes the date of the hearing. Penalties shall be assessed in the following manner:

(1) Such penalty and attorney fees shall be assessed against either the employer or the insurer, depending upon fault. No workers' compensation insurance policy shall provide that these sums shall be paid by the insurer if the workers' compensation judge determines that the penalty and attorney fees are to be paid by the employer rather than the insurer.

(2) This Subsection shall not apply if the claim is reasonably controverted or if such nonpayment results from conditions over which the employer or insurer had no control.

(3) Except as provided in Paragraph (4) of this Subsection, any additional compensation paid by the employer or insurer pursuant to this Section shall be paid directly to the employee.

(4) In the event that the health care provider prevails on a claim for payment of his fee, penalties as provided in this Section and reasonable attorney fees based upon actual hours worked may be awarded and paid directly to the health care

provider. This Subsection shall not be construed to provide for recovery of more than one penalty or attorney fee.

(5) No amount paid as a penalty or attorney fee under this Subsection shall be included in any formula utilized to establish premium rates for workers' compensation insurance.

G. If any award payable under the terms of a final, nonappealable judgment is not paid within thirty days after it becomes due, there shall be added to such award an amount equal to twenty-four percent thereof or one hundred dollars per day together with reasonable attorney fees, for each calendar day after thirty days it remains unpaid, whichever is greater, which shall be paid at the same time as, and in addition to, such award, unless such nonpayment results from conditions over which the employer had no control. No amount paid as a penalty under this Subsection shall be included in any formula utilized to establish premium rates for workers' compensation insurance. The total one hundred dollar per calendar day penalty provided for in this Subsection shall not exceed three thousand dollars in the aggregate.

H. Within fourteen days after the final payment of compensation has been made, the employer or insurer shall send a notice to the office, in the manner prescribed by the rules of the director, stating:

(1) The name of the injured employee or any other person to whom compensation has been paid, or both.

(2) The date of injury or death.

(3) The dates on which compensation has been paid.

(4) The total amount of compensation paid.

(5) The fact that final payment has been made.

I. Any employer or insurer who at any time discontinues payment of claims due and arising under this Chapter, when such discontinuance is found to be arbitrary, capricious, or without probable cause, shall be subject to the payment of a penalty not to exceed eight thousand dollars and a reasonable attorney fee for the prosecution and collection of such claims. The provisions as set forth in R.S. 23:1141 limiting the amount of attorney fees shall not apply to cases where the employer or insurer is found liable for attorney fees under this Section. The provisions as set forth in R.S. 22:1892(C) shall be applicable to claims arising under this Chapter.

J. Notwithstanding the fact that more than one violation in this Section which provides for an award of attorney fees may be applicable, only one reasonable attorney fee may be awarded against the employer or insurer in connection with any hearing on the merits of any disputed claim filed pursuant to this Section, and an award of such single attorney fee shall be res judicata as to any and all conduct for which penalties may be imposed under this Section which precedes the date of the hearing.

## § 1201.1. Controversion of compensation and medical benefits

Effective: August 1, 2013

A. Upon the first payment of compensation or upon any modification, suspension, termination, or controversion of compensation or medical benefits for any reason, including but not limited to issues of medical causation, compensability of the claim,

or issues arising out of R.S. 23:1121, 1124, 1208, and 1226, the employer or payor who has been notified of the claim, shall do all of the following:

(1) Prepare a "Notice of Modification, Suspension, Termination, or Controversion of Compensation and/or Medical Benefits".

(2) Send the notice of the initial indemnity payment to the injured employee on the same day as the first payment of compensation is made by the payor after the payor has received notice of the claim from the employer.

(3) Send a copy of the notice of the initial payment of indemnity to the office within ten days from the date the original notice was sent to the injured employee or by facsimile to the injured employee's representative.

(4) Send the "Notice of Payment, Modification, Suspension, Termination, or Controversion of Compensation and/or Medical Benefits" to the injured employee by certified mail, to the address at which the employee is receiving payments of compensation, on or before the effective date of a modification, suspension, termination, or controversion.

(5) Send a copy of the "Notice of Payment, Modification, Suspension, Termination, or Controversion of Compensation and/or Medical Benefits" to the office on the same business day as sent to the employee or to his representative.

B. The form of the "Notice of Payment, Modification, Suspension, Termination, or Controversion of Compensation and/or Medical Benefits" shall be promulgated by the office.

C. The director shall make the notice available upon request by the employee and the employee's representative.

D. If the injured employee is represented by an attorney, the notice shall also be provided to the employee's representative by facsimile. Proof that the notice was sent to the employee's representative by facsimile shall be prima facie evidence of compliance with Subsection A of this Section.

E. The provisions of this Section shall not apply to questions of medical necessity as provided by R.S. 23:1203.1.

F. (1) Any injured employee or his representative who disagrees with any information provided on the notice form sent by the employer or payor, shall notify the employer or payor of the basis for disagreement by returning the form to the employer or payor as provided on the form, or by letter of amicable demand, and provide any amounts of compensation he believes appropriate.

(2) No disputed claim shall be filed regarding any such disagreement unless the notice required by this Section has been sent to the employer or payor who initially sent the notice.

G. (1) If the employer or the payor provides the benefit that the employee claims is due, including any arrearage, on the returned form or letter of amicable demand within seven business days of receipt of the employee's demand, the employer or payor shall not be subject to any claim for any penalties or attorney fees arising from the disputed payment, modification, suspension, termination, or controversion.

(2) If the employer or payor does not provide the benefit that the employee claims is due, the employee may file a disputed claim for benefit provided it is filed

within the prescriptive period established under R.S. 23:1209. If the prescription date of the claim occurs within the seven-day waiting period, the employee will be allowed to file a disputed claim without waiting the seven business days as provided in Paragraph (1) of this Subsection. However, the employer or payor shall still be allowed seven business days to provide the benefit that the employee claims is due, and if the employer does provide the benefit, the disputed claim will be moot regarding the issues arising out of the payment, suspension, modification, termination, or controversion of benefits. All other issues alleged in the disputed claim will be unaffected by the payment.

H. The employer or the payor who wishes to have a preliminary determination hearing shall request the hearing in his answer to the disputed claim arising from the notice of initial payment or any subsequent modification, suspension, termination, or notice of controversion. In cases where a disputed claim is already pending when an issue arises from a subsequent notice of payment, modification, suspension, termination, or controversion of benefits, such request shall be made in an amended pleading filed within fifteen days of the expiration of the seven-day period set forth in Paragraph (G)(1) of this Section.

I. (1) An employer or payor who has not complied with the requirements set forth in Subsection A through E of this Section or has not initially accepted the claim as compensable, subject to further investigation and subsequent controversion shall not be entitled to a preliminary determination. An employer or payor who is not entitled to a preliminary determination or who is so entitled but fails to request a preliminary determination may be subject to penalties and attorney fees pursuant to R.S. 23:1201 at a trial on the merits or hearing held pursuant to Paragraph (K)(8) of this Section.

(2) If disputed by the parties, upon a rule to show cause held prior to the preliminary determination or any hearing held pursuant to this Section, the workers' compensation judge shall determine whether the employer is in compliance.

J. (1) Upon the filing of the request for a preliminary determination hearing, the workers' compensation judge shall initiate a telephone status conference with the parties to schedule the discovery deadlines and to facilitate the exchange of documents. The scope of the discovery will be limited to the issues raised in the disputed payment, suspension, modification, termination, or controversion of benefits. The preliminary determination hearing shall be a contradictory hearing at which all parties shall have the opportunity to introduce evidence.

(2) The testimony of physicians may be introduced by certified records or deposition. The parties may agree to allow uncertified medical records and physician reports to be introduced into evidence. Witnesses may testify at the hearing or, if agreed on by the parties, may offer testimony by introduction of a deposition.

(3) The preliminary determination hearing shall be held no later than ninety days from the scheduling conference. However, upon a showing of good cause, one extension of an additional thirty days is permitted upon approval by the workers' compensation judge. The workers' compensation judge shall issue a preliminary determination no later than thirty days after the hearing.

(4) Any employer or payor requesting a preliminary determination hearing shall produce all documentation relied on by the employer or payor in calculating, modifying, suspending, terminating, or controverting the employee's benefits.

These documents shall be disclosed to the employee or the employee's representative within ten days of the request for the preliminary determination hearing.

K. (1) The employer or payor shall, within ten calendar days of the mailing of the determination from the workers' compensation judge, do either of the following:

(a) Accept and comply with preliminary determination of the workers' compensation judge regarding the payment, suspension, modification, termination, or controversion of benefits and mail a revised "Notice of Modification, Suspension, Termination, or Controversion of Compensation and/or Medical Benefits" to the injured employee or employee's representative, along with any payment amount determined, and any arrearage due.

(b) Notify the injured employee or his representative in writing that the employer or payor does not accept the determination.

(2) Any employer or payor who accepts and complies with the workers' compensation judge's determination within ten calendar days, shall not be subject to any penalty or attorney fees arising out of the original notice which was the subject of the preliminary hearing.

(3) Any employer or payor who accepts and complies with the workers' compensation judge's determination, but who disagrees with such preliminary determination, shall notify the court within ten days of receipt of the preliminary determination of his desire to proceed to a trial on the merits of the matters that were the subject of the preliminary hearing.

(4) Any employer or payor who does not accept the workers' compensation judge's determination or fails to comply with the determination within ten calendar days, may, at the trial on the merits, be subject to penalties and attorney fees pursuant to R.S. 23:1201, arising out of the issues raised in the original notice of payment, modification, suspension, termination, or controversion of benefits, which was the subject of the preliminary hearing.

(5) Any injured employee who disagrees with the preliminary determination shall notify the court within ten days of the receipt of such preliminary determination of his desire to proceed to a trial on the merits of the matters that were the subject of the preliminary hearing. If the employer or payor has accepted and complied with the preliminary hearing determination, the employer or payor shall also be entitled to litigate all issues including those issues presented at the preliminary determination hearing.

(6) Any employer or payor who accepts and complies with the determination of the workers' compensation judge, and who does not request to proceed to trial on the merits of the matters that were the subject of the preliminary hearing, shall retain the right to further controvert future matters. The workers' compensation judge's determination shall not be considered an order concerning benefits due requiring modification, nor shall the determination be considered res judicata of any matters which were the subject of the preliminary hearing. The acceptance of the preliminary determination by the employer or payor shall not be considered an admission.

(7) In matters where the employee has filed a disputed claim and the employer or payor is not entitled to a preliminary determination, the matter shall proceed to trial on the merits.

(8) (a) Upon motion of either party, whether or not the employer or payor is entitled to a preliminary determination, the workers' compensation judge's ruling in a hearing shall be conducted as an expedited summary proceeding and shall be considered an order of the court and not requiring a further trial on the merits, if it concerns any of the following matters:

(i) The employee has sought choice of physician pursuant to R.S. 23:1121(B)(1).

(ii) The employee has filed a claim pursuant to R.S. 23:1226(B)(3)(a).

(iii) The employer or payor seeks to compel the employee to sign the choice of physician form pursuant to R.S. 23:1121(B)(5).

(iv) The employer or payor seeks to compel the employee's submission to a medical examination pursuant to R.S. 23:1124.

(v) The employer seeks to require the employee to return form LWC-1025 or LWC-1020.

(vi) The employee seeks to have a suspension of benefits for failure to comply with R.S. 23:1121(B)(1) lifted.

(vii) The employee seeks to have a suspension of benefits for failure to submit to a medical examination lifted.

(viii) The employee seeks to have a suspension of benefits for failure to comply with R.S. 23:1208(H) lifted.

(ix) The employee seeks to have a reduction in benefits for failure to cooperate with vocational rehabilitation lifted.

(b) (i) The workers' compensation judge shall set the expedited summary proceeding hearing date pursuant to Items (a)(iii), (iv), and (v) of this Paragraph within three days of receiving the employer's motion for the expedited hearing. The hearing shall be held not less than ten nor more than thirty days after the motion has been filed.

(ii) The workers' compensation judge shall provide the notice of the hearing date to the employee or his attorney at the same time and in the same manner that the notice of the hearing date is provided to the employer or payor.

(iii) For the purposes of this Section, the party seeking an expedited hearing shall not be required to submit the dispute to mediation or go through a pretrial conference before obtaining a hearing. The hearing shall be conducted as a rule to show cause.

(c) The workers' compensation judge shall order the employee to sign the choice of physician form, enforce the employee's submission to the medical examination, or provide the LWC-1020 or LWC-1025 form as applicable unless the employee can show good cause for his refusal.

(d) If the employee seeking relief pursuant to this Paragraph can show good cause for his refusal, the workers' compensation judge shall order the suspension or reduction in benefits lifted and the payment of any arrear-

age due. If the employee fails to show good cause for refusal, the workers' compensation judge shall order the suspension or reduction in benefits to continue until the employee complies.

(e) An employer or payor who is entitled to a preliminary determination and who complies with an order of the court issued pursuant to a hearing held in accordance with this Paragraph within ten calendar days shall not be subject to any penalty or attorney fees arising out of the original notice which was the subject of the hearing.

L. Notwithstanding any provision in this Section to the contrary, the failure to comply with any provision of this Section shall not itself be considered a failure to reasonably controvert benefits; however, failure of the employer or payor to comply shall result in loss of penalty and attorney fee protections provided in this Section.

## § 1201.3. Failure to pay compensation; judgment and execution; interest; revocation or suspension of insurer's license

A. If payment of compensation or an installment payment of compensation due under the terms of an award, except in case of appeals from an award, is not made within ten days after the same is due by the employer or insurance carrier liable therefor, the workers' compensation judge may order a certified copy of the award to be filed in the office of the clerk of court of any parish, which award whether accumulative or lump sum, when recorded in the mortgage records, shall be a judicial mortgage as provided in Civil Code Article 3299. Any compensation awarded and all payments thereof directed to be made by order of the workers' compensation judge shall bear judicial interest from the date compensation was due until the date of satisfaction. The interest rate shall be fixed at the rate in effect on the date the claim for benefits was filed with the office of workers' compensation administration.

B. Upon the filing of the certified copy of the workers' compensation judge's award a writ of execution shall issue and process shall be executed and the cost thereof taxed, as in the case of writs of execution, on judgments of courts of record, as provided by the Louisiana Code of Civil Procedure.

C. If any insurance carrier intentionally, knowingly, or willfully violates any of the provisions of the Workers' Compensation Act, the insurance commissioner, on the request of a workers' compensation judge or the director, shall suspend or revoke the license or authority of such insurance carrier to do compensation business in this state.

D. The provisions of this Section relating to the execution and process for the enforcement of awards shall be and are cumulative to other provisions now existing or which may hereafter be adopted relating to liens or enforcement of awards or claims for compensation.

## § 1201.4. Forfeiture of benefits while incarcerated; exclusions; medical expenses

Effective: August 1, 2012

A. Except as provided in Subsection B of this Section, the employee's right to compensation benefits, including medical expenses, is forfeited during any period of incarceration, unless a workers' compensation judge finds that an employee has

dependents who rely on a compensation award for their support, in which case said compensation shall be made payable and transmitted to the legal guardian of the minor dependent or other person designated by the workers' compensation judge and such payments shall be considered as having been made to the employee. After release from incarceration, the employee's right to claim compensation benefits shall resume. An employee who is incarcerated but is later found to be not guilty of felony criminal charges or against whom all felony charges have been dismissed by the prosecutor shall have the prescriptive period for filing a claim for benefits under this Chapter extended by the number of days he was incarcerated.

B. When an employee has been assigned to a work release or transitional work program and has been injured as a result of such assignment, the provisions of this Section shall not be construed to limit the obligation of the employer to pay medical expenses to a health care provider when such medical expenses would be otherwise compensable under the Workers' Compensation Act.

## § 1202. Maximum and minimum amounts payable

A. (1) The maximum compensation to be paid under this Chapter for injuries occurring on or after September 1, 1975, and on or before August 31, 1976, shall be eighty-five dollars per week and a minimum compensation shall be twenty-five dollars per week; and for injuries occurring on or after September 1, 1976, and on or before August 31, 1977, the maximum weekly compensation to be paid under this Chapter shall be ninety-five dollars per week and the minimum compensation shall be thirty dollars per week. For injuries occurring on or after September 1, 1977, and before July 1, 1983, the maximum weekly compensation to be paid under this Chapter shall be sixty-six and two-thirds percent of the average weekly wage paid in all employment subject to the Louisiana Employment Security Law, and the minimum compensation shall be not less than twenty percent of such wage, said maximum and minimum to be computed to the nearest multiple of one dollar.

(2) For injuries occurring on or after July 1, 1983, the maximum weekly compensation to be paid under this Chapter shall be seventy-five percent of the average weekly wage paid in all employment subject to the Louisiana Employment Security Law, and the minimum compensation for total disability shall be not less than twenty percent of such wage, said maximum and minimum to be computed to the nearest multiple of one dollar. There shall be no minimum compensation for benefits payable pursuant to R.S. 23:1221(3) or (4). In any case where the employee was receiving wages at a rate less than the applicable minimum compensation, the compensation shall be the employee's "wages". In no event shall monthly Supplemental Earnings Benefits exceed four and three tenths times temporary total disability benefits.

B. For the purposes of this Chapter, the average weekly wage in all employment subject to the Louisiana Employment Security Law shall be determined by the administrator of the Louisiana Employment Security Law on or before August first of each year as of the quarter ending on the immediately preceding March thirty-first of each year. The average weekly wage so determined shall be applicable for the full period during which compensation is payable when the date of occurrence of injury falls within the twelve-month period commencing September first following the determination.

## § 1203. Duty to furnish medical and vocational rehabilitation expenses; prosthetic devices; other expenses

Effective: August 1, 2012

A. In every case coming under this Chapter, the employer shall furnish all necessary drugs, supplies, hospital care and services, medical and surgical treatment, and any nonmedical treatment recognized by the laws of this state as legal, and shall utilize such state, federal, public, or private facilities as will provide the injured employee with such necessary services. Medical care, services, and treatment may be provided by out-of-state providers or at out-of-state facilities when such care, services, and treatment are not reasonably available within the state or when it can be provided for comparable costs.

B. The obligation of the employer to furnish such care, services, treatment, drugs, and supplies, whether in state or out of state, is limited to the reimbursement determined to be the mean of the usual and customary charges for such care, services, treatment, drugs, and supplies, as determined under the reimbursement schedule annually published pursuant to R.S. 23:1034.2 or the actual charge made for the service, whichever is less. Any out-of-state provider is also to be subject to the procedures established under the office of workers' compensation administration utilization review rules.

C. The employer shall furnish to the employee the necessary cost of repair to or the replacement of any prosthetic device damaged or destroyed by accident in the course and scope and arising out of such employment, including but not limited to damage or destruction of eyeglasses, artificial limbs, hearing aids, dentures, or any such prosthetic devices whatsoever.

D. In addition, the employer shall be liable for the actual expenses reasonably and necessarily incurred by the employee for mileage reasonably and necessarily traveled by the employee in order to obtain the medical services, medicines, and prosthetic devices, which the employer is required to furnish under this Section, and for the vocational rehabilitation-related mileage traveled by the employee at the direction of the employer. When the employee uses his own vehicle, he shall be reimbursed at the same rate per mile as established by the state of Louisiana for reimbursement of state employees for use of their personal vehicle on state business. The office shall inform the employee of his right to reimbursement for mileage.

E. Upon the first request for authorization pursuant to R.S. 23:1142(B)(1), for a claimant's medical care, service, or treatment, the payor, as defined in R.S. 23:1142(A)(1), shall communicate to the claimant information, in plain language, regarding the procedure for requesting an independent medical examination in the event a dispute arises as to the condition of the employee or the employee's capacity to work, and the procedure for appealing the denial of medical treatment to the medical director as provided in R.S. 23:1203.1. A payor shall not deny medical care, service, or treatment to a claimant unless the payor can document a reasonable and diligent effort in communicating such information. A payor who denies medical care, service, or treatment without making such an effort may be fined an amount not to exceed five hundred dollars or the cost of the medical care, service, or treatment, whichever is more.

## § 1203.1. Definitions; medical treatment schedule; medical advisory council

Effective: August 1, 2014

A. For use in this Section, the following terms shall have the following meanings, unless clearly indicated otherwise by the context:

(1) "Associate medical director" means a physician who is licensed to practice medicine in the state of Louisiana and has been chosen by the director of the office of workers' compensation administration pursuant to R.S. 23:1203.1.1.

(2) "Council" means the medical advisory council appointed by the director of the office of workers' compensation administration.

(3) "Director" means the director of the office of workers' compensation administration.

(4) "Medical director" means a physician who is licensed to practice medicine in the state of Louisiana and has been chosen by the director of the office of workers' compensation administration pursuant to R.S. 23:1203.1.1.

(5) "Office" means the office of workers' compensation administration of the Louisiana Workforce Commission.

(6) "Schedule" means the medical treatment schedule to be developed by the council and promulgated by the office and the director.

B. The director shall, through the office of workers' compensation administration, promulgate rules in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., to establish a medical treatment schedule.

(1) Such rules shall be promulgated no later than January 1, 2011.

(2) The medical treatment schedule shall meet the criteria established in this Section and shall be organized in an interdisciplinary manner by particular regions of the body and organ systems.

C. The schedule shall be developed by the conscientious, explicit, and judicious use of current best evidence in making decisions about the care of individual patients, integrating clinical expertise, which is the proficiency and judgment that clinicians acquire through clinical experience and clinical practice, with the best available external clinical evidence from systematic research.

D. The medical treatment schedule shall be based on guidelines which shall meet all of the following criteria:

(1) Rely on specified, comprehensive, and ongoing systematic medical literature review.

(2) Contain published criteria for rating studies and for determining the overall strength of the medical evidence, including the size of the sample, whether the authors and researchers had any financial interest in the product or service being studied, the design of the study and identification of any bias, and the statistical significance of the study.

(3) Are current and the most recent version produced, which shall mean that documented evidence can be produced or verified that the guideline was developed, reviewed, or revised within the previous five years.

(4) Are interdisciplinary and address the frequency, duration, intensity, and appropriateness of treatment procedures and modalities for all disciplines commonly performing treatment of employment-related injuries and diseases.

(5) Are, by statute or rule, adopted by any other state regarding medical treatment for workers' compensation injuries, diseases, or conditions.

E. The medical advisory council shall develop guidelines in accordance with Subsections C and D of this Section and may amend the schedule in accordance with Subsection C and Paragraph (D)(2) of this Section before submission to the director of the office of workers' compensation administration for initial and subsequent formal adoption and promulgation in accordance with the Administrative Procedure Act, R.S. 49:950, et seq.

F. The director of the office of workers' compensation administration shall appoint a medical advisory council, which shall be selected in accordance with the following:

(1) The professional association in Louisiana that represents each discipline enumerated in this Subsection shall provide the director of the office of workers' compensation, on or before August 15, 2009, the names of three nominees, from which at least one representative shall be chosen to represent his respective discipline on the council.

(2) The director shall select at least one representative from each of the following disciplines or associations:

(a) Orthopedic surgeons.

(b) Neurosurgeons.

(c) Neurologists.

(d) Interventional pain management physicians.

(e) Family practice physicians.

(f) Physical and occupational therapists.

(g) Chiropractic Association of Louisiana.

(h) Psychologists and psychiatrists.

(3) The director may consider and appoint additional representatives in order to fulfill his duties as defined in this Section.

(4) The initial members of the medical advisory council shall serve until August 14, 2011, and all subsequent members shall serve two-year terms beginning on August fifteenth of each odd-numbered year.

(5) The director shall have the authority to contract with a medical director and with consultants to assist the director and the medical advisory council in the establishment and promulgation of the schedule.

G. The medical advisory council shall:

(1) Review current guidelines and accepted medical treatments which meet the criteria set forth in Subsections C, D, and E of this Section.

(2) Provide recommendations to the director for the designation of guidelines to be established and promulgated as the medical treatment schedule by the office.

(3) Provide any additional advice and counsel to the director as may be reasonable and necessary, or as may be requested, relative to the effective and efficient delivery of quality medical services to injured workers.

H. The director, with the assistance of the medical advisory council, is authorized to review and update the medical treatment schedule no less often than once every two years. Such updates shall be made by rules promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq. In no event shall the schedule contain multiple guidelines covering the same aspects of the same medical condition which are simultaneously in force.

I. After the promulgation of the medical treatment schedule, throughout this Chapter, and notwithstanding any provision of law to the contrary, medical care, services, and treatment due, pursuant to R.S. 23:1203 et seq., by the employer to the employee shall mean care, services, and treatment in accordance with the medical treatment schedule. Medical care, services, and treatment that varies from the promulgated medical treatment schedule shall also be due by the employer when it is demonstrated to the medical director of the office by a preponderance of the scientific medical evidence, that a variance from the medical treatment schedule is reasonably required to cure or relieve the injured worker from the effects of the injury or occupational disease given the circumstances.

J. (1) After a medical provider has submitted to the payor the request for authorization and the information required by the Louisiana Administrative Code, Title 40, Chapter 27, the payor shall notify the medical provider of their action on the request within five business days of receipt of the request. If any dispute arises after January 1, 2011, as to whether the recommended care, services, or treatment is in accordance with the medical treatment schedule, or whether a variance from the medical treatment schedule is reasonably required as contemplated in Subsection I of this Section, any aggrieved party shall file, within fifteen calendar days, an appeal with the office of workers' compensation administration medical director or associate medical director on a form promulgated by the director. The medical director or associate medical director shall render a decision as soon as is practicable, but in no event, not more than thirty calendar days from the date of filing.

(2) If either party, the medical director, or associate medical director believes that a potential conflict of interest exists, he shall communicate in writing such information to the director, who shall make a determination as to whether a conflict exists within two business days. The director shall notify in writing the patient, the physician, and, if applicable, the attorney of his decision within two business days.

K. After the issuance of the decision by the medical director or associate medical director of the office, any party who disagrees with the decision, may then appeal by filing a "Disputed Claim for Compensation", which is LWC Form 1008. The decision may be overturned when it is shown, by clear and convincing evidence, the decision of the medical director or associate medical director was not in accordance with the provisions of this Section.

L. It is the intent of the legislature that, with the establishment and enforcement of the medical treatment schedule, medical and surgical treatment, hospital care, and other

health care provider services shall be delivered in an efficient and timely manner to injured employees.

M. (1) With regard to all treatment not covered by the medical treatment schedule promulgated in accordance with this Section, all medical care, services, and treatment shall be in accordance with Subsection D of this Section.

(2) Notwithstanding any other provision of this Chapter, all treatment not specified in the medical treatment schedule and not found in Subsection D of this Section shall be due by the employer when it is demonstrated to the medical director, in accordance with the principles of Subsection C of this Section, that a preponderance of the scientific medical evidence supports approval of the treatment that is not covered.

N. The medical treatment schedule is not relevant nor shall it be considered as evidence of a medical provider's legal standard of professional care as contemplated by the Louisiana medical malpractice provisions, R.S. 40:1299.41 et seq.

O. (1) No member of the Medical Advisory Council acting within the scope of his official functions and duties shall be held individually liable for a policy recommendation or policy action by the council, unless damage or injury is caused by the member's willful or wanton misconduct.

(2) A person immune from liability under the provisions of Paragraph (1) of this Subsection shall not be subject to civil or administrative subpoena for his recommendations or exercise of judgment as a member of the council, including a subpoena seeking his oral or written testimony at trial, discovery, or other proceeding, and a subpoena duces tecum seeking documents, inspections, things or information in electronic or any other form.

## § 1203.1.1. Medical director and associate medical director

Effective: August 1, 2013

A. The director shall hire a medical director and an associate medical director to render decisions on disputed cases filed pursuant to R.S. 23:1203.1(J).

B. The medical director and associate medical director shall be full-time public employees of the office of workers' compensation administration and shall not engage in the practice of medicine outside the office.

## § 1203.2. Electronic medical billing and payment

Effective: July 1, 2013

A. (1) The director shall adopt rules and regulations regarding the electronic submission, processing, and payment of workers' compensation- related medical bills, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

(2) Such rules shall take effect no later than January 1, 2012.

B. The following groups shall make provisions for such an electronic claims system:

(1) Insurance carriers shall accept medical bills electronically submitted by health care providers, in accordance with the rules promulgated.

(2) Health care providers shall accept payment of medical claims submitted electronically by insurance carriers, in accordance with the rules promulgated.

C. On or after January 1, 2012, the director may adopt additional rules and regulations, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., regarding the electronic exchange of medical claims information.

D. Nothing shall prohibit the director from promulgating and adopting rules and regulations, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., regarding the development and implementation of a centralized data warehouse for the collection of medical billing and payment data.

## § 1204. Furnishing of medical services or advancing voluntary payments not admission of liability

Neither the furnishing of medical services nor payments by the employer or his insurance carrier shall constitute an admission of liability for compensation under this Chapter.

## § 1205. Claim for payments; privilege of employee; non-assignability; exemption from seizure; payment of denied medical expenses

A. Claims or payments due under this Chapter shall have the same preference and priority for the whole thereof against the assets of the employer as is allowed by law for any unpaid wages of the laborer; and shall not be assignable, and shall be exempt from all claims of creditors and from levy or execution or attachment or garnishment, except under a judgment for alimony in favor of a wife, or an ascendant or descendant.

B. Any company which contracts for health care benefits for an employee shall have a right of reimbursement against the entity responsible for the payment of workers' compensation benefits for such employee if the company paid health care benefits for which such entity is liable. The amount of reimbursement shall not exceed the amount of the entity's liability for the workers' compensation benefit. In the event the company seeks recovery for such in conjunction with a claim against any other party brought by the employee, the company may be charged with a proportionate share of the reasonable and necessary costs, including attorney fees, incurred by the employee in the advancement of his claim or suit.

C. (1) In the event that the workers' compensation payor has denied that the employee's injury is compensable under this Chapter, then any health insurer which contracts to provide health care benefits for an employee shall be responsible for the payment of all medical benefits pursuant to the terms of the health insurer's policy. Any health insurer which contracts to provide health care benefits for an employee who violates the provisions of this Subsection shall be liable to the employee or health care provider for reasonable attorney fees and costs related to the dispute and to the employee for any health benefits payable.

(2) The payment of medical expenses shall be recoverable pursuant to and in accordance with Subsection B of this Section. However, if it is determined that the worker's compensation payor was responsible for payment of medical benefits that have been paid by the health insurer, the obligation of the worker's compensation payor for such benefits shall be to reimburse the health insurer one hundred percent of the benefits it paid. If it is determined that the worker's

compensation payor was responsible for payment of benefits and its denial of responsibility is determined to be arbitrary and capricious, then the health insurer shall also be entitled to recover legal interest on any benefits it paid, calculated from the date such benefits were due.

(3) Any claim filed against the worker's compensation carrier by the health insurer or health providers in accordance with this provision shall not be subject to timely filing requirements, nor does prescription run until such time as the workers' compensation claim reaches a resolution by final judgment or settlement.

(4) Any claim filed by a health care provider against a health insurer pursuant to this Section shall be filed no later than one hundred eighty days after the denial by the worker's compensation payor.

## § 1206. Voluntary payments; deductions from benefits

Any voluntary payment or unearned wages paid by the employer or insurer either in money or otherwise, to the employee or dependent, and accepted by the employee, which were not due and payable when made, may be deducted from the payments to be made as compensation.

## § 1207. Rival claimants; payment; discharge of employer

Payment of compensation under this Chapter by an employer to a dependent subsequent in right to another or other dependent shall protect and discharge the employer unless and until the dependent or dependents prior in right have given the employer notice of his or their claim. In case the employer is in doubt as to the respective rights of rival claimants the employer may apply to the court to decide between them.

## § 1208. Misrepresentations concerning benefit payments; penalty

Effective: August 1, 2013

A. It shall be unlawful for any person, for the purpose of obtaining or defeating any benefit or payment under the provisions of this Chapter, either for himself or for any other person, to willfully make a false statement or representation.

B. It shall be unlawful for any person, whether present or absent, directly or indirectly, to aid and abet an employer or claimant, or directly or indirectly, counsel an employer or claimant to willfully make a false statement or representation.

C. (1) Whoever violates any provision of this Section, when the benefits claimed or payments obtained have a value of ten thousand dollars or more, shall be imprisoned, with or without hard labor, for not more than ten years, or fined not more than ten thousand dollars, or both.

(2) Whoever violates any provision of this Section, when the benefits claimed or payments obtained have a value of two thousand five hundred dollars or more, but less than a value of ten thousand dollars shall be imprisoned, with or without hard labor, for not more than five years, or fined not more than five thousand dollars, or both.

(3) Whoever violates any provision of this Section, when the benefits claimed or payments obtained have a value of less than two thousand five hundred dollars, shall be imprisoned for not more than six months or fined not more than five hundred dollars, or both.

(4) Notwithstanding any provision of law to the contrary which defines "benefits claimed or payments obtained", for purposes of Subsection C of this Section, the definition of "benefits claimed or payments obtained" shall include the cost or value of indemnity benefits, and the cost or value of health care, medical case management, vocational rehabilitation, transportation expense, and the reasonable costs of investigation and litigation.

D. In addition to the criminal penalties provided for in Subsection C of this Section, any person violating the provisions of this Section may be assessed civil penalties by the workers' compensation judge of not less than five hundred dollars nor more than five thousand dollars payable to the Kids Chance Scholarship Fund, Louisiana Bar Foundation, and may be ordered to make restitution. Restitution may only be ordered for benefits claimed or payments obtained through fraud and only up to the time the employer became aware of the fraudulent conduct.

E. Any employee violating this Section shall, upon determination by workers' compensation judge, forfeit any right to compensation benefits under this Chapter.

F. Whenever the employer reports an injury to the office pursuant to R.S. 23:1306, the employer and employee shall certify their compliance with this Chapter to the employer's payor on a form prescribed by the director, which form shall include all of the following information:

(1) A summary of the fines and penalties for workers' compensation fraud.

(2) The names, addresses, phone numbers, and signatures of the employee and the employer.

(3) The fine or penalty that may be imposed for failure to report to the payor as required by this Section.

G. Whenever an employee receives benefits pursuant to this Chapter for more than thirty days, the employee shall upon reasonable request report his other earnings to his employer's payor on a form prescribed by the director and signed by the employee.

H. (1) Whenever an employee fails to report to his employer's payor as required by this Section within fourteen days of his receipt of the appropriate form, the employer or payor may suspend the employee's right to benefits as provided in this Chapter. If otherwise eligible for benefits, the employee shall be entitled to all of the suspended benefits after the form has been provided to the payor. Suspension of benefits by the employer or payor shall be made in accordance with the provisions of R.S. 23:1201.1(A) through (E). The employer or payor may move for an order to compel the employee to return the form.

(2) Whenever an employer fails to report to its payor as required by this Section, the employer may be subject to a penalty of five hundred dollars, payable to the payor.

(3) The payor may request an assessment of a penalty for the employer's failure to report as provided in this Subsection by filing a form LDOL-WC-1008 with the director.

I. (1) No person acting gratuitously and without malice, fraudulent intent, or bad faith, shall be subject to civil liability for libel, slander, or any other relevant tort, and no civil cause of action of any nature shall exist against such person or entity by

virtue of the filing of reports or furnishing of other information, either orally or in writing, relative to a violation by any person of the provisions of this Section.

(2) The grant of immunity provided by this Subsection shall not abrogate or modify in any way any statutory or other privilege or immunity otherwise enjoyed by such person or entity.

## § 1208.1. Employer's inquiry into employee's previous injury claims; forfeiture of benefits

Nothing in this Title shall prohibit an employer from inquiring about previous injuries, disabilities, or other medical conditions and the employee shall answer truthfully; failure to answer truthfully shall result in the employee's forfeiture of benefits under this Chapter, provided said failure to answer directly relates to the medical condition for which a claim for benefits is made or affects the employer's ability to receive reimbursement from the second injury fund. This Section shall not be enforceable unless the written form on which the inquiries about previous medical conditions are made contains a notice advising the employee that his failure to answer truthfully may result in his forfeiture of worker's compensation benefits under R.S. 23:1208.1. Such notice shall be prominently displayed in bold faced block lettering of no less than ten point type.

## § 1208.2. Duty to report fraud; immunity from civil liability

A. Any person having knowledge of or who believes that an act is being or has been committed in violation of this Chapter shall report orally or in writing to the director the information that forms the basis of such knowledge or belief, as well as any such additional information relevant thereto as the director or his employees or his agents may require.

B. Any person who provides information pursuant to this Section without malice, fraudulent intent, or bad faith, shall be immune from all civil liability for such action.

## § 1209. Prescription; timeliness of filing; dismissal for want of prosecution

Effective: August 1, 2012

A. (1) In case of personal injury, including death resulting therefrom, all claims for payments shall be forever barred unless within one year after the accident or death the parties have agreed upon the payments to be made under this Chapter, or unless within one year after the accident a formal claim has been filed as provided in Subsection B of this Section and in this Chapter.

(2) Where such payments have been made in any case, the limitation shall not take effect until the expiration of one year from the time of making the last payment, except that in cases of benefits payable pursuant to R.S. 23:1221(3) this limitation shall not take effect until three years from the time of making the last payment of benefits pursuant to R.S. 23:1221(1), (2), (3), or (4).

(3) When the injury does not result at the time of or develop immediately after the accident, the limitation shall not take effect until expiration of one year from the time the injury develops, but in all such cases the claim for payment shall

be forever barred unless the proceedings have been begun within three years from the date of the accident.

(4) However, in all cases described in Paragraph (3) of this Subsection, where the proceedings have begun after two years from the date of the work accident but within three years from the date of the work accident, the employee may be entitled to temporary total disability benefits for a period not to exceed six months and the payment of such temporary total disability benefits in accordance with this Paragraph only shall not operate to toll or interrupt prescription as to any other benefit as provided in R.S. 23:1221.

B. Any claim may be filed with the director, office of workers' compensation, by delivery or by mail addressed to the office of workers' compensation. The filing of such claims shall be deemed timely when the claim is mailed on or before the prescription date of the claim. If the claim is received by mail on the first legal day following the expiration of the due date, there shall be a rebuttable presumption that the claim was timely filed. In all cases where the presumption does not apply, the timeliness of the mailing shall be shown only by an official United States postmark or by official receipt or certificate from the United States Postal Service made at the time of mailing which indicates the date thereof.

C. All claims for medical benefits payable pursuant to R.S. 23:1203 shall be forever barred unless within one year after the accident or death the parties have agreed upon the payments to be made under this Chapter, or unless within one year after the accident a formal claim has been filed with the office as provided in this Chapter. Where such payments have been made in any case, this limitation shall not take effect until the expiration of three years from the time of making the last payment of medical benefits.

D. When a petition for compensation has been initiated as provided in R.S. 23:1310.3, unless the claimant shall in good faith request a hearing and final determination thereon within five years from the date the petition is initiated, that claim shall be barred as the basis of any claim for compensation under the Worker's Compensation Act and shall be dismissed by the office for want of prosecution, which action shall operate as a final adjudication of the right to claim compensation thereunder.

## § 1210. Burial expenses; duty to furnish

Effective: August 1, 2012

A. In every case of death, the employer shall pay or cause to be paid, in addition to any other benefits allowable under the provisions of this Part, reasonable expenses of the burial of the employee, not to exceed eight thousand five hundred dollars.

B. If the reasonable expenses for the burial of an employee are less than seven thousand five hundred dollars, the difference between such reasonable expenses and seven thousand five hundred dollars shall be paid or caused to be paid by the employer to the heirs of the deceased employee and such payment shall be in addition to any other benefits paid by the employer or his insurer on behalf of the deceased employee.

## § 1211. Special compensation benefits for injury or death of member of national guard

Effective: January 1, 2009

A. Except as provided by R.S. 22:941, every member of the national guard who is accidentally injured, or his dependents if he is accidentally killed, while on active duty during a state of emergency declared by the governor and for the duration of such emergency as declared by the governor, shall be compensated by the state in accordance with the workers' compensation law, including but not limited to such medical, surgical, and hospital services and medicines and such disability and death benefits as are authorized by the workers' compensation law.

B. Except as provided by R.S. 22:941, no compensation shall be paid unless the injury or death arose out of and in the course of service while on active duty during a state of emergency declared by the governor and only for the duration thereof and for no other kind of service whatsoever. Before any claim is certified for payment, proof that the applicant is entitled to payment shall be made in accordance with regulations prescribed by the adjutant general. The amount payable as compensation may be commuted to a lump-sum settlement by agreement of the parties. In computing the weekly benefit hereunder, either the weekly wages from the member's principal civilian employment or his weekly military wages, whichever is larger, will be used. Otherwise, the provisions of the workers' compensation law apply.

C. Except as provided in Subsection B of this Section and R.S. 22:941, the provisions of this Section and of no other law shall govern the compensation benefits payable to members of the national guard.

## § 1212. Medical expense offset

A. Except as provided in Subsection B, payment by any person or entity, other than a direct payment by the employee, a relative or friend of the employee, or by Medicaid or other state medical assistance programs of medical expenses that are owed under this Chapter, shall extinguish the claim against the employer or insurer for those medical expenses. This Section shall not be regarded as a violation of R.S. 23:1163. If the employee or the employee's spouse actually pays premiums for health insurance, either as direct payments or as itemized deductions from their salaries, then this offset will only apply in the same percentage, if any, that the employer of the employee or the employer of his spouse paid the health insurance premiums.

B. Payments by Medicaid or other state medical assistance programs shall not extinguish these claims and any payments made by such entities shall be subject to recovery by the state against the employer or insurer.

## § 1221. Temporary total disability; permanent total disability; supplemental earnings benefits; permanent partial disability; schedule of payments

Effective: August 1, 2012

Compensation shall be paid under this Chapter in accordance with the following schedule of payments:

(1) Temporary total.

(a) For any injury producing temporary total disability of an employee to engage in any self-employment or occupation for wages, whether or not the same or a similar occupation as that in which the employee was customarily engaged when injured, and whether or not an occupation for which the employee at the time of injury was particularly fitted by reason of education, training, or experience, sixty-six and two-thirds percent of wages during the period of such disability.

(b) For purposes of Subparagraph (1)(a) of this Paragraph, compensation for temporary disability shall not be awarded if the employee is engaged in any employment or self-employment regardless of the nature or character of the employment or self-employment including but not limited to any and all odd-lot employment, sheltered employment, or employment while working in any pain.

(c) For purposes of Subparagraph (1)(a) of this Paragraph, whenever the employee is not engaged in any employment or self-employment as described in Subparagraph (1)(b) of this Paragraph, compensation for temporary total disability shall be awarded only if the employee proves by clear and convincing evidence, unaided by any presumption of disability, that the employee is physically unable to engage in any employment or self-employment, regardless of the nature or character of the employment or self-employment, including but not limited to any and all odd-lot employment, sheltered employment, or employment while working in any pain, notwithstanding the location or availability of any such employment or self-employment.

(d) An award of benefits based on temporary total disability shall cease when the physical condition of the employee has resolved itself to the point that a reasonably reliable determination of the extent of disability of the employee may be made and the employee's physical condition has improved to the point that continued, regular treatment by a physician is not required.

(2) Permanent total.

(a) For any injury producing permanent total disability of an employee to engage in any self-employment or occupation for wages, whether or not the same or a similar occupation as that in which the employee was customarily engaged when injured, and whether or not an occupation for which the employee at the time of injury was particularly fitted by reason of education, training, and experience, sixty-six and two-thirds percent of wages during the period of such disability.

(b) For purposes of Subparagraph (2)(a) of this Paragraph, compensation for permanent total disability shall not be awarded if the employee is engaged in any employment or self-employment regardless of the nature or character of the employment or self-employment including but not limited to any and all odd-lot employment, sheltered employment, or employment while working in any pain.

(c) For purposes of Subparagraph (2)(a) of this Paragraph, whenever the employee is not engaged in any employment or self-employment as described in Subparagraph (2)(b) of this Paragraph, compensation for permanent total disability shall be awarded only if the employee proves by

clear and convincing evidence, unaided by any presumption of disability, that the employee is physically unable to engage in any employment or self-employment, regardless of the nature or character of the employment or self-employment, including, but not limited to, any and all odd-lot employment, sheltered employment, or employment while working in any pain, notwithstanding the location or availability of any such employment or self-employment.

(d) Notwithstanding any judgment or determination that an employee is permanently and totally disabled, if such employee subsequently has or receives any earnings, including, but not limited to, earnings from odd-lot employment, sheltered employment, or employment while working in any pain, such employee shall not receive benefits pursuant to this Paragraph but may receive benefits computed pursuant to Paragraph (3) of this Section, if applicable.

(e) The issue of permanent total disability provided herein shall not be adjudicated or determined while the employee is engaged in employment pursuant to R.S. 23:1226(G), but such employment shall not prevent adjudication or determination of the employee's right to any other benefits otherwise provided in this Chapter; however, the employee shall not by virtue of employment pursuant to R.S. 23:1226(G) be deprived of the right to determination or adjudication of permanent total disability herein at a time when he is not engaged in such employment.

(3) Supplemental earnings benefits.

(a) (i) For injury resulting in the employee's inability to earn wages equal to ninety percent or more of wages at time of injury, supplemental earnings benefits, payable monthly, equal to sixty-six and two-thirds percent of the difference between the average monthly wages at time of injury and average monthly wages earned or average monthly wages the employee is able to earn in any month thereafter in any employment or self-employment, whether or not the same or a similar occupation as that in which the employee was customarily engaged when injured and whether or not an occupation for which the employee at the time of the injury was particularly fitted by reason of education, training, and experience, such comparison to be made on a monthly basis. Average monthly wages shall be computed by multiplying his wages by fifty-two and then dividing the product by twelve.

(ii) When the employee is entitled to monthly supplemental earnings benefits pursuant to this Subsection, but is not receiving any income from employment or self-employment and the employer has not established earning capacity pursuant to R.S. 23:1226, payments of supplemental earning benefits shall be made in the manner provided for in R.S. 23:1201(A)(1).

(b) For purposes of Subparagraph (3)(a), of this Paragraph, the amount determined to be the wages the employee is able to earn in any month shall in no case be less than the sums actually received by the employee, including, but not limited to, earnings from odd-lot employment, sheltered employment, and employment while working in any pain.

(c) (i) Notwithstanding the provisions of Subparagraph (b) of this Paragraph, for purposes of Subparagraph (a) of this Paragraph, if the employee is not engaged in any employment or self-employment, as described in Subparagraph (b) of this Paragraph, or is earning wages less than the employee is able to earn, the amount determined to be the wages the employee is able to earn in any month shall in no case be less than the sum the employee would have earned in any employment or self-employment, as described in Subparagraph (b) of this Paragraph, which he was physically able to perform, and (1) which he was offered or tendered by the employer or any other employer, or (2) which is proven available to the employee in the employee's or employer's community or reasonable geographic region.

(ii) For purposes of Subsubparagraph (i) of this Subparagraph, if the employee establishes by clear and convincing evidence, unaided by any presumption of disability, that solely as a consequence of substantial pain, the employee cannot perform employment offered, tendered, or otherwise proven to be available to him, the employee shall be deemed incapable of performing such employment.

(d) The right to supplemental earnings benefits pursuant to this Paragraph shall in no event exceed a maximum of five hundred twenty weeks, but shall terminate:

(i) As of the end of any two-year period commencing after termination of temporary total disability, unless during such two-year period supplemental earnings benefits have been payable during at least thirteen consecutive weeks; or

(ii) After receipt of a maximum of five hundred twenty weeks of benefits, provided that for any week during which the employee is paid any compensation under this Paragraph, the employer shall be entitled to a reduction of one full week of compensation against the maximum number of weeks for which compensation is payable under this Paragraph; however, for any week during which the employee is paid no supplemental earnings benefits, the employer shall not be entitled to a reduction against the maximum number of weeks payable under this Paragraph; or

(iii) When the employee retires; however, the period during which supplemental earnings benefits may be payable shall not be less than one hundred four weeks.

(e) (i) The fact that an employee has suffered previous disability, impairment, or disease, or received compensation therefor, shall not preclude him from receiving benefits for a subsequent injury or preclude benefits for death resulting therefrom.

(ii) If an employee receiving supplemental earnings benefits suffers a subsequent injury causing the payment of temporary total disability, permanent total disability, or supplemental earnings benefits, the combined benefits payable shall not exceed the maximum compensation rate in effect for temporary total disability at the time of the subsequent injury. Any reduction in benefits due to such limit

shall be applied first to the supplemental earnings benefits payable as a result of the prior injury.

(f) Any compensable supplemental earnings benefits loss shall be reported by the employee to the insurer or self-insured employer within thirty days after the termination of the week for which such loss is claimed. The director shall provide by rule for the reporting of supplemental earnings benefits loss by the injured worker and for the reporting of supplemental earnings benefits and payment of supplemental earnings benefits by the employer or insurer to the office and may prescribe forms for such reporting. The office, upon request by the employer or insurer, shall provide verification through unemployment compensation records under the Louisiana Employment Security Law of any claimed supplemental earnings benefits loss and shall obtain such verification from other states, if applicable.

(g) When an injured employee has been released to return to work with or without restrictions, and the employer maintains an established written and promulgated substance abuse policy which requires employer-administered drug testing prior to employment or return to work, upon the employee's failure to meet the requirements of such employer's established policy and inability to qualify for the position for that reason, the obligation for all benefits pursuant to this Chapter, with the sole exception of the obligation to provide reasonable and necessary medical treatment, shall be terminated and the employee shall be subject to the terms and conditions established in the employer's promulgated drug testing policy and program. The provisions of this Subparagraph shall not apply to prescription medication prescribed for the employee in the dosages so prescribed by a physician.

(4) Permanent partial disability. In the following cases, compensation shall be solely for anatomical loss of use or amputation and shall be as follows:

(a) For the loss of a thumb, sixty-six and two-thirds percent of wages during fifty weeks.

(b) For the loss of a first finger, commonly called the index finger, sixty-six and two-thirds percent of wages during thirty weeks.

(c) For the loss of any other finger, or a big toe, sixty-six and two-thirds percent of wages during twenty weeks.

(d) For the loss of any toe, other than a big toe, sixty-six and two-thirds percent of wages during ten weeks.

(e) For the loss of a hand, sixty-six and two-thirds percent of wages during one hundred fifty weeks.

(f) For the loss of an arm, sixty-six and two-thirds percent of wages during two hundred weeks.

(g) For the loss of a foot, sixty-six and two-thirds percent of wages during one hundred twenty-five weeks.

(h) For the loss of a leg, sixty-six and two-thirds percent of wages during one hundred seventy-five weeks.

(i) For the loss of an eye, sixty-six and two-thirds percent of wages during one hundred weeks.

(j) Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or one hand and one foot, or any of two thereof, or paraplegia, or quadriplegia shall, in the absence of conclusive proof of a substantial earning capacity, constitute permanent total disability.

(k) The loss of the first phalanx of the thumb or big toe, or two phalanges of any finger or toe, shall be considered to be equal to the loss of one-half of such member, and the compensation shall be one-half of the amount above specified.

(l) The loss of more than one phalanx of a thumb, or more than two phalanges of any finger or toe shall be considered as the loss of the entire member; provided, however, that 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, or the amount received for the loss of more than one toe exceed the amount provided in this schedule for the loss of a foot.

(m) Amputation between the elbow and the wrist shall be considered as equivalent to the loss of a hand and amputation between the knee and the ankle shall be equivalent to the loss of a foot.

(n) A permanent total anatomical loss of the use of a member is equivalent to the amputation of the member.

(o) In all cases involving a permanent partial anatomical loss of use or amputation of the members mentioned hereinabove, compensation shall bear such proportion to the number of weeks provided for herein for the total loss of such members as the percentage loss or impairment to such members bears to the total loss of the member, provided that in no case shall compensation for an injury to a member exceed the compensation payable for the loss of such member.

(p) In cases not falling within any of the provisions already made, where the employee is seriously and permanently disfigured or suffers a permanent hearing loss solely due to a single traumatic accident, or where the usefulness of the physical function of the respiratory system, gastrointestinal system, or genito-urinary system, as contained within the thoracic or abdominal cavities, is seriously and permanently impaired, compensation not to exceed sixty-six and two-thirds percent of wages for a period not to exceed one hundred weeks may be awarded. In cases where compensation is so awarded, when the disability is susceptible to percentage determination, compensation shall be established in the proportions set forth in Subparagraph (o) of this Paragraph. In cases where compensation is so awarded, when the disability is not susceptible to percentage determination, compensation as is reasonable shall be established in proportion to the compensation hereinabove specifically provided in the cases of specific disability.

(q) No benefits shall be awarded or payable in this Paragraph unless the percentage of the anatomical loss of use or amputation, as provided in Subparagraphs (a) through (o) of this Paragraph or the percentage of the

loss of physical function as provided in Subparagraph (p) or (s) of this Paragraph is as established in the most recent edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment".

(r) (i) In all claims for inguinal hernia, it must be established by a preponderance of the evidence that the hernia resulted from injury by accident arising out of and in the course and scope of employment; that the accident was reported promptly to the employer, and that the employee was attended by a licensed physician within thirty days thereafter.

(ii) If the employee submits to treatment, including surgery, recommended by a competent physician or surgeon, the employer or insurer shall pay compensation benefits as elsewhere fixed by this Chapter.

(iii) If the employee refuses to submit to such recommended treatment, including surgery, and establishes by a preponderance of the evidence that his refusal is based upon his conscientious religious objection thereto or that such recommended treatment, including surgery, involves an unusual and serious danger to him, the employer or insurer shall pay compensation benefits as elsewhere fixed by this Chapter. In all other cases of the employee's refusal to submit to such recommended treatment, including surgery, the employer shall provide all necessary first aid and medical treatment and supply the necessary truss, support, or other mechanical appliance at a total cost not in excess of six hundred dollars. In addition, the employer shall pay compensation for a period not to exceed twenty-six weeks.

(iv) Recurrence of the hernia following surgery shall be considered as a separate hernia, and the provisions and limitations of this Subparagraph shall apply.

(s) (i) In addition to any other benefits to which an injured employee may be entitled under this Chapter, any employee suffering an injury as a result of an accident arising out of and in the course and scope of his employment shall be entitled to a sum of fifty thousand dollars, payable within one year after the date of the injury. Interest on such payment shall not commence to accrue until after it becomes payable. Such payment shall not be subject to any offset for payment of any other benefit under this Chapter. Such payment shall not be subject to a claim for attorney fees; however, attorney fees may be awarded in a claim to collect such payment pursuant to R.S. 23:1201.2.

(ii) In any claim for an injury, it must be established by clear and convincing evidence that the employee suffers an injury and that such resulted from an accident arising out of and in the course and scope of his employment. Nothing herein shall limit the right of any party to obtain a second medical opinion or, in appropriate cases, the opinion of an independent medical examiner pursuant to R.S. 23:1123.

(iii) Only the following injuries shall be considered injuries for which benefits pursuant to this Subparagraph may be claimed:

(aa) Paraplegia or quadriplegia or the total anatomical loss of both hands, or both arms, or both feet, or both legs, or both eyes, or

one hand and one foot, or any of two thereof; however, functional loss or loss of use shall not constitute anatomical loss.

(bb) Third degree burns of forty percent or more of the total body surface.

(iv) Notwithstanding the provisions of R.S. 23:1291.1 and 1377, any benefit paid pursuant to this Subparagraph shall be reported to the office separately from any other benefit paid pursuant to this Chapter and shall not be subject to assessment by the office or by the Louisiana Workers' Compensation Second Injury Board.

(v) Repealed by Acts 2006, No. 494, § 1.

## § 1222. Probable duration of disability not basis for award

Supplemental earnings benefits shall not be awarded or payable for probable duration of loss of wages. However, this Section does not prohibit the parties from entering into a compromise or lump sum settlement, in accordance with the Workers' Compensation Law.

## § 1223. Deductions from benefits

A. Except as provided in R.S. 23:1221(4)(s), when compensation has been paid under R.S. 23:1221(1), (2), or (3), the number of weeks of compensation paid shall be deducted from the number of weeks of compensation allowed under R.S. 23:1221(4) or Subpart C of this Part.

B. Except as provided in R.S. 23:1221(4)(s), when compensation has been paid under R.S. 23:1221(1), (2), or (4), the number of weeks of compensation paid shall be deducted from the number of weeks of compensation allowed under R.S. 23:1221(3) or Subpart C of this Part.

## § 1224. Payments not recoverable for first week; exceptions

Effective: August 1, 2012

No compensation shall be paid for the first week after the injury is received; provided, that in cases where disability from injury continues for two weeks or longer after date of the accident, compensation for the first week shall be paid after the first two weeks have elapsed.

## § 1225. Reductions when other benefits payable

A. The benefits provided for in this Subpart for injuries producing permanent total disability shall be reduced when the person receiving benefits under this Chapter is entitled to and receiving benefits under 42 U.S.C. Chapter 7, Subchapter II, entitled Federal Old Age, Survivors, and Disability Insurance Benefits, on the basis of the wages and self-employment income of an individual entitled to and receiving benefits under 42 U.S.C. § 423; provided that this reduction shall be made only to the extent that the amount of the combined federal and workers' compensation benefits would otherwise cause or result in a reduction of the benefits payable under the Federal Old Age, Survivors, and Disability Insurance Act pursuant to 42 U.S.C. § 424a, and in no event will the benefits provided in this Subpart, together with those provided

under the federal law, exceed those that would have been payable had the benefits provided under the federal law been subject to reduction under 42 U.S.C. § 424a. However, there shall be no reduction in benefits provided under this Section for the cost-of-living increases granted under the federal law after the date of the employee's injury.

B. No compensation benefits shall be payable for temporary or permanent total disability or supplemental earnings benefits under this Chapter for any week in which the employee has received or is receiving unemployment compensation benefits.

C. (1) If an employee receives remuneration from:

(a) Benefits under the Louisiana Workers' Compensation Law.

(b) Repealed by Acts 2003, No. 616, § 1.

(c) Benefits under disability benefit plans in the proportion funded by an employer.

(d) Any other workers' compensation benefits,

then compensation benefits under this Chapter shall be reduced, unless there is an agreement to the contrary between the employee and the employer liable for payment of the workers' compensation benefit, so that the aggregate remuneration from Subparagraphs (a) through (d) of this Paragraph shall not exceed sixty-six and two-thirds percent of his average weekly wage.

(2) Notwithstanding the provisions of Paragraph (1) of this Subsection, benefits payable for injury to an employee under this Chapter shall not be reduced by the receipt of benefits under this Chapter or any other laws for injury or death sustained by another person.

(3) If an employee is receiving both workers' compensation benefits and disability benefits subject to a plan providing for reduction of disability benefits, the reduction of workers' compensation benefits required by Paragraph (1) of this Subsection shall be made by taking into account the full amount of employer funded disability benefits, pursuant to plan provisions, before any reduction of disability benefits are made.

(4) If a conflict arises between the application of the provisions of this Section and those of any other Louisiana law or contract of insurance, the provisions of this Section shall control.

D. Repealed by Acts 2004, No. 561, § 1.

## § 1226. Rehabilitation of injured employees

Effective: June 23, 2014

A. When an employee has suffered an injury covered by this Chapter which precludes the employee from earning wages equal to wages earned prior to the injury, the employee shall be entitled to prompt rehabilitation services. Vocational rehabilitation services shall be provided by a licensed professional vocational rehabilitation counselor, and all such services provided shall be compliant with the Code of Professional Ethics for Licensed Rehabilitation Counselors as established by R.S. 37:3441 et seq.

B. (1) The goal of rehabilitation services is to return a worker with a disability to work, with a minimum of retraining, as soon as possible after an injury occurs. The first appropriate option among the following must be chosen for the worker:

(a) Return to the same position.

(b) Return to a modified position.

(c) Return to a related occupation suited to the claimant's education and marketable skills.

(d) On-the-job training.

(e) Short-term retraining program (less than twenty-six weeks).

(f) Long-term retraining program (more than twenty-six weeks but not more than one year).

(g) Self-employment.

(2) Whenever possible, employment in a worker's local job pool must be considered and selected prior to consideration of employment in a worker's statewide job pool.

(3) (a) The employer shall be responsible for the selection of a licensed professional vocational rehabilitation counselor to evaluate and assist the employee in his job placement or vocational training. Should the employer refuse to provide these services, or a dispute arises concerning the work of the vocational counselor, the employee may file a claim with the office to review the need for such services or the quality of services being provided. The employee shall have a right to an expedited summary proceeding pursuant to R.S. 23:1201.1(K)(8). The workers' compensation judge shall set a hearing date within three days of receiving the motion. The hearing shall be held not less than ten, nor more than thirty days, after the employer or payor receives notice, delivered by certified or registered mail, of the employee's motion. The workers' compensation judge shall provide notice of the hearing date to the employer and payor at the same time and in the same manner that notice of the hearing date is provided to the employee or his attorney. For the purposes of this Section, an employee shall not be required to submit the dispute on the issue of vocational services to mediation or go through a pretrial conference before obtaining a hearing. The hearing shall be conducted as a rule to show cause.

(b) An employee shall have no right of action against a vocational counselor for tort damages related to the performance of vocational services unless and until he has exhausted the administrative remedy provided for in Subparagraph (a) of this Paragraph. The running of prescription shall be suspended during the pendency of the administrative proceedings provided for in this Paragraph.

(c) Upon refusal by the employee, the employer or payor may reduce weekly compensation, including supplemental earnings benefits pursuant to R.S. 23:1221(3), by fifty percent for each week of the period of refusal. Reduction of benefits by the employer or payor shall be made in accordance with the provisions of R.S. 23:1201.1(A) through (E).

C. (1) Rehabilitation services required for workers with disabilities may be initiated by:

(a) An insurer or self-insured employer by designating a rehabilitation provider and notifying the office.

(b) The office by requiring the insurer or self-insured employer to designate a rehabilitation provider.

(c) The employee, through a request to the office. The office shall then require the insurer to designate a rehabilitation provider.

(2) Rehabilitation services provided under this Part must be delivered through a rehabilitation counselor approved by the office.

D. Prior to the workers' compensation judge adjudicating an injured employee to be permanently and totally disabled, the workers' compensation judge shall determine whether there is reasonable probability that, with appropriate training or education, the injured employee may be rehabilitated to the extent that such employee can achieve suitable gainful employment and whether it is in the best interest of such individual to undertake such training or education.

E. When it appears that a retraining program is necessary and desirable to restore the injured employee to suitable gainful employment, the employee shall be entitled to a reasonable and proper retraining program for a period not to exceed twenty-six weeks, which period may be extended for an additional period not to exceed twenty-six additional weeks if such extended period is determined to be necessary and proper by the workers' compensation judge. However, no employer or insurer shall be precluded from continuing such retraining beyond such period on a voluntary basis. An injured employee must request and begin retraining within two years from the date of the termination of temporary total disability as determined by the treating physician. If a retraining program requires residence at or near the facility or institution and away from the employee's customary residence, reasonable cost of board, lodging, or travel shall be borne by the employer or insurer. A retraining program shall be performed at facilities within the state when such facilities are available.

F. Temporary disability benefits paid pursuant to R.S. 23:1221(1) shall include such period as may be reasonably required for training in the use of artificial members and appliances and shall include such period as the employee may be receiving training or education under a retraining program pursuant to this Section.

G. The permanency of the employee's total disability under R.S. 23:1221(2) cannot be established, determined, or adjudicated while the employee is employed pursuant to an on-the-job training or a retraining program as provided in Subsections B and E of this Section.

## § 1231. Death of employee; payment to dependents; surviving parents

Effective: August 1, 2012

A. For injury causing death within two years after the last treatment resulting from the accident, there shall be paid to the legal dependent of the employee, actually and wholly dependent upon his earnings for support at the time of the accident and death, a weekly sum as provided in this Subpart.

B. (1) If the employee leaves legal dependents only partially actually dependent upon his earnings for support at the time of the accident and death, the weekly compensation to be paid shall be equal to the same proportion of the weekly payments for the benefit of persons wholly dependent as the amount contributed

by the employee to such partial dependents in the year prior to his death bears to the earnings of the deceased at the time of the accident.

(2) If the employee leaves no legal dependents, whether biological or adopted, entitled to benefits under any state or federal compensation system, one lump sum payment of seventy-five thousand dollars shall be paid to the employee's surviving biological and adopted children who are over the age of majority, to be divided equally among them, which shall constitute the sole and exclusive compensation in such cases.

(3) If the employee leaves no dependents entitled to benefits under Paragraph (2) of this Subsection, one lump sum of seventy-five thousand dollars shall be paid to the surviving biological and adopted children of the employee to be divided equally among them, which shall constitute the sole and exclusive compensation in such cases. If the employee leaves no legal dependents and no biological or adopted children entitled to benefits under any state or federal compensation system, the sum of seventy-five thousand dollars shall be paid to each surviving parent of the deceased employee, in a lump sum, which shall constitute the sole and exclusive compensation in such cases.

## § 1232. Allocation to dependents; schedule of payments

Effective: August 15, 2008

Payment to dependents shall be computed and divided equally among them on the following basis:

(1) If the widow or widower alone, thirty-two and one-half per centum of wages.

(2) If the widow or widower and one child, forty-six and one-quarter per centum of wages.

(3) If the widow or widower and two or more children, sixty-five per centum of wages.

(4) If one child alone, thirty-two and one-half per centum of wages of deceased.

(5) If two children, forty-six and one-quarter per centum of wages.

(6) If three or more children, sixty-five per centum of wages.

(7) If there are neither widow, widower, nor child, then to the father or mother, thirty-two and one-half per centum of wages of the deceased. If there are both father and mother, sixty-five per centum of wages.

(8) If there are neither widow, widower, nor child, nor dependent parent entitled to compensation, then to one brother or sister, thirty-two and one-half per centum of wages with eleven per centum additional for each brother or sister in excess of one. If other dependents than those enumerated, thirty-two and one-half per centum of wages for one, and eleven per centum additional for each such dependent in excess of one, subject to a maximum of sixty-five per centum of wages for all, regardless of the number of dependents.

## § 1233. Death or marriage of dependent; age limit of minor dependent

Weekly payments to a surviving spouse shall continue until the death or remarriage of such surviving spouse. In the case of remarriage of a surviving spouse, two years compensation payments shall be payable in one lump sum.

Weekly payments to a surviving child, physically or mentally incapacitated from earning, shall continue as long as such incapacity exists.

Weekly payments to a minor dependent child, who is not mentally or physically incapable of wage earning, shall terminate when he dies, marries, reaches the age of eighteen years, or, if enrolled and attending as a full-time student in any accredited educational institution, until he ceases to be so enrolled and attending or reaches the age of twenty-three years.

Weekly payments for all other dependents as determined in Subpart D of the Chapter shall continue as long as their dependency shall exist or shall terminate upon their deaths.

## § 1234. Minors and mental incompetents; rights and privileges, by whom exercised; prescriptions applicable

In case an injured employee is mentally incompetent or a minor or, where death results from the injury, in case any dependent as herein defined is mentally incompetent or a minor at the time when any right, privilege or election accrues to him under this Chapter, his duly qualified curator or tutor, as the case may be, may, in his behalf, claim and exercise such right, privilege or election, and no limitation of time, in this Chapter provided for, shall run, so long as such incompetent or minor has no curator or tutor, as the case may be.

## § 1235. Payments to minor dependents; how made

Effective: August 15, 2006

Where there is a surviving widow or widower and child or children entitled to compensation, the compensation above prescribed shall be paid entirely to the widow or widower for the benefit of the widow or widower and the common benefit of the child or children and the appointment of a tutor or tutrix shall not be necessary provided that in no event shall an amount in excess of the amount provided in R.S. 23:1232(1) be allocated for the exclusive use of the widow or widower alone. Where there is no surviving parent, and child or children entitled to compensation, payment shall be made in the following manner:

(1) To the duly appointed tutor or tutrix for a child or children under the age of eighteen.

(2) Directly to a child or children age eighteen years or older, except when the dependent is mentally or physically impaired.

## § 1236. Payments to employee before death; effect on payments to dependents

Where payments of compensation have been made to the employee before his death, the compensation for dependents as provided for in this Subpart shall begin on the date of the last of such payments.

## § 1251. Persons conclusively presumed dependents

Effective: August 1, 2012

The following persons shall be conclusively presumed to be wholly and actually dependent upon the deceased employee:

(1) A surviving spouse upon a deceased spouse with whom he or she is living at the time of the accident or death.

(2) A child under the age of eighteen years (or over eighteen years of age, if physically or mentally incapacitated from earning) upon the parent with whom he is living at the time of the injury of the parent, or until the age of twenty-three if enrolled and attending as a full-time student in any accredited educational institution.

(3) A child under the age of eighteen years, or over eighteen years of age, if physically or mentally incapacitated from earning, with a valid child support order from a court of competent jurisdiction against the deceased parent, regardless of whether child support is actually being paid, or until the age of twenty-three if enrolled and attending any accredited educational institution as a full-time student.

## § 1252. Determination of dependency in other cases

In all other cases, the question of legal and actual dependency in whole or in part, shall be determined in accordance with the facts as they may be at the time of the accident and death; in such other cases if there are a sufficient number of persons wholly dependent to take up the maximum compensation, the death benefit shall be divided equally among them, and persons partially dependent, if any, shall receive no part thereof.

## § 1253. Membership in family or relationship

Effective: August 1, 2012

If there is no one wholly dependent and more than one person partially dependent, so much of the death benefit as each is entitled to shall be divided among them according to the relative extent of their dependency. No person shall be considered a dependent, unless he is a member of the family of the deceased employee, or bearing to him the relation of husband or widow, or lineal descendant or ascendant, or brother or sister, or child. Regardless of dependency, no payments shall be made to the concubine of the deceased employee nor the concubine's children, unless those children are related to the deceased employee by blood or adoption.

## § 1254. Dependency at the time of accident and death

In all cases provided for under this Part the relation or dependency must exist at the time of the accident and at the time of death, and the mere expectation or hope of future contribution to support of an alleged dependent by an employee, shall not constitute proof of dependency as a fact.

## § 1255. Widow or widower; living with spouse at time of injury or death

No compensation shall be payable under this Part to a surviving spouse unless he or she was living with the deceased spouse at the time of the injury or death, or was then actually dependent upon the deceased spouse for support.

## § 1271. Right of parties to settle or compromise

A. It is stated policy for the administration of the workers' compensation system of this state that it is in the best interest of the injured worker to receive benefit payments on a periodic basis. A lump sum payment or compromise settlement in exchange for full and final discharge and release of the employer, his insurer, or both from liability under this Chapter shall be allowed only:

(1) Upon agreement between the parties, including the insurer's duty to obtain the employer's consent;

(2) When it can be demonstrated that a lump sum payment is clearly in the best interests of the parties; and

(3) Upon the expiration of six months after termination of temporary total disability. However, such expiration may be waived by consent of the parties.

B. As used in this Part, "parties" means the employee or his dependent and the employer or his insurer. Nothing in this Section shall require the office of risk management to obtain approval of settlements from the employing state agency, department, council, board, or political subdivision.

## § 1272. Approval of lump sum or compromise settlements by the workers' compensation judge

A. A lump sum or compromise settlement entered into by the parties under R.S. 23:1271 shall be presented to the workers' compensation judge for approval through a petition signed by all parties and verified by the employee or his dependent, or by recitation of the terms of the settlement and acknowledgment by the parties in open court which is capable of being transcribed from the record of the proceeding.

B. When the employee or his dependent is represented by counsel, and if attached to the petition presented to the workers' compensation judge are affidavits of the employee or his dependent and of his counsel certifying each one of the following items: (1) the attorney has explained the rights of the employee or dependent and the consequences of the settlement to him; and, (2) that such employee or dependent understands his rights and the consequences of entering into the settlement, then the workers' compensation judge shall approve the settlement by order, and the order shall not thereafter be set aside or modified except for fraud or misrepresentation made by any party.

C. When the employee or his dependent is not represented by counsel, the workers' compensation judge shall determine whether the employee or his dependent understands the terms and conditions of the proposed settlement, and shall approve it by order, unless he finds that it does not provide substantial justice to all parties, and the order shall not thereafter be set aside or modified except for fraud or misrepresentation made by any party.

D. If a suit has been filed against a third party pursuant to the provisions of R.S. 23:1101, the district court hearing the third-party suit shall, in addition to a workers' compensation judge, have the authority to approve a lump sum or compromise settlement of the workers' compensation claim under the same conditions and terms set forth in this Section for approval of such settlements by a workers' compensation judge, and such authority shall include approval and establishment of the credit due the employer. The fees of the attorney representing the employee in the workers' compensation matter shall be approved by the district court judge.

E. All compensable medical expenses incurred prior to the date of the settlement shall be paid by the payor unless the terms of the settlement specifically provide otherwise.

## § 1274. Lump sum settlements; necessity for approval

A. The amounts payable as compensation may be commuted to a lump sum settlement by agreement if approved by the workers' compensation judge as provided in this Part. In a lump sum settlement, the payments due the employee or his dependents shall not be discounted at a greater rate than eight percent per annum.

B. If the lump sum settlement is made without the approval of the workers' compensation judge, or at a discount greater than eight percent per annum, even if approved by the director or the workers' compensation judge, the employer shall be liable for compensation at one and one-half times the rate fixed by this Chapter. At any time within two years after date of the payment of the lump sum settlement and notwithstanding any other provision of this Chapter, the claimant shall be entitled to demand and receive in a lump sum from the employer such additional payment as together with the amount already paid, will aggregate one and one-half times the compensation which would have been due but for such lump sum settlement.

C. Upon payment of a lump sum settlement commuted on a term agreed upon by the parties, approved by the workers' compensation judge, and discounted at not more than eight percent per annum, the liability of the employer or his insurer making the payment shall be fully satisfied.

D. For the settlement of compensation claims as provided in R.S. 23:1231 through 1236 the following procedure shall be followed. The claimant must present to the employer an affidavit of death of the employee, proper proof of the claimant's relationship to the deceased and his legal right to the compensation benefits. Such documentation shall be affixed to the joint petition and submitted to the workers' compensation judge for approval as hereinabove provided.

## § 1291. Creation, powers, and duties of the office of workers' compensation administration

Effective: August 1, 2014

A. The office of workers' compensation administration is hereby established within the Louisiana Workforce Commission to administer the provisions of this Chapter. The office shall be administered by a director, who shall be a director appointed pursuant to R.S. 36:307.

B. The director shall have the following powers, duties, and functions:

(1) To supervise, direct, and account for the administration and operation of the office, its sections, functions, and employees.

(2) To appoint such personnel as may be necessary for the administration and operation of the office within such limitations as may be imposed by law.

(3) Repealed by Acts 1988, No. 938, § 3, eff. July 1, 1989.

(4) To require, that every Louisiana employer of more than fifteen employees provide, if self insured, or is provided by the insurer, if privately insured, plans for implementation of a working and operational safety plan. The plans shall be made available for inspection by the director upon request but shall be privileged and confidential pursuant to R.S. 23:1293 provided that the operational safety plan may be subpoenaed from the employer who shall certify under oath that it is a duplicate of the plan submitted to the director. In order to assure adequate safety resources for Louisiana employers and employees, the director shall maintain a list of safety engineers from the private sector, which shall be available upon request by any Louisiana employer.

(5) To establish and promulgate in accordance with the Administrative Procedure Act such rules and regulations governing the administration of this Chapter and the operation of the office as may be deemed necessary and which are not inconsistent with the laws of this state.

(6) To delegate any of his powers, duties, or functions to a manager of a section, except his powers to remove employees of the office or to fix their compensation, and to establish and promulgate rules and regulations.

(7) To review and approve “own-risk” applications.

(8) To monitor “own-risk” insurance programs in accordance with the rules of the office of workers’ compensation administration.

(9) To enforce the reimbursement schedule established for drugs, supplies, hospital care and services, medical and surgical treatment, and any nonmedical treatment recognized by the laws of this state as legal.

(10) To require the use of appropriate procedures, including a utilization review process that establishes standards of review, for determining the necessity, advisability, and cost of proposed or already performed hospital care or services, medical or surgical treatment, or any nonmedical treatment recognized by the laws of this state as legal, and to resolve disputes over the necessity, advisability, and cost of same.

(11) To engage the services of qualified experts in the appropriate health-care fields to assist him in the discharge of his responsibilities in Paragraph (10) of this Subsection, and to establish fees and promulgate rules and procedures in furtherance of his performance of these duties.

(12) To audit the specific medical records of the patient under treatment by any health care provider who has furnished services or treatment to a person covered by this Chapter, or the records of any person or entity rendering care, services, or treatment or furnishing drugs or supplies for the purpose of determining whether an inappropriate reimbursement has been made.

(13) To promulgate necessary rules and regulations in accordance with the provisions of the Administrative Procedure Act, imposing reasonable fines or penalties for a failure to comply with any rule or regulation adopted under the provisions of this Chapter. In no event shall such fine or penalty exceed five hundred dollars.

(14) To appoint an advisory council of five persons to consult with him periodically upon the efficient administration of his responsibilities under this Chapter.

C. There shall be established within the office the following sections:

(1) A hearing section, the primary duty of which shall be to resolve and/or adjudicate disputed claims filed with the office of workers' compensation administration.

(2) A medical service section, the primary duty of which shall be to administer and implement the provisions of Paragraphs B(9), (10), (11), and (12) of this Section and R.S. 23:1121 through 1123.

(3) A workplace safety section, the primary duty of which shall be to administer and implement the provisions of Paragraph (B)(4) of this Section, the OSHA 21(d)(1) program and the Workers' Compensation Cost Containment Act. This section shall also have the responsibility for the coordination of the safety programs of the Louisiana Workforce Commission.

(4) A records management section, which shall administer and implement the provisions of R.S. 23:1201(H), 1292, 1306, 1310.10, and 1310.12.

(5) A workers' compensation fraud section, which shall administer the provisions of R.S. 23:1170, 1171, 1171.1, 1172, 1172.1, 1172.2, 1208, and 1295 by investigating allegations of workers' compensation fraud and noncompliance by employers.

(6) Repealed by Acts 2001, No. 627, § 2.

D. Each section shall perform such other functions and duties as may be prescribed by the director and shall act under the direction and supervision of the director.

## § 1291.1. Annual reports; assessment; collection

A. (1) All insurers and employers that have paid Louisiana workers' compensation benefits shall provide a report annually to the office of workers' compensation administration on a form provided by the office showing the amount of actual Louisiana workers' compensation benefits paid in the previous calendar year. The report shall be provided no later than April thirtieth of each year.

(2) As used herein, "insurer" shall include insurance companies, group self-insurers, and individual self-insurers, and "workers' compensation benefits" shall include all benefits paid in satisfaction of an employer's workers' compensation obligation as provided for by this Chapter, regardless of the source or designation, minus all sums of any nature received during the previous calendar year from the Louisiana Second Injury Fund or from third parties with the exception of recoveries made by reinsurers.

B. The annual reports as required by Subsection A of this Section shall be used by the office as the base figure for computing an assessment on the insurers and employers required to file the annual reports. Such assessments shall be a percentage of the amount reported in the annual reports.

C. (1) The director of the office of workers' compensation administration shall provide by regulation for the collection of the amounts assessed against each insurer and employer. Collection of funds under the provisions of this Subsection shall be accomplished by the office of workers' compensation administration, the amount collected to be determined by the director. Such amounts shall be paid

into the Office of Workers' Compensation Administrative Fund within thirty days from the date that notice is served upon such insurer or employer.

(2) If the assessment is not paid by the due date for payment there may be assessed, for each thirty days, or a fraction thereof, the amount assessed remains unpaid, a civil penalty equal to twenty percent of the unpaid assessment excluding any penalty assessed for late filing, which shall be due and collected at the same time as the unpaid part of the amount assessed. This penalty shall be in addition to any penalty assessed for late filing.

(3) If any insurer or employer fails to provide an annual report by April thirtieth, and such report is later found to be required, there may be assessed civil penalties. The penalties shall be a percentage of the assessment as determined on the properly completed report and shall be calculated as follows:

(a) Ten percent per month, or fraction thereof, until June thirtieth.

(b) Twenty percent per month, or fraction thereof, after June thirtieth.

(4) The assessment and any penalties provided for in this Section shall be regarded as any other money judgment and may be pursued for collection as prescribed by law for any other such remedy.

D. If any insurer or employer fails to pay the amounts assessed against it under the provisions of this Section within sixty days from the time such notice is served upon it, or fails to provide the report required under Subsection A of this Section within sixty days of the date due the commissioner of insurance, upon being advised by the director, may suspend or revoke the insurer's authorization to insure compensation in accordance with the procedures of the Insurance Code or the director may revoke the authorization to self-insure.

E. There is hereby created and established in the state treasury a special fund, which shall be designated as the "Office of Workers' Compensation Administrative Fund". The fund shall be maintained as a separate account in the treasury for the sole purpose of funding the administrative expenses of the office of workers' compensation administration of the Louisiana Workforce Commission as set forth in R.S. 23:1291 et seq. Funds shall be withdrawn therefrom only pursuant to legislative appropriation and shall be subject to budgetary control as provided by law. All remaining and unencumbered balances at the end of any fiscal year shall remain to the credit of the fund and shall be used solely for the purpose stated in this Section.

## § 1291.2. Access to payors' records; fraud identification

Effective: August 1, 2012

A. Each payor, as defined by R.S. 23:1142, shall make his claims and payment data, if such data are maintained, available to the office of workers' compensation administration for the purpose of identifying violations of this Chapter.

B. The director of the office of workers' compensation administration may designate the data to be reproduced, copied, or utilized at his discretion to verify that employers and claimants are not engaging in fraudulent activities. Notwithstanding any other provision of law to the contrary, any data produced or inspected pursuant to this Section shall remain confidential and privileged and are not subject to discovery or subpoena in any legal proceeding, except in the prosecution of persons or corporations according to R.S. 23:1170, et seq. The Louisiana Workforce Commission

shall have the authority to promulgate rules and regulations necessary to implement the provisions of this Section.

## § 1292. Statistical data; required reports; penalties

A. Every employer of more than ten employees who is subject to recordkeeping under the provisions of 29 U.S.C. 655 shall, within ninety days of any occupational death of an employee, any non-fatal occupational illness, or any non-fatal occupational injury involving either loss of consciousness, restriction of work or motion, transfer to another job, or medical treatment other than first aid, send to the records management section the following information:

(1) Employer's name.

(2) Employee's name.

(3) Employee's occupation.

(4) A description of employee's duties.

(5) A description of employee's workplace.

(6) Date of death, injury, or onset of illness.

(7) A description of the accident or occurrence resulting in death, injury, or illness.

(8) The number of work days lost or days of restricted activity involving the employee and resulting from the accident, occurrence, or illness.

B. The records of the records management section which contain the identity of individual employers or employees are confidential, shall not be public records, and shall not be subject to subpoena. All employees of the office shall maintain such confidentiality. The statistical data derived from these records shall be public records, however, and shall be published annually by the section in such form as will insure its availability to the general public.

C. Any employee of the office who violates the confidentiality of any record that reveals the identity of any employer or employee involved in a case of occupational death, injury, or illness shall be guilty of a misdemeanor and fined not more than five hundred dollars for each offense.

## § 1293. Confidentiality of records; exceptions; penalties for violation

Effective: August 1, 2012

A. (1) All medical records of an employee, all records of payment of compensation to an employee or his dependent, all records with respect to the rehabilitation or attempted rehabilitation of an injured employee, all employer reports of injury as required by R.S. 23:1306, all claims by an employee or his dependent filed pursuant to R.S. 23:1310, records submitted to the Louisiana Workers' Compensation Second Injury Board concerning claims for reimbursement arising out of a claim by an employee or his dependent filed pursuant to Chapter 10 of this Title, including but not limited to any and all records submitted for requests for reimbursement, documents maintained in the claim files regarding reimbursement and settlement requests, and all records submitted pursuant to R.S. 23:1378(A)(5), all safety plans pursuant to R.S. 23:1291(B)(4), all safety

records of the OSHA section obtained in connection with the Insurance Cost Containment Act or the OSHA 7(c)(1) program, and all data produced pursuant to R.S. 23:1291.2, shall be confidential and privileged, shall not be public records, and shall not be subject to subpoena, except that records of the office may be produced in response to an order of a workers' compensation judge based upon his finding that the record is relevant and necessary to the resolution of a disputed claim pending before the office. Such confidentiality and privilege shall be strictly maintained by the director and all employees of the office except as provided above or in Subsection B of this Section and shall be used exclusively for the purpose of discharging the duties and responsibilities of the office under this Chapter.

(2) Nothing in this Section shall prohibit the communication of facts or documents that are part of an employee's medical record to the employee or his representative. When authorized in writing by the employee such facts and documents may also be released to the employer or his insurer. The facts or documents that are part of an employee's medical record shall be used exclusively for the purposes of claims administration and the communication to third parties is strictly prohibited.

(3) Nothing in this Section shall prohibit the communication of facts, documents, or other information which are part of employee or employer records if requested by a federal or state prosecuting attorney; by the office of state police, public safety services, Department of Public Safety and Corrections, in the conduct of an insurance fraud investigation; or by the attorney general of this state. The office may also share information with any state or federal agency for the purpose of investigating or determining tax fraud or the offset of any governmental benefit or workers' compensation benefits or with any other government entity authorized by law to conduct any audit, investigation, or similar activity in connection with the administration of any state or federally funded program.

(4) Nothing in this Section shall prohibit the communication of the name and address of an employer approved by this office as a self-insured. All other information submitted in an employer's application for self-insurance remains subject to the privacy provision of this Section.

(5) Nothing in this Section shall prohibit the communication of the name of an employer and the name of his insurer or membership in a group self-insurance fund as of a specific date. The office of workers' compensation administration shall not provide information which shall allow a requesting party to obtain the identity of all members or insured employers of a particular carrier or group self-insurance fund, either through individual requests or multiple requests. The office of workers' compensation administration shall not provide the effective dates of coverage for a specific employer, or groups of employers, either through individual requests or multiple requests.

(6) (a) Nothing in this Section shall prohibit the communication of information found in the records of the Louisiana Workers' Compensation Second Injury Board, during a meeting of the board, as provided in R.S. 23:1373 or on an appeal of a final decision of the Second Injury Board pursuant to R.S. 23:1378(E).

(b) Notwithstanding the provisions of this Section, once a claim is made by an employer, group self-insurance fund, or insurer for reimbursement of the Louisiana Workers' Compensation Second Injury Fund, information or documents submitted to the Louisiana Workers' Compensation Second Injury Board involving the claim for reimbursement shall be available to the employer, group self-insurance fund, insurer, or their representatives upon simple request.

B. (1) Notwithstanding the provisions of Subsection A of this Section, once in a disputed claim an employer begins to pay benefits to an employee under this Chapter or a claim is made by an employee against an employer for benefits under this Chapter, pleadings, motions, discovery documents, depositions, hearing transcripts, and exhibits entered into evidence in any dispute involving the same claimant or any records of the office involving prior benefits paid by an employer to the same claimant shall be available to the employer, the employee, and their counsel upon simple request. Any decision, award, or order of a workers' compensation judge is a public record and may be compiled and disseminated to the public. The complete record of any formal hearing shall be made available to the court of appeal when an appeal is filed.

(2) Nothing in this Section shall prevent the use of such records for the compilation of statistical data wherein the identity of the individual or employer is not disclosed.

C. Whoever violates Subsection (A) of this Section shall be guilty of a misdemeanor and fined not more than five hundred dollars for each offense.

## § 1294. Workers' Compensation Advisory Council

Effective: August 1, 2014

A. (1) The Workers' Compensation Advisory Council is hereby created within the Louisiana Workforce Commission pursuant to R.S. 36:309(C)(4).

(2) It shall consist of seventeen members who are domiciled in Louisiana and appointed by the governor to serve at the pleasure of the governor. To the extent practicable, every organization or entity that provides nominations to the council shall strive for diversity in its appointments on the basis of sex, race, ethnicity, and geography. Each appointment by the governor shall be submitted to the Senate for confirmation.

(a) Two council members shall be representatives of labor and shall be presently or formerly affiliated with labor and residing and working in Louisiana.

(b) Two shall be representative of business interests in Louisiana.

(c) One shall be a representative of self-insured industries in Louisiana.

(d) One shall be an attorney licensed to practice law in Louisiana who has previously represented employers in workers' compensation claims.

(e) One shall be an attorney licensed to practice law in Louisiana who has previously represented claimants in workers' compensation claim.

(f) One shall be a representative from the Louisiana State Medical Society.

(g) Five shall be members of the general public, one from each Public Service Commission district.

(h) One shall be a representative from the Louisiana Orthopaedic Association.

(i) One shall be the director of the office of workers' compensation administration.

(j) One shall be a representative of the Chiropractic Association of Louisiana.

(k) One shall be a representative of the Louisiana Psychological Association.

(3) The chairman of the council shall be the director of the office of workers' compensation administration.

(4) Any change in membership to achieve the goal of geographic representation and diversity based on sex, race, and ethnicity shall occur by attrition.

B. (1) The council shall monitor and, at least thirty days prior to the convening of the regular session of the legislature, report to the governor and the legislature on the implementation and administration of this Part and make specific recommendations thereon.

(2) The advisory council shall review and make recommendations to the governor, through the Louisiana Workforce Commission, on any proposed rules affecting the administration or resolution of claims provided for in this Chapter.

C. (1) No member of the Worker's Compensation Advisory Council acting within the scope of his official functions and duties shall be held individually liable for a policy recommendation or policy action by the council, unless damage or injury is caused by the member's willful or wanton misconduct.

(2) A person immune from liability under the provisions of Paragraph (1) of this Subsection shall not be subject to civil or administrative subpoena for his recommendations or exercise of judgment as a member of the council, including a subpoena seeking his oral or written testimony at trial, discovery, or other proceeding, and a subpoena duces tecum seeking documents, inspections, things or information in electronic or any other form.

## § 1295. Investigations

For the purposes of administering the provisions of this Chapter, the administrator of the fraud section for the office of workers' compensation and his duly authorized representative shall investigate all allegations of violations of this Chapter. As used in this Subpart, "administrator" means the administrator of the fraud section of the office of workers' compensation.

## § 1296. Administrator; powers

In the discharge of the duties imposed by this Chapter, the administrator and any duly authorized representative shall have the power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memorandums, and other records deemed necessary as evidence in connection with an investigation under

this Subpart. Subpoenas issued pursuant to this Section may be served by any person duly authorized by the administrator.

## § 1297. Subpoenas

In case of contumacy by, or refusal to obey a subpoena issued to, any person, upon application by the administrator or any duly authorized representative to a district court of the state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts business, that district court shall have jurisdiction to issue an order requiring that person to appear before the administrator, or any duly authorized representative, to produce evidence, or to give testimony relevant to the matter under investigation. Failure to obey such an order of the court may be punished as a contempt of that court.

## § 1301. Notice as prerequisite to institution of proceedings

No proceeding under this Chapter for compensation shall be maintained unless notice of the injury has been given to the employer within thirty days after the date of the injury or death. This notice may be given or made by any person claiming to be entitled to compensation or by anyone on his behalf.

## § 1302. Employer's duty to advise employees as to necessity of notice

A. The employer shall have printed and keep posted at some convenient and conspicuous point in his place of business a notice reading substantially as follows:

"In case of accidental injury or death, an injured employee or any person claiming to be entitled to compensation either as a claimant or as a representative of a person claiming to be entitled to compensation must give notice to (name and address of employer) within thirty days. If notice is not given to the above party within thirty days, no payments will be made under the law for such injury or death. In addition, any fraudulent action by the employer, employee, or any other person for the purpose of obtaining or defeating any benefit or payment of worker's compensation shall subject such person to criminal as well as civil penalties."

B. If the employer fails to keep such a notice posted, the time in which the notice of injury shall be given as provided in R.S. 23:1301 shall be extended to twelve months from the date of injury. The director may by rule require inclusion of additional information in the notice required by this Section.

## § 1303. Contents of notice

The notice required by R.S. 23:1301 shall (1) be made in writing, (2) contain the name and address of the employee, (3) state in ordinary language the time, place, nature, and cause of the injury, and (4) be signed by the person giving or making the notice.

## § 1304. Persons to whom notice given

Any notice or claim under this Chapter shall be given to the employer. If the employer is a partnership, then notice may be given to any one of the partners. If the employer is a corporation, then the notice may be given to any agent of the corporation upon whom process may be served or to any officer or agent in charge of the business at the place

where the injury occurred. If the employer is a body politic, then the notice or claim for compensation may be given to the person connected with the body politic upon whom process may be served; however, in any case, the notice may be given to the person designated in the notice posted in accordance with R.S. 23:1303. Any such notice shall be given by delivering it or by sending it by certified mail, return receipt requested, addressed to the employer or officer or agent at his or its last known residence or place of business.

## § 1305. Inaccuracies as to time, nature, place, or cause, of injury; effect of delay or lack of notice

A notice given under this Subpart shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place, nature, or cause of the injury, or otherwise, unless it is shown that the employer was in fact misled to his detriment thereby. Lack of notice or delay in giving notice shall not be a bar to proceedings under this Chapter if it is shown that the employer, or his agent or representative, had knowledge of the accident or that the employer has not been prejudiced by such delay or lack of notice.

## § 1306. Employer reports

Effective: August 1, 2012

A. Within ten days of actual knowledge of injury resulting in death or in lost time in excess of one week after the injury, the employer shall send a report to the insurer, if any, on a form prescribed by the director, providing the following information:
   (1) The name, address, and business of the employer.
   (2) The name, Social Security number, street, mailing address, telephone number, and occupation of the employee.
   (3) The cause and nature of the injury or death.
   (4) The date, time, and the particular locality where the injury or death occurred.
   (5) The wages, as defined in R.S. 23:1021, the worker was earning at the time of the injury.

B. (1) (a) The insurer or the administrator of the employer's workers' compensation claims, upon receipt of the first report of injury, shall submit the data in electronic data interchange or EDI format to the office of workers' compensation administration at a frequency to be determined by the director.
   (b) For the purposes of this Subsection, electronic data interchange or EDI format shall be based on the International Association of Industrial Accident Boards and Commissions (IAIABC) standards.
   (2) (a) Submissions after December 31, 2012, may be in the EDI format. Submissions after December 31, 2013, shall be in the EDI format.
   (b) Any new EDI format developed by the IAIABC shall be adopted for use at the discretion of the director.

C. All information and records pursuant to this Section shall be confidential and privileged, shall not be public records, and shall not be subject to subpoena. However, nothing in this Section shall prevent the use of such information or records for the compilation of statistical data wherein the identity of the individual or employer is not disclosed.

## § 1307. Information to injured employee

Effective: August 1, 2012

Upon receipt of notice of injury from the employer or other indication of an injury reportable under R.S. 23:1306, the office shall mail immediately to the injured employee and employer a brochure which sets forth in clear understandable language a summary statement of the rights, benefits, and obligations of employers and employees under this Chapter, together with an explanation of the operations of the office, and shall invite the employer and employee to seek the advice of the office with reference to any question or dispute which the employee has concerning the injury. Such brochure shall specifically state the procedure for requesting an independent medical examination in the event a dispute arises as to the condition of the employee or the employee's capacity to work and the procedure for appealing the denial of medical treatment to the medical director as provided in R.S. 23:1203.1. If such brochure has previously been mailed to an employer within the calendar year, the office shall not mail such employer an additional brochure unless the employer specifically requests such.

## § 1310. Initial filing of claim with office of workers' compensation administration

A. If, at any time after notification to the office of the occurrence of death or injury resulting in excess of seven days lost time, a bona fide dispute occurs, the employee or his dependent or the employer or insurer may file a claim with the state office, or the district office where the hearing will be held, on a form to be provided by the director.

B. In addition to any other information required by the director, the claim shall set forth the time, place, nature, and cause of the injury, the benefit in dispute, and the employee's actual earnings, if any, at the time of the filing of the claim with the office.

## § 1310.1. Workers' compensation judges; creation; tenure; qualification; presiding officer; rules and regulations; hearings; director

A. There is hereby created workers' compensation judge positions comprised of at least ten judges within the office of workers' compensation administration.

B. A workers' compensation judge, or ad hoc officer presiding over a workers' compensation adjudicatory hearing, shall have been licensed and actively engaged in the practice of the law in the state for not less than five years, and following employment as a workers' compensation judge shall not practice workers' compensation law while so employed. Any temporary ad hoc officers appointed or designated by the commission to preside over a workers' compensation adjudicatory hearing shall meet the same eligibility requirements and shall comply with the same provisions of civil service for appointment, retention, or reappointment as are required for workers' compensation judges authorized under this Section.

C. The director shall have the authority to adopt reasonable rules and regulations, including the rules of procedure before the workers' compensation judges, according to the procedures established by the Administrative Procedure Act.1 All rules and regulations, properly approved and promulgated under the Administrative Procedure

Act, shall be consistent with the Workers' Compensation Law and shall be binding in the administration of that law.

D. A workers' compensation judge shall be appointed by the director of the office of workers' compensation in accordance with all applicable civil service laws, rules, and regulations for a five-year term. He shall be subject to removal by the executive director during his term of employment for cause. A workers' compensation judge may be appointed for additional terms of five years but must reapply in the same manner as new applicants.

## § 1310.2. Duties of director

A. The chief administrative officer to assist the workers' compensation judges shall be the director of the office of workers' compensation administration, who shall be subject to the general administrative authority of the executive director.

B. In addition to his other duties set forth in Title 23 of the Louisiana Revised Statutes of 1950, the director shall organize, direct, and develop the administrative work in support of the work of the workers' compensation judges, including the docketing, clerical, technical, and financial work, establish hours of operation, and perform such other duties relating to matters within the purview of the workers' compensation judges as any one of them may request.

C. The director shall employ other employees, within budgetary limitation, necessary to carry out the work and orders of the workers' compensation judges in an efficient and expedient manner.

## § 1310.3. Initiation of claims; voluntary mediation; procedure

Effective: August 15, 2010

A. A claim for benefits, the controversion of entitlement to benefits, or other relief under the Workers' Compensation Act shall be initiated by the filing of the appropriate form with the office of workers' compensation administration. Mailing, facsimile transmission, or electronic transmission of the form and payment of the filing fee within five days of any such mailing or transmission constitutes the initiation of a claim under R.S. 23:1209.

B. Upon receipt of the form, the director shall assign the matter to a district. Upon receipt of the form, a district office shall effect service of process on any named defendant in any manner provided by law or by certified mail. All subsequent pleadings requiring service shall also be served in any manner provided by law or by certified mail. A defendant shall file an answer within fifteen days of service of the form or within a delay for answering granted by the workers' compensation judge not to exceed an additional ten days.

C. The filing of the answer shall be deemed timely when the answer is mailed, transmitted by facsimile, or electronic transmission on or before the day on which said delays run. If the answer is received by mail, facsimile, or electronic transmission on or before the first legal day following the expiration of the due date, there shall be a rebuttable presumption that the answer was timely filed. In all cases where the presumption does not apply, the timeliness of the mailing or transmittal shall be shown by an official United States postmark, official receipt of certificate from the United States Postal

Service, facsimile transmission confirmation, or electronic receipt confirmation made at the time of transmission which indicates the date thereof.

D. (1) Upon joint request of the parties, or upon order of the presiding workers' compensation judge, all parties shall engage the services of either of the following:

(a) A Louisiana Workforce Commission, office of workers' compensation administration mediator, and such mediation shall be held in the district office in which the selected mediator is assigned.

(b) A private mediator, and such mediation shall be held at a location mutually agreeable to the parties.

(2) The selection of the mediator shall be by mutual agreement of the parties.

(3) Each party shall provide a representative, in person or via telephone, to participate in the mediation conference, who has been provided with authority to enter into negotiations in a good faith effort to resolve the issue in dispute. The attorneys for the parties may participate in the mediation conference via telephone by mutual consent of the parties.

(4) Within five days of the conclusion of the mediation conference, the parties shall certify to the court, via United States mail, electronic transmission, or facsimile transmission, that a mediation conference has occurred and the results thereof.

(5) Nothing shall prohibit the parties from requesting a mediation conference prior to the filing of a disputed claim for compensation; however, neither the request nor participation in the mediation conference shall interrupt the running of prescription.

E. If any party fails to appear at a mediation conference ordered by the judge or requested by the parties after proper notice, the workers' compensation judge upon request of a party may fine the delinquent party an amount not to exceed five hundred dollars, which shall be payable to the Office of Workers' Compensation Administrative Fund. In addition, the workers' compensation judge may assess against the party failing to attend costs and reasonable attorney fees incurred by any other party in connection with the conference. The penalties provided for in this Subsection shall be assessed by the workers' compensation judge only after a contradictory hearing which shall be held prior to the hearing on the merits of the dispute.

F. Except as otherwise provided by R.S. 23:1101(B), 1361, and 1378(E), the workers' compensation judge shall be vested with original, exclusive jurisdiction over all claims or disputes arising out of this Chapter, including but not limited to workers' compensation insurance coverage disputes, group self-insurance indemnity contract disputes, employer demands for recovery for overpayment of benefits, the determination and recognition of employer credits as provided for in this Chapter, and cross-claims between employers or workers' compensation insurers or self-insurance group funds for indemnification or contribution, concursus proceedings pursuant to Louisiana Code of Civil Procedure Articles 4651 et seq. concerning entitlement to workers' compensation benefits, payment for medical treatment, or attorney fees arising out of an injury subject to this Chapter.

G. (1) Any party challenging the constitutionality of any provision of this Chapter shall specially plead such an allegation in the original petition, an exception, written

motion, or answer, which shall state with particularity the grounds for such an allegation.

(2) Within thirty days of the filing of any pleading raising the issue of unconstitutionality, the party making such an allegation must file a petition in a state district court of proper jurisdiction for purposes of adjudicating the claim of unconstitutionality. Such filing shall be given priority in hearing such claim not more than ten days from being presented to the district court.

(3) Failure to follow the procedures set forth in this Section shall bar any claim as to the unconstitutionality of any provision of this Chapter on appeal.

## § 1310.4. Place hearings to be held

A. (1) At the time a claim is initiated with the director, the claimant shall elect the situs of necessary hearings by the workers' compensation judge.

(2) If the claimant is a domiciliary of the state of Louisiana, he shall be required to elect either the judicial district of the parish of his domicile at the time he sustained his injury, the judicial district of the parish where the injury occurred, or the judicial district of the parish of the principal place of business of the employer.

(3) In the event that the claimant is not a domiciliary of the state of Louisiana, the necessary hearings shall be held in the judicial district of the parish of the principal place of business of the employer, provided, that if the injury occurred within the state, the hearings shall be held in the judicial district of the parish where the injury occurred.

(4) In the event the claimant is not a domiciliary of the state of Louisiana and the accident resulting in injury occurred outside the territorial limits of the state, the hearings shall be held in the judicial district of the parish in this state wherein the contract of employment was made or in which the employment was principally localized.

B. After the election has been made as provided above, all future hearings affecting the claimant's case shall be held in the workers' compensation district so designated unless the workers' compensation judge, upon agreement by the claimant and the employer, shall transfer such cause for hearing to any other workers' compensation district agreed upon. In addition, hearings may be held in any workers' compensation district if the workers' compensation judge determines that good cause has been shown.

## § 1310.5. Hearing and appellate procedures; reported opinions

A. (1) Insofar as may be possible, all the evidence pertaining to each case, except as to noncontested matters, shall be heard by the workers' compensation judge initially assigned to the case. Upon the completion of such hearing or hearings, the workers' compensation judge shall make such order, decision, or award as is proper, just, and equitable in the matter.

(2) Either party feeling aggrieved by such order, decision, or award shall, after receipt by certified mail of the order, decision, or award, have the right to take an appeal to the circuit court of appeal for the judicial district elected by the claimant upon the filing of the petition. The motion and order for appeal shall

be filed with the district office assigned to handle the claim, which shall be responsible for preparation of the record for the appellate court.

B. The decision of the workers' compensation judge shall be final unless an appeal is made to the appropriate circuit court of appeal. An appeal which suspends the effect or execution of an appealable judgment or order must be filed within thirty days. An appeal which does not suspend the effect or execution of an appealable judgment or order must be filed within sixty days. The delay for filing an appeal commences to run on the day after the judgment was signed or on the day after the district office has mailed the notice of judgment as required by Louisiana Code of Civil Procedure Article 1913, whichever is later. Motions for new trial shall be entertained in disputes filed under this Chapter. The delay for filing an appeal when a motion for new trial has been filed shall be governed by the Louisiana Code of Civil Procedure.

C. When there has been an award of benefits by the workers' compensation judge, no appeal by an employer shall be entertained by the appellate court unless the employer secures a bond with one or more sureties to be approved by the workers' compensation judge, guaranteeing that the employer will pay the amount of the award rendered therein together with interest thereon as otherwise provided by law, and all costs of the proceeding. The time limits for perfecting the bond shall be as provided in the Code of Civil Procedure, but shall not commence to run against the appellant until the appellant is notified by the workers' compensation judge as to the amount of the bond fixed in accordance with law.

D. When the only controverted issue in a death claim is the determination of proper beneficiaries entitled to receive death benefits, and the competing beneficiaries appeal the decision of the workers' compensation judge, the employer or insurance carrier may pay the proceeds, as they accrue, to the director. The director shall hold the proceeds in trust in an interest-bearing account during the appellate period and shall distribute the proceeds and interest to the beneficiaries designated in final award or judgment. The employer or insurance carrier shall not be taxed interest or cost on the order of the death claim if payments have been made to the director as they accrue.

E. (1) An order for physical therapy or a work hardening program shall not be suspended during the pendency of any appeal.

(2) Regardless of whether the judgment rendered by the workers' compensation judge is in favor of the employer or the employee, when the workers' compensation judge has made a specific finding that further delay for surgery would, more likely than not, result in death, permanent disability, or irreparable injury to the claimant, any appeal of the judgment shall be entitled to preference and priority and handled on an expedited basis. In such cases, the record shall be prepared and filed within fifteen days of the granting of the order of appeal. The court of appeal shall hear the case within thirty days after the filing of the appellee's brief.

F. All workers' compensation decisions of the circuit courts of appeal shall be published opinions. The published opinions in any reporter shall identify the office of workers' compensation district from which the appeal was taken and the identity of the workers' compensation judge who rendered the judgment or award that is the subject of appeal.

## § 1310.6. Director; powers and duties

The director shall preside at all meetings of the workers' compensation judges and shall make all procedural rulings for the workers' compensation judges collectively, except those to be made in the course of hearings before a single workers' compensation judge, oversee the administrative affairs of the workers' compensation judges, and bear such other responsibilities and duties as may be necessary to operate the workers' compensation judge system in an efficient manner. The director, in his discretion, may appoint a chief workers' compensation judge to perform any or all of these duties. The position of chief workers' compensation judge shall be in addition to the number of workers' compensation judges provided for in R.S. 23:1310.1. The director may also appoint ad hoc judges, as necessary, in addition to the positions provided for in R.S. 23:1310.1.

## § 1310.7. Orders; subpoenas; judgments; enforcement; contempt

A. A workers' compensation judge shall have the power to enforce any order or judgment he shall deem proper which is issued pursuant to the powers and jurisdiction provided for in this Chapter and the Constitution of Louisiana. This power shall not include the authority to order a person confined.

B. (1) Direct contempt in a workers' compensation proceeding shall be as defined in Louisiana Code of Civil Procedure Article 222, except that it shall be committed before or in response to a subpoena or summons of a workers' compensation judge instead of the court. In a case of direct contempt, the workers' compensation judge may assess a civil fine of up to five hundred dollars for each such contempt violation which shall be payable to the Kids Chance Scholarship Fund, Louisiana Bar Foundation.

(2) Constructive contempt in a workers' compensation proceeding shall be as defined in Louisiana Code of Civil Procedure Article 224, except that it shall be concerning the workers' compensation judge and hearing procedures instead of the court. In a case of constructive contempt, the workers' compensation judge may assess a civil fine of up to five hundred dollars for each such contempt violation which shall be payable to the Kids Chance Scholarship Fund, Louisiana Bar Foundation.

(3) In any case where the workers' compensation judge has found a party in direct or constructive contempt, or has imposed sanctions on a party for conduct in connection with the litigation of a claim, the workers' compensation judge shall issue written reasons in connection with said ruling and shall report such findings to the director on a form promulgated by the director, within thirty days of the ruling.

C. Workers' compensation judges shall have the authority to issue subpoenas and subpoenas duces tecum as provided in Louisiana Code of Civil Procedure Articles 1351 through 1354. Subpoenas issued pursuant to this Section may be served by certified mail, return receipt requested.

D. Nothing in this Section shall be construed to limit the power of the workers' compensation judge to encourage compliance with and enforcement of his orders by means other than referral to the district courts for contempt proceedings.

## § 1310.8. Jurisdiction continuing; determining as to final settlement

Effective: August 1, 2013

A. (1) The power and jurisdiction of the workers' compensation judge over each case shall be continuing and he may, upon application by a party and after a contradictory hearing, make such modifications or changes with respect to former findings or orders relating thereto if, in his opinion, it may be justified, including the right to require physical examinations as provided for in R.S. 23:1123; however, upon petition filed by the employer or insurance carrier and the injured employee or other person entitled to compensation under the Worker's Compensation Act, a workers' compensation judge shall have jurisdiction to consider the proposition of whether or not a final settlement may be had between the parties presenting such petition, subject to the provisions of law relating to settlements in workers' compensation cases.

(2) The workers' compensation judge may have a full hearing on the petition, and take testimony of physicians and others relating to the permanency or probable permanency of the injury, and take such other testimony relevant to the subject matter of such petition as the workers' compensation judge may require. The workers' compensation judge may consider such petition and dismiss the same without a hearing if in his judgment the same shall not be set for a hearing.

(3) The expenses of such hearing or investigation, including necessary medical examinations, shall be paid by the employer or insurance carrier, and such expenses may be included in the final award. If the workers' compensation judge decides it is in the best interest of both parties to said petition that a final award be made, a decision shall be rendered accordingly and the workers' compensation judge may make an award that shall be final as to the rights of all parties to said petition and thereafter the workers' compensation judge shall have no jurisdiction over any claim for the injury or any results arising from same. If the workers' compensation judge should decide the case should not be finally settled at the time of the hearing, the petition shall be dismissed without prejudice to either party, and the workers' compensation judge shall have the same jurisdiction over the matter as if said petition had not been filed.

B. Upon the motion of any party in interest, on the ground of a change in conditions, the workers' compensation judge may, after a contradictory hearing, review any award, and, on such review, may make an award ending, diminishing, or increasing the compensation previously awarded, subject to the maximum or minimum provided in the Workers' Compensation Act, and shall state his conclusions of fact and rulings of law, and the director shall immediately send to the parties a copy of the award.

C. This Section shall not apply to the calculation of the monthly benefit amount pursuant to R.S. 23:1221(3).

D. A petition to modify a judgment awarding benefits shall be subject to the prescriptive limitations established in R.S. 23:1209.

E. A judgment denying benefits is res judicata after the claimant has exhausted his rights of appeal.

F. An award of temporary total disability benefits may be modified by the filing of a motion for modification with the same court that awarded the benefits and under the same caption and docket number without the necessity of filing a new dispute

and appearing at a mediation conference. The court shall expedite the hearing on the modification proceedings in accordance with the procedure established in R.S. 23:1124(B).

## § 1310.9. Costs

If the workers' compensation judge before which any proceedings for compensation or concerning an award of compensation have been brought, under the Workers' Compensation Act, determines that such proceedings have not been brought on a reasonable ground, or that denial of benefits has not been based on a reasonable ground, the workers' compensation judge shall assess the total cost of the proceedings to the party who has brought them or the party who has unreasonably denied payment of benefits.

## § 1310.10. Report to governor, supreme court, and legislature

Annually, on or before the first day of April, commencing in 1990, the director shall prepare and submit a report for the prior calendar year to the governor, the chief justice of the supreme court, the president of the Senate, the speaker of the House of Representatives, and each member of the legislature, which shall include a statement of the number of awards made and the causes of the accidents leading to the injuries for which the awards were made, total workload data of the workers' compensation judges, a detailed report of the work load of each workers' compensation judge, a detailed statement of the expenses of the offices of the director of workers' compensation and the workers' compensation judges, together with any other matter which the director deems proper to report, including any recommendations he may desire to make.

## § 1310.11. Deposit of fees in Workers' Compensation Administration Fund

Effective: July 2, 2008

A. The director shall provide by rule for a fee not to exceed fifty dollars to be collected in each dispute, which such fee shall be taxed as costs to be paid by the party against whom any award becomes final. Such fee shall be collected by the director at the time of filing, unless a request is contemporaneously submitted by an indigent party seeking waiver of costs and such request is granted by the office of workers' compensation administration. The fee shall not be reassessed against any applicant who has made such payment prior to July 18, 1990.

B. When a request for waiver of costs is denied by the office of workers' compensation administration, the party shall submit the filing fee to the office of workers' compensation administration within five days of the date of denial. If the party fails to comply with this requirement, the original filing of the pleading shall be deemed to have no force or effect.

C. All fees collected under the provisions of this Section shall be deposited to the credit of the Workers' Compensation Administration Fund.

## § 1310.13. Expenses of director; penalties imposed by Act; payment into special state treasury fund

All penalties imposed by the Workers' Compensation Act, except those specifically payable to claimants, or as otherwise specifically provided by law, shall be deposited into

the Office of Workers' Compensation Administrative Fund and used in those amounts appropriated by the legislature as provided for in R.S. 23:1291.1(E).

## § 1310.14. Securing information

Every employer shall furnish the director, upon request, any information required by him to carry out the provisions of the Workers' Compensation Act.

## § 1310.15. Employer's records and books; subject to inspection; self-incriminating evidence

All books, records, and payrolls of the employers showing or reflecting in any way upon the amount of wage expenditures of such employers shall always be open for inspection by the director or any other authorized auditor, accountant, or inspector for the purpose of ascertaining the correctness of the wage expenditure and number of men employed and such other information as may be necessary for the purposes and uses of the director in the administration of the Workers' Compensation Act. No person shall be excused from testifying or from producing any book, record, or payroll in any investigation or inquiry, by or upon any hearing before the workers' compensation judge, when ordered to do so by the workers' compensation judge, upon the ground that the testimony, payroll, or other competent evidence required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person shall be prosecuted, punished, or subjected to any penalty or forfeiture for or on account of any act, transaction, matter, or thing concerning which he shall have under oath, by order of the workers' compensation judge, testified to or produced documentary evidence of, provided however, that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony.

## § 1311. Contents of petition

A. The petition required under Section 1310.3 shall set forth:

(1) The names and addresses of the parties.

(2) A statement of the time, place, nature, and cause of the injury, or such fairly equivalent information as will put the employer on notice with respect to the identity of the parties.

(3) The specific compensation benefit which is due but has not been paid or is not being provided.

## § 1312. Suits against the state; filing; procedure

A. In the case of a suit against the state, service of the petition and of the citation shall be made both on the governor and on the attorney general. Payment of the judgment rendered against the state shall be submitted in due course for consideration by the legislature in making appropriations or submitted for payment in accordance with the provisions of R.S. 13:5115 through 5119.

B. In the case of suits against any public board, commission, or agency, the director shall serve the president or chairman thereof, or any other officer thereof authorized by law to accept service, by certified mail as required by Section 1310.3, and payment of any judgment, rendered against such public board, commission, or agency shall be

made in due course by such public board, commission, or agency, if duly authorized by law, or in the absence of such authorization, such judgment shall be submitted in due course for consideration by the legislature in making appropriations or submitted for payment in accordance with the provisions of R.S. 13:5115 through 5119. In any and all such suits the defenses thereto, and the procedure otherwise, shall be the same as those provided in this Chapter.

## § 1314. Necessary allegations; dismissal of premature petition; dispute of benefits

Effective: August 1, 2013

A. The presentation and filing of the petition under R.S. 23:1310.3 shall be premature unless it is alleged in the petition that:

(1) The employee or dependent is not being or has not been paid, and the employer has refused to pay, the maximum percentage of wages to which the petitioner is entitled under this Chapter; or

(2) The employee has not been furnished the proper medical attention, or the employer or insurer has not paid for medical attention furnished; or

(3) The employee has not been furnished copies of the reports of examination made by the employer's medical practitioners after written request therefor has been made under this Chapter; or

(4) The employer or insurer has not paid penalties or attorney's fees to which the employee or his dependent is entitled.

B. The petition shall be dismissed when the allegations in Subsection (A) of this Section are denied by the employer and are shown at a time fixed by the workers' compensation judge to be without reasonable cause or foundation in fact.

C. The workers' compensation judge shall determine whether the petition is premature and must be dismissed before proceeding with the hearing of the other issues involved with the claim.

D. Disputes over medical treatment pursuant to the medical treatment schedule shall be premature unless a decision of the medical director has been obtained in accordance with R.S. 23:1203.1(J).

E. (1) Notwithstanding any other provision of this Section, the employer or payor shall be permitted to file a disputed claim against an employee, his dependent, or beneficiary only when the employer or payor alleges the employee, his dependent, or beneficiary has committed fraud as provided in R.S. 23:1208 which caused the employer or payor to pay a benefit which was not due to the employee, his dependent, or beneficiary; or when the employer or payor is an aggrieved party appealing a decision of the medical director pursuant to R.S. 23:1203.1(K).

(2) Notwithstanding any other provision of this Section, the employer or payor shall be permitted to file a disputed claim against a person or entity other than an injured employee, his dependent, or beneficiary concerning any other dispute arising under this Chapter.

## § 1316. Answer, failure to file; judgment by default

If a defendant in the principal or incidental demand fails to answer within the time prescribed by law or the time extended by the workers' compensation judge, and upon proof of proper service having been made, judgment by default may be entered against him. The judgment shall be obtained by written motion.

## § 1316.1. Confirmation of judgment by default

A. A judgment by default on behalf of any party at interest must be confirmed by proof of the demand sufficient to establish a prima facie case. If no answer is filed timely, this confirmation may be made after two days, exclusive of holidays, from the entry of the judgment of default.

B. A prima facie case shall include but not be limited to proof of the following:

(1) The employee's average weekly wage.

(2) The existence of an employer-employee relationship at the time of the work-related accident.

(3) The occurrence of an accident arising out of and in the course of the employment, or the existence of an occupational disease.

(4) Entitlement to benefits under the provisions of this Chapter.

C. Medical evidence shall include oral testimony or certified medical records from all treating and all examining health care providers. All other evidence may be presented by sworn affidavit.

## § 1317. Hearing on the merits; rules of procedure; effect of judgment; costs; fees of medical witnesses

A. If an answer has been filed within the delays allowed by law or granted by the workers' compensation judge, or if no judgment has been entered as provided in R.S. 23:1316 at the time for hearing or any adjournment thereof, the workers' compensation judge shall hear the evidence that may be presented by each party. Each party shall have the right to be present at any hearing or to appear through an attorney. The workers' compensation judge shall not be bound by technical rules of evidence or procedure other than as herein provided, but all findings of fact must be based upon competent evidence and all compensation payments provided for in this Chapter shall mean and be defined to be for only such injuries as are proven by competent evidence, or for which there are or have been objective conditions or symptoms proven, not within the physical or mental control of the injured employee himself. The workers' compensation judge shall decide the merits of the controversy as equitably, summarily, and simply as may be.

B. Costs may be awarded by the workers' compensation judge, in his discretion, and when so awarded the same may be allowed, taxed, and collected as in other civil proceedings. The fees of expert witnesses shall be reasonable and fixed in the original judgment. The judgment rendered shall have the same force and effect and may be satisfied as a judgment of a district court.

## § 1317.1. Independent medical examinations

Effective: August 1, 2012

A. Any party wishing to request an independent medical examination of the claimant pursuant to R.S. 23:1123 and 1124.1 shall be required to make its request at or prior to the pretrial conference. Requests for independent medical examinations made after that time shall be denied except for good cause or if it is found to be in the best interest of justice to order such examination.

B. An examiner performing independent exams pursuant to R.S. 23:1123 shall be required to prepare and send to the office a certified report of the examination within thirty days after its occurrence.

C. The report of the examination shall contain the following, when applicable:

(1) A statement of the medical and legal issues the examiner was asked to address.

(2) A detailed summary of the basis of the examiner's opinion, including but not limited to a listing of reports or documents reviewed in formulating that opinion.

(3) The medical treatment and physical rehabilitative procedures which have already been rendered and the treatment, if any, which the examiner recommends for the future, together with reasons for the recommendation.

(4) Any other conclusions required by the scope of the independent medical examination, together with reasons for the conclusion reached.

(5) A curriculum vitae of the examiner.

(6) A written certification personally signed by the examiner that the report is true. The substance of the certification shall be: "I certify that I have caused this report to be prepared, I have examined it, and to the best of my knowledge and belief, all statements contained herein are true, accurate, and complete."

D. If a physical examination of the claimant was conducted, the certified report shall contain all of the following additional information:

(1) A complete history of the claimant, including all previous relevant or contributory injuries with a detailed description of the present injury.

(2) The complaints of the claimant.

(3) A complete listing of tests and diagnostic procedures conducted during the course of the examination.

(4) The examiner's findings on examination, including but not limited to a description of the examination and any diagnostic tests and X-rays.

E. When the independent medical examiner's report is presented within thirty days as provided in this Section:

(1) The examiner shall be protected from subpoena except for a single trial deposition. However, upon a proper motion for cause, the workers' compensation judge may order further discovery of the independent medical examiner as deemed appropriate.

(2) Except to schedule the deposition or further discovery as described above, the office of the independent medical examiner shall not be contacted regarding the claimant by any party, attorney, or agent.

F. Objections to the independent medical examination shall be made on form LDOL-WC-1008, and shall be set for hearing before a workers' compensation judge within thirty days of receipt. No mediation shall be scheduled on disputes arising under this Section.

## § 1318. Director and office employees not subject to subpoena

For claims arising under this Chapter, the director or any other office employee shall not be subject to subpoena for the purpose of testifying in any legal proceeding. This prohibition shall extend to depositions and interrogatories, both written and oral.

## § 1319. Evidence; depositions in advance of hearing

When any of the parties deems it necessary to take the testimony of any witness who might not be available in the event a dispute ever arose under this Chapter in connection with any claim arising as a result of any accident or accidental injury covered by this Chapter, either party may take the deposition of such witness under oral examination in accordance with law. Such depositions shall be filed with the director and may be used in evidence in any future proceeding, just as though a suit had been filed before the depositions were taken.

## § 1332. Awards in favor of minors or interdicts; tutor's bond and report

Where an award has been rendered in favor of a minor or interdict, the tutor or curator shall be required by the office to furnish a bond in favor of the office for the faithful performance of his duties, and shall be required by the office to furnish it annually with a report or accounting of the funds the said tutor or curator may be administering for the said minor or interdict. This report or accounting of the tutor or curator is not to be in the nature of the report of the tutor or curator required to be filed under other laws, but it is to be a simple verified statement of the receipts of the tutor or curator with a detailed accounting of the expenditures.

## § 1333. Employer's insolvency or failure to pay after award; acceleration of payments

A. If the employer against whom an award awarding compensation has been rendered becomes insolvent or fails to pay six successive installments as they become due, the installments not yet payable under the award shall immediately become due and exigible and the award shall become executory for the whole amount; but if the employee or his dependent is adequately protected by insurance and receives payments thereunder this right shall not accrue.

B. When the award of temporary total disability benefits is accelerated pursuant to this Section, the acceleration shall be limited to an additional six months of benefits.

## § 1361. Unlawful discrimination prohibited

A. No person, firm or corporation shall refuse to employ any applicant for employment because of such applicant having asserted a claim for workers' compensation benefits under the provisions of this Chapter or under the law of any state or of the United

States. Nothing in this Section shall require a person to employ an applicant who does not meet the qualifications of the position sought.

B. No person shall discharge an employee from employment because of said employee having asserted a claim for benefits under the provisions of this Chapter or under the law of any state or of the United States. Nothing in this Chapter shall prohibit an employer from discharging an employee who because of injury can no longer perform the duties of his employment.

C. Any person who has been denied employment or discharged from employment in violation of the provisions of this Section shall be entitled to recover from the employer or prospective employer who has violated the provisions of this Section a civil penalty which shall be the equivalent of the amount the employee would have earned but for the discrimination based upon the starting salary of the position sought or the earnings of the employee at the time of the discharge, as the case may be, but not more than one year's earnings, together with reasonable attorney's fees and court costs.

D. The rights and remedies granted by this Section shall not limit or in any way affect any rights and remedies that may be available under the provisions of any other state or federal law.

E. Any party found by a workers' compensation judge or a court of competent jurisdiction to have brought a frivolous claim under this Section shall be held responsible for reasonable damages incurred as a result of this claim, including reasonable attorney's fees and court costs.

## § 1371. Purpose and intent

Effective: June 30, 2010

A. It is the purpose of this Part to:

(1) Encourage the employment, re-employment, or retention of employees who have a permanent, partial disability.

(2) Protect employers, group self-insurance funds, and property and casualty insurers from excess liability for workers' compensation for disability when a subsequent injury to such an employee merges with his preexisting permanent physical disability to cause a greater disability than would have resulted from the subsequent injury alone.

B. Except as provided in R.S. 23:1378(A) (6), this Part shall not be construed to create, provide, diminish, or affect in any way the workers' compensation benefits due to an injured employee. The payment of compensation to an injured employee under this Chapter shall be determined without regard to this Part, and the provisions of this Part shall be considered only in determining whether an employer or his insurer is entitled to reimbursement from the Workers' Compensation Second Injury Fund herein created.

C. As used in this part, the merger of an injury with a preexisting permanent partial disability is limited to the following:

(1) The subsequent injury would not have occurred but for the preexisting permanent partial disability; or

(2) The disability resulting from the subsequent injury in conjunction with the preexisting permanent partial disability is materially and substantially greater than that which would have resulted had the preexisting permanent partial disability not been present, and the employer has been required to pay and has paid additional medical or indemnity benefits for that greater disability.

D. The records of the second injury board shall be confidential as provided in R.S. 23:1293(A).

## § 1371.1. Definitions

Effective: June 23, 2014

As used in this Part, unless the context clearly indicates otherwise, the following terms shall have the meanings ascribed to them in this Section:

(1) "Employer" means any entity who is required to pay and has paid into the fund.

(2) "Hire and fire authority" shall mean the authority of the representative of the employer who plays an integral part in fulfilling the business of the employer with the responsibility to have closely controlled the injured employee regarding his physical conduct and time, as well as providing significant input into the hiring, retention, and firing decisions regarding that employee.

(3) "Permanent partial disability" shall mean any permanent condition, whether congenital or due to injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment, to retention by an employer, or to obtaining re-employment, if the employee becomes unemployed.

(4) "PPD Employee Registry" shall mean the registry maintained by the Louisiana Workforce Commission of available employees. The listing of an employee on the registry shall serve as proof of knowledge of the employee's preexisting permanent partial disability for the purpose of a Second Injury Board claim.

(5) "Psychiatrist" shall mean an individual licensed to practice medicine by the Louisiana State Board of Medical Examiners or, in the event that the individual is practicing medicine in a jurisdiction other than Louisiana, licensed by the appropriate member board of the Federation of State Medical Boards to practice psychiatry, who has completed a residency in psychiatry, been in clinical practice for at least three years and has training in the evaluation, diagnosis, and treatment of intellectual disabilities.

(6) "Psychologist" shall mean an individual licensed to practice psychology by the Louisiana State Board of Examiners of Psychologists or licensed to practice medical psychology by the Louisiana State Board of Medical Examiners, or, in the event an individual is practicing psychology in a jurisdiction other than Louisiana, licensed by the appropriate member board of the Association of State and Provincial Psychology Boards to practice psychology, who has registered specialty in a relevant clinical area of practice, who has been in clinical practice for at least three years and has training and experience in the evaluation, diagnosis, and treatment of intellectual disabilities.

(7) "Representative" shall include, but not be limited to, third party administrators, attorneys, or adjusting firms of the party filing the claim on behalf of the employer, insurer or group self-insurance fund.

## § 1372. Louisiana Worker's Compensation Second Injury Board; creation, domicile, membership

Effective: June 15, 2006

The Louisiana Worker's Compensation Second Injury Board, hereinafter referred to as the board, is created. The board, which shall be domiciled in Baton Rouge, Louisiana, shall be composed of five members or their designee, who shall be the secretary of state, the state treasurer, the commissioner of insurance, the secretary of the Department of Children and Family Services, and the director of the office of worker's compensation administration.

## § 1373. Meetings; quorum; officers

Effective: June 30, 2010

A. The board may meet monthly, but in no event shall it meet less than once each three months and at such other times as it may provide by its rules. Three members shall constitute a quorum for the transaction of business. A majority vote of the members present shall be required for all actions of the board. Any member of the board may be represented at any meeting by an alternate designated by the member in writing prior to the commencement of such meeting.

B. The board shall elect a chairman and vice chairman, who shall serve for a two year term; provided that the election be held within thirty days of July 1, of each odd-numbered year.

## § 1374. Salary; expenses

The members of the board shall receive no salary, but each member shall be reimbursed for necessary travel and other expenses actually incurred while in attendance at meetings of the board or on business for the board.

## § 1375. Personnel

Effective: June 15, 2006

A. The board shall appoint, fix the compensation and prescribe the duties of an executive director, who shall be in the unclassified service. The executive director shall devote full time to his duties and may not accept or engage in additional employment of any kind.

B. The executive director shall employ and supervise all such personnel, who shall be in the classified service, necessary for the operation of the business of the board.

## § 1376. Rule making power; reports

A. The board may conduct such investigations, hold such hearings and adopt such rules and regulations as are necessary and proper to carry out its functions.

B. The board may collect information and compile statistics relevant and pertinent to the administration of the second injury fund. In order to accomplish this purpose, it may

require employers and insurers to file reports with it containing such information and details as the board prescribes with respect to occupational accidents and workers' compensation claims.

## § 1377. Workers' Compensation Second Injury Fund

Effective: August 15, 2011

A. There is hereby created and established in the state treasury a special fund which shall be designated as the "Workers' Compensation Second Injury Fund", hereinafter referred to as the "fund". The fund shall be maintained as a separate account in the state treasury for the purposes of funding the administrative expenses of the board and reimbursing compensable claims of property and casualty insurers, self-insured employers, and group self-insurance funds as set forth by R.S. 23:1371 et seq. Except as provided in Subsection F of this Section, monies shall be withdrawn therefrom only pursuant to legislative appropriation and shall be subject to budgetary control as provided by law. All remaining and unencumbered balances at the end of any fiscal year shall remain credited to the fund and shall be used solely for the purposes stated in this Section. Any interest income generated by the fund shall accrue to the fund.

B. (1) Every property and casualty insurer, individual self-insurer, and group self-insurance fund that has paid Louisiana workers' compensation benefits under Parts II and III, Chapter 10 of this Title, shall make an annual payment to the fund. The annual reports required by R.S. 23:1291.1(A) shall be used by the board as the base figure for computing the assessments and such assessments shall be a percentage of the amount reported in the annual reports. The board shall determine the amount of the assessment. Monies collected by the assessment shall not exceed one hundred twenty-five percent of the sum of the disbursements made from the fund in the preceding fiscal year, and the known outstanding unpaid amounts which have been submitted for reimbursement on or in connection with an approved claim at the end of the preceding fiscal year.

(2) These funds shall be made payable to the order of the state treasurer and shall be transmitted to the board, which shall in turn transmit all funds so received to the state treasurer. Upon receipt by the state treasurer, the funds shall be credited to the Workers' Compensation Second Injury Fund.

C. (1) The board shall provide by rules and regulations for the collection of the assessment amount. The board shall determine the date the assessment is due and notify, in writing, all property and casualty insurers, self-insured employers, and group self-insurance funds of the assessment at least thirty days before the due date. If such amounts are not paid by the due date established by the board, there may be assessed, for each thirty days that the amount assessed remains unpaid, a civil penalty equal to twenty percent of the amount assessed that remains unpaid, which shall be due and collected at the same time as the unpaid part of the amount assessed. Payments received by the office shall be applied first to penalties assessed and then to the outstanding assessment.

(2) Any property and casualty insurer that has discontinued writing workers' compensation insurance in this state or any self-insured employer that ceases to be authorized by R.S. 23:1168 or any group self-insurance fund that has

ceased to be authorized as a group self-insurance fund shall continue to be liable for payment of any assessment and penalties to the fund on account of any benefits paid by the property and casualty insurer, self-insured employer, or group self-insurance fund under Parts II and III of this Chapter.

(3) Any entity that is required by law to make an annual payment or payments into the fund and has not done so shall not be eligible for reimbursement from the fund. In addition, except as provided in R.S. 23:1378(A)(5), any entity that is not required by law to make such payments into the fund shall not be eligible for reimbursement from the fund.

D. (1) Upon warrant issued by the board, the treasurer shall make payments to employers or insurers entitled thereto under the provisions of this Part. If the funds in the Workers' Compensation Second Injury Fund are insufficient to pay such warrants, claims shall rank from the date of submission to the second injury board for reimbursement.

(2) A final decision of the board, as provided in R.S. 23:1378(E), decreeing that an employer or insurer is entitled to an award from the Workers' Compensation Second Injury Fund shall have the same effect as such a warrant.

E. If any property or casualty insurer, self-insured employer, or group self-insurance fund fails to pay the amounts assessed against it under the provisions of this Section within sixty days from the time such notice is served upon it, the commissioner of insurance may suspend or revoke the authorization to transact business as provided by law or the office of workers' compensation may suspend or revoke the authorization to be self-insured.

F. The board may enter into reimbursement agreements, at the recommendation of the director, with property and casualty insurers, self-insured employers, or group self-insurance funds which have made an overpayment to the fund.

G. The Second Injury Board may approve an annual lump-sum amount up to one percent of the board's annual budget to be allocated to Louisiana Rehabilitation Services for use in assisting potential employers and qualified employees with permanent partial disabilities under the Louisiana Rehabilitation Services Vocational Rehabilitation Program. Services may include work evaluation and job readiness services, assessment for and provision of assistive technology, and workstation modification directly related to the employment, reemployment, or retention of such employees. The funds paid by the Second Injury Board, as well as any fund matching and earned interest, shall be used only for these purposes. The Louisiana Rehabilitation Services shall provide the Second Injury Board with a quarterly report to include all funding balances and expenditures as well as case statistical information.

## § 1378. Determination of liability of fund

Effective: June 23, 2014

A. An employer operating under the provisions of this Chapter who knowingly employs, re-employs, or retains in his employment an employee who has a permanent partial disability, as defined in R.S. 23:1371.1, shall qualify for reimbursement from the Second Injury Fund, if the employee incurs a subsequent injury arising out of and in the course of his employment resulting in a greater liability due to the merger of the subsequent injury with the preexisting permanent partial disability. The employer or,

if insured, his insurer shall pay all benefits provided in this Chapter, but the employer or, if insured, his insurer thereafter shall be reimbursed by the Second Injury Fund for all indemnity and medical benefit payments as follows:

| Date of Injury | Reimbursement Schedule |
|---|---|
| Before July 1, 2004 & on/ | INDEMNITY |
| after July 1, 2009, but before July 1, 2010 | • TTD/SEB/PTD After the first 104 weeks of payment of benefits<br>• Death benefits after the first 175 weeks of payment of benefits<br>MEDICAL<br>• 50% of all reasonable and necessary medical expenses actually paid which exceed $5,000.00, but no less than $10,000.00<br>• 100% of all reasonable and necessary medical expenses actually paid which exceed $10,000.00 |
| On/after July 1, 2004 & before July 1, 2009 | INDEMNITY<br>• After the first 130 weeks of payment of benefits<br>MEDICAL<br>• 100% of all reasonable and necessary medical expenses actually paid which exceed $25,000.00 |

| | |
|---|---|
| On/after July 1, 2010 & | INDEMNITY |
| before July 1, 2015 | • After the first 104 weeks of indemnity |
| | MEDICAL |
| | • 100% of all reasonable and necessary medical expenses actually paid which exceed $25,000.00, including reasonable and necessary Vocational Rehabilitation expenses, if such expenses are directly related to services provided in the actual retention or reemployment of employees |

(1) Such payments shall be reimbursed provided they are submitted to the board within one year of the approval for reimbursement or within one year of the payment of such weekly compensation payments, whichever occurs later.

(2) No employer or insurer shall be entitled to reimbursement unless it is clearly established that the employer had actual knowledge of the employee's preexisting permanent partial disability prior to the subsequent injury. For injuries occurring after December 31, 2010, actual knowledge shall be established only by any one of the following circumstances:

(a) The employee's preexisting permanent partial disability was caused by a compensable workers' compensation accident or occupational disease while employed by the same employer seeking reimbursement from the Second Injury Fund.

(b) Prior to the second injury, the employee disclosed to the employer the employee's preexisting permanent partial disability on a form promulgated by the office of workers' compensation.

(c) The employer employs, retains, or re-employs employees from the PPD employee registry maintained by the Louisiana Workforce Commission and which is created and maintained in accordance with rules promulgated by the office of workers' compensation.

(d) The employer provides an affidavit, on a form promulgated by the office of workers' compensation, which shall set forth all of the following:

(i) An attestation as to hire and fire authority as defined in R.S. 23:1371.1.

(ii) An attestation as to how and when knowledge was acquired.

(iii) An attestation as to the actual permanent partial disability existing.

(iv) An attestation of how the permanent partial disability, if not a presumed condition as listed in Subsection F of this Section, was a hindrance and obstacle to employment.

(v) An attestation certifying that false statements used in the affidavit may result in penalties pursuant to R.S. 23:1208.

(3) The Second Injury Fund shall be credited or reimbursed for sums recovered by the employer or the insurer from third parties in an amount equal to a pro rata share of the net amount recovered based upon the amounts paid by the fund, and the amounts paid by the self-insurer or insurer which have not been reimbursed by the fund, to or on behalf of the injured employee for medical benefits, workers' compensation indemnity benefits, and vocational rehabilitation services. The employer or the insurer shall advise the board of any subrogation action against third parties on any claim submitted to the board. The failure of the employer or insurer to notify the board of any pending subrogation action prior to receipt of payment from the board shall subject the employer or the insurer to a penalty of twenty percent of the amount otherwise claimed by the employer or insurer as payable from the Second Injury Fund, as well as a return of all amounts paid by the board to the extent these amounts are recovered in the subrogation action. Except as provided in this Subsection the Second Injury Fund shall not be required to reimburse vocational rehabilitation expenses.

(4) (a) The Second Injury Fund shall not be liable for reimbursement or be obligated to give credit for any amounts paid by an employer or carrier as attorney fees, penalties, or interest, nor for any sums paid under the Jones Act or Longshoremen and Harbor Workers Compensation Act.

(b) For settlements occurring after July 1, 2007, the Second Injury Fund shall be liable for reimbursement or be obligated to give credit for attorney fees paid pursuant to R.S. 23:1141, but shall not be liable for reimbursement or be obligated to give credit for attorney fees paid pursuant to R.S. 23:1201 or any other penalty provision provided for in Chapter 10 of this Title.

(5) Upon the board's approval of a claim for reimbursement, and on an annual basis thereafter, the insurer shall report to the board an estimate of the future medical and indemnity liability to the injured employee on a form promulgated by the director. The report shall be submitted to the board each year at the same time the annual report required by R.S. 23:1291.1 is submitted to the office of workers' compensation administration.

(a) Upon the board's approval of a claim for reimbursement, the insurer shall immediately certify to the board that the medical reserve and the weekly disability benefits (indemnity) reserve do not exceed the threshold limits provided in the reimbursement schedule set forth in this Subsection. No reimbursement will be made to the insurer unless such insurer complies with the provisions of this Paragraph:

(i) As a prerequisite to reimbursement from the fund, the insurer shall be required to certify that the medical and indemnity reserves have been reduced to the threshold limits of reimbursement and report in accordance with the National Council on Compensation Insurance Workers' Compensation Statistical Plan.

(ii) The Second Injury Fund director shall quarterly submit to the National Council on Compensation Insurance information regarding the Second Injury Fund accepted claims.

(iii) The National Council on Compensation Insurance shall submit a report of any discrepancies pursuant to regulations established by the Department of Insurance. The Department of Insurance is directed to establish regulations concerning Second Injury Fund discrepancies.

(b) The Louisiana Insurance Guaranty Association shall be entitled to reimbursement, but only to the extent of the proportion of the Second Injury Fund assessment paid by insurance companies.

(6) (a) (i) For an accident occurring on or after October 1, 1995, the employer, if self-insured, or the insurer shall obtain written approval from the board of any lump sum or compromise settlement of an approved claim before such settlement is submitted for approval, as provided in Part III of this Chapter.

(ii) If written approval is obtained, an order approving the settlement shall be obtained within one hundred eighty days from the date that approval is issued after which time the written approval shall be null and the self-insurer or insurer must again obtain written approval to settle the claim. The board shall respond to requests for written approval within forty-five days of receipt of the request.

(iii) If an employer, if self-insured, or the insurer seeks authority to enter into a compromise settlement in connection with the settlement of a third-party claim, the board shall respond within three working days unless the settlement contemplates payment by the insurer or self-insurer of additional amounts which exceed fifty thousand dollars. If the settlement contemplates additional amounts which exceed fifty thousand dollars, the board shall respond within forty-five days of receipt of the request.

(iv) If the board does not issue a written response within the time provided in Items (ii) and (iii), the request shall be deemed approved unless the employer or insurer does not comply with rules promulgated pursuant to Item (v) of this Paragraph.

(v) The director of the Office of Workers' Compensation Administration shall establish and promulgate, in accordance with the Administrative Procedure Act, such rules and regulations governing the submission of requests for approval as well as response from the board as may be deemed necessary and which are not inconsistent with the laws of this state.

(b) (i) Except in cases of a settlement in connection with the settlement of a third-party claim, if the self-insurer or insurer fails to obtain written approval from the board as provided in Subparagraph (a) of this Paragraph or fails to submit the settlement to the judge for approval as provided in Subparagraph (a) of this Paragraph, the fund shall not reimburse such self-insurer or insurer for the final settlement amount.

(ii) In cases of a settlement in connection with the settlement of a third-party claim, if the self-insurer or insurer fails to obtain written approval

from the board as provided in Subparagraph (a) of this Paragraph or fails to submit the settlement to the judge for approval as provided in Subparagraph (a) of this Paragraph, the fund shall not reimburse such self-insurer or insurer for the final settlement amount and twenty-five percent of the unpaid reimbursements due or ten thousand dollars, whichever is greater.

(iii) As used in this Section, "final settlement amount" shall mean only additional funds contemplated to be paid by the insurer or self-insurer.

(c) The board shall not be a party to any lump sum compromise settlement with the employee.

(d) In the event that the board issues a written denial of the settlement, the property or casualty insurer, self-insured employer, or group self-insurance fund may appeal pursuant to Subsection E. The appeal shall be placed on the preference docket of the appropriate district court and shall be heard on the earliest practicable date.

B. (1) Except as provided in Paragraph (2) of this Subsection, the employer or his insurer, whichever of them makes the payments or becomes liable, shall within one year after the first payment of either compensation or medical benefits, whichever occurs first, notify the board in writing of such facts and furnish such other information as may be required by the board to determine if the employer or his insurer is qualified for reimbursement from the Workers' Compensation Second Injury Fund. Except as provided in Paragraph (2) of this Subsection, no employer, insurer, servicing agent, or self-insured association shall be reimbursed unless the board is notified within one year from the date of the first payment of either compensation or medical benefits whichever occurs first. Employers which are self-insured for workers' compensation benefits, but have not received a certificate of authority from the commissioner of insurance as provided for in R.S. 23:1197 or authorization from the director pursuant to R.S. 23:1168(A)(2) or (3) shall not be entitled to reimbursement from the fund.

(2) When R.S. 23:1209(A)(3) is applicable to a claim against an employer, the employer or his insurer, whichever of them makes the payments or becomes liable, shall within one year after the first payment of either compensation or medical benefits, whichever occurs later, notify the board in writing of such facts and furnish such other information as may be required by the board to determine if the employer or his insurer is qualified for reimbursement from the Workers' Compensation Second Injury Fund.

C. (1) Upon receipt of a notice as provided in Subsection B of this Section, the board may conduct an investigation into all phases of the matter and take any and all other actions necessary to permit it to determine whether or not the employer or his insurer is entitled to reimbursement from the Workers' Compensation Second Injury Fund.

(2) The board may call a hearing, and in such case the employer and insurer, if any, shall be notified of the date, time, and place at least ten days before the date set for the hearing. Hearings may be had in the parish wherein the accident occurred or in any other parish that the board determines to be more convenient. The board shall establish rules for the conduct of such hearings. The board may

issue subpoenas for witnesses in its behalf or for witnesses deemed necessary to a proper determination of the case. It shall issue subpoenas for witnesses at the request of the employer or insurer. At such hearings, the board shall not make a determination which would create, provide, diminish, or affect any workers' compensation benefits due to an injured employee but shall limit itself to the determination of whether the fund is liable to reimburse the employer, or, if insured, the insurer.

D. If the board finds that the employer or, if insured, his insurer is entitled to reimbursement, as provided in this Part, from the Workers' Compensation Second Injury Fund, the board shall issue its warrant to the state treasurer for payments to be made at such intervals as the board directs from the Workers' Compensation Second Injury Fund to such employer or insurer for the amount provided in Subsection A of this Section. In the event the employer or insurer makes a compromise or a lump-sum payment as provided in R.S. 23:1271 through 1274, the board shall have the discretion of paying in a lump sum or in periodic payments of three-month intervals for the amount that would have been due the employee for that period from the date the compromise or lump-sum settlement agreement is received in the board's office.

E. Written notice of the decision of the board shall be given to all parties to the hearing and the representatives designated by the party on the reimbursement form submitted to the board. The decision of the board shall be final; however, an appeal therefrom may be taken by any of the parties within thirty days after the date of the decision of the board. If an appeal is taken, the board shall be made party defendant, and service and citation shall be made in accordance with applicable law upon the attorney general or one of his assistants. The appeal shall be to the Nineteenth Judicial District Court, parish of East Baton Rouge. All appeals in all such cases shall be tried de novo.

F. Where the employer establishes that he had knowledge of the preexisting permanent partial disability prior to the subsequent injury, and diagnosis of the condition was made by qualified physicians within the scope of their practice or other persons properly licensed and certified to make such a diagnosis, there shall be a presumption that the employer considered the condition to be permanent and to be or likely to be a hindrance or obstacle to employment where the condition is one of the following:

(1) Seizure disorder.

(2) Diabetes mellitus.

(3) Coronary artery disease or congestive heart failure.

(4) Arthritis.

(5) Amputated foot, leg, arm, or hand, or total or partial of at least fifty percent loss of use thereof.

(6) Loss of sight of one or both eyes or legal blindness.

(7) Residual disability from poliomyelitis.

(8) Cerebral palsy.

(9) Multiple sclerosis.

(10) Parkinson's disease.

(11) Cerebral vascular accident.

(12) Tuberculosis.

(13) Pneumoconiosis.

(14) Psychoneurosis or psychosis following treatment in a recognized medical or mental institution.

(15) Bleeding disorder.

(16) Chronic osteomyelitis.

(17) Ankylosis of joints.

(18) Muscular dystrophy.

(19) Arteriosclerosis.

(20) Thrombophlebitis.

(21) Varicose veins.

(22) Heavy metal poisoning.

(23) Ionizing radiation injury.

(24) Compressed air sequelae.

(25) Ruptured or herniated intervertebral disc.

(26) Brain damage.

(27) Spinal surgery including fusion, partial, or total discectomy or microdiscectomy.

(28) Chronic obstructive pulmonary disease (COPD).

(29) Post traumatic stress disorder syndrome (PTSD).

(30) Post concussive syndrome.

(31) Alzheimer's disease.

(32) Sickle cell anemia.

(33) Joint replacement surgery.

(34) Intellectual disability,

(a) Provided the diagnosis of an intellectual disability shall be made on the basis of the following:

(i) Significantly subnormal intellectual functioning, defined as an objective measure of cognitive status which falls at least two standard deviations below the mean of the national standardization sample based on valid results of a recognized individually administered test of intellectual function.

(ii) Objective evidence of concurrent impairment of adaptive functioning in at least two areas of functional behavior as measured by standardized, norm reference measures of adaptive function.

(iii) Evidence of an onset before the age of eighteen years.

(b) It shall not be necessary for the employer to know the employee's actual intelligence quotient or actual relative ranking in relation to the intelligence quotient of the general population.

(c) Diagnosis of an intellectual disability shall be made by a psychiatrist, psychologist, or other person properly licensed and certified to make such a diagnosis.

## § 1379. Annual report

Effective: June 15, 2006

The board shall make an annual report to the governor and the legislature, which shall contain a statement of the operations of the fund.

## § 1391. Purpose

A. It is hereby declared by the Legislature of Louisiana that an adequate market for workers' compensation insurance is necessary to the economic welfare of the state and that without such insurance, the orderly growth and development of the state would be severely impeded; that, furthermore, adequate insurance for workers' compensation is necessary to enable employers to satisfy their legal obligation under R.S. 23:1168.

B. It is the purpose of the corporation to provide a residual market for those employers that have in good faith, but without success, sought workers' compensation insurance in the voluntary market of insurance; to provide a competitive market for preferred risk policies as defined herein; and to insure that rates charged are adequate to provide solvency and self-funding of the corporation.

## § 1392. Definitions

Effective: June 14, 2008

As used in this Part, the following terms have the meaning ascribed to them in this Section, unless the context clearly indicates otherwise:

(1) "Accepted risk" means an employer, other than one eligible for a preferred risk policy, who in good faith attempts to procure or retain workers' compensation insurance but is unable to do so through ordinary methods in the voluntary market from an admitted insurer with a minimum "A-" A.M. Best rating. The term also includes any legal entities that may be combined for experience rating purposes according to the rules of the commissioner of insurance.

(2) "Board" means the board of directors of the corporation.

(3) "Corporation" means the Louisiana Workers' Compensation Corporation.

(4) "Good faith" means honesty in fact in any conduct of a transaction.

(5) "Health care provider" means an individual or entity as defined in R.S. 23:1021.

(6) "Manager" means the person appointed to the position of manager by the board.

(7) "Policyholder" means a natural or artificial person named as the insured in a current policy issued by the corporation.

(8) "Preferred risk" is an employer who is a Louisiana resident, partnership, or corporation domiciled in this state whose workers' compensation insurance policy meets either of the following conditions:

(a) The prospective annual premium is less than five thousand dollars during the succeeding twelve months; the governing classifications of the policy would be in hazard group I, II, or III, as determined in retrospective rating plans approved by the commissioner of insurance; and the employer can

demonstrate that its loss ratio has not exceeded seventy-hundredths during the most recent three policy years.

(b) A preferred risk is an employer who has an experience modifier of less than one and meets all other underwriting criteria established by the board.

(9) "Profit" means income including premiums earned, investment income, and fees less expenses including claims paid and reserved, claims incurred but not reported, loss adjusting expenses, administrative and production costs, and any other expenses.

(10) "Servicing carrier or contractor or vendor" means an insurer or other entity which contracts with the board to provide a service to the corporation.

(11) "Workers' compensation insurance" means insurance to cover job-related injuries, attendant medical and indemnity benefits and employer's liability insurance, and coverage under the United States Longshore and Harbor Worker's Compensation Act.

## § 1393. Creation of Louisiana Workers' Compensation Corporation

Effective: January 1, 2009

A. (1) The Louisiana Workers' Compensation Corporation is hereby created as a private, nonprofit corporation to operate as a domestic mutual insurer to provide workers' compensation insurance, a residual market, and services related to workers' compensation insurance for the benefit of Louisiana employers.

(2) The corporation is authorized to provide workers' compensation insurance which shall include but not be limited to state workers' compensation insurance coverage, United States Longshore and Harbor Worker's Compensation Act coverage, and Jones Act coverage. Such coverage may be provided through any direct insurance agreement or shared risk arrangement with entities that are properly qualified by the Department of Insurance and maintain an "A" or better rating according to the then current annual edition of Best's Insurance Reports. The corporation is also authorized to provide such coverage for temporary and permanent operations in other states to its insureds with exposures in Louisiana, provided that the insured is domiciled in Louisiana, incorporated in Louisiana, or has its principal place of business in Louisiana. However, the total amount of premiums in any calendar year for coverage for temporary and permanent operations subject to other states' laws shall not exceed twenty percent of the corporation's annual total amount of premiums derived from workers' compensation insurance. No more than thirty percent of the total premium for any insured shall be for exposures under other states' laws.

(3) The corporation shall be domiciled in East Baton Rouge Parish. The corporation shall not be considered as a state agency.

(4) The corporation is authorized to operate by this Part and, notwithstanding the provisions of R.S. 22:65 to the contrary, the corporation is not required to obtain a certificate of authority from the commissioner of insurance.

B. The corporation shall provide Jones Act coverage only when such coverage is incidental to the issuance of a policy of Louisiana workers' compensation insurance or United States Longshore and Harbor Worker's Compensation Act insurance and such coverage shall not exceed twenty-five thousand dollars in the aggregate. The

board of directors shall establish underwriting criteria for the acceptance of such risk.

C. Any extraterritorial insurance coverage, as defined in R.S. 23:1035.1, shall be provided as incidental to the issuance of a policy by the corporation.

D. The corporation shall provide United States Longshore and Harbor Worker's Compensation Act insurance to employers only if the corporation is also providing Louisiana workers' compensation insurance. The board of directors shall establish underwriting criteria for the acceptance of such funds.

## § 1394. Applicability of other laws

A. The corporation shall be subject to all applicable laws of the Louisiana Insurance Code relative to an incorporated domestic mutual insurer, except as otherwise specifically provided in this Part.

B. Notwithstanding the provisions of R.S. 12:266 to the contrary, the provisions of the Louisiana Nonprofit Corporation Law, as provided in R.S. 12:201 et seq., and other provisions of Title 12 of the Louisiana Revised Statutes of 1950, relative to nonprofit business corporations, shall apply to the regulation of the business and the conduct of the affairs of the corporation in those situations in which the provisions of this Part and the Louisiana Insurance Code are silent.

C. If a conflict arises in the application of the law, the provisions of this Part shall govern first, followed by the provisions of the Louisiana Insurance Code, and finally, by the provisions of Title 12 of the Louisiana Revised Statutes of 1950.

## § 1395. Exemptions; rate regulation; surplus; reserves; guaranty funds

Effective: January 1, 2009

A. The corporation shall be exempt from rate regulation by the commissioner of insurance.

B. Except as provided in R.S. 23:1404, the corporation shall not be required to comply with any surplus requirements for a domestic mutual insurer. However, upon extinguishment of the full faith and credit guarantee of the state, as provided in the constitution, and notwithstanding R.S. 23:1404, the corporation shall comply with surplus requirements for a domestic mutual insurer.

C. Except as provided in R.S. 23:1404, the corporation shall not be required to comply with any reserve requirements for a domestic mutual insurer. However, upon extinguishment of the full faith and credit guarantee of the state, as provided in the constitution, and notwithstanding R.S. 23:1404, the corporation shall comply with reserve requirements for a domestic mutual insurer.

D. (1) Notwithstanding any other law to the contrary, the corporation and its policyholders shall be exempt from participation and shall not join or contribute financially to, nor be entitled to the protection of, any plan, pool, association, or guaranty or insolvency fund authorized or required by the Louisiana Insurance Code; however, the corporation shall pay premium taxes.

(2) However, upon the extinguishment of the full faith and credit guarantee of the state, which occurs when the United States Department of Labor approves

the corporation to provide United States Longshore and Harbor Worker's Compensation Act coverage without the state guarantee, the corporation shall participate in, contribute to, and receive protection under the insurance guaranty association fund created and operating under R.S. 22:2051 et seq., of the Insurance Code. The corporation's participation in, contribution to, and protection under the insurance guaranty association fund shall be on a prospective basis only. This prospective participation, contribution, and protection shall apply to claims arising from injuries occurring after the extinguishment of the full faith and credit guarantee.

(3) Upon the extinguishment of the full faith and credit guarantee as provided in R.S. 23:1404(B) and in addition to the deposit required by R.S. 22:808, the corporation shall provide one of the following as security to hold the state harmless from all claims arising from any legal obligation of the corporation to which the full faith and credit guarantee of the state is pledged:

(a) Deposit with the commissioner of insurance:

(i) Safekeeping or trust receipts from banks doing business within this state or from savings and loan associations chartered to do business in this state indicating that the corporation has deposited an amount equal to twelve percent of its outstanding liabilities not covered by the Louisiana Insurance Guaranty Association, calculated using the most recent quarterly financial statements as filed with the Department of Insurance, or

(ii) A bond of the United States, this state, or any political subdivision thereof, of the par value of not less than an amount equal to twelve percent of its outstanding liabilities not covered by the Louisiana Insurance Guaranty Association, calculated using the most recent quarterly financial statements as filed with the Department of Insurance.

(iii) All securities deposited pursuant to this Subparagraph shall be held in trust to hold the state harmless from all claims arising from any legal obligation of the corporation to which the full faith and credit guarantee of the state is pledged.

(b) Deliver to the commissioner of insurance a bond in the amount equal to twelve percent of its outstanding liabilities not covered by the Louisiana Insurance Guaranty Association, calculated using the most recent quarterly financial statements as filed with the Department of Insurance. The bond shall issue from an authorized surety company doing business in this state which has a minimum surplus of five hundred million dollars and is subject to approval of the commissioner of insurance. The bond shall be conditioned on the same terms as stated in Subparagraph (a) and must be renewed annually. No such bond shall be cancelled unless a new bond or deposit has been substituted or satisfactory evidence has been submitted to the commissioner of insurance that no further liability exists for all claims arising from any legal obligation of the corporation to which the full faith and credit guarantee of the state is pledged. The term of these bonds shall be for one year, but the last bond shall always remain in effect until a new bond is filed or either a deposit is made pursuant to Subparagraph

(a) or a reinsurance agreement entered into pursuant to Subparagraph (c) as a substitution therefor.

(c) A reinsurance agreement with an insurer authorized to make such re-insurance and authorized to do business in this state against any loss in connection with all claims of any legal obligation of the corporation to which the full faith and credit guarantee of the state is pledged. Pursuant to such agreement, the commissioner shall be authorized to examine the books and records of the reinsurer. During the term of such reinsurance, the reinsurer shall file annually with the commissioner of insurance a true copy of its annual statement with the insurance department of its state of domicile and a copy of its most recent audited financial statement.

(4) Upon request by the corporation and compliance with the pertinent provisions above, the commissioner may permit the corporation to substitute one form of security for another, all as described in Paragraph (3).

(5) Upon proper presentation of claims information, the commissioner of insurance shall release a portion of the initial amount of the deposit or authorize a reduction in the bond or the amount of the reinsurance agreement, as appropriate. When evidence is presented to the commissioner of insurance that no further liability exists from any claim arising from any legal obligation of the corporation to which the full faith and credit guarantee of the state is pledged, the commissioner shall consent to terminate the deposit, bond, or reinsurance agreement.

E. The corporation shall be liable for payment of assessments imposed by the Louisiana Office of Workers' Compensation Administration, the Louisiana Workers' Compensation Second Injury Fund, and the United States Department of Labor pursuant to Section 44 of the United States Longshore and Harbor Worker's Compensation Act.

F. There shall be no liability on the part of and no cause of action shall arise against the corporation, its governing board, staff, agents, or employees, arising out of or in connection with any judgment or decision made in connection with the performance of the powers and duties under this Part, or for any inspections, safety engineering investigations performed, or recommendations made in good faith in any reports or in communications concerning employers due to their applying for or being provided insurance coverage by the corporation, or at any administrative hearing or inquiry conducted in connection with any insurance coverage by the corporation pursuant to the purposes and objectives of this Part.

## § 1397. Incurring of debt for operations and cash flow; pledge of full faith and credit of state

A. The corporation shall not incur capitalization debt, in the aggregate, over five million dollars unless prior approval is obtained from the State Bond Commission. However, upon the extinguishment of the full faith and credit guarantee of the state, as provided in the constitution, the board of directors of the corporation shall have the exclusive authority to approve the capitalization debt of the corporation.

B. Any proceeds from debt incurred pursuant to this Section shall be used only for the operations of the corporation and for cash flow purposes to pay any claims under policies issued by the corporation.

C. Until such time as the corporation obtains the approval of the United States Department of Labor to provide United States Longshore and Harbor Worker's Compensation Act coverage without such security, the full faith and credit of the state of Louisiana shall be pledged for any debt incurred pursuant to this Section subject to the provisions of R.S. 23:1404.

## § 1398. Board of directors

A. The board shall consist of twelve members as follows:

(1) One person from a list of three submitted by the Louisiana American Federation of Labor and Congress of Industrial Organizations, or by a successor organization representative of organized labor to be designated by the legislature in the event that the Louisiana American Federation of Labor and Congress of Industrial Organizations ceases to exist.

(2) One person from a list of three submitted by the Louisiana Association of Business and Industry, or by a successor organization representative of organized business to be designated by the legislature in the event the Louisiana Association of Business and Industry ceases to exist.

(3) Four persons, all residents of the state of Louisiana, each of whom represents a for-profit business, provided that at least one of these persons represents a business with ten or fewer employees, one of these persons represents a business with at least eleven but not more than fifty employees, one of these persons represents a business with over fifty employees, and one of these persons represents a business with over one hundred employees. One person possessing the above mentioned qualifications shall be a representative of the Louisiana Farm Bureau Federation. Vacant offices of any of the four members shall be filled by similarly qualified persons, who are policyholders, at an election by the policyholders, as provided by the board.

(4) One person, from a list of three submitted by the board of directors of Louisiana Workers' Compensation Corporation, who is an agent licensed by the Department of Insurance to sell workers' compensation insurance in Louisiana and who possesses executive-level experience in the field of workers' compensation insurance.

(5) Two persons, each from a list of three submitted by the board of directors of Louisiana Workers' Compensation Corporation, who are residents of the state of Louisiana and who shall represent the interest of the citizens of the state at large.

(6) Repealed by Acts 2003, No. 315, § 2, eff. Nov. 6, 2003.

(7) The insurance commissioner or his designee, who shall be a nonvoting ex officio member.

(8) A member of the Senate selected by the president of the Senate, who shall be a nonvoting ex officio member.

(9) A member of the House of Representatives, selected by the speaker of the House of Representatives who shall be a nonvoting ex officio member.

B. The initial members of the board may serve staggered terms of up to six years. The terms of the initial board members shall be assigned to achieve a staggered rotation, spread as fairly as possible across all the representative groups of the board. Except

for the legislative members and the insurance commissioner, the initial board shall be appointed by the governor with the advice and consent of the Senate. Except for the insurance commissioner, no board member shall serve more than three consecutive terms. Upon extinguishment of the full faith and credit guarantee, the gubernatorial appointees will no longer be subject to term limits and a seventy percent majority of the voting policyholders may elect their representative directors for a fourth and any successive term.

C. The board shall adopt and amend bylaws necessary for the economic, equitable, and efficient administration of the corporation.

D. The governor shall appoint members to the board no later than forty-five calendar days after submission of the lists of nominees. Submissions of the lists of nominees for a board position shall be made to the governor no later than forty-five days prior to the expiration of the term of any appointed board position.

E. Five members of the board may vote to expel a board member who has accumulated three consecutive unexcused absences from regularly scheduled board meetings, for neglect of duty, or for malfeasance or nonfeasance in office.

F. (1) Except for the legislative members and the insurance commissioner, members of the board shall receive no salary but shall be entitled to receive board fees commensurate with industry standards, for actual attendance at board meetings and for vouchered expenses incurred while fulfilling their official duties.

(2) Legislative members shall receive a per diem reimbursement for travel expenses as provided by their respective house. The board may reimburse the Senate and House of Representatives respectively for per diem and travel expense reimbursement paid to the legislative members in fulfilling their official duties on the board.

## § 1399. Duties of the board

A. (1) The board shall mandate the solvency of the corporation and shall insure that it establishes funded reserves, establishes an operating account in accordance with the provisions of this Part, and that the corporation is self-supporting.

(2) The corporation shall adopt bylaws no later than six months after its formation to assure the fair, reasonable, and efficient servicing of workers' compensation insurance policies and other matters necessary or advisable to carry into effect the provisions of this Part.

(3) To insure the corporation's solvency, the board, in formulation of its bylaws, procedures, and reserving policies shall use generally accepted actuarial practices and procedures as set forth in the Statement of Principles Regarding Property and Casualty Loss and Loss Adjustment Expense Reserves of the Casualty Actuarial Society.

(4) The board shall require the use of policies or other forms filed with and approved by the insurance commissioner.

(5) The board may accept the loan, pledge, or donation of funds, credit, property, or things of value of the state or any other entity, except as limited by Article XII, Section 8.1(B)(1) of the Constitution of Louisiana.

B. (1) The board shall appoint a manager of the corporation who shall be in charge of the day-to-day operation of the corporation.

(2) The board shall set the compensation for the manager, and he shall serve at the pleasure of the board.

(3) The board shall require the manager to have proven successful experience as an executive at the general management level and in the field of workers' compensation insurance.

(4) The board shall require the manager to be a full-time employee of the corporation who shall not accept or engage in additional employment of any kind.

(5) The board shall require the manager to give an official bond, to be filed with the secretary of state, in an amount and with sureties approved by the board.

C. The board shall require the manager to take the following corporate actions:

(1) Conduct safety inspections for workplace risks.

(2) Furnish advisory services and assistance to policyholders in the formation and implementation of safety programs or other measures.

(3) Make rules for the settlement of claims, including an emphasis on rehabilitation and return to the workplace by a rehabilitated employee, not in conflict with any provision of Title 23 of the Louisiana Revised Statutes of 1950.

(4) Contract with health care providers for cost containment purposes for the treatment and care of employees entitled to benefits under a policy issued by the corporation.

(5) Obtain whatever actuarial, legal, and accounting services that are necessary for the successful operation of the corporation.

D. The board may require the manager to take the following corporate actions:

(1) Enter into contracts for workers' compensation insurance.

(2) Reinsure any risk or a part of a risk.

(3) Cause the payrolls of policyholders and applicants for insurance to be inspected and audited.

(4) Contract with vendors for provision of various services as needed by the corporation.

## § 1400. Policy applications; risk classification

A. After the start up of the corporation and upon termination of the applicant's current policy, an applicant shall apply for coverage by the corporation in good faith, through an agent licensed by the state of Louisiana to procure workers' compensation insurance. An applicant shall not be eligible to secure workers' compensation coverage from the corporation by canceling its current coverage during the first year of the corporation's operation.

B. Pursuant to this Part and the rules and regulations in conformity herewith, applicants shall be classified as a preferred risk or an accepted risk.

## § 1401. Discontinuation of Louisiana Workers' Compensation Assigned Risk Plan

Effective: January 1, 2009

A. The Louisiana Workers' Compensation Assigned Risk Plan, as authorized by R.S. 22:1475(A), is discontinued effective September 30, 1992, except for dissolution of any obligations for claims occurring prior to the termination of any policies written pursuant to the Louisiana Workers' Compensation Assigned Risk Plan.

B. Notwithstanding any other provision of law, the corporation shall be self-funding and cover corporation losses and expenses. The sole source of continual funding of the corporation shall be its policyholders and contractual services fees, except as provided in R.S. 23:1397 and 1399(A)(5). There shall be no requirement for any insurer to capitalize the corporation. There shall be no assessments or other liability imposed on any insurer for any deficit of the corporation.

C. It is the intent of this Part to provide for an orderly transfer of policies from the Louisiana Workers' Compensation Assigned Risk Plan as authorized by R.S. 22:1475(A) to the corporation as defined herein. The activities of the Louisiana Workers' Compensation Assigned Risk Plan are hereby discontinued as follows:

(1) The Louisiana Workers' Compensation Assigned Risk Plan will continue its operation for all policies with inception dates of or before September 30, 1992. All policies written thereunder shall be for one-year terms, and shall not be terminated prior to expiration except for cause. In no case shall policies with inception dates of October 1, 1992, or later, be provided under the Louisiana Workers' Compensation Assigned Risk Plan.

(2) Commencing October 1, 1992, the corporation fund shall offer policies for preferred and accepted risks.

## § 1403. Policy programs

A. There is established within the corporation a preferred risk policy program, hereinafter referred to as the PRP program and an accepted risk program, hereinafter referred to as the ARP program.

B. The corporation shall keep a separate accounting of all costs and revenues associated with the ARP program and the PRP program. The corporation shall issue separate rating plans for the ARP program and the PRP program according to R.S. 23:1411.

C. To participate in the PRP program, the applicant shall satisfy the definition of preferred risk as stated in R.S. 23:1392.

D. To participate in the ARP program the applicant shall satisfy the definition of accepted risk as stated in R.S. 23:1392.

E. After the PRP program has been operating at least twelve months, the board may expand the eligibility of the PRP program.

## § 1404. Allocation of surplus; full faith and credit; exemptions; sunset

A. Any profit indicated on the annual financial statement of the corporation shall be allocated during the next accounting period as follows:

(1) No less than fifty percent of the profit shall be applied to liquidate any outstanding indebtedness of the corporation, until all such indebtedness has been liquidated.

(2) The remainder of the profit shall be used to establish and maintain surplus and reserve requirements as required for a domestic mutual insurer.

B. (1) (a) Should the corporation's assets be insufficient to pay claims as they become due, then the full faith and credit of the state of Louisiana shall be pledged for the purposes as provided in R.S. 23:1395 and for the payment of claims. This full faith and credit guarantee shall expire in five years or at such time as the United States Department of Labor approves United States Longshore and Harbor Worker's Compensation Act coverage by the corporation without such security, whichever occurs later.

(b) The corporation shall seek the approval of the United States Department of Labor to provide United States Longshore and Harbor Worker's Compensation coverage upon obtaining an A.M. Best rating of "A-" or better. Beginning no later than five years after the issuance of its first policy, the corporation shall make diligent efforts to obtain an A.M. Best rating of "A-" or better.

(c) The extinguishment of the full faith and credit guarantee shall be self-executing immediately upon the United States Department of Labor's approval. The provisions of this Part affected by extinguishment of the full faith and credit guarantee shall also be immediately self-executing.

(d) Notwithstanding the self-execution of the extinguishment, within ten days of the receipt of the United States Department of Labor's approval, the corporation shall provide formal written notice of this approval to the governor, the speaker of the House of Representatives, the president of the Senate, the commissioner of insurance, the legislative auditor, the treasurer, and the director of the office of risk management.

(2) In the event that the corporation is dissolved, the funds reserved to pay the claims of policyholders and beneficiaries arising from and within the coverage of insurance policies issued by the corporation shall be held in trust for the benefit of those policyholders and beneficiaries. Any remaining assets of the corporation shall be transferred to the state of Louisiana.

(3) The full faith and credit guarantee, equal to the minimum surplus requirements for a domestic mutual insurer less any actual surplus of the corporation, shall be included as an asset in the configuration of the financial statements required under the provisions of R.S. 23:1411, until its extinguishment.

C. The exemption from surplus and loss reserve requirements shall cease when the corporation has:

(1) Paid off its initial principal debt.

(2) Established sufficient reserves to bring it into compliance with the Louisiana Insurance Code.

(3) Experienced growth in the number of policies in each of the preceding three years of less than ten percent annually.

## § 1404.1. State reporting

Upon its extinguishment, the full faith and credit guarantee shall no longer operate as a state liability, contingent or otherwise, for the state's accounting, budgeting, financial, or reporting purposes.

## § 1405. Corporation investments

Effective: January 1, 2009

A. Notwithstanding any other law to the contrary and as long as the full faith and credit guarantee remains in effect, the corporation is hereby authorized and directed to invest, for the benefit of the policyholders, such monies not needed for cash flow purposes, in any of the following obligations:

(1) Direct United States Treasury obligations, the principal and interest of which are fully guaranteed by the government of the United States.

(2) United States government agency obligations, the principal and interest of which are fully guaranteed by the government of the United States, or United States government obligations, the principal and interest of which are guaranteed by any United States government agency, which may include certificates or other evidences of an ownership interest in such obligations, which may consist of specified portions of interest thereon, such as those securities commonly known as CATS, TIGRS, or STRIPS.

(3) Direct security repurchase agreements and reverse direct security repurchase agreements of any federal book entry only securities enumerated in Paragraphs (1) and (2). "Direct security repurchase agreement" means an agreement under which the corporation buys, holds for a specified time, and then sells back those securities and obligations enumerated in Paragraphs (1) and (2). "Reverse direct securities repurchase agreement" means an agreement under which the corporation sells and after a specified time buys back any of the securities and obligations enumerated in Paragraphs (1) and (2).

(4) Time certificates of deposit of state banks organized under the laws of Louisiana, or national banks having their principal offices in the state of Louisiana, savings accounts or shares of savings and loan associations and savings banks, as defined by R.S. 6:703 (16) and 17(a), or share accounts and share certificate accounts of federally or state chartered credit unions issuing time certificates of deposit. For those funds made available for investment in time certificates of deposit, the rate of interest paid by the banks shall be established by contract between the bank and the corporation.

(5) Mutual or trust fund institutions which are registered with the Securities and Exchange Commission under the Securities Act of 1933 and the Investment Act of 1940, and which have underlying investments consisting solely of and limited to securities of the United States government or its agencies.

(6) Funds invested in accordance with the provisions of this Part shall not exceed at any time the amount insured by the Federal Deposit Insurance Corporation in any one banking institution, or in any one savings and loan association, or National Credit Union Administration, unless the uninsured portion is collateralized by the pledge of securities in the manner provided in R.S. 39:1221.

(7) Investment grade corporate bonds rated Baa or higher by Moody's, or rated BBB or higher by Standard and Poor, preferred stock and common stock whose shares are traded on a nationally recognized exchange, such as, but not limited to, the New York Stock Exchange, NASDAQ, or the American Stock Exchange. Investment in such bonds and stocks is restricted to two percent per issue of admitted assets, and not to exceed twenty percent, in aggregate, of admitted assets.

(8) Bonds or other interest-bearing securities of the United States or an agency thereof, including but not limited to the Federal National Mortgage Association.

B. Upon the extinguishment of the full faith and credit guarantee, the provisions of Subsection A of this Section shall cease to have effect and the investments of the corporation shall be made in conformity with the provisions of the Louisiana Insurance Code applicable to domestic insurers as provided in R.S. 22:581 et seq.

## § 1405.1. Conversion to stock corporation; conditions; approval; laws applicable

A. Notwithstanding any law to the contrary, the corporation shall not convert to a domestic stock insurer except in accordance with general law applicable to such conversion and only with the prior approval of the legislature, by concurrent resolution adopted by a majority of the elected members of each house of the legislature,

B. If the corporation converts to a domestic stock insurer, it shall be subject to laws applicable to domestic stock insurers.

## § 1406. Conflict of interest

A. Notwithstanding that Chapter 15 of Title 42 of the Louisiana Revised Statutes of 1950 is not applicable to the corporation or to its board members, officers, or employees or to any spouse, sibling, ascendant, or descendant of a board member, officer, or employee of the corporation, the following provisions shall apply:

(1) (a) Except for a member of the board, no officer or employee of the corporation, or any spouse, sibling, ascendant, or descendant of the officer or employee shall have a financial interest in any entity doing business or proposing to do business with the corporation, except that an officer may be a policyholder.

(b) Any member of the board or any spouse, sibling, ascendant, or descendant of any member of the board who has a financial interest in any entity doing business or proposing to do business with the corporation, other than as a policyholder, shall disclose, in writing, the following:

(i) The nature, amount, and extent of the financial interest.

(ii) The name, address, and relationship to the board member, if applicable.

(iii) The name and business address of the legal entity involved, if applicable.

(c) The disclosure statement required in Subparagraph (b) shall be initially filed with the corporation and the secretary of state within thirty days of

the member's commencement of service on the board or within thirty days after the matter subject to disclosure arises, whichever later occurs, and shall be filed thereafter annually, to the extent required, by May first, which annual report shall include such information for the previous calendar year. The statements shall be a matter of public record.

(d) As used in this Paragraph, "financial interest" means ownership by an individual or his spouse, either individually or collectively, of an interest which exceeds five percent of any legal entity.

(2) (a) Except for a member of the board, no officer or employee of the corporation who leaves the service or employ of the corporation may represent any person doing business or proposing to do business with the corporation for a period of two years following termination of service or employment with the corporation, except that an officer may be a policyholder.

(b) Any member of the board who leaves the board, and who does not serve as an officer or employee of the corporation, may represent any person doing business or proposing to do business with the corporation within a period of two years following termination of service on the board, other than as a policyholder, only if within thirty days of such representation, the board member files a written statement with the corporation and with the secretary of state disclosing the following:

(i) The nature, amount, and extent of the board member's relationship with the person.

(ii) The name and business address of the person involved and nature of the business or proposed business with the corporation.

(c) The statements filed pursuant to this Paragraph shall be public records.

B. (1) No spouse, sibling, ascendant, or descendant of a board member or officer or employee of the corporation shall be employed by the corporation.

(2) Any spouse, sibling, ascendant, or descendant of a board member or officer or employee of the corporation employed by the corporation on June 21, 1993, whose employment would otherwise be in violation of this Subsection, may continue his employment and this Subsection shall not be construed to hinder, alter, or in any way affect normal promotional advancements for the employee.

(3) This Subsection shall not prohibit the continued employment of any employee nor shall it be construed to hinder, alter, or in any way affect normal promotional advancements for the employee when a spouse, sibling, ascendant, or descendant of the employee becomes a member of the board, provided that the employee has been employed by the corporation for a period of at least one year prior to the spouse, sibling, ascendant, or descendant becoming a member of the board.

C. (1) No officer or employee of the corporation shall solicit or accept, directly or indirectly, any thing of economic value as a gift or gratuity from any person or from any officer, director, agent, or employee of such person, if the officer or employee knows or reasonably should know that such person either:

(a) Has or is seeking to obtain contractual or other business or financial relationships with the corporation.

(b) Is seeking, for compensation, to influence the passage or defeat of any rule or rate by the corporation.

(c) Conducts operations or activities which are regulated by the corporation.

(d) Has a financial interest which may be substantially affected by the performance or nonperformance of the officer's or employee's stated duty.

(2) (a) Written disclosure shall be made by any member of the board who shall solicit or accept, directly or indirectly, any thing of economic value as a gift or gratuity from any person or from any officer, director, agent, or employee of such person, if the board member knows or reasonably should know that such person either:

(i) Has or is seeking to obtain contractual or other business or financial relationships with the corporation.

(ii) Is seeking, for compensation, to influence the passage or defeat of a rule or rate by the corporation.

(iii) Conducts operations or activities which are regulated by the corporation.

(iv) Has a financial interest which may be substantially affected by the performance or nonperformance of the member's stated duty.

(b) The disclosure required by Subparagraph (a) shall include the following:

(i) The name and business address of the person involved and the relationship to the board member, if applicable.

(ii) The name and address of any officer, director, agent, or employee of the person involved and the relationship to the board member, if applicable.

(iii) The contractual or other business or financial relationship sought with the corporation, if applicable.

(iv) The regulation sought to be influenced, if applicable.

(v) The corporation-regulated operations or activities conducted by the person involved, if applicable.

(vi) The financial interest of the person involved which may be substantially affected by the performance or nonperformance of the member's stated duty, if applicable.

(c) The disclosure statement required by Subparagraph (a) shall be filed with the corporation and the secretary of state within thirty days of the member's solicitation or acceptance of the thing of economic value and shall be a matter of public record.

(3) As used in this Subsection, "thing of economic value" means money or any other thing having a value in excess of fifty dollars such as food, drink, or refreshments consumed by a board member, officer, or employee of the corporation, including reasonable transportation and entertainment incidental thereto, while the personal guest of some person.

D. Any person who violates any provision of this Section or who knowingly makes a false statement in any disclosure required by this Section may be fined not more than five thousand dollars.

E. (1) Nothing in this Section shall require disclosure by a board member appointed pursuant to and in accordance with Article XII, Section 8.1(C)(1)(f) of the Constitution of Louisiana of information regarding the sale or offer to sell of workers' compensation insurance as an agent licensed by the Department of Insurance.

(2) Nothing in this Section shall require disclosure by a board member appointed pursuant to and in accordance with Article XII, Section 8.1(C)(1)(g) of the Constitution of Louisiana of information regarding the issuance of workers' compensation insurance as a representative of insurers licensed by the Department of Insurance to issue workers' compensation insurance.

## § 1407. Sales of policies; agents not liable

Effective: January 1, 2009

A. Any insurance agent licensed to sell workers' compensation insurance in this state shall be authorized to sell insurance policies for the corporation in compliance with the bylaws adopted by the corporation and R.S. 22:1113(A)(3) [Repealed]. The board of directors shall establish a schedule of commissions to pay for the services of the agent.

B. No action shall lie against any person authorized to sell insurance by this Section for any claim arising out of the corporation's insolvency or inability to pay claims.

## § 1407.1. Issuance or renewal of policies not backed by full faith and credit of state; disclosure

A. After the full faith and credit of the state is extinguished, the corporation and any person who is an officer, employee, agent, or representative of the corporation, in the solicitation and negotiation of the renewal or issuance of any policy by the corporation, shall disclose that the full faith and credit of the state does not guarantee the legal obligations of the corporation under such policy.

B. Each policy issued or renewed by the corporation after the full faith and credit of the state is extinguished shall contain a statement that the full faith and credit of the state does not guarantee the legal obligations of the corporation under the policy. Any such policy which does not contain such provision shall be void.

## § 1409. Denial, cancellation, and termination

The nonpayment of premium for current or prior policies issued by the corporation may be a basis for the corporation to deny coverage. The failure or refusal by any applicant or insured to fully and accurately disclose to the corporation information concerning the applicant's ownership, change of ownership, operations, or payroll, including allocation of payroll among state and federal compensation programs, classification of payroll, and any other information determined by the board to be important in determining proper rates shall be sufficient ground for the corporation to deny an application or to nonrenew or terminate an existing policy. No policy shall be terminated or nonrenewed under this Section without sixty days prior notice, except for nonpayment of premium.

## § 1410. Fraud division

The corporation shall establish a fraud division to investigate and take any actions to remedy and prevent employer or employee fraud regarding workers' compensation. The division shall provide an annual report to the board to be submitted with the report provided for in R.S. 23:1411(C).

## § 1411. Rates

A. There shall be no premium discount on policies issued by the corporation except as provided in R.S. 23:1411(D) or when otherwise mandated by statutory provision.

B. Any rating plan or method of payment by the policyholders may be adopted by the board for the purpose of insuring that the corporation is totally solvent and self-funded. In formulating rates, the board shall use generally accepted actuarial practices and procedures as set forth in the Statement of Principle Regarding Property and Casualty Ratemaking of the Casualty Actuarial Society, in accordance with the actuarial standards of practice and compliance guidelines of the Actuarial Standards Board.

C. (1) By April first after the end of every fiscal year, the manager shall present to the board and the commissioner of insurance an annual report including financial statements as are required for fire and casualty insurance companies for that year. The financial statement shall include an opinion prepared by an independent property and casualty actuary as to the adequacy of premiums and funded reserves during that fiscal year.

(2) By June first after the end of every fiscal year, the manager shall present to the board and the commissioner of insurance an annual audit conducted by the legislative auditor in accordance with statutory accounting practices prescribed or permitted by the Department of Insurance.

(3) Upon the extinguishment of the full faith and credit guarantee, the provisions of Paragraph (2) of this Subsection shall be void and all authority of the legislative auditor over the corporation shall cease, notwithstanding any other provision of law.

(4) If the report determines that the corporation is operating at a deficit according to statutory accounting practices, then no later than the succeeding May first, the board of directors shall submit for the approval of the commissioner of insurance a plan to fund the deficit.

(5) If the plan fails to be submitted or approved, the commissioner of insurance is authorized and directed to immediately implement a plan to achieve the solvency of the corporation.

D. If the annual report issued pursuant to Subsection C of this Section indicates that all obligations of the corporation are adequately funded, the board may adopt a plan for credits, discounts, or dividends.

E. The board shall establish its rates, including rates on Jones Act coverage, on an actuarially justified class code basis, to insure that the rates of the corporation are adequate to be self-funding.

## § 1412. Workplace safety program

A. (1) The board shall direct the corporation to formulate, implement, and monitor a workplace safety program for policyholders.

(2) The work program shall specify a list of standard industrial classifications of policyholders.

(3) The representatives of the corporation shall have reasonable access to the premises of any policyholder or applicant during regular working hours.

(4) The manager shall notify each policyholder in writing as to how he is to comply with the program.

B. The failure or refusal by any policyholder or applicant to comply with reasonable safety requirements or to permit such access as provided for in Paragraph A(3) shall be sufficient grounds for having its workers' compensation insurance coverage surcharged, nonrenewed, or canceled, or an applicant for such coverage denied.

## § 1413. Workplace accident and injury reduction plan

A. The board shall require the corporation to require certain policyholders to establish a written workplace accident and injury reduction plan that promotes safe working conditions and which is based on clearly stated goals and objectives. At a minimum, the plan shall describe the following:

(1) The implementation by the policyholder, supervisors, and employees of the program and continued participation of management to be established, measured, and maintained.

(2) The methods used to identify, analyze, and control new or existing hazards, conditions, and operations.

(3) The investigation and corrective action implemented for workplace accidents.

(4) The enforcement of safe work practices and rules.

B. The corporation shall require such a policyholder to conduct and document a review of the workplace accident and injury reduction plan at least annually. The review shall document how procedures set forth in the plan are being met. The review shall be submitted to the corporation.

## § 1414. Annual report

A. Within six months after the close of each fiscal year, the corporation shall present a report on its activities to the legislative auditor, the speaker of the House of Representatives, the president of the Senate, and the governor. This report shall include, but need not be limited to, the following information:

(1) The number of risks in the PRP program and the number of risks in the ARP program.

(2) A determination of whether or not the corporation is solvent and self-sufficient and if not, what remedial action the board will take to eliminate or prevent any deficit.

B. The annual report shall also contain specific findings and recommendations as to those factors that are contributing to any increase in premiums or deficits. The annual

report shall also recommend any cost containment or efficiency measure to insure the proper operation of the corporation.

## § 1415. Appeal to insurance commissioner

A. Any determination of the corporation with respect to the cancellation or nonrenewal of any policy, with the exception of cancellation for nonpayment of premium, may be appealed to the commissioner of insurance in writing, within thirty days following the receipt by certified mail of the notice. Upon receipt of an appeal, the commissioner shall schedule and hold a hearing with at least ten days written notice to the parties affected. After consideration of all matters presented at the hearing, as well as information available to him from the records of the Department of Insurance, the commissioner of insurance may affirm, annul, or modify the ruling or decision, or take any other action with respect thereto that is equitable and reasonable under the circumstances. All testimony and other evidence on which the insurance commissioner bases any decision under this Part shall be in writing, directed to the parties affected, and filed of record in the Department of Insurance.

B. Board decisions regarding rates, classifications, or any other facet of premium determination are appealable to the Nineteenth Judicial District Court.