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Massachusetts General Laws

PART I ADMINISTRATION OF THE GOVERNMENT

TITLE XXI LABOR AND INDUSTRIES

CHAPTER 152 WORKERS' COMPENSATION

Section 1 Definitions

Section 1. The following words as used in this chapter shall, unless a different meaning is plainly required by the context or specifically prescribed, have the following meanings:

(1) "Average weekly wages", the earnings of the injured employee during the period of twelve calendar months immediately preceding the date of injury, divided by fifty-two; but if the injured employee lost more than two weeks' time during such period, the earnings for the remainder of such twelve calendar months shall be divided by the number of weeks remaining after the time so lost has been deducted. Where, by reason of the shortness of the time during which the employee has been in the employment of his employer or the nature or terms of the employment, it is impracticable to compute the average weekly wages, as above defined, regard may be had to the average weekly amount which, during the twelve months previous to the injury, was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district. In case the injured employee is employed in the concurrent service of more than one insured employer or self-insurer, his total earnings from the several insured employers and self-insurers shall be considered in determining his average weekly wages. Weeks in which the employee received less than five

dollars in wages shall be considered time lost and shall be excluded in determining the average weekly wages; provided, however, that this exclusion shall not apply to employees whose normal working hours in the service of the employer are less than fifteen hours each week.

Except as provided by sections twenty-six and twenty-seven of chapter one hundred forty-nine, such fringe benefits as health insurance plans, pensions, child care, or education and training programs provided by employers shall not be included in employee earnings for the purpose of calculating average weekly wages under this section.

(1A) “Commissioner”, the director of the department of industrial accidents established under chapter twenty-three E.

(2) “Department”, the department of industrial accidents.

(3) “Dependents”, members of the employee’s family or next of kin who were wholly or partly dependent upon the earnings of the employee for support at the time of the injury or at the time of his death.

(4) “Employee”, every person in the service of another under any contract of hire, express or implied, oral or written, excepting (a) masters of and seamen on vessels engaged in interstate or foreign commerce, (b) persons employed to participate in organized professional athletics, while so employed, if their contracts of hire provide for the payment of wages during the period of any disability resulting from such employment, (c) a salesperson affiliated with a real estate broker pursuant to an agreement which specifically provides for compensation only in the form of commissions earned from the sale or rental of real property, (d) a salesperson who is a direct seller of consumer products on a buy-sell or deposit-commission basis other than in a

retail establishment, all of whose remuneration is directly related to sales rather than amount of time worked and whose services are performed pursuant to a written contract providing that the direct seller will not be treated as an employee for Federal tax purposes, (e) a person who operates a taxicab vehicle which is leased by such person from a taxicab company pursuant to an independent contract which specifically provides for a rental fee or other payment to the owner of such taxicab vehicle which is in no way related to the taxicab fares collected by such person; and provided, further, that such person is not treated as an employee for Federal tax purposes, (f) persons employed by an employer engaged in interstate or foreign commerce but only so far as the laws of the United States provide for compensation or liability for their injury or death, and (g) a person whose employment is not in the usual course of the trade, business, profession or occupation of his employer, but not excepting a person conclusively presumed to be an employee under section twenty-six.

Notwithstanding the provisions of section one hundred of chapter forty-one, any reserve or special police officer who is employed by a contractor for the purpose of directing or maintaining traffic or other similar purposes upon any way which is being constructed or reconstructed or upon which other types of construction projects are in progress under contract with the state department of highways or the metropolitan district commission or any city or town, and who is paid directly for such services by a contractor engaged in the performance of such a contract with said department or commission or city or town, shall be conclusively presumed to be an employee of such contractor while so employed and paid; and, notwithstanding any contrary provision of law, the compensation provided by this chapter shall be paid to any such police officer who receives an injury arising out of and in the course of such employment, or, in case of death resulting from such injury, to the persons entitled thereto.

Students participating in a work-based experience as part of a school-to-work program who receive personal injuries arising out of and in the course of such participation at or with particular employers, shall, for purposes of this chapter, be deemed employees of such employers. For the purposes of this paragraph, “school to work program” shall mean workplace based education and training programs designed to improve the knowledge and skills of high school students by integrating academic and occupational learning to prepare students for gainful employment and increase their opportunities for post secondary education.

The provisions of this chapter shall remain elective as to employers of seasonal or casual or part-time domestic servants. For the purpose of this paragraph, a part-time domestic servant is one who works in the employ of the employer less than sixteen hours per week.

This chapter shall be elective for an officer or director of a corporation who owns at least 25 per cent of the issued and outstanding stock of the corporation. Notwithstanding section 46, these provisions shall apply only if the corporate officer provides the commissioner of industrial accidents with a written waiver of his rights under this chapter. Said commissioner shall promulgate regulations to carry out the purpose of this paragraph. Violations of this paragraph shall subject the corporation to the penalties set forth in section 25C.

For the purpose of this chapter, a sole proprietor at his option or a partnership at its option shall be an employee. A sole proprietor or partnership may elect coverage by securing insurance with a carrier.

Any reference to an employee who has been injured shall, when the employee is dead, also include his legal representatives, dependents and other persons to whom compensation may be payable.

(5) “Employer”, an individual, partnership, association, corporation or other legal entity, or any two or more of the foregoing engaged in a joint enterprise, and including the legal representatives of a deceased employer, or the receiver or trustee of an individual, partnership, association, corporation or other legal entity, employing employees subject to this chapter; provided, however, that the owner of a dwelling house having not more than three apartments and who resides therein, or the occupant of a dwelling house of another who employs persons to do maintenance, construction or repair work on such dwelling house or on the grounds or buildings appurtenant thereto shall not because of such employment be deemed to be an employer. The word “employer” shall include both the general employer and the special employer in any case where both relationships exist with respect to an employee. The word “employer” shall not include nonprofit entities, as defined by the Internal Revenue Code, that are exclusively staffed by volunteers.

A corporation and its subsidiary corporations shall be considered as one entity for the purposes of a self-insurance license; provided, however, that such corporation has signed as guarantor to insure payment of claims by its subsidiary corporations.

(6) “Insured” or “insured persons”, an employer who has provided by insurance for the payment to his employees by an insurer of the compensation provided for by this chapter, or is a self-insurer under subparagraph (a) or (b) of paragraph (2) of section twenty-five A, or is a member of workers’ compensation self-insurance group established pursuant to section twenty-five E to twenty-five U, inclusive.

(7) “Insurer”, any insurance company, reciprocal, or interinsurance exchange, authorized so to do, which has contracted with an employer to pay the compensation provided for by this

chapter. The term “insurer” within this definition shall include, wherever applicable, a self-insurer, the commonwealth and any county, city, town, or district which has accepted the provisions of section sixty-nine of this chapter. The term “insurer” as used in this chapter, except where used to refer to regulation of insurance companies by the division of insurance, and except where used in sections sixty-five A and sixty-five C, shall include where applicable a workers’ compensation self-insurance group established pursuant to the provisions of sections twenty-five E to twenty-five U, inclusive.

(7A) “Personal injury” includes infectious or contagious diseases if the nature of the employment is such that the hazard of contracting such diseases by an employee is inherent in the employment. “Personal injury” shall not include any injury resulting from an employee’s purely voluntary participation in any recreational activity, including but not limited to athletic events, parties, and picnics, even though the employer pays some or all of the cost thereof. Personal injuries shall include mental or emotional disabilities only where the predominant contributing cause of such disability is an event or series of events occurring within any employment. If a compensable injury or disease combines with a pre-existing condition, which resulted from an injury or disease not compensable under this chapter, to cause or prolong disability or a need for treatment, the resultant condition shall be compensable only to the extent such compensable injury or disease remains a major but not necessarily predominant cause of disability or need for treatment. No mental or emotional disability arising principally out of a bona fide, personnel action including a transfer, promotion, demotion, or termination except such action which is the intentional infliction of emotional harm shall be deemed to be a personal injury within the meaning of this chapter.

(8) “Reviewing board”, any three member panel of the reviewing board established under section five of chapter twenty-three E.

(9) “Average weekly wage in the commonwealth”, for dates subsequent to October fourth, nineteen hundred and seventy, the average weekly wage as determined according to the provisions of subsection (a) of section twenty-nine of chapter one hundred and fifty-one A and promulgated by the deputy director of the division of employment and training, on or before October first of each year. For dates prior to October fourth, nineteen hundred and seventy, the state average weekly wage for all employees covered under the employment security law as calculated by said deputy director of the division of employment and training during the year of such date.

(10) “Maximum weekly compensation rate”, one hundred per cent of the average weekly wage in the commonwealth according to the calculation on or next prior to the date of injury by the deputy director of the division of employment and training.

(11) “Minimum weekly compensation rate”, twenty per cent of the average weekly wage in the commonwealth according to the calculation on or next prior to the date of injury by the deputy director of the division of employment and training.

(12) “Vocational rehabilitation”, nonmedical services reasonably necessary at a reasonable cost to restore a disabled employee to suitable employment as near as possible to pre-injury earnings. Such services may include vocational evaluation, counseling, education, workplace modification, and retraining, including on-the-job training for alternative employment with the same employer, and job placement assistance. It shall also mean reasonably necessary related expenses.

The department shall promulgate rules concerning the qualifications and performance of any person, agency or institution providing vocational rehabilitation services pursuant to this chapter. The commissioner may remove or suspend a vocational rehabilitation provider from the list of certified providers, or suspend payment to a vocational rehabilitation service provider for cause. Any such provider shall have the right to appeal to the commissioner any such removal or suspension within fourteen days of such provider's receipt of notice of removal or suspension. Upon receipt of such appeal, the commissioner shall refer the matter to the division of administrative law appeals within the executive office of administration and finance which shall have the authority to reverse, uphold or modify the removal or suspension after a hearing held pursuant to chapter thirty A. Any party aggrieved by said hearing shall have the right to appeal as set forth in said chapter thirty A.

Section 2 Powers and duties of department; investigation of causes of injuries

Section 2. The department shall make all necessary inspections and investigations relating to causes of injuries for which compensation may be claimed, and for this purpose any board member or employee thereof may at any time enter places of employment when being used for business purposes. It shall also have the powers and duties set forth in this chapter.

Section 2A Application of amendments of statute

Section 2A. Every act, in amendment of this chapter, in effect on the effective date of this section or thereafter becoming effective which increases or decreases the amount or amounts of compensation payable to an injured employee or his dependents including amounts deducted for legal fees shall, for the purposes of this chapter, be deemed to be substantive in character and shall apply only to personal injuries occurring on and after the effective date of such act, unless otherwise expressly provided. Every act, in amendment of this chapter, in effect on the effective date of this section or thereafter becoming effective which is not deemed to be substantive in character within the meaning of this section shall be deemed to be

procedural or remedial only, in character, and shall have application to personal injuries irrespective of the date of their occurrence, unless otherwise expressly provided.

Section 3 Repealed, 1921, 462, Sec. 8

Section 4 Repealed, 1985, 572, Sec. 15

Section 5 Rules and regulations

Section 5. The commissioner shall promulgate rules and regulations consistent with this chapter for carrying out the functions of the department. Such rules and amendments thereto shall comply with the filing provisions of section five of chapter thirty A and such regulations shall not take effect until so filed. Such rules and regulations shall include, but not be limited to, a provision authorizing a party, on or after the filing of any claim or complaint pursuant to this chapter, to serve on any party, employer or medical provider rendering medical treatment to the claimant, a request to produce, and permit the party making such request to inspect and copy, any medical notes, treatment reports and employment records.

Neither an administrative judge nor the reviewing board shall have the authority to repeal, revoke, or otherwise set aside a regulation promulgated by the commissioner; provided, however, that if in any proceeding within the division of dispute resolution it is found that the application of any section of this chapter is made impossible by the enforcement of any particular regulation, the administrative judge or reviewing board shall not apply such regulation during such proceeding only. In any case in which a regulation is not applied as

herein provided, the administrative judge or reviewing board shall, on or before the date of the issuance of the decision, inform the commissioner in writing of the explicit contradiction found between the regulation and this chapter.

Section 6 Notice of injuries; forms; additional reports; statistical summaries

Section 6. Within seven calendar days, not including Sundays and legal holidays, of receipt of notice of any injury alleged to have arisen out of and in the course of employment which incapacitates an employee from earning full wages for a period of five or more calendar days, the employer shall furnish notice of the injury to the division of administration, the employee and insurer. The notice shall be submitted on a form prescribed by the division and shall contain the name and nature of the business of the employer, the name, age, sex, and occupation of the injured employee, and the date, nature, circumstances and cause of the injury and such additional information as the division shall prescribe.

The commissioner may require employers with those standard industry codes with the highest number of injuries or claims to provide proof of insurance coverage as required by this chapter. The commissioner may utilize information provided by the department of unemployment assistance and the department of revenue to ascertain the addresses of the employers with such industry codes.

Additional reports may be required from employers, insurers and medical services providers with respect to such injury and of the condition of such employee, including copies of medical, hospital, and rehabilitation reports and records, and the payments made or to be made for

compensation shall be filed with the division of administration at such times and in such manner as the division may prescribe.

The division of administration shall prepare statistical summaries of reports filed under this section.

The provisions of this section shall apply also to the head of each employing board, commission and department of the commonwealth and of the several counties, cities, towns and districts subject to the provisions of section sixty-nine and copies of the report hereby required shall be furnished to the appropriate retirement board, if any, and to the agent set forth in section seventy-five or the insurer, if any.

Any person who violates the provision of this section three or more times in any year shall be punished by a fine of one hundred dollars for each such violation. Each failure to pay a fine within thirty days of receipt of a bill from the department shall be considered a separate violation.

Section 6A Informational brochures; monitoring of benefits; resolution of disputes

Section 6A. Upon receipt of notice of injury from the employer, or any other indication of a compensable injury, the division of administration shall immediately mail, post paid, to the injured worker an informational brochure as prescribed by the division which sets forth in clear and understandable language a summary statement of the rights, benefits, and obligations of injured workers under this chapter. The division shall monitor the furnishing of benefits by the employer or insurer to ascertain that correct benefits are being provided in cases accepted as compensable injuries. In the event of controversy or dispute, the division shall attempt to resolve the dispute promptly and informally, and, upon failing to do so, shall promptly forward a claim form to the employee.

Section 6B Disposition of fines

Section 6B. Any proceeds resulting from the imposition of any fine levied under this chapter shall be paid into the Special Revenue Fund, established pursuant to section sixty-five.

Section 7 Commencement of payments

Section 7. (1) Within fourteen days of an insurer's receipt of an employer's first report of injury, or an initial written claim for weekly benefits on a form prescribed by the department, whichever is received first, the insurer shall either commence payment of weekly benefits under this chapter or shall notify the division of administration, the employer, and, by certified mail, the employee, of its refusal to commence payment of weekly benefits. The notice shall specify the grounds and factual basis for the refusal to commence payment of said benefits and shall state that if no claim has yet been filed, benefits will not be secured for the alleged injury unless a claim is filed with the department and insurer within any time limits provided under this chapter. Any grounds and basis for noncompensability specified by the insurer shall, unless based upon newly discovered evidence, be the sole basis of the insurer's defense on the issue of compensability in any subsequent proceeding. An insurer's inability to defend on any issue shall not relieve an employee of the burden of proving each element of any case.

(2) If an insurer fails to commence such payment or to make such notification within fourteen days, it shall pay to the employee a penalty in an amount equal to two hundred dollars. Where compensation is later ordered and interest is due the employee under section fifty, such penalty shall be considered compensation for the purpose of computing interest. If the insurer fails to commence such payment or to make such notification of denial within sixty days it shall pay an additional penalty to the department of two thousand dollars into the special fund

created pursuant to section sixty-five; provided, however, that such additional penalty shall be ten thousand dollars if said payment is not commenced and said notification is not made within ninety days. Penalties under this section may be waived if an administrative judge finds that the failure to comply with the requirements herein set forth was due to events beyond the control of the insurer or its agents. No additional penalties shall be levied for continuing violations under this section, but the insurer shall be allowed no defenses against any initial claim for weekly benefits until any penalty owed under this section has been paid. No amount paid as a penalty under this section shall be included in any formula utilized to establish premium rates for workers' compensation insurance. An insurer's inability to defend on any issue shall not relieve an employee of the burden of proving each element of any case.

(3) No individual shall receive or continue to receive benefits under this chapter if such individual has an outstanding default or arrest warrant against him. In order to determine if an individual has an outstanding default or arrest warrant against him, the department shall transmit to the department of criminal justice information services a list of applicants and beneficiaries along with sufficient identifying information about such applicants and beneficiaries on at least a quarterly basis. The department of criminal justice information services shall send to the department a list of any applicants or beneficiaries who have a default or arrest warrant outstanding. Evidence of the outstanding default or arrest warrant appearing in the warrant management system established by section 23A of chapter 276 shall be sufficient grounds for such action by the department. The department shall notify the person against whom there is a default or arrest warrant outstanding that such person's benefits shall be denied or suspended unless such person furnishes proof within 30 days that such warrant has been recalled or that there is no such warrant outstanding for such person. Notice of potential denial or suspension shall be deemed sufficient if the notice is mailed to the most

recent address furnished to the department. If proof that such warrant has been recalled or that there is no such warrant outstanding is furnished within 30 days, and if the applicant would otherwise be entitled to benefits, such benefits shall be provided from the time that they would have been provided had there not been a denial or suspension of benefits. If no such proof is furnished within 30 days, such person shall be notified that such benefits are denied or suspended subject to the opportunity for a hearing. After such notice to such person has been delivered or mailed by the department, such person may request a hearing within 90 days with respect to the existence of an outstanding warrant. If a hearing is requested within ten days from the time the notice that benefits are being denied or suspended is mailed or delivered, benefits shall not be suspended until a finding following the hearing. If a hearing is requested, the law enforcement agency responsible for the warrant shall be notified of the time, place, date of hearing and the subject of the warrant. An affidavit from the law enforcement agency responsible for the warrant or from the colonel of the state police may be introduced as prima facie evidence of the existence of a warrant without the need for members of that law enforcement agency to attend any hearings held under this section. The department shall issue a finding within 45 days of conducting the hearing as to whether there is a warrant. If there is a warrant outstanding, the benefits shall not be issued or shall be suspended. A person whose benefits have been denied or suspended due to an outstanding warrant may petition for reinstatement of such benefits at any time if such person can furnish sufficient proof as determined by the department that such warrant has been recalled. Such benefits will be provided from the time the warrant was recalled. The department shall promulgate regulations to implement this section.

Section 7A Presumptions; employee unable to testify

Section 7A. In any claim for compensation where the employee has been killed or found dead at his place of employment or, in the absence of death, is physically or mentally unable to testify, and such testimonial incapacity is causally related to the injury, it shall be prima facie evidence that the employee was performing his regular duties on the day of injury or death and that the claim comes within the provisions of this chapter, that sufficient notice of the injury has been given and that the injury or death was not occasioned by the willful intention of the employee to injure or kill himself or another.

Section 7B Admissibility of, or reference to, statement given insurer or self-insurer by claimant or in his behalf

Section 7B. In any claim for compensation by an employee, which is denied by an insurer or self-insurer, no statement in writing signed by the claimant, or statement taken on a recording instrument, concerning the facts out of which the claim arose, given by such claimant, or a person in his behalf, to such insurer or self-insurer, or to an agent or attorney of such insurer or self-insurer, shall be admissible in evidence or referred to at the hearing of any such claim, or in any proceeding connected therewith, unless a copy of such statement or verbatim written transcript of such recorded statement has been furnished to the claimant, or to a person acting in his behalf, or to his attorney, within ten days after a written request therefor.

Section 7C Representation of claimants; compensation; denial or suspension of right to practice or appear

Section 7C. Any party appearing before the division of dispute resolution may be heard in person, or may be represented by an attorney or by any other person designated by such party. No person who is not an attorney shall be compensated for representing a claimant in such a proceeding; provided, however, that nothing in this section shall bar payment by a labor organization, employee association, or insurer of any payment of regular wages or salary to a full time employee for time spent in representing a claimant. The senior judge may, for cause, deny or suspend the right of any person to practice or appear before the department. Any person denied or suspended under this provision shall have the right to appeal to the commissioner any denial or suspension within fourteen days of receipt of the notice. Upon receipt of such appeal, the commissioner shall refer the matter to the division of administrative law appeals within the executive office of administration and finance which shall have the authority to reverse, uphold or modify the removal or suspension after a hearing held pursuant

to section thirteen of chapter thirty A. Any party aggrieved by said hearing shall have the right to appeal as set forth in section fourteen of said chapter thirty A.

Section 7D Repealed, 1979, 67

Section 7E Repealed, 1985, 572, Sec. 20

Section 7F Record of filing fees, penalties and attorneys' fees

Section 7F. The department shall keep and maintain a record of filing fees charged under section ten, penalties levied under section seven and section eight, and attorneys' fees ordered under section thirteen A, where such filing fees, penalties, or attorneys' fees are required to be paid by insurers, separately identifying those amounts which may not be utilized in the establishment of premium rates. This information shall be provided to the advisory council and to the commissioner of insurance at least once each calendar year.

Section 7G Documentation attached to claims

Section 7G. The senior judge in consultation with the commissioner shall promulgate rules setting forth the required documentation to be attached to any claim for benefits or complaint for modification or discontinuance of benefits. The attachment of all required documentation shall be a prerequisite for the acceptance of said claim or complaint for processing by the office of claims administration.

Section 8 Termination or modification of payments

Section 8. (1) An insurer which makes timely payments pursuant to subsection one of section seven, may make such payments for a period of one hundred eighty calendar days from the

commencement of disability without affecting its right to contest any issue arising under this chapter. An insurer may terminate or modify payments at any time within such one hundred eighty day period without penalty if such change is based on the actual income of the employee or if it gives the employee and the division of administration at least seven days written notice of its intent to stop or modify payments and contest any claim filed. The notice shall specify the grounds and factual basis for stopping or modifying payment of benefits and the insurer's intention to contest any issue and shall state that in order to secure additional benefits the employee shall file a claim with the department and insurer within any time limits provided by this chapter.

Any grounds and basis for noncompensability specified by the insurer shall be the sole basis of the insurer's defense on the basis of compensability, unless based on newly discovered evidence; provided, however, that an insurer's inability to defend on any issue shall not relieve an employee of the burden of proving each element of any case. Any failure of an insurer to make all payments due an employee under the terms of an order, decision, arbitrator's decision, approved lump sum or other agreement, or certified letter notifying said insurer that the employee has left work after an unsuccessful attempt to return within the time frame determined pursuant to paragraph (a) of subsection (2) of this section within fourteen days of the insurer's receipt of such document, shall result in a penalty of two hundred dollars, payable to the employee to whom such payments were required to be paid by the said document; provided, however, that such penalty shall be one thousand dollars if all such payments have not been made within forty-five days, two thousand five hundred dollars if not made within sixty days, and ten thousand dollars if not made within ninety days. No penalty shall be assessed a self-administered public employer or the Workers' Compensation Trust Fund under this paragraph where delivery has been made to the employee or other recipient of a copy of

an official request made by such employer or fund to the appropriate authority for the issuance of a check in the appropriate amount to said recipient, provided that delivery of such copy to said employee or recipient has been made within fourteen days of the employer or fund's receipt of the order, decision or agreement.

(2) An insurer paying weekly compensation benefits shall not modify or discontinue such payments except in the following situations:

(a) compensation has been modified or discontinued pursuant to an order or decision of an arbitrator, an administrative judge, the reviewing board or court of the commonwealth;

(b) the compensation recipient has assented thereto in writing on a form prescribed by the department and the original of such form has been filed with the department;

(c) the employee has returned to work; provided, however, that the insurer shall forthwith resume payments if, within twenty-eight calendar days of return to such employment, the employee leaves such employment and, within twenty-one calendar days thereafter, informs the employer and insurer by certified letter that the disability resulting from the injury renders him incapable of performing such work; provided, further, that if due, compensation shall be paid under section thirty-five;

(d) the insurer has possession of (i) a medical report from the treating physician, or, if an impartial medical examiner has made a report pursuant to section eleven A or subsection (4) of this section, the report of such examiner, and either of such reports indicates that the employee is capable of return to the job held at the time of injury, or other suitable job pursuant to section thirty-five D consistent with the employee's physical and mental condition

as reported by said physician and (ii) a written report from the person employing said employee at the time of the injury indicating that such a suitable job is open and has been made available, and remains open to the employee; provided, however, that if due, compensation shall be paid under section thirty-five; provided, further, that if such employee accepts said employment subsequent to a modification or termination pursuant to this paragraph, compensation shall be reinstated at the prior rate if the employee should cease work in accordance with paragraph (c) of this section or should be terminated by the employer because of the employee's physical or mental incapacity to perform the duties required by the job;

(e) payments are terminated or modified pursuant to subsection (1);

(f) the insurer has received a communication from the office of education and vocational rehabilitation authorizing suspension or reduction of payment under section thirty G;

(g) the benefits payable to the employee have been exhausted pursuant to sections thirty-one, thirty-four, or thirty-five;

(h) payments are suspended or reduced pursuant to section eleven D for failure to respond to an insurer's written request to provide an earnings report, or for past overpayments;

(i) payments are suspended pursuant to section forty-five, provided that the department shall provide by rule for the manner of any such suspension, and subsequent reinstatement or forfeiture;

(j) the employee has been incarcerated pursuant to conviction for a felony or misdemeanor and has thereby forfeited any right to compensation during such period; or

(k) payments are suspended or reduced pursuant to section thirty-six B; or

(l) the employee has died.

For purposes of clause (d) of this section, any termination of an employee within one year of resumption of work with his prior employer will be presumed to be for the reason that the employee was physically or mentally incapable of performing the duties required by the job or that the job was unsuitable for the employee, unless the insurer demonstrates the contrary by a preponderance of evidence at a subsequent proceeding.

[There is no subsection (3).]

(4) An insurer who makes prompt payment of benefits pursuant to section seven and continues payment for one hundred eighty days or more, without contesting liability, may, no sooner than sixty days following the referral to the industrial accident board of a complaint for termination or reduction of benefits under section thirty-four, thirty-four A or thirty-five, if no conference order has been issued during such sixty day period, request the senior judge to appoint an impartial physician to examine the employee. The senior judge shall, within seven days of a request for an impartial examination, appoint a physician from the appropriate roster to conduct an examination of the employee and make a report within fourteen days. If such report contains evidence of increased capability to work, the insurer may reduce or terminate benefits in accordance with such report, pursuant to the provisions of section thirty-five D. In such instances, if the requirements of this subsection have been complied with, when an order is issued on the insurer's complaint, if such order requires that retroactive weekly benefits are due the employee, an additional payment equal to two times the average weekly wage in the commonwealth shall also be paid to the employee.

At any time subsequent to the filing of a claim or complaint solely regarding the reasonableness or necessity of a particular course of medical treatment, any party to such claim or complaint may request the senior judge to appoint a physician from the appropriate roster to conduct an examination of the employee and make a report within fourteen days. If the senior judge determines that said claim or complaint involves only the issue of reasonable and necessary medical treatment, he shall make such appointment within seven days. The impartial physician shall determine the appropriateness of any medical treatment claimed or denied by the parties, using any guidelines adopted by the health care services board or promulgated by the department. The determination by the impartial physician shall be binding upon the parties until any subsequent proceeding within the division of dispute resolution. The determination of the impartial physician shall be prima facie evidence of the appropriateness or inappropriateness of the course of medical treatment in question at any hearing at which such treatment is at issue.

(5) Except as specifically provided above, if the insurer terminates, reduces, or fails to make any payments required under this chapter, and additional compensation is later ordered, the employee shall be paid by the insurer a penalty payment equal to twenty per cent of the additional compensation due on the date of such finding. No amount paid as a penalty under this section shall be included in any formula utilized to establish premium rates for workers' compensation insurance. No termination or modification of benefits not based on actual earnings or an order of the board shall be allowed without seven days written notice to the employee and the department.

(6) Any one hundred eighty day payment without prejudice period herein provided may be extended to a period not to exceed one year by agreement of the parties provided that:

(a) the agreement sets out the last day of such extension; and

(b) a conciliator, administrative judge, or administrative law judge approves such agreement as not detrimental to the employee's case.

All the provisions of subsection (1) of this section shall apply to any period of payment without prejudice extended as provided in this subsection. Any payment without prejudice under this section shall toll the statute of limitations pursuant to section forty-one.

Section 8A Repealed, 1985, 572, Sec. 22

Section 9 Repealed, 1985, 572, Sec. 23

Section 9A Physicians engaged to testify or depose for employee; fees paid by insurer

Section 9A. Whenever a medical question is in dispute in any case, and an impartial physician has not, prior to seven days before the date assigned for each hearing thereof, been appointed by the administrative judge, the employee may engage his own physician, and one additional physician if the administrative judge finds that justice and equity require the same, to appear and testify or be deposed, in his behalf, and, if the decision of the administrative judge or reviewing board is in favor of the employee, a reasonable fee shall be allowed by the administrative judge or reviewing board for the services of each such physician and shall be added to the amount so awarded and be paid by the insurer under the provisions of this chapter; provided, that, notwithstanding the foregoing, in every case wherein the decision of the administrative judge or reviewing board is in favor of the employee, if more than one physician appeared and testified in behalf of the insurer a reasonable fee shall be allowed for

the services of each of the physicians, up to a like number, who appeared and testified or were deposed in behalf of the employee, which fees shall be added to the amount so awarded and be paid by the insurer under the provisions of this chapter.

Section 9B Repealed, 1947, 286

Section 10 Claims for benefits; complaints requesting modification or discontinuation of benefits; conciliation

Section 10. (1) Any claim for benefits shall be filed with the division of administration and the insurer on a form prescribed by the division, and shall specifically state the benefits claimed to be due and unpaid. No claim for weekly compensation shall be accepted by the department unless it is either accompanied by a copy of an insurer's notification of denial pursuant to section seven, or at least thirty days have passed from the alleged onset of disability.

Unless otherwise expressly provided, on the receipt of a claim for compensation, a complaint from the insurer requesting a modification or discontinuance of benefits, or a complaint from any party requesting resolution of any other issue arising under this chapter, the division of administration shall notify the parties that it is in receipt of such claim or complaint, and may request the parties to appear and submit relevant information. The conciliation unit within the division of dispute resolution may attempt to resolve the claim or complaint by informal means and the parties shall cooperate with any conciliator assigned to the case. The assigned conciliator shall withdraw without prejudice the claim or complaint of any party that fails to cooperate or to produce requested material.

In order for an attorney's fee to be required under section thirteen A, pursuant to a dispute over a claim for benefits under this chapter, such claim shall have been sent to the insurer by certified mail. No attorney's fee shall be due for services involving a claim sent to the insurer which does not include a copy of a medical report relevant to the alleged claim in the possession of the employee or his attorney. In order for any attorney's fee to be due for services involving a claim for health care services, such claim shall include a copy of any relevant bill and a description from the health care provider of the services rendered. No attorney's fee shall be due for services involving claim for benefits for loss of function or disfigurement under section thirty-six unless such claim includes a copy of a letter from a physician describing the location and extent of the alleged loss of function or disfigurement and the specific amount requested for compensation therefor. No attorney's fee shall be due for services involving claims for mileage reimbursement unless such claims delineate the date and purpose for the travel, identity of the medical provider and mileage of each trip for which reimbursement is sought. No attorney's fee shall be due for any claim solely involving unpaid attorney's fees or expenses for past services.

(2) Any claim or complaint shall be referred to the industrial accident board within fifteen business days of its receipt by the division of administration unless:

(a) the moving party fails to appear on request of the conciliation unit or provide requested information;

(b) a conciliator authorizes an extension of the conciliation period, attaching the reasons therefor to the case file, or

(c) the conciliator receives an agreement signed by the parties, on a form prescribed by the department, indicating that they will abide by the findings of an independent arbitrator chosen by such parties to make findings as to compensation pursuant to section ten B. Any conciliator, within their departmental capacity, may also be chosen by the parties to serve as the arbitrator. Said agreement may specify that any subsequent claim or complaint regarding the instant injury shall, after having been filed with the department, and, provided that such subsequent claim or complaint has not been successfully mediated by the assigned conciliator, be forwarded to the same or other agreed upon arbitrator and not be referred to the division of dispute resolution. When presented with such a signed agreement, the assigned conciliator shall mark the case as forwarded to arbitration.

Any party aggrieved by an extension of the conciliation period or by the conciliator's withdrawal of a claim or complaint may file a written appeal with the senior judge who, if all requested information has been submitted, shall set a date for referral to the industrial accident board.

(3) In any instance in which the respondent to a claim or complaint either fails to appear or is not authorized to negotiate, enter into and sign agreements as to compensation at a conciliation, said claim or complaint shall forthwith be referred to the industrial accident board.

(4) In each instance in which a claim or complaint is referred to the industrial accident board following a conciliation, the conciliator to whom the case was assigned shall forward a written report setting out the issues in controversy and the information he deems to support:

(a) his recommendation that weekly compensation or other benefits should or should not be paid;

(b) his recommendation that weekly compensation or other benefits should or should not be modified or terminated; or

(c) his report that the information available at the conciliation is insufficient for determining whether weekly compensation or other benefits should be paid, modified, or terminated.

(5) In each instance in which a claim for compensation is referred to the industrial accident board, the insurer shall pay a fee of sixty-five percent of the average weekly wage in the commonwealth at that time; provided, however, that in the event that the insurer failed to appear at a scheduled conciliation, and such failure was not beyond the control of said insurer, the referral fee shall be one hundred and thirty percent of the average weekly wage in the commonwealth at that time. In such event the referral fee shall not be included in any formula utilized to establish premium rates for workers' compensation insurance. Any referral fee shall be paid into the Special Revenue Fund established pursuant to section sixty-five. If, prior to a claim or complaint being scheduled before an administrative judge, the parties shall forward to the senior judge a written arbitration agreement pursuant to section ten B, the department shall refund any referral fee for such claim or complaint paid under this section.

(6) Whenever, with respect to a case in which liability is not an issue, a claim for additional compensation or a complaint to discontinue or modify compensation is the subject of conciliation the case shall not be referred to the industrial accident board until each party shall have filed with the conciliator a written offer which such party believes to be the amount of weekly compensation due the claimant under this chapter. If the claimant fails to file such offer within any time limit set forth by the conciliator assigned to the case, such conciliator shall file, on behalf of such claimant, an amount equal to the last best offer made by such claimant, or if

no offer was made, the maximum compensation rate in the commonwealth, indicating that it was filed by said conciliator. If the insurer fails to file such offer within any time limit set forth by the conciliator assigned to the case, such conciliator shall file, on behalf of such insurer, an amount equal to the last best offer made by such insurer, or if no offer was made, the amount of zero, indicating that it was filed by said conciliator.

Section 10A Assignments of cases; conferences; orders; appeals

Section 10A. (1) On referral from the division of administration of a claim for compensation or a complaint for modification or discontinuance of benefits, said claim or complaint shall be immediately assigned to an administrative judge. Except where events beyond the control of the department make such scheduling impracticable, the administrative judge assigned to any case referred to the division of dispute resolution shall retain exclusive jurisdiction over the matter and any subsequent claim or complaint related to the alleged injury shall be referred to the same administrative judge. The administrative judge shall require the parties to appear before him for a conference within twenty-eight days of receipt of the case by the division of dispute resolution. The administrative judge may require and receive reports of injury, signed statements of the employee and any witnesses, medical, hospital, and rehabilitation records, and other written and oral matter. At the conference, the parties shall identify the issues in dispute and they shall produce a summary of any anticipated testimony.

(2) Within seven days of the conclusion of the conference the administrative judge shall file:

(a) a written order requiring or denying that weekly compensation or other benefits be paid; or

(b) a written order modifying, terminating, or denying modification or termination of weekly compensation or other benefits.

Whenever the subject of the conference is a claim or complaint for which written offers have been filed pursuant to section ten, the order or arbitrator's award modifying, terminating, or denying modification or termination of weekly compensation benefits shall reflect the amount so filed by one or other of the parties, or by a conciliator on behalf of a party, and shall not require any payment, modification or termination which has not been proposed by either party unless the judge or arbitrator provides a detailed written explanation of why neither submitted amount could reasonably be believed to accurately compensate the employee for his earning capacity. Whenever, with respect to a case in which liability is not an issue, a claim for additional compensation or a complaint to discontinue or modify compensation is among the issues before the administrative judge or arbitrator, if written amounts have not been filed at conciliation as hereinbefore provided, or are unavailable on the date of the conference or arbitration for any other reason or if the judge or arbitrator determines that a party that has previously filed an amount with a conciliator in good faith has subsequently acquired new information regarding earning capacity not available at the time of conciliation, the administrative judge or arbitrator shall require or, in case of newly discovered information, allow such filings at the close of the conference or arbitration, and the order or award shall reflect one of the offers so filed and not substitute any other amount unless the judge or arbitrator provides a detailed written explanation of why neither submitted amount could reasonably be believed to accurately compensate the employee for his earning capacity.

Nothing in this section shall restrict the authority of an administrative judge to order weekly benefits or health care services for a closed period into the future or to order that such benefits or services be initiated, modified, or terminated at a particular date in the future.

(3) Any party aggrieved by an order of an administrative judge shall have fourteen days from the filing date of such order within which to file an appeal for a hearing pursuant to section eleven. Such hearing shall be held within twenty-eight days of the department's receipt of such appeal.

Failure to file a timely appeal or withdrawal of a timely appeal shall be deemed to be acceptance of the administrative judge's order and findings, except that a party who has by mistake, accident or other reasonable cause failed to appeal an order within the time limited herein may within one year of such filing petition the commissioner of the department who may permit such hearing if justice and equity require it, notwithstanding that a decree has previously been rendered on any order filed, pursuant to section twelve.

Section 10B Arbitration; agreements; proceedings

Section 10B. (1) At any time prior to five days before a conference held pursuant to section ten A, the parties to a claim or complaint may agree to refer the matter to an independent arbitrator; provided, however, that such arbitrator shall not have appeared before an administrative judge or the reviewing board as an advocate on behalf of any party for at least one year. Parties who wish to refer a matter to arbitration shall sign a written agreement to arbitrate which shall be enforceable in accordance with the provisions of section one of chapter

two hundred and fifty-one. The agreement shall require that the arbitrator determine all questions regarding this chapter, and, except as provided in subsection four, it shall provide that the parties will abide by the findings and award of the arbitrator which shall be final and binding upon them. The agreement shall also identify all costs and fees which may be payable in the arbitration and shall state which party shall be responsible for the payments.

(2) Upon receipt of a written agreement to arbitrate signed by the parties, the department shall mark the case as forwarded to arbitration, and all further proceedings on the case before the division of dispute resolution shall be stayed. No further claim or complaint may be filed with the department with respect to the same injury or condition that is the subject of the arbitration until the department is in receipt of the arbitrator's award or a written withdrawal from arbitration signed by both parties.

(3) An agreement to arbitrate entered into by the parties may also provide that any subsequent claim or complaint filed by either party with respect to the same injury or condition that is the subject of the initial arbitration must likewise be referred for findings by the same arbitrator or another arbitrator agreed to by the parties. Whenever a subsequent claim or complaint is filed with the department after the parties have entered into an agreement for arbitration of successive claims and complaints in accordance with this paragraph, the department shall mark the case as forwarded to arbitration and paragraph two shall apply.

(4) Any arbitration authorized pursuant to this section shall be conducted in accordance with the provisions of chapter two hundred and fifty-one. The arbitrator shall have all of the powers and duties provided in said chapter two hundred and fifty-one, and the arbitrator's award may be reviewed, modified or set aside only as provided in that chapter. The arbitrator's award shall

include his findings as to compensation, an order requiring or denying payment of compensation, modifying or terminating compensation, or denying modification or termination of compensation. The arbitrator's award may be enforced pursuant to section twelve of this chapter. The arbitrator shall provide the department with a copy of the arbitration award upon its issuance. Any party seeking to vacate or modify an arbitration award shall do so pursuant to the provisions of sections twelve and thirteen, respectively, of chapter two hundred fifty-one.

(5) At any stage of the proceedings before the department the parties to a claim or complaint may agree to mediate the matter before an independent mediator selected by the parties. Agreement by the parties to mediation shall not result in the postponement or stay of any proceedings before the department, nor shall any party be considered to have waived its right to proceed with its case before the department by virtue of its agreement to mediate. The work product and case files of the mediator shall be confidential and subject to the evidentiary privilege set forth in section twenty-three C of chapter two hundred and thirty-three. The costs and fees of mediation shall be subject to the agreement of the parties and the mediator.

Section 10C Collective bargaining agreements; binding obligations and procedures

Section 10C. (1) Any employer, and the recognized or certified and exclusive representative of its employees may agree by collective bargaining to establish certain binding obligations and procedures relating to workers' compensation; provided, however, that the scope of the agreement shall be limited to:

(a) benefits supplemental to those provided in sections thirty-four, thirty-four A, thirty-five and thirty-six;

(b) an alternative dispute resolution system which may include but is not limited to arbitration, mediation and conciliation;

(c) the use of a limited list of providers for medical treatment;

(d) the use of a limited list of impartial physicians;

(e) the creation of a light duty, modified job or return to work program;

(f) the adoption of twenty-four hour health care coverage plan;

(g) the establishment of safety committees and safety procedures; and

(h) the establishment of vocational rehabilitation or retraining programs.

Section 11 Hearings; evidence; continuances

Section 11. At the hearing the member shall make such inquiries and investigations as he deems necessary, and may require and receive any documentary or oral matter not previously obtained as shall enable him to issue a decision with respect to the issues before him. Such decision shall issue within twenty-eight days of the conclusion of the hearing. Failure of a party to appear at a hearing shall not delay the issuance of a decision.

The member conducting the hearing may grant a continuance only for reasons beyond the control of a party or his attorney. Any continuance shall be set forth in writing by the member and shall be compiled quarterly by the department and shall be submitted to the advisory council.

Section 11A Impartial medical examiners

Section 11A. (1) With the assistance of the medical consultant to the commissioner and the administrative judges, the senior judge shall periodically review and update a roster of impartial medical examiners who are certified specialists in various medical fields and who are willing to make prompt reports and be deposed as hereinafter provided. The department shall establish criteria for being named to and remaining on said roster.

(2) When any claim or complaint involving a dispute over medical issues is the subject of an appeal of a conference order pursuant to section ten A, the parties shall agree upon an impartial medical examiner from the roster to examine the employee and submit such choice to the administrative judge assigned to the case within ten calendar days of filing the appeal, or said administrative judge shall appoint such examiner from the roster. The insurer or any claimant represented by counsel who files such appeal shall also submit a fee equal to the average weekly wage in the commonwealth at the time of the appeal to defray the cost of the medical examination under this section within ten days of filing said appeal; provided, however, that where more than one party appeals, the fee shall be divided equally among all appealing parties; provided, further, that such amount paid by a claimant shall be refunded by the insurer to any claimant who prevails at the hearing.

The impartial medical examiner, so agreed upon or appointed, shall examine the employee and make a report at least one week prior to the beginning of the hearing, which shall be sent to each party. No hearing shall be commenced sooner than one week after such report has been received by the parties. The report of the impartial medical examiner shall, where feasible, contain a determination of the following: (i) whether or not a disability exists, (ii) whether or not any such disability is total or partial and permanent or temporary in nature, and (iii) whether or not within a reasonable degree of medical certainty any such disability has as its major or predominant contributing cause a personal injury arising out of and in the course of the employee's employment. Such report shall also indicate the examiner's opinion as to whether or not a medical end result has been reached and what permanent impairments or losses of function have been discovered, if any. Such impartial physician's report shall constitute prima facie evidence of the matters contained therein.

Failure of an employee to report to an impartial medical examiner agreed upon or appointed under this section or under section eight, after due notice and without cause, and failure to submit to such examiner all relevant medical records, medical reports, medical histories, and any other relevant information requested without good reason, shall constitute sufficient cause for suspension of benefits pursuant to section forty-five. The report of the impartial medical examiner shall be admitted into evidence at the hearing. Either party shall have the right to engage the impartial medical examiner to be deposed for purposes of cross examination. Notwithstanding any general or special law to the contrary, no additional medical reports or depositions of any physicians shall be allowed by right to any party; provided, however, that the administrative judge may, on his own initiative or upon a motion by a party, authorize the submission of additional medical testimony when such judge finds that said testimony is required due to the complexity of the medical issues involved or the inadequacy of the report

submitted by the impartial medical examiner. The fact that the impartial examiner has not treated the employee shall not constitute sufficient reason for finding any report of an impartial medical examiner inadequate.

(3) The fee for the provision of a medical report by any impartial medical examiner engaged under this section shall be a reasonable amount approved by the commissioner, and shall be paid by the department to the physician promptly upon receipt of the report. The fee for the provision of a deposition by any impartial medical examiner engaged under this section shall be a reasonable amount approved by the commissioner, and shall be paid by the deposing party directly to the physician promptly upon receipt of the report; provided, however, that if the decision of the administrative judge is in favor of the employee, the cost of such deposition shall be added to the amount awarded to the employee and be paid by the insurer under the provisions of this chapter. In reviewing and updating said roster, the senior judge shall utilize the criteria developed by the health care services board pursuant to section thirteen.

Section 11B Procedure for hearings; depositions; record of proceedings

Section 11B. Procedures within the division of dispute resolution shall be as simple and summary as reasonable. The commissioner shall promulgate rules providing for the use of depositions and interrogatories. In any proceeding under this chapter, the division shall give notice of the date, time, and place of the proceeding to all parties in interest. Any member of the board may subpoena witnesses, administer oaths, and examine such parts of the books and records of the parties to a proceeding as relate to questions before such member. The fee for attending as witness before the department or a member of the board shall be that provided

for witnesses before the superior court department of the trial court. The superior court shall have jurisdiction to enforce the provisions of this section relating to the attendance and testimony of witnesses and the examination of books and records.

A member may upon the filing of a written request of any party appearing before him, together with interrogatories and cross-interrogatories, if any, request officers in other jurisdictions, having power and duties similar to those of a member of the board, to take depositions or testimony of persons or witnesses residing in such jurisdictions. On the return of any such deposition to the division it shall be forwarded to the appropriate member. A reasonable fee for services in connection with the taking of such depositions and the expenses thereof shall be assessed upon the requesting party.

The expenses for services in connection with the taking of depositions shall be paid by the party requesting that such witness be deposed or whose witness is ordered to be deposed; provided, however, that if the decision of the member or reviewing board is in favor of the employee, the cost of such proceeding shall be added to the amount awarded to the employee and be paid by the insurer under the provisions of this chapter.

The evidence at the hearing shall be taken by an employee of the department sworn to record the entire proceeding. The record of the hearing shall be transcribed verbatim or electronically recorded. Upon the request of a member or the reviewing board, or at the request of a party, a transcript or recording or both, whichever such party requests shall be forwarded to such party without charge. The original recording shall remain in the control of the department. Verbatim transcripts shall be made manually from the stenographic notes only if a certified copy of the proceedings is required by the reviewing board or a court of the commonwealth. Decisions of

members of the board shall set forth the issues in controversy, the decision on each and a brief statement of the grounds for each such decision. Decisions shall issue no more than twenty-eight days following the close of testimony, unless further extension is authorized in writing by the director of dispute resolution.

Section 11C Appeals to reviewing board

Section 11C. Any party aggrieved by a decision of an administrative judge after a hearing held pursuant to section eleven shall have thirty days from the filing date of such decision within which to file an appeal from said decision to the reviewing board. A party who has by mistake, accident, or other reasonable cause failed to appeal from a decision within the time limited herein may within one year of the filing of said decision petition the commissioner of the department who may permit such appeal if justice and equity require it, notwithstanding that a decree has previously been rendered on any decision filed, pursuant to section twelve. Appeals to the reviewing board must be accompanied by a fee of thirty per cent of the average weekly wage in the commonwealth, which shall be paid into the special fund pursuant to section sixty-five. Such fee may be waived by the reviewing board for indigent claimants. The reviewing board shall reverse the decision of an administrative judge only if it determines that such administrative judge's decision is beyond the scope of his authority, arbitrary or capricious, or contrary to law. The reviewing board may, when appropriate, recommit a case before it to an administrative judge for further findings of fact. Where the reviewing board affirms the decision of an administrative judge, it may do so in summary fashion and without discussion of the issues raised on appeal.

Section 11D Earnings reports by employees; recovery of overpayments

Section 11D. (1) Any employee entitled to receive weekly compensation under this chapter shall have an affirmative duty to report to the insurer all earnings, including wages or salary earned from self-employment. Insurers shall notify employees of said duty on a form approved by the department. Such form shall indicate that failure to report any earnings may subject the

employee to civil or criminal penalties, and shall further indicate that failure to file an earnings report on a form approved by the department within thirty days of an insurer's request for such filing may result in the insurer's suspension of the employee's weekly benefits; provided, however, that no employee shall be required to file an earnings report more often than once every six months.

(2) An insurer in receipt of an earnings report indicating that overpayments have been made shall be entitled to recover such overpayments by unilateral reduction of weekly benefits, by no more than thirty percent per week, of any remaining compensation owed the employee; provided, however, that the reported earnings are of a kind that could have been considered in the computation of the employee's compensation rate. Where overpayments have been made that cannot be recovered in this manner, recoupment may be ordered pursuant to the filing of a complaint under section ten or by bringing an action against the employee in superior court.

(3) An insurer that has paid compensation pursuant to a conference order, shall, upon receipt of a decision of an administrative judge or a court of the commonwealth which indicates that overpayments have been made be entitled to recover such overpayments by unilateral reduction of weekly benefits, by no more than thirty percent per week, of any remaining compensation owed the employee. Where overpayments have been made that cannot be recovered in this manner, recoupment may be ordered pursuant to the filing of a complaint pursuant to section ten or by bringing an action against the employee in superior court.

(4) Where an order of recoupment against an employee has not been fulfilled, and weekly benefits are owed to an employee under this chapter by an insurer other than that to which recoupment has been ordered, such insurer shall reduce by thirty percent said weekly benefits

payable to the employee, and shall pay such thirty percent excess directly to the insurer to whom recoupment has been ordered, until full recovery has been made.

Section 12 Enforcement of orders; appeals from decisions of reviewing board; costs; reported questions; copies of judgments

Section 12. (1) Whenever any party in interest presents a certified copy of an order or decision of a board member or of the reviewing board and any papers in connection therewith to the superior court department of the trial court for the county in which the injury occurred or for the county of Suffolk, the court shall enforce the order or decision, notwithstanding whether the matters at issue have been appealed and a decision on the merits of the appeal is pending. In the event that the order or decision is reversed on appeal, the enforcement order shall be deemed vacated and unenforceable from the date of such reversal. If the request for an enforcement order is presented to the superior court for the county of Suffolk, the court may, on motion of any party in interest, order the case removed to the superior court for the county in which the injury occurred.

(2) Any appeal from a decision by a reviewing board shall be taken pursuant to section fourteen of chapter thirty A, except that such appeal shall be filed with the appeals court of the commonwealth and provided further that clause (e) of paragraph seven of section fourteen of chapter thirty A shall not apply to such appeals.

(3) In rendering an order or judgement under this section or following a rescript of the supreme judicial court after an appeal from such an order or judgement the court shall award costs to

the prevailing party, to be assessed as in actions at law. This paragraph shall not authorize the awarding of costs to or against the industrial accident board or reviewing board.

(4) In the event of a judgement of the appeals court, the court may, on motion of either party, by a brief statement of facts agreeable to the parties, report questions of law raised by the decree to the supreme judicial court for determination.

(5) Immediately after the entry of a judgement under this section, whether final or interlocutory, the clerk of the court shall prepare and forward to the department and to the parties an attested copy of such judgement. Upon the entry of an interlocutory judgement under this section recommitting a case to the board, counsel for the parties shall immediately notify said board by appropriate motion for action in accordance with the requirements of such judgement.

Section 12A Award of costs and attorney's fees

Section 12A. If on appeal to the appeals court or the supreme judicial court pursuant to section twelve the claimant prevails, the court shall allow the claimant, in addition to the award in the judgement, an amount equal to the reasonable cost of his attorney's fees, briefs and other necessary expenses that result from the appeal. When any party in interest obtains an enforcement order from the superior court department of the trial court pursuant to said section twelve, the court shall also allow the party the reasonable cost of attorney's fees, briefs and other expenses provided for by this section.

Section 13 Rate of payment by insurers; review of clinical health care providers; health care services board

Section 13. (1) The rate of payment by insurers for health care services adjudged compensable under this chapter shall be established by the executive office of health and human services under chapter 118E or a governmental unit designated by the executive office; provided, however, that a different rate for services may be agreed upon by the insurer, the employer and the health care service provider.

Except as provided above, no insurer shall be liable for hospitalization expenses adjudged compensable under this chapter at a rate in excess of the rate set by the said executive office, or for other health services in excess of the rate established for that service by the said executive office, regardless of the setting in which the service is administered; provided, however, that the amount required to be reimbursed by insurers to hospitals for outpatient physical, occupational and speech therapy services only (codes 178010 through 178013, 178050 through 178053, and 178090 through 178093, inclusive) shall be the higher of:

(a) the amount required by the said executive office to be reimbursed by insurers to non-hospitals for the above-mentioned outpatient physical, occupational and speech therapy services; and

(b) either the amount which can be derived from the ratio of total costs to total charges calculated for the hospital requesting reimbursements, in accordance with methods utilized by the said executive office to determine payment on account factors for hospitals subject to chapter 118E, or ninety-five percent of the rates payable to such hospital for such services on May fifteenth, nineteen hundred and ninety-five, whichever is the lower amount.

Requests for reimbursement for health services under this chapter shall be signed by the person performing such service and shall be accompanied by a detailed description of the

service rendered as well as the name and licensure number of the person performing such service. All health services provided under this chapter shall be subject to the provisions of section three of chapter one hundred and seventy-five H and 42 CFR 1001.951-1001.953, the so-called “safe harbor regulations” as adopted by the federal government on July twenty-ninth, nineteen hundred and ninety-one. No employee shall be liable for health care services adjudged compensable under this chapter.

Except with respect to rates to be paid for health care services, as defined in said chapter 118E, which shall be reviewable under said chapter 118E, the commissioner shall by rule establish procedures for determining whether or not the charge for a health service is excessive. In order to accomplish this purpose, the commissioner shall consult with insurers, associations and organizations representing the medical and other providers of treatment services, and other appropriate groups. The charges for such health services shall be reasonable.

(2) The department shall review the clinical health care providers who render services to injured employees. This review shall be achieved by establishing a quality control system within the department. The commissioner may hire a medical consultant or consultants, full or part-time, to assist in the administration of this section. Any medical consultant shall be a physician licensed under the laws of the commonwealth.

Such medical consultant shall perform all duties assigned by the commissioner relating to the supervision of the total range of care of injured employees and shall also advise the department on matters on which the commissioner requests the consultant’s advice.

The commissioner shall monitor the medical and surgical treatment provided to injured employees and the services of other health care providers, and shall also monitor hospital

utilization as it relates to the treatment of injured employees. The monitoring shall include determinations concerning the appropriateness of the service, whether the treatment is necessary and effective, the proper costs of services, and the quality of treatment. The commissioner with the advice of the health care service board may penalize, disqualify, or suspend a provider from receiving payment for services rendered under this chapter if the commissioner or his designee determines that the provider has violated any part of this chapter or rule adopted under this chapter.

The commissioner shall have the sole authority to make determinations under this section; provided, however, that aggrieved parties shall have a right to appeal to the superior court.

(3) There is hereby created a health care services board composed of the commissioner or his designee as an ex officio member and chairman, one person representing chiropractors, one person representing dentists, one person representing hospital administrators, one person representing physical therapists, and six physicians representing different health care specialties which the commissioner determines are the most frequently utilized by injured employees. The board shall also have one person representing employees, one person representing employers, and one person representing the public. Members shall be appointed by the commissioner for two-year terms. The health care services board shall receive and investigate complaints from employees, employers and insurers regarding health care providers who provide services under this chapter who are alleged to have engaged in patterns of (i) discrimination against compensation claimants, (ii) overutilization of procedures, (iii) unnecessary surgery or other procedures, or (iv) other inappropriate treatment of compensation recipients. Where such board finds a pattern of abuse, it shall refer its findings to the appropriate board of registration. No member of the health care services board shall be

liable for damages resulting from any investigation under this paragraph in any action brought by any party against such board or any individual member thereof, provided that the performance of the duties of such member were undertaken in good faith. The health care services board shall develop itself or the commissioner may contract with one or more organizations with demonstrated expertise in the treatment of work-related injuries and illnesses to develop written guidelines for appropriate and necessary treatment based on diagnosis of injuries and illnesses. Said guidelines shall include appropriate mechanisms for deviation of treatment. The board shall no later than July first, nineteen hundred and ninety-two, distribute said guidelines in draft form for public comment and no later than January first, nineteen hundred and ninety-three, endorse the first version of said guidelines for use by health care providers in the treatment of injuries and illnesses under this chapter. The board shall at least annually review and where appropriate revise said guidelines. The cost of any contract for development, review, revision or dissemination of said guidelines shall be paid out of the Workers' Compensation Special Fund pursuant to section sixty-five.

The health care services board shall develop criteria in order to select and maintain a roster of qualified impartial physicians to provide objective medical opinions pursuant to sections eight and eleven A of this chapter. Said criteria shall further be used, when necessary, to remove any impartial physicians from the roster when a medical provider fails to comply with the criteria. Upon the establishment of criteria, the health care services board shall refer said criteria to the senior administrative judge who shall develop a roster of impartial physicians.

The commissioner shall have the authority to hire the personnel necessary to carry out the duties of the board pursuant to this section.

Section 13A Attorney's fees for employees

Section 13A. (1) Whenever an insurer contests an initial liability claim for benefits submitted on a form prescribed by the department, by failing to commence the compensation requested within twenty-one days of receipt of such claim, and then, at any time prior to a conference held under section ten A, the insurer agrees to pay, with or without prejudice, the compensation claimed to be due, said insurer shall pay an attorney's fee to the employee's counsel in the amount of seven hundred dollars, plus necessary expenses; provided, however, that only one such fee shall be paid with respect to any such written claim under this paragraph. An insurer shall reduce such a fee to three hundred fifty dollars when pursuant to a conciliator's finding said attorney failed to appear at a scheduled conciliation and such failure was not beyond the control of said attorney. Only one fee under this paragraph shall be paid with respect to any written claim. A conciliator shall have the authority to extend the twenty-one day period within which no attorney's fee is due to no more than thirty-five days, if in the opinion of the conciliator such extension increases the likelihood of the payment of the claim prior to referral to the industrial accident board. Such extensions shall be granted after consultation with the parties and a written indication shall be appended to the case file.

(2) Whenever an insurer contests an initial liability claim for benefits as provided by subsection (1), and then is ordered to pay such benefits by an administrative judge pursuant to a conference held under section ten A, said insurer shall pay an attorney's fee to the employee's counsel in the amount of one thousand dollars, plus necessary expenses; provided, however, that an administrative judge may increase or decrease such fee based on the complexity of the dispute or the effort expended by the attorney; provided, further, that only one such fee under

this paragraph shall be paid with respect to any such written claim. An insurer shall reduce such a fee to five hundred dollars when, pursuant to a conciliator's finding said attorney failed to appear at a scheduled conciliation and such failure was not beyond the control of said attorney.

(3) Whenever an insurer contests a claim for benefits on a form prescribed by the department other than an initial liability claim as provided by subsection (1), by failing to commence the compensation requested within twenty-one days of receipt of such claim and then, at any time prior to a conference pursuant to section ten A the insurer agrees to pay the compensation claimed to be due, said insurer shall pay an attorney's fee to the employee's counsel in the amount of five hundred dollars, plus necessary expenses; provided, however, that only one such fee shall be paid with respect to any such written claim under this paragraph. An insurer shall reduce such a fee to two hundred fifty dollars when, pursuant to a conciliator's finding, said attorney failed to appear at a scheduled conciliation and such failure was not beyond the control of said attorney. For purposes of this subsection, the filing of a subsequent written request on a prescribed form shall be deemed an additional written claim for benefits. A conciliator shall have the authority to extend the twenty-one day period within which no attorney's fee is due to no more than thirty-five days, if, in the opinion of the conciliator, such extension increases the likelihood of the payment of the claim prior to referral to the industrial accident board. Such extensions shall be granted after consultation with the parties and a written indication shall be appended to the case file.

(4) Whenever an insurer files a complaint to reduce or discontinue an employee's benefits or whenever an insurer contests a claim for benefits on a form prescribed by the department other than an initial liability claim as provided by subsection (1), by failing to commence the compensation requested within twenty-one days of receipt of such claim, if the order of the

administrative judge pursuant to a conference held under section ten A, reflects the written offer submitted by the claimant or by a conciliator on the claimant's behalf, pursuant to section ten or section ten A, said insurer shall pay an attorney's fee to the employee's counsel in the amount of seven hundred dollars, plus necessary expenses. If the order of the administrative judge reflects the written offer submitted by the insurer or by a conciliator on the insurer's behalf, pursuant to section ten or section ten A, no attorney's fee shall be payable to the employees' counsel. If the order reflects an amount different from both submissions, the fee shall be in the amount of three hundred fifty dollars, plus necessary expenses. Any fee payable under this paragraph shall be reduced by half when the attorney failed to appear at a scheduled conciliation, and such failure was not beyond the control of said attorney. Only one such fee shall be paid with respect to any particular written claim under this paragraph.

(5) Whenever an insurer files a complaint or contests a claim for benefits and then either (i) accepts the employee's claim or withdraws its own complaint within five days of the date set for a hearing pursuant to section eleven; or (ii) the employee prevails at such hearing the insurer shall pay a fee to the employee's attorney in an amount equal to three thousand five hundred dollars plus necessary expenses. An administrative judge may increase or decrease such fee based on the complexity of the dispute or the effort expended by the attorney.

(6) Whenever an insurer appeals a decision of an administrative judge and the employee prevails in the decision of the reviewing board, the insurer shall pay a fee to the employee's attorney in the amount of one thousand dollars, plus necessary expenses. An administrative judge may increase or decrease such fee based on the complexity of the dispute or the effort expended by the attorney.

(7) Whenever an employee appeals a decision of an administrative judge and the employee prevails in the decision of the reviewing board, the employee shall pay an attorney's fee sufficient to defray the reasonable costs of counsel retained by said employee. Subject to the approval of the reviewing board, such fee shall be an amount agreed to by the employee and his attorney.

(8) Whenever an insurer and an employee agree to a settlement under section forty-eight, the attorney's fee shall be paid from the settlement in accordance with the following provisions:

(a) when the insurer and the employee reach such settlement prior to insurer acceptance of liability or prior to a decision of an administrative judge, the reviewing board, or the appeals court of the commonwealth finding insurer liability, such fee shall be no more than fifteen percent of the amount of such settlement;

(b) when the insurer and the employee reach such settlement subsequent to insurer acceptance of liability or subsequent to a decision of an administrative judge, the reviewing board, or the appeals court of the commonwealth finding insurer liability which is in effect at the time such agreement is entered into, such fee shall be no more than twenty percent of amount of such settlement.

(9) In any hearing or review requested by an insurer aggrieved by an order or decision with respect to an injury occurring prior to November first, nineteen hundred and eighty-six or in a proceeding brought by an insurer or self-insurer as to the continuance of compensation being paid under this chapter for an injury occurring prior to November first, nineteen hundred and eighty-six, there shall be awarded an amount sufficient to compensate the employee for the reasonable costs of such hearing review or proceeding including reasonable counsel fees and

expenses, provided that the employee prevails at such hearing review or proceeding. Such amounts shall be paid by the insurer. Any other attorneys' fees for services provided claimants for injuries prior to November first, nineteen hundred and eighty-six, shall be of an amount agreed upon between the employee and the attorney.

(10) The attorneys' fees specified in this section shall be the only fees payable for any services provided to employees under this chapter unless otherwise provided by an arbitration agreement pursuant to section ten B. In any instance in which an attorney's fee under subsection (1) to (6), inclusive, is due as a result of a cash award being made to the employee either voluntarily, or pursuant to an order or decision, the insurer may reduce the amount payable to the employee within the first month from the date of the voluntary payment order or decision, by the amount owed the claimant's attorney; provided, however, that the amount paid to the employee shall not be reduced to a sum less than seventy-eight percent of what the employee would have received within that month if no attorney's fee were payable. The dollar amounts specified in said subsections (1) to (6), inclusive, of this section shall be changed October first of each year by the percentage change in adjusted benefits from the preceding year as calculated and limited in paragraph (a) of section thirty-four B. The department shall provide by rule the necessary expenses that are reimbursable under this section. No fees shall be payable under subsection (1), (2), (3) or (4) unless the claim subject to the dispute was filed according to the provisions of section ten.

(11) In any proceeding at which a penalty pursuant to section seven or section eight is awarded an employee by an administrative judge, the attorney's fee payable for such proceeding shall not be included in any formula utilized to establish premium rates for workers' compensation.

Section 14 Actions not based on reasonable grounds; illegal or fraudulent conduct; costs and penalties

Section 14. (1) Except as provided in subsection three, if any administrative judge or administrative law judge determines that any proceedings have been brought, prosecuted, or defended by an insurer without reasonable grounds:

(a) the whole cost of the proceedings shall be assessed upon the insurer; and

(b) if a subsequent order requires that additional compensation be paid, a penalty of double back benefits of such amount shall be paid by the insurer to the employee, and such penalty shall not be included in any formula utilized to establish premium rates for workers' compensation insurance.

If any administrative judge or administrative law judge determines that any proceedings have been brought or defended by an employee or counsel without reasonable grounds, the whole cost of the proceedings shall be assessed against the employee or counsel, whomever is responsible.

(2) If it is determined that in any proceeding within the division of dispute resolution, a party, including an attorney or expert medical witness acting on behalf of an employee or insurer, concealed or knowingly failed to disclose that which is required by law to be revealed, knowingly used perjured testimony or false evidence, knowingly made a false statement of fact or law, participated in the creation or presentation of evidence which he knows to be false, or otherwise engaged in conduct that such party knew to be illegal or fraudulent, the party's conduct shall be reported to the general counsel of the insurance fraud bureau.

Notwithstanding any action the insurance fraud bureau may take, the party shall be assessed, in addition to the whole costs of such proceedings and attorneys' fees, a penalty payable to the aggrieved insurer or employee, in an amount not less than the average weekly wage in the commonwealth multiplied by six. A copy of any order or decision requiring the payment of penalties by an attorney under this section shall be referred to the board of bar overseers. Any expert medical witness who knowingly makes false statements in any medical report or deposition or who provides testimony of any kind in a proceeding under this chapter on behalf of a party he knows to be engaging in a fraudulent claim or defense, shall be subject to the same penalties applicable to attorneys herein. A copy of any order or decision requiring the payment of penalties by a physician under this section shall be reported to the appropriate board of registration. Any action provided in this subsection shall be brought by an employee or insurer in the department, or by an employee, employer or insurer in the superior court department of the trial court for the county in which the injury occurred or in the county of Suffolk; provided, however, that if presented to the superior court for the county of Suffolk, the court may, on motion of any party in interest, order the case removed to the superior court for the county in which the injury occurred.

(3) Notwithstanding any provision of section one hundred and eleven A of chapter two hundred and sixty-six to the contrary, any person who knowingly makes any false or misleading statement, representation or submission or knowingly assists, abets, solicits or conspires in the making of any false or misleading statement, representation or submission, or knowingly conceals or fails to disclose knowledge of the occurrence of any event affecting the payment, coverage or other benefit for the purpose of obtaining or denying any payment, coverage, or other benefit under this chapter; and any person or employer who knowingly misclassifies employees or engages in deceptive employee leasing practices for the purpose of avoiding full

payment of insurance premiums; and any law firm, healthcare establishment or agent thereof that employs or contracts persons or firms to personally coerce or encourage individuals to file compensation claims, shall be punished by imprisonment in the state prison for not more than five years or by imprisonment in jail for not less than six months nor more than two and one-half years or by a fine of not less than one thousand nor more than ten thousand dollars, or by both such fine and imprisonment.

The court shall, after conviction, conduct an evidentiary hearing to ascertain the extent of the damages or financial loss suffered as a result of the defendant's crime. A person found guilty of violating this section shall, in all cases, upon conviction, in addition to any other punishment, be ordered to make restitution for any financial loss sustained to an aggrieved person as a result of the commission of the crime. Such restitution shall be ordered in accordance with the provisions contained in section one hundred and eleven B of chapter two hundred and sixty-six and shall be reduced by any amount previously recovered under subsection (2).

Section 14A Employee leasing companies

Section 14A. (1) As used in this section, the following words shall have the following meanings:—

(a) "Client company", a person, association, partnership, corporation or other entity that utilizes workers provided by an employee leasing company pursuant to a contract.

(b) "Commissioner", the commissioner of insurance.

(c) “Employee leasing company”, a sole proprietorship, partnership, corporation or other form of business entity whose business consists largely of leasing employees to one or more client companies under contractual arrangements that retain for such employee leasing companies a substantial portion of personnel management functions, such as payroll, direction and control of workers, and the right to hire and fire workers provided by the employee leasing company; provided, however, that the leasing arrangement is long term and not an arrangement to provide the client company temporary help services during seasonal or unusual conditions.

(2) The commissioner may establish by regulation the circumstances and conditions, if any, under which any employee leasing company may be the policyholder of a workers’ compensation insurance policy providing coverage to employees leased to client companies, and the manner and method of determining the appropriate premiums of client companies and employee leasing companies.

(3) An employee leasing company that does not meet the requirements of this section shall be subject to the provisions of section twenty-five C and where applicable, section fourteen.

Section 15 Liability of person other than insured

Section 15. Where the injury for which compensation is payable was caused under circumstances creating a legal liability in some person other than the insured to pay damages in respect thereof, the employee shall be entitled, without election, to the compensation and other benefits provided under this chapter. Either the employee or insurer may proceed to enforce the liability of such person, but the insurer may not do so unless compensation has been paid in accordance with sections seven, eight, ten A, eleven C, twelve or nineteen nor until seven months following the date of such injury. The sum recovered shall be for the benefit of the insurer, unless such sum is greater than that paid by it to the employee, in which event the excess shall be retained by or paid to the employee. For the purposes of this section,

“excess” shall mean the amount by which the gross sum received in payment for the injury exceeds the compensation paid under this chapter. The party which brings the actions or which pays the costs associated with the action, if the party bringing the action does not pay those costs, shall be entitled to retain those costs recovered in the action. Any interest received in such action shall be apportioned between the insurer and the employee in proportion to the amounts received by them respectively, exclusive of interest and costs. The expenses of attorney’s fees shall be divided between the insurer and the employee in proportion to the amounts received by them respectively, under this section. Except in the case of settlement by agreement by the parties to, and during a trial of, such an action at law, no settlement by agreement shall be made with such other person without the approval of either the board, the reviewing board, or the court in which the action has been commenced after a hearing in which both the employee and the insurer have had an opportunity to be heard. At such hearing the court shall inquire and make a finding as to the taking of evidence on the merits of the settlement, on the fair allocation of amounts payable to the employee and the employee’s spouse, children, parents and any other member of the employee’s family or next of kin who may have claims arising from the injury for which are payable, under this chapter in which the action has been commenced after an opportunity has been afforded both the insurer and the employee to be heard on the merits of the settlement and on the amount, if any, to which the insurer is entitled out of such settlement by way of reimbursement, and on the amount of excess that shall be subject to offset against any future payment of benefits under this chapter by the insurer, which amount shall be determined at the time of such approval. In determining the amount of “excess” that shall be subject to offset against any future compensation payment the board, the reviewing board, or the court in which the action has been commenced shall consider the fair allocation of amounts payable to and amongst family members who may have claims arising from the injury for which said compensation is payable. In the case of a settlement by agreement by the parties to and during a trial of such an action at law, only the justice presiding at the trial shall have and exercise, relative to the approval of such settlement by agreement and to the protection of the rights and interests of the employee, his family members, and the insurer, the powers granted in the preceding sentence. Nothing in this section, or in section eighteen or twenty-four shall be construed to bar an action at law for damages for personal injuries or wrongful death by an employee against any person other than the insured person employing such employee and liable for payment of the compensation provided by this chapter for the employee’s personal injury or wrongful death and said insured person’s employees. For purposes of this section, the Workers’ Compensation Trust Fund, as established under subsection (2) of section sixty-five, shall be deemed an insurer.

Section 15A Controversy as to which of two or more insurers is liable

Section 15A. If one or more claims are filed for an injury and two or more insurers, any one of which may be held to be liable to pay compensation therefor, agree that the injured employee would be entitled to receive such compensation but for the existence of a controversy as to which of said insurers is liable to pay the same, such one of said insurers as they may mutually agree upon or as may be selected by a single member of the board shall pay to the injured employee the compensation aforesaid, pending a final decision of the board as to the matter in controversy, and such decision shall require that the amount of compensation so paid shall be deducted from the award if made against another insurer and be paid by said other insurer to the insurer agreed upon or selected by the single member as aforesaid. If, however, said insurers cannot agree that such employee would be entitled to compensation irrespective of the existence of such controversy, then a hearing to determine the question of liability and the payment of compensation shall be held forthwith by the division, such hearing to take precedence over other pending matters.

Section 16 Subsequent findings discontinuing compensation; finality

Section 16. When in any case before the department it appears that compensation has been paid or when in any such case there appears of record a finding that the employee is entitled to compensation, no subsequent finding by a member or the reviewing board discontinuing compensation on the ground that the employee's incapacity has ceased shall be considered final as a matter of fact or res adjudicata as a matter of law, and such employee or his dependents, in the event of his death, may have further hearings as to whether his incapacity or death is or was the result of the injury for which he received compensation; provided, however, that if the board shall determine that the petition for such rehearing is without merit or frivolous, the employee or his dependents shall not thereafter be entitled to file any subsequent petition thereof except for cause shown and in the discretion of the member to whom such subsequent petition may be referred; and, provided further, that, in the event of the death of the employee, such a petition for a rehearing shall be filed within three months from the time of his decease and within one year from the date of the finding terminating his compensation.

Section 17 Enforcement of orders or decisions

Section 17. All orders or decisions issued in accordance with this chapter shall be enforceable under section twelve unless and until reversed by a decision of a member of the board or a reviewing board, or a judgement or decision of a court of the commonwealth; and payment of compensation, when ordered, shall commence immediately, with the first payment to be

received by the employee within fourteen days of the issuance of any such order or decision, and shall cover all periods for which compensation is due under this chapter. No penalties shall be assessed during the pendency of any appeal.

Section 18 Independent and sub-contractors; liability of insurer and others

Section 18. If an insured person enters into a contract, written or oral, with an independent contractor to do such person's work, or if such a contractor enters into a contract with a sub-contractor to do all or any part of the work comprised in such contract with the insured, and the insurer would, if such work were executed by employees immediately employed by the insured, be liable to pay compensation under this chapter to those employees, the insurer shall pay to such employees any compensation which would be payable to them under this chapter if the independent or sub-contractors were insured persons. The insurer, however, shall be entitled to recover indemnity from any other person who would have been liable to such employees independently of this section; and if the insurer has paid compensation under this section, it may enforce, in the name of the employee or in its own name and for its benefit, the liability of such other person. The insurer shall also be entitled to recover from the uninsured independent contractor or the uninsured sub-contractor all compensation benefits and expenses, medical, hospital or otherwise, that it has paid or may become obligated to pay on account of any injury to the employee or employees of any such uninsured independent contractor or uninsured sub-contractor; provided, that this provision shall not authorize the insurer to recover from such a contractor or sub-contractor an amount which, together with any sum recovered under this chapter from any other person on account of the payment of compensation to such employee or employees, will exceed in the aggregate the amount of such compensation benefits and expenses. This section shall not apply to any contract of an independent or sub-contractor which is merely ancillary and incidental to, and is no part of or

process in, the trade or business carried on by the insured, nor to any case where the injury occurred elsewhere than on, in or about the premises on which the contractor has undertaken to execute the work for the insured or which are under the control or management of the insured. The word “premises”, as used in this section, shall include the public highways if the contract requires or necessitates the use of the public highways.

In any case where there shall exist with respect to an employee a general employer and a special employer relationship, as between the general employer and the special employer, the liability for the payment of compensation for the injury shall be borne by the general employer or its insurer, and the special employer or its insurer shall be liable for such payment if the parties have so agreed or if the general employer shall not be an insured or insured person under this chapter.

Section 19 Agreements by parties

Section 19. (1) Except as otherwise provided by section seven, any payment of compensation shall be by written agreement by the parties and subject to the approval of the department. Any other questions arising under this chapter may be so settled by agreement. Said agreements shall for all purposes be enforceable in the same manner as an order under section twelve.

(2) Any withdrawal of a complaint for discontinuance of compensation shall be made in writing and filed with the department and the employee. The parties shall be deemed to have agreed to all of the findings contained in a written decision of an arbitrator on a case forwarded to

arbitration pursuant to the provisions of section ten. The department shall approve any agreement received on a prescribed form unless such agreement is deemed to be in violation of law. Any agreement not approved shall be returned to the party submitting it. Except as provided by section ten B, a party to any agreement under this chapter may file a complaint with the superior court to vacate or modify such agreement on grounds of law or equity.

Section 19A Repealed, 1948, 158

Section 19B Repealed, 1948, 157

Section 20 Hospital records as evidence; medical records and reports open to inspection

Section 20. Copies of hospital records kept in accordance with section seventy of chapter one hundred and eleven, certified by the persons in custody thereof to be true and complete, shall be admissible in evidence in proceedings before the division or any member thereof. The division or any member, before admitting any such copy in evidence, may require the party offering the same to produce the original record. All medical records and reports of hospitals, clinics and physicians of the insurer, employer, or of the employee shall be filed with and open to the inspection of the division so far as relevant to any matter before it. Such reports shall be open to the inspection of any party.

Section 20A Copies of reports of medical examinations furnished employees; reports as evidence

Section 20A. Any employer who maintains a clinic, dispensary or hospital for the treatment of injured employees and any insurer who maintains a clinic, dispensary or hospital for the

treatment of injured employees of any insured shall, upon request of any injured employee attending such a clinic, dispensary or hospital, or of his attorney, furnish such employee or his attorney, at cost, with copies of reports of all medical examinations of the injured employee made while at such clinic, dispensary or hospital, showing the history obtained, the nature of the treatment given or prescribed, the diagnosis and the prognosis. No such medical report shall upon objection by the claimant be admissible in evidence in any proceeding under this chapter, unless a copy thereof has been furnished to the claimant, or a person acting in his behalf, or to his attorney, within twenty days after a written request therefor.

Section 20B Medical reports of disabled or deceased physicians as evidence

Section 20B. In proceedings before the industrial accident board, the medical report of an incapacitated, disabled or deceased physician who attended or examined the employee, including expressions of medical opinion, shall, at the discretion of the member, be admissible as evidence if the member finds that such medical report was made as the result of such physician's attendance or examination of the employee.

Section 21 Notice by insured to employees

Section 21. Every insured person shall, as soon as he secures a policy, give written or printed notice to all persons under contract of hire with him that he has provided for payment to injured employees by the insurer, or by self-insurance, as provided by this chapter.

Section 22 Notice by insured to new employees; notice of cessation of insurance; filing copy

Section 22. Every insured person shall give written or printed notice to every person with whom he is about to enter into a contract of hire that he has provided for payment to injured employees by the insurer or by means of self-insurance as provided in this chapter. An employer ceasing to be insured by an insurance company shall, on or before the day on which his policy expires, give written or printed notice thereof to all persons under contract with him. In case of the renewal of the policy no notice shall be required. He shall file a copy of said notice with the department. The notices required by this and the preceding section may be given in the manner therein provided or in such other manner as may be approved by the department.

Section 23 Release of claims or demands at common law

Section 23. If an employee files any claim or accepts payment of compensation on account of personal injury under this chapter, or submits to a proceeding before the department under sections ten to twelve, inclusive, such action shall constitute a release to the insurer of all claims or demands at common law, if any, arising from the injury. If an employee accepts payment of compensation under this chapter on account of personal injury or makes an agreement under section forty-eight, such action shall constitute a release to the insured of all claims or demands at common law, if any, arising from the injury.

Section 24 Waiver of right of action for injuries

Section 24. An employee shall be held to have waived his right of action at common law or under the law of any other jurisdiction in respect to an injury that is compensable under this chapter, to recover damages for personal injuries, if he shall not have given his employer, at the time of his contract of hire, written notice that he claimed such right, or, if the contract of hire was made before the employer became an insured person or self-insurer, if the employee shall not have given the said notice within thirty days of the time said employer became an insured person or self-insurer. An employee who has given notice to his employer that he claimed his right of action as aforesaid may waive such claim by a written notice, which shall take effect five days after it is delivered to the employer or his agent. The notices required by this section shall be given in such manner as the department may approve. If an employee has not given notice to his employer that he preserves his right of action at common law as provided by this section, the employee's spouse, children, parents and any other member of the employee's family or next of kin who is wholly or partly dependent upon the earnings of such employee at the time of injury or death, shall also be held to have waived any right created by statute, at common law, or under the law of any other jurisdiction against such employer, including, but not limited to claims for damages due to emotional distress, loss of consortium, parental guidance, companionship or the like, when such loss is a result of any injury to the employee that is compensable under this chapter.

Section 25 Insurer's liability on judgment for employee

Section 25. If an insured person who has complied with the rules, regulations and demands of the insurer is required by a judgment of a court to pay to an employee any damages on account of personal injury sustained by such employee during the period covered by insurance, the insurer shall pay to the insured the full amount of such judgment and the cost assessed

therewith if the insured shall have given the insurer written notice of the bringing of the action in which the judgment was recovered and an opportunity to appear and defend the same.

Section 25A Purchase of insurance; self-insurance; reinsurance; deductibles

Section 25A. In order to promote the health, safety and welfare of employees, every employer shall provide for the payment to his employees of the compensation provided for by this chapter in the following manner:

(1) By insurance with an insurer or by membership in a workers' compensation self-insurance group, established pursuant to the provisions of sections twenty-five E to twenty-five U, inclusive, or

(2) Subject to the rules of the department, by obtaining from the department annually a license as a self-insurer by conforming to the provisions of one of the two following subparagraphs and also to the provisions of subparagraph (c) if required. Every employer desiring to be licensed as a self-insurer shall make application for such license on a form provided by the department. The application shall contain: (1) a sworn itemized statement of the assets and liabilities of the applicant; (2) a payroll report for the preceding fiscal year of the applicant; (3) a detailed description of the nature and kind of business carried on.

(a) By keeping on deposit with the state treasurer in trust for the benefit and security of employees such amount of securities, not less in market value than twenty thousand dollars, as may be required by the department, said securities to be in the form of cash, bonds, stocks or other evidences of indebtedness as the department may require, and to be used, liquidated and disbursed only upon order of the department for the purposes of paying the benefits

provided for by this chapter. The department shall, at least semiannually, determine the liabilities of a self-insurer both incurred or to be incurred because of personal injuries to employees under this chapter. The department shall require an additional deposit or further security when the sum of the self-insurer's liability both incurred or to be incurred exceeds the deposit or any required reinsurance, or permit a decrease of said deposit provided the value of said deposit in no case shall be less than twenty thousand dollars. The department may permit a substitution of securities in place of those deposited. Interest, dividends and other income from said deposit or deposits shall be payable to the employer who deposited them, unless and until the department shall direct otherwise. The deposit or deposits may be returned to the employer if the employer shall insure with an insurer under paragraph (1) of this section, or qualify as a self-insurer under subparagraph (b) of this section, or if he shall cease to transact business in the commonwealth; provided, that in any case he satisfies the department that he is not under any obligation to pay compensation under this chapter, or, if the department so requires, he furnishes the department with a single premium non-cancellable policy, insuring him against any liability that may have arisen under this chapter or with a bond executed as surety by some company authorized to transact the business of workers' compensation insurance in this commonwealth, in an amount and form approved by the department, guaranteeing the payment of any liability on his part that may have arisen under this chapter. No deposit so deposited shall be assignable or subject to attachment or be liable in any way for the debt of the self-insurer. If an employer engaged in interstate or foreign commerce certifies that the laws of the United States provide for liability for injury to or death of its employees, the deposit shall be returned to the employer less such amount as determined by the department as necessary to satisfy against liability that may already have arisen under this chapter; and provided that such determination by the department shall be reviewable by the superior court

for the county in which the employer resides, or, in the case of a corporation, where said corporation has a usual place of business.

(b) By furnishing annually a bond running to the commonwealth, with some surety company authorized to transact business in the commonwealth as surety, in such form as may be approved by the department and in such amount not less than twenty thousand dollars as may be required by the department, said bond, however, to be upon the condition that if the license of the principal shall be revoked or if the principal shall cease to transact business in the commonwealth or if the department shall refuse to renew the license or if the principal shall insure with an insurer, the principal shall upon demand deposit with the state treasurer an amount of securities equal to the penal sum of the bond or a single premium non-cancellable policy issued by some insurance company authorized to transact the business of workers' compensation insurance in this commonwealth, insuring him against any liability that may have arisen under this chapter or a bond executed as surety by some company authorized to transact the business aforesaid in this commonwealth, in an amount and form approved by the department, guaranteeing the payment of any liability on his part that may have arisen under this chapter. The department shall, at least semiannually, determine the liabilities of a self-insurer both incurred or to be incurred because of personal injuries to employees under this chapter. The department may at any time require an additional bond, similarly conditioned, or further security or permit a decrease in the amount of said bond provided the amount of the bond or the bonds in no case shall be less than twenty thousand dollars. The liability of the surety shall not exceed in the aggregate the penal sum or sums stated in any such annual bond or bonds or in any endorsements giving effect to any such increase or reduction. The department may permit a substitution of a new bond or bonds for the bond or bonds which

have been furnished and shall return the old bond or bonds to the self-insurer as soon as a new annual bond has been obtained.

(c) As a further guarantee of a self-insurer's ability to pay the benefits provided for by this chapter to injured employees, every self-insurer shall make arrangements satisfactory to the department, by reinsurance, to protect it from extraordinary losses or losses caused by one disaster.

Such reinsurance shall be in such amounts and form as the department may approve and shall be effected with a company as provided in section twenty of chapter one hundred and seventy-five, provided, the minimum amount shall be not less than five hundred thousand dollars. Such reinsurance shall provide that the use or disposition of any money received by a self-insurer or former self-insurer under any such reinsurance shall be subject to the approval of the department, and no such money shall be assignable or subject to attachment or be liable in any way for the debt of the self-insurer unless incurred under this chapter. The provisions of this paragraph shall not apply to common carriers by railroad which are subject to the provisions of the Federal Employers Liability Act.

(3) The department may make rules governing self-insurers, and may revoke or refuse to renew the license of a self-insurer because of the failure of such self-insurer promptly to make payments of compensation provided for by this chapter, or for any other reasonable cause. Any person aggrieved by the action of the department in refusing to grant a license or in revoking, or refusing to renew, a license of a self-insurer under this section or by the action of the department in requiring an additional deposit or further security under subparagraph (a) of this section, or in requiring a further bond or security for an additional sum under subparagraph (b)

of this section may demand a hearing before the department, and if, after said hearing, the department denies his petition, he may within ten days after receipt of a notice stating reasons for such denial, file a petition in the superior court for Suffolk county for a review thereof; but the filing of such a petition shall not suspend the action of the department unless a stay thereof shall be allowed by the justice pending a final determination by the court. The court shall summarily hear the petition and may make any appropriate order or decree.

(4)(a) The commissioner of insurance shall require each insurer issuing a policy under this chapter to offer, as a part of the policy or as an optional endorsement to the policy, deductibles, including reasonable small deductibles optional to the policyholder for benefits payable under this chapter. Deductible amounts offered shall be fully disclosed to the prospective policyholders in writing in amounts determined by the commissioner. The policyholder exercising the deductible option shall choose only one deductible amount.

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

(c) Optional deductibles shall be offered in each policy insuring liability for workers' compensation that is issued, delivered, issued for delivery, or renewed under this chapter on or after a date to be determined by the commissioner, unless an insured employer and insurer agree to renegotiate a workers' compensation policy in effect, so as to include a provision allowing for a deductible.

(d) Premium reductions for deductibles shall be determined by the commissioner of insurance.

(e) This subsection shall not apply to employers who are approved to self-insure against liability for workers' compensation or group self-insurance funds for workers' compensation established pursuant to the provisions of this chapter.

(f) The commissioner of insurance may promulgate regulations to enforce the provisions of this section.

Section 25B Applicability of statute relating to insurance and self-insurers; employer bringing employees within statute

Section 25B. Section twenty-five A shall not apply to the commonwealth, the Massachusetts Turnpike Authority, the Massachusetts Bay Transportation Authority, the Massachusetts Port Authority or the various counties, cities, towns and districts provided for in sections sixty-nine to seventy-five, inclusive. Any employer may bring an employee or employees for whom he is not required by this chapter to provide for the payment of compensation within the coverage of this chapter by providing for the payment of compensation to such employee or employees as provided by this chapter.

Section 25C Failure to provide for payment of compensation; stop work orders; penalties; liens; actions brought by losing bidders; civil actions for violations of chapter

Section 25C. (1) Whenever the commissioner or his designee determines that an employer who is required to provide for the payment to his employees of the compensation provided for by the chapter has failed to do so, a stop work order shall be served on said employer, requiring the cessation of all business operations at the place of employment or job site. Such order shall take effect immediately upon its service upon said employer, unless such employer provides evidence, satisfactory to the commissioner or his designee, of having secured any necessary insurance or self-insurance and pays a civil penalty into the private employer trust fund in the amount of one hundred dollars per day for each day such employer was not in compliance with this chapter, counting the date of service of the stop work order as the first day and date of payment of the penalty herein provided and of production of evidence of insurance or self-insurance as the final day.

(2) Any employer who is aggrieved by the imposition of a stop work order shall have ten days from the date of its service to appeal such order. Any employer who timely files such appeal shall be granted a hearing by the commissioner or his designee within fourteen days of receipt of appeal. The stop work order shall not be in effect during the pendency of any timely filed appeal. Any stop work order and monetary penalty shall be rescinded if the commissioner or his designee finds at the hearing that the employer has at all times been in compliance with this chapter. If the commissioner or his designee finds at the hearing that the employer did or has not provided for all insurance or self-insurance required by this chapter, the stop work order shall be effective immediately on the conclusion of the hearing and shall remain in effect until such time as the employer provides evidence, satisfactory to the commissioner or his designees, of having secured any necessary insurance or self-insurance and pays a civil penalty into the private employer trust fund in the amount of two hundred and fifty dollars per day for each day such employer was not in compliance with this chapter, counting the date of service

of the stop work order as the first day and the date of payment of the penalty herein provided and of production of evidence of insurance or self-insurance as the final day.

A stop work order and any monetary penalties assessed by the commissioner after a hearing as authorized in this section shall be final at the expiration of thirty days if no action for judicial review of such decision is commenced pursuant to chapter thirty A. Any person who institutes proceedings for judicial review of the final assessment of a penalty by the commissioner pursuant to this section, shall place the final amount of the assessment in an interest-bearing escrow account in the custody of the clerk/magistrate of the reviewing court. The establishment of such interest-bearing account shall be a condition precedent to the jurisdiction of the reviewing court unless the party demonstrates in a preliminary hearing held within twenty days of the filing of the complaint either the presence of a substantial question for review by the court or an inability to pay. Upon such a demonstration, the court may grant an extension or waiver of the interest-bearing escrow account or may require, in lieu of such account, the posting of a bond payable directly to the Private Employer Trust Fund in the amount of one hundred and twenty-five per cent of the assessed penalty. If, after judicial review, in the case where the requirement for an escrow account has been waived, and in the case where a bond has been posted, the court affirms the penalty in whole or in part, the penalty assessed by the commissioner shall be paid with interest at the rate set forth in section six C of chapter two hundred and thirty-one. If, after such review in a case where an interest-bearing escrow account has been established, the court affirms the penalty in whole or in part, the penalty shall be paid with accumulated interest from such account. If the court sets aside the penalty the amount placed in such account or the amount posted for such bond shall be repaid together with any interest thereon.

(3) Any law enforcement agency in the commonwealth shall, at the request of the commissioner, render any assistance necessary to carry out the provisions of this section, including but not limited to preventing any employee or other persons from remaining at a place of employment or job site after a stop work order has taken effect.

(4) Any employee affected by a stop work order pursuant to this section shall be paid for the first ten days lost pursuant to such order and any time lost pursuant to this section not exceeding ten days shall be considered time worked under the provisions of chapter one hundred and forty-nine.

(5) In addition to being subject to the civil penalties herein provided, an employer who fails to provide for insurance or self-insurance as required by this chapter shall be punished by a fine of not more than one thousand five hundred dollars or by imprisonment for not more than one year, or both. Failure of an employer, after imposition of such fine or imprisonment, to provide for insurance or self-insurance under this chapter after notice by the department to do so shall, as to each notice, be deemed a further violation in respect thereof, subject to an additional fine and imprisonment. If such employer is a corporation, the president or treasurer or both shall be liable for said punishment. The commissioner or his designee shall have power to bring complaints against employers, including the president and treasurer of a corporation which is an employer, for violations of the provisions of this subsection, and to prosecute the same, and for such purpose may deputize one or more employees of the department to make and prosecute complaints. Complaints under this subsection shall be brought in the district court in which the principal place of business of such employer is situated, or in the district court in whose district such president or treasurer of a corporation resides.

(6) Every state or local licensing agency shall withhold the issuance or renewal of a license or permit to operate a business or to construct buildings in the commonwealth for any applicant who has not produced acceptable evidence of compliance with the insurance coverage required by this chapter.

(7) Neither the commonwealth nor any of its political subdivisions shall enter into any contract for the performance of public work until acceptable evidence of compliance with the insurance requirements of this chapter have been presented to the contracting authority.

(8) Any judgments obtained by the department requiring employer reimbursements or other payments into the private employer trust fund, and any penalties due pursuant to the service of a stop work order under this section shall, until collected, constitute a lien upon the entire interest of the employer, legal or equitable, in any property, real or personal, tangible or intangible; provided, however, that such lien shall be subordinate to claims for unpaid wages and any prior recorded liens; and provided, further, that no lien created by this section shall be valid against a subsequent purchaser or mortgagee in good faith and for value of real or personal property from or of such employer, or against a subsequent attaching creditor, unless, with respect to real estate of the employer, a notice of such lien is recorded in the registry of deeds for the county where such real estate is located, and, with respect to personal property of the employer, said notice is recorded with the clerk of the city or town where such personal property is located.

(9)(a) Any person or firm that loses a competitive bid for a contract including but not limited to construction, repair, remodeling, alteration, conversion, modernization, replacement or renovation of a building, roadway or structure may bring an action for damages against another

person who is awarded the contract for which the bid was made, if the other person was awarded the contract because of cost advantages achieved by violating the provisions of section twenty-five A or section twenty-five C of this chapter or by the deliberate misclassification of employees for the purpose of avoiding full payment of workers' compensation insurance premiums.

(b) A person or firm bringing an action under this section must establish a violation of said subsection or chapters by a preponderance of the evidence. Upon establishing that the violation occurred, the person bringing the action shall recover, as liquidated damages, ten percent of the total amount bid on the contract, or fifteen thousand dollars, whichever is lesser.

(c) An action under this subsection shall be commenced within one year from the date when the contract is awarded.

(d) No plaintiff shall be allowed to recover any amounts under this subsection if said plaintiff was in violation of sections twenty-five A or twenty-five C at the time of making the bid on the contract.

(e) In any action under this section, the prevailing party shall be entitled to an award of reasonable attorneys fees.

(10) In addition to being subject to the civil penalties herein provided, an employer who fails to provide for insurance or self insurance as required by this chapter or knowingly misclassifies employees, to avoid higher premium rates, will be immediately debarred from bidding or participating in any state or municipal funded contracts for a period of three years and shall when applicable be subject to penalties provided for in section fourteen.

[Subsection (11) applicable as provided by 2010, 285, Sec. 2.]

(11) Whenever facts exist showing that an employer has failed to comply with this chapter, then any 3 persons may bring a civil action and that civil action shall be deemed a private attorney's general action. Before bringing a civil action under this subsection, the 3 persons shall provide notice, by certified mail, return receipt requested, of what might become the substance of a complaint to the employer and any insurer that was or is entitled to collect amounts not paid. The notice shall include a statement of intent to file suit under this subsection. After the expiration of 90 days after delivery of the notice to the employer and the insurer, the 3 persons may file a civil action under this subsection, but they shall not be bound by the notice provided to the employer and the insurer.

Plaintiffs shall prove a violation of this chapter by a preponderance of the evidence. An employer shall be liable for all amounts which should have been paid by the employer. Upon establishing that a violation occurred, plaintiffs shall be collectively entitled to recover 25 per cent of the amount not paid or $25,000, whichever is less, plus costs and reasonable attorneys' fees, and an additional amount from the employer as compensatory and liquidated damages which shall be equal to 25 per cent of the amount that should have been paid or $25,000, whichever is less.

After a civil action is commenced under this subsection, any insurer that has failed to file a complaint or seek arbitration to recover or collect all of the amounts which would have been due to the insurer from an employer in the action shall be barred from recovering, attempting to recover or collect any amounts sought in the action unless the insurer obtains the voluntary, written consent of the plaintiffs. When such written consent is provided, a court may substitute

the insurer as the plaintiff and, upon substitution, the case shall proceed without further regard to this subsection or to the Workers' Compensation Trust Fund.

No settlement between an insured and an insurer shall prohibit or limit an action under this subsection to recover other amounts that should have been paid under this chapter. The insurer shall, upon demand, provide a copy of any settlement to the 3 persons who sent notice under this subsection. Except as provided herein and unless the insurer has been substituted in the action, any amounts recovered by the plaintiffs under this subsection shall be deposited into the Workers' Compensation Trust Fund established in section 65, except those amounts payable to those plaintiffs in accordance with this subsection. An insurer who has been served with notice under this subsection and who pays a claim may recover from the amounts that are deposited into the trust fund any premium that should have been paid to that insurer which would have provided coverage for that specific claimant and claim.

Nothing in this subsection shall limit or prohibit a political subdivision, public entity or office, division, commission, commissioner, director, attorney general or a law enforcement agency or office entitled to bring a civil or criminal action against a defendant to an action under this subsection from proceeding against such defendant in an appropriate forum. The judge or other hearing officer in that forum may consider and offset the amounts recovered, or likely recoverable, by an action pursuant to this subsection in imposing a verdict or judgment or against imposing a fine or other penalty.

Any action filed under this subsection shall be filed only after 90 days following the expiration of a workers' compensation policy affected by the action, if such policy existed.

Actions under this subsection shall be commenced within 6 years after the cause of action accrues.

Section 25D Service companies; investigation, adjustment or settlement of claims for self-insurers

Section 25D. A self-insurer may engage a service company, third party administrator, or like organization to investigate, adjust or settle claims under this chapter. The insurance commissioner shall promulgate regulations governing the conduct and practices of service companies, third party administrators, or like organizations.

Section 25E Self-insurance groups; definitions

Section 25E. Sections twenty-five E to twenty-five U, inclusive, shall apply to workers' compensation self-insurance groups. A workers' compensation self-insurance group that is issued a certificate of approval by the commissioner shall not be deemed to be insurers or insurance companies and shall not be subject to the provisions of the insurance laws and regulations of the commonwealth except as otherwise provided herein. Workers' compensation self-insurance groups shall be subject to all provisions of this chapter and all regulations promulgated hereunder governing the conduct of insurers with respect to the payment of workers' compensation benefits, and shall be subject to all fees, fines, penalties and assessments levied upon insurers for failure to comply with the claim procedures of this chapter.

The commissioner may promulgate rules and regulations as necessary to carry out the provision of sections twenty-five E to twenty-five U, inclusive.

As used in this section and sections twenty-five F to twenty-five U, inclusive, the following words, unless the context requires otherwise, shall have the following meanings:—

“Administrator”, an individual, partnership, corporation or unincorporated association engaged by a workers’ compensation self-insurance group’s board of trustees to carry out the policies established by the group’s board of trustees and to provide daily management of the group.

“Insolvent” or “Insolvency”, the inability of a workers’ compensation self-insurance group to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its required reserves and other liabilities over its assets or by its not having sufficient assets to reinsure all of its outstanding liabilities after paying all accrued claims owed by it.

“Net premium”, premium derived from standard premium adjusted by any advance premium discounts.

“Standard premium”, the premium derived from the manual rates adjusted by experience modification factors but before advance premium discounts.

“Workers’ compensation”, when used as a modifier of benefits, liabilities or obligations, shall mean both workers’ compensation and employer’s liability.

“Public employer workers’ compensation self-insurance group”, or “public employer group”, a not-for-profit association consisting of five or more employers, all of whom are public entities, who enter into agreements to pool their liabilities for workers’ compensation benefits and employer’s liability in this state.

“Workers’ compensation self-insurance group” or “group”, a public employers group or a not-for-profit unincorporated association or a corporation formed under the provisions of chapter one hundred and eighty consisting of five or more employers who are engaged in the same or similar type of business, who are members of the same bona fide industry, trade or professional association which has been in existence for not less than two years or who are parties to the same or related collective bargaining agreements, and who enter into agreements to pool their liabilities for workers’ compensation benefits and employer’s liability in this state.

“Commissioner of insurance”, the commissioner of the department of insurance.

Section 25F Certification to act as self-insurance group

Section 25F. No person, association, or entity shall act as a workers’ compensation self-insurance group unless it has been issued a certificate of approval by the commissioner of insurance.

Section 25G Application for certificate; requirements; issuance

Section 25G. (1) A proposed workers’ compensation self-insurance group shall file with the commissioner of insurance its application for a certificate of approval accompanied by a nonrefundable filing fee in the amount of one hundred dollars. The application shall include the group’s name, the location of its principal office, the date of organization, the name and address of each member, and such other information as said commissioner may reasonably require, together with the following:

(a) a copy of the by-laws of the proposed group, and a copy of the articles of association, if any;

(b) an individual application of each member of the group applying for coverage by the group on the inception date of the group;

(c) a current certified financial statement of each member, including at a minimum, a balance sheet, a profit and loss statement, a statement of change in fund position, and a statement showing the combined net worth of all members applying for coverage on the inception date of the fund. The combined net worth shall be of an amount that establishes the financial strength and liquidity of the businesses. The requirements of this paragraph shall not apply to a self-insurance group which is composed of more than 1,000 members and has been in existence for at least five years as of December 31, 1999 and at all times remains in compliance with the minimum net worth requirements of paragraph (a) of subsection (2);

(d) a pro forma financial statement on a form acceptable to the commissioner of insurance showing the financial ability of the group to pay the workers' compensation obligations of its members.

(e) a composite listing of the estimated standard premium and annual net premium to be developed for each member individually and in total as a group. Payroll data for each of the three preceding years shall be furnished by risk classification;

(f) a documented agreement by each member to pay to the group not less than twenty-five per cent of that member's estimated annual net premium not later than the initial day of coverage afforded by the group;

(g) a confirmation of any required reinsurance by a recognized carrier in an amount estimated acceptable to the commissioner of insurance;

(h) the designation of the initial board of trustees and administrator;

(i) an indemnity agreement jointly and severally binding the group and each member thereof to comply with the provisions of the chapter, which shall conform to an indemnity agreement prescribed by the commissioner of insurance;

(j) a breakdown of all projected administrative expenses for the group year in dollar amount and as a percentage of the estimated annual normal premium;

(k) proof provided by the trustees, satisfactory to the commissioner of insurance, that the annual gross premiums of the group shall be not less than two hundred and fifty thousand dollars.

(2) To obtain and to maintain its certificate of approval, a workers' compensation self-insurance group shall comply with the following requirements as well as any other requirements established by law or regulation:

(a) A combined net worth of all members of a group of private employers of at least one million dollars;

(b) Security in a form and amount prescribed by the commissioner which shall be provided by either a surety bond, or security deposit, or any combination thereof. If a surety bond is used to meet the security requirement, it shall be issued by a corporate surety company authorized to transact business in the commonwealth. If a security deposit is used to meet the security

requirement, securities shall be limited to bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by an agency or instrumentality thereof; certificates of deposit in a federally insured savings and loan association or credit union; or any bond or security issued by a state of the United States of America and backed by its full faith and credit.

The bond, or security deposit, shall be for the benefit of the commonwealth solely to pay claims and associated expenses and payable on the failure of the group to pay workers' compensation benefits which it is legally obligated to pay. The commissioner may establish requirements for the amount of security based on differences among groups in their size, types of employment, years in existence, and other relevant factors; provided, however, that the commissioner of insurance may not require an amount lower than one hundred thousand dollars for any group during its first year of operation;

(c) Specific and aggregate excess insurance in a form, in an amount, and by an insurer acceptable to the commissioner of insurance. The commissioner of insurance may establish minimum requirements for the amount of specific and aggregate excess insurance based on differences among groups in their size, types of employments, types of local government services provided by members of public employers groups, years in existence, and other relevant factors and may permit a group to meet this requirement by placing in a designated depository securities of the type referred to in paragraph (b) of this subsection.

The commissioner may periodically review a group's security deposit or bond and excess and aggregate insurance to determine if the minimum requirements established by the commissioner are being met.

(d) A fidelity bond for the administrator, if any, in a form and amount prescribed by the commissioner of insurance;

(e) A group shall notify the commissioner of insurance of any change in the information required to be filed under subsection (1) or in the manner of its compliance with subsection (2) no later than thirty days after such change.

(3) The commissioner of insurance shall evaluate the information provided by the application required to be filed under subsection (1) of this section to assure that no gaps in funding exist and that funds necessary to pay workers' compensation benefits shall be available on a timely basis.

(4) The commissioner of insurance shall act on a completed application for a certificate of approval within ninety days.

(5) The commissioner of insurance shall issue to the group a certificate of approval on finding that the proposed group has met all requirements, or shall issue an order refusing such certificate setting forth reasons for such refusal on finding that the proposed group does not meet all requirements.

(6) Each workers' compensation self-insurance group shall be deemed to have appointed the commissioner of insurance as its attorney to receive service of legal process issued against it in the commonwealth. The appointment shall be irrevocable, shall bind any successor in interest and shall remain in effect as long as there is in the commonwealth any obligation or liability of the group for workers' compensation benefits.

(7) The provisions of paragraphs (c) and (i) of subsection (1) and paragraphs (a) and (b) of subsection (2) shall not apply to public employer groups.

Section 25H Termination of certificate

Section 25H. (1) The certificate of approval issued by the commissioner of insurance to a workers' compensation self-insurance group authorizes the group to provide workers' compensation benefits. The certificate of approval remains in effect until terminated at the request of the group or revoked by the commissioner of insurance pursuant to the provisions of section twenty-five U.

(2) The commissioner of insurance shall not grant the request of any group to terminate its certificate of approval unless the group has insured or reinsured all incurred workers' compensation obligations with an authorized insurer under an agreement filed with and approved in writing by said commissioner. Such obligations shall include both known claims and expenses associated therewith. Subject to the approval of the commissioner of insurance, a group may merge with another group engaged in the same or similar type of business only if the resulting group assumes in full all obligations of the merging groups. A public employer group may only merge with another public employer group. The commissioner of insurance may hold a hearing on the merger and shall do so if any party, including a member of either group, so requests.

Section 25I Examination of affairs, transactions, accounts, records and assets of each group

Section 25I. The commissioner of insurance shall examine the affairs, transactions, accounts, records and assets of each group as often as the commissioner deems advisable, but not less often than once every three years. The expense of such examinations shall be assessed against the group in the same amount and manner that insurers are assessed for examinations.

Section 25J Boards of trustees

Section 25J. (1) Each group shall be operated by a board of trustees which shall consist of not less than three persons whom the members of a group elect for stated terms of office. At least two of the trustees shall be employees, officers or directors of members of the group, except for public employer groups for whom the three trustees shall be elected officials or employees of public entities within this state. The administrator of a self-insurance group, if any, shall not serve on the board of trustees of the group, unless the group is a public employer group, in which case the administrator may serve as a trustee. All trustees shall be residents of the commonwealth or officer of corporations authorized to do business in the commonwealth.

(2) The board of trustees of each group shall ensure that all claims are paid promptly and shall take all necessary precautions to safeguard the assets of the group, including the following:

(a) Maintain responsibility for all monies collected or disbursed from the group and segregate all monies in a claims fund account and an administrative fund account. Net premium shall be placed in a designated depository in an amount equal to the aggregate retained workers' compensation liability of the group, and such deposits shall be called the claims fund account. The remaining net premium after any payments for reinsurance or excess insurance shall be placed in a designated depository for the payment of taxes, general regulatory fees and

assessments and administrative costs and such deposits shall be called the administrative fund account.

(b) Maintain minutes of its meetings and make such minutes available to the commissioner of insurance; and

(c) Designate an administrator to carry out the policies of the board of trustees and to provide day to day management of the group. The board shall enter into a written agreement with the administrator, which shall include, but not be limited to, a description of the duties, responsibilities and compensation for the administrator, subject to the commissioner's approval. The group shall demonstrate to the commissioner's satisfaction that any administrator designated by the board of trustees is of good repute, is in sound financial condition and is experienced in the area of workers' compensation claims administration.

(3) Funds not needed for current obligations may be invested by the board of trustees in accordance with the provisions of section sixty-three of chapter one hundred and seventy-five.

(4) The board of trustees shall not:

(a) Extend credit to individual members for payment of a premium, except pursuant to payment plans approved by the commissioner of insurance.

(b) Borrow any monies from the group or in the name of the group except in the ordinary course of business, without first advising the commissioner of insurance of the nature and purpose of the loan and obtaining prior approval from the commissioner of insurance.

Section 25K Applications for membership; cancellation of members; insolvency or bankruptcy of members

Section 25K. (1) An employer joining a workers' compensation self-insurance group after the group has been issued a certificate of approval shall submit an application for membership to the board of trustees or its administrator and, unless the employer is a public employer, enter into the indemnity agreement required by paragraph (i) of subsection (1) of section twenty-five G. Membership shall take effect no earlier than each member's date of approval. The application for membership and its approval shall be maintained as permanent records of the board of trustees.

(2) Individual members of the group shall be subject to cancellation by the group pursuant to the by-laws of the group. In addition, individual members may elect to terminate their participation in the group. The group shall notify the commissioner of insurance and the division of industrial accidents of the termination or cancellation of a member within ten days and shall maintain coverage of each cancelled or terminated member for thirty days after such notice, with the cancelled or terminated member responsible for the premium for such period, unless the group is notified sooner by the workers' compensation agency that the cancelled or terminated member has procured workers' compensation insurance, has become a self-insurer, or has become a member of another group.

(3) The group shall pay all workers' compensation benefits for which each member incurs liability during its period of membership. A member of a group, unless the group is a public employer group, who elects to terminate its membership or is cancelled by the group shall remain jointly and severally liable for the workers' compensation obligations of the group and

its members which were incurred during the cancelled or terminate member's period of membership.

(4) A group member is not relieved of its workers' compensation liabilities incurred during its period of membership except through payment by the group or the member of required workers' compensation benefits.

(5) The insolvency or bankruptcy of a member shall not relieve the group or, unless the group is a public employer group, any other member of the group of liability for the payment of workers' compensation benefits incurred during the insolvent or bankrupt member's period of membership.

(6) Whenever, as a result of the addition of new members, or a material change in the size of any existing member or its parent or subsidiaries, the total annual premium of the group increases by ten percent or more, the board of trustees shall submit the approved applications of the new members, or new information regarding existing members or their parents or subsidiaries, to the commissioner, along with revised premium and payroll data. The commissioner shall review the information and may require changes in the form and amount of security and excess insurance for the group, and require the group to make other changes as the commissioner deems appropriate to ensure that the group is able to meet its workers' compensation obligations.

Section 25L Solicitation of membership by licensed agents

Section 25L. Except for the trustees, officers, directors or salaried employees of a group or its administrator, any person soliciting membership in a workers' compensation self-insurance group must be a licensed agent as provided by section sixty-three of chapter one hundred and seventy-five.

Section 25M Misrepresentations or omissions in solicitations of membership

Section 25M. No person shall make a material misrepresentation or omission of a material fact in connection with the solicitation of a membership of a group.

Section 25N Performance reports; statements of financial condition

Section 25N. Each group shall submit to the commissioner of insurance thirty days prior to the end of its policy year a performance report estimating total outstanding liability, including incurred but not reported claims, for that policy year.

Each group shall submit to the commissioner of insurance a statement of financial condition audited by an independent certified public accountant on or before the last day of the sixth month following the end of the group's fiscal year. Said financial statement shall be on a form prescribed by said commissioner and shall include, but not be limited to, actuarially appropriate reserves for known claims and expenses associated therewith, claims incurred but not reported and expenses associated therewith, reinsurance in force, unearned premiums, and bad debts, which reserves shall be known as liabilities.

The commissioner of insurance may prescribe the format and frequency of other reports which may include, but shall not be limited to, payroll audit reports, summary loss reports and quarterly financial statements.

Section 25O Uniform classification system; premium contributions; application to make own rates; audits

Section 25O. (1) Every workers' compensation self-insurance group shall adhere to the uniform classification system, uniform experience rating plan, and manual rules filed with the commissioner of insurance by an advisory organization designated by said commissioner.

(2) Premium contributions to the group shall be determined by applying the manual rates and rules to the appropriate classification of each member which shall be adjusted by each member's experience credit or debit. Subject to approval by the commissioner of insurance, premium contributions may also be reduced by an advance premium discount reflecting the group's expense levels and loss experience.

(3) Notwithstanding the provisions of subsection (2), a group may apply to the commissioner of insurance for authority to make its own rates. Such rates shall be based on at least two years of the group's experience. Public employer safety groups in operation for at least two consecutive years prior to their application as a public employer self insurance group may apply to the commissioner of insurance to make its own rates effective the first year of operation as a self insured group. Any self-insured group which is composed of more than 1,000 members and has been in existence for a period of five consecutive years as of December 31, 1999 and which remains in compliance with the requirements of subsection (2) of section 25G shall not be required to have its members experience rated pursuant to the uniform experience rating plan filed with and approved by the commissioner, unless its by-laws or similar rules require otherwise.

(4) Each group shall be audited at least annually by an auditor approved by the commissioner of insurance to verify proper classifications, experience rating, payroll and rates. A report of the audit shall be filed with said commissioner of insurance in a form acceptable to him. A group or any member thereof may request a hearing on any objections to the classifications. If the commissioner of insurance determines that, as a result of an improper classification, a member's premium contribution is insufficient, he shall order the group to assess that member an amount equal to the deficiency. If said commissioner determines that as a result of an improper classification a member's premium is excessive, he shall order the group to refund to the member the excess collected. The audit shall be at the expense of the group.

Section 25P Refunds

Section 25P. Any monies for a fund year in excess of the amount necessary to fund all obligations for such fund year may be declared to be refundable by the board of trustees not less than six months after the end of the fund year.

Each member shall be given a written description of the refund plan at the time of application for membership. A refund for any fund year shall be paid only to those employers who remain participants in the group for the entire fund year. Payment of a refund based on a previous fund year shall not be contingent on continued membership in the group after that fund year.

Section 25Q Premium payment plans; loss reserves; bad debt reserves

Section 25Q. (1) Each group shall establish with the approval of the commissioner of insurance a premium payment plan which shall include an initial payment by each member of at least twenty-five per cent of that member's annual premium before the start of the group's fund year and payment of the balance of each member's annual premium within the first eight months of that fund year in monthly or quarterly installments.

(2) Each group shall establish and maintain actuarially appropriate loss reserves which shall include reserves for known claims and expenses associated therewith and claims incurred but not reported and expenses associated therewith.

(3) Each group shall establish and maintain bad debt reserves based on the historical experience of the group or other groups.

(4) Subsections (1) and (3) shall not apply to public employer groups; provided, however, that public employer groups shall establish a premium payment plan acceptable to the commissioner.

Section 25R Deficiencies; assessments; liquidation of groups

Section 25R. If the assets of a group are at any time insufficient to enable the group to discharge its legal liabilities and other obligations and to maintain the reserves required of it under this chapter, it shall forthwith make up the deficiency or levy an assessment on its members for the amount needed to make up the deficiency.

In the event of a deficiency in any fund year, such deficiency shall be made up immediately, either from surplus from a fund year other than the current fund year, administrative funds, assessment of the membership, if ordered by the group or, such alternate method as the commissioner of insurance may approve of direct. Said commissioner shall be notified prior to any transfer of surplus funds from one fund year to another.

If the group fails to assess its members or to otherwise make up such deficit within thirty days the commissioner of insurance shall order it to do so.

If the group fails to make the required assessment of its members within thirty days after the commissioner of insurance orders it to do so, or if the deficiency is not fully made up within sixty days after the date on which such assessment is made, then after such longer period of time as may be specified by said commissioner, the group shall be deemed to be insolvent.

The commissioner of insurance shall proceed against an insolvent group in the same manner as said commissioner would proceed against in insolvent domestic insurer in the commonwealth pursuant to section six of chapter one hundred and seventy-five. Said commissioner shall have the same powers and limitations in such proceedings as are provided under said section six, except as otherwise provided in this chapter.

In the event of the liquidation of a group, the commissioner of insurance shall levy an assessment on its members for such an amount as he determines to be necessary to discharge all liabilities of the group, including the reasonable cost of liquidation.

Section 25S Penalties

Section 25S. After notice and opportunity for a hearing, the commissioner of insurance may impose a monetary penalty on any person or group found to be in violation of any of the provisions of sections twenty-five E to twenty-five U, inclusive, or of any rules or regulations promulgated thereunder. The monetary penalty shall not exceed one thousand dollars for each act or violation, not to exceed an aggregate monetary penalty of ten thousand dollars. The amount of any such monetary penalty shall be paid to said commissioner for the use of the department of insurance.

Section 25T Cease and desist orders

Section 25T. After notice and opportunity for a hearing, the commissioner of insurance may issue an order requiring a person or group to cease and desist from engaging in an act or practice found to be in violation of any provision of sections twenty-five E to twenty-five U, inclusive, or of any rules or regulations promulgated thereunder.

Upon a finding, after notice and opportunity for a hearing, that any person or group has violated any cease and desist order, the commissioner of insurance may: impose a monetary penalty of not more than ten thousand dollars for each act or violation of such order not to exceed an aggregate monetary penalty of one hundred thousand dollars and may revoke the group's certificate of approval.

Section 25U Revocation of certificates of approval

Section 25U. After notice and opportunity for a hearing, the commissioner of insurance may revoke a group's certificate of approval if it is found to be insolvent, fails to pay any regulatory

fee or assessment, or special fund or trust fund contribution imposed on it, or fails to comply with any of the applicable provisions of sections twenty-five E to twenty-five U, inclusive, with any rules lawfully promulgated, or with any lawful order of said commissioner within the time prescribed. In addition, said commissioner of insurance may revoke a group's certificate of approval if, after notice and opportunity for hearing, the commissioner finds that any certificate of approval that was issued to the group was obtained by fraud; that there was a material misrepresentation in the application for the certificate of approval; or that the group or its administrator has misappropriated, converted, illegally withheld, or refused to pay over on proper demand any monies that belong to a member, an employee of a member, or a person otherwise entitled thereto and that have been entrusted to the group or its administrator in its fiduciary capacities.

This section shall apply to public employer groups; provided, however, that the failure of a public employer group to pay a premium tax shall not be grounds for revocation of the public employer group's certificate of approval.

Section 26 Injuries arising out of and in course of employment

Section 26. If an employee who has not given notice of his claim of common law rights of action under section twenty-four, or who has given such notice and has waived the same, receives a personal injury arising out of and in the course of his employment, or arising out of an ordinary risk of the street while actually engaged, with his employer's authorization, in the business affairs or undertakings of his employer, and whether within or without the commonwealth, he shall be paid compensation by the insurer or self-insurer, as hereinafter provided; provided,

that as to an injury occurring without the commonwealth he has not given notice of his claim of rights of action under the laws of the jurisdiction wherein such injury occurs or has given such notice and has waived it. For the purposes of this section any person, while operating or using a motor or other vehicle, whether or not belonging to his employer, with his employer's general authorization or approval, in the performance of work in connection with the business affairs or undertakings of his employer, and whether within or without the commonwealth, and any person who, while engaged in the usual course of his trade, business, profession or occupation, is ordered by an employer, or by a person exercising superintendence on behalf of such employer, to perform work which is not in the usual course of such work, trade, business, profession or occupation, and while so performing such work, receives a personal injury, shall be conclusively presumed to be an employee, and if an employee while acting in the course of his employment receives injury resulting from frost bite, heat exhaustion or sunstroke, without having voluntarily assumed increased peril not contemplated by his contract of employment, or is injured by reason of the physical activities of fellow employees in which he does not participate, whether or not such activities are associated with the employment, such injury shall be conclusively presumed to have arisen out of the employment.

If an employee is injured by reason of such physical activities of fellow employees and the department finds that such activities are traceable solely and directly to a physical or mental condition resulting from the service of any of such fellow employees in the armed forces of the United States, the entire amount of compensation that may be found due shall be paid by the insurer, self-insurer or self-insurance group; provided, however, that upon an order or pursuant to an approved agreement of the department, the insurer, self-insurer or self-insurance group shall be reimbursed by the state treasurer from the trust fund established by section sixty-five for all amounts of compensation paid under this section.

Section 26A Suicide

Section 26A. Dependents shall not be precluded from recovery under this chapter, nor shall the insurance company be relieved from making payment to the commonwealth under section sixty-five, for death by suicide of the employee, if it be shown by the weight of the evidence that, due to the injury, the employee was of such unsoundness of mind as to make him irresponsible for his act of suicide.

Section 26B Concurrent service of two or more employers; joint and several liability of insurers

Section 26B. When an employee employed in the concurrent service of two or more insured employers receives a personal injury compensable under this chapter while performing a duty which is common to such employers, the liability of their insurers under this chapter shall be joint and several. Each insurer or self-insurer liable under this section shall pay compensation according to the proportion of the wages paid by its insured in relation to the concurrent wage which the employee received from all insured employers.

Section 27 Willful misconduct of employee

Section 27. If the employee is injured by reason of his serious and wilful misconduct, he shall not receive compensation; but this provision shall not bar compensation to his dependents if the injury results in death.

Section 27A False representation of physical condition by employee; right to benefits

Section 27A. In any claim for compensation where it is found that at the time of hire the employee knowingly and willfully made a false representation as to his physical condition and the employer relied upon the false representation in hiring such employee, when such employee knew or should have known that it was unlikely he could fulfill the duties of the job without incurring a serious injury, then the employee shall, if an injury related to the condition misrepresented occurs, not be entitled to benefits under this chapter. Retention of an employee who rectifies any misrepresentation made to his employer regarding his physical

condition subsequent to the hire but prior to the injury shall restore any right to compensation under this chapter.

Section 28 Wilful misconduct of employer; defense; reimbursement of insurer; employment of minor; mentally retarded persons; injuries at sheltered workshops

Section 28. If the employee is injured by reason of the serious and wilful misconduct of an employer or of any person regularly intrusted with and exercising the powers of superintendence, the amounts of compensation hereinafter provided shall be doubled. In case the employer is insured, he shall repay to the insurer the extra compensation paid to the employee. If a claim is made under this section, and the employer is insured, the employer may appear and defend against such claim only. The employment of any minor, known to be such, in violation of any provision of sections sixty to seventy-four, inclusive, or of section one hundred and four of chapter one hundred and forty-nine shall constitute serious and wilful misconduct under this section.

As used in this section the term “minor” shall include mentally retarded persons eighteen years of age or older unless:

(1) the employment takes place in a sheltered workshop which holds either a license from the department of developmental services or accreditation from the commission on accreditation of rehabilitation facilities; and

(2) a professional vocational specialist evaluates the employee at the employment site, for the specific job performed and such evaluation determines in writing that the employee is appropriate for and capable of such employment; and

(3) the employee has agreed in writing to the written rehabilitation plan or to an accurate verbal description of such written plan.

The division of administration shall keep statistical records on injuries that occur at sheltered workshops. If there appears to be a pattern of such injuries at a particular sheltered workshop, the office of claims administration shall notify the department of developmental services and such department shall take whatever action it deems appropriate.

Section 29 Required period of incapacitation; personnel actions

Section 29. No compensation pursuant to section thirty-four or thirty-five shall be paid for any injury which does not incapacitate the employee from earning full wages for a period of five or more calendar days. If incapacity extends for a period of twenty-one days or more, compensation shall be paid from the date of onset of incapacity. If incapacity extends for a period of at least five but less than twenty-one days, compensation shall be paid from the sixth day of incapacity. Except as otherwise provided in this chapter, no compensation shall be paid for any period for which any wages were earned. No mental or emotional disability arising principally out of a bona fide, personnel action including a transfer, promotion, demotion, or termination except such action which is the intentional infliction of emotional harm shall be deemed to be a personal injury within the meaning of this chapter.

Section 30 Adequate and reasonable health care services; preferred health care provider

Section 30. The insurer shall furnish to an injured employee adequate and reasonable health care services, and medicines if needed, together with the expenses necessarily incidental to such services, and in the case of an injured employee, a physical examination shall be given at least once a year while the employee is hospitalized. Except for the employee's first scheduled appointment, which, pursuant to the terms of a preferred provider arrangement entered into

under this section may be required to be with a health care provider within the plan, the employee may select a treating health care professional other than any provided or agreed to by the insurer and may switch to another such professional once. When referred by the treating health care professional to another provider in a particular specialty, the employee may also change once to a different provider in such specialty. In cases of emergency or where the insurer or administrative judge agrees, the employee may seek treatment from additional providers. Where services are provided to employees under this section, the reasonable and necessary cost of such services shall be paid by the insurer.

On or before July first, nineteen hundred and ninety-three, the commissioner shall promulgate regulations regarding the provision of adequate and reasonable health care services. In doing so, he shall utilize the treatment guidelines developed and endorsed under the provisions of section thirteen. Any provision of health care services in material compliance with such regulations shall be presumed to be adequate and reasonable. Any material departure from said regulations shall be presumed to be either an inadequate or unreasonable provision of health care services.

An employee receiving benefits from the Workers' Compensation Trust Fund may be required to choose a treating physician from a health maintenance organization which has been chosen by the fund. In any instance in which the fund requires such a choice of an employee, the fund shall pay all co-payments, deductibles, or other costs required by the health maintenance organization for necessary and reasonable medical and hospital services under this chapter.

In any case where an administrative judge, the reviewing board, the office of education and vocational rehabilitation or the health care services board is of the opinion that the fitting of an

employee eligible for compensation with an artificial eye or limb, or other mechanical appliance, will promote his restoration to or continue him in industry, it may be ordered that such employee be provided with such item, at the expense of the insurer. The provisions of this section shall be applicable so long as such services are necessary, notwithstanding the fact that maximum compensation under other sections of this chapter may have been received by the injured employee.

Any insurer may enter into a preferred provider arrangement in compliance with the requirements of chapter one hundred and seventy-six I of the General Laws and the regulations thereunder. Notwithstanding any other provision of this chapter, if an insurer enters into a preferred provider arrangement for health care services required under this chapter, those employees who are subject to the arrangement shall receive such care in the manner prescribed by the arrangement; provided, however, that a worker may receive immediate emergency treatment from a health care provider who is not a member of the managed care organization, and the insurer shall pay the reasonable and necessary costs of such treatment. Notwithstanding the provisions of this section, if an employee requests the services of a health care provider licensed or certified under the provisions of chapter one hundred and twelve and such specialty is not represented within the preferred provider organization with whom the employer has contracted, and the employee utilizes the services of such provider, the insurer or preferred provider organization shall pay the reasonable and necessary costs of such service. Said employee shall be allowed to choose any such health care provider.

Any insurer, with the written consent of the insured employer may, except as provided by the terms of a collective bargaining agreement, if any, approved under this chapter enter into a preferred provider arrangement for the employees of such employers in compliance with the

requirements of chapter one hundred and seventy-six I and the regulations thereunder. If an insurer enters into a preferred provider arrangement for health care services required under this chapter, those employees who are subject to the arrangement shall receive such care in the manner prescribed by the arrangement consistent with this section.

Notwithstanding the provisions of this section if an employee requests, for his first scheduled appointment, the services of a health care provider licensed or certified under the provisions of chapter one hundred twelve and the specialty of said health care provider is not represented within the preferred provider organization with which the employer has contracted, and the employee utilizes the services of such provider, the insurer or preferred provider organization shall pay the reasonable and necessary costs of such service as provided under this chapter. In no instance shall employees be required to make copayments or pay deductibles.

Section 30A Medical reports

Section 30A. Any medical report pertaining to an injury which appears to be compensable shall be furnished by the physician or other medical provider to the employee, the insurer, and the department within fourteen days of completion of the examination of the employee. Each failure to comply with such reporting requirement shall be punishable by a civil fine to be determined by the director of administration, of not less than twenty-five nor greater than one thousand dollars. A schedule of incremental increases relative to violations shall be determined by the commissioner.

Section 30B to 30D Repealed, 1986, 662, Sec. 28

Section 30E Development of voluntary agreements

Section 30E. It shall be the policy of the department to encourage and assist in the development of voluntary agreements between injured employees and insurers to provide and utilize vocational rehabilitation services when necessary to return such employees to suitable gainful employment. The department shall promulgate rules and regulations to implement such policy.

Section 30F Identification of cases in which vocational rehabilitation services may be required

Section 30F. The commissioner shall promulgate rules and regulations for the identification and reporting to the office of education and vocational rehabilitation of cases in which vocational rehabilitation services may be required.

The purpose of said rules and regulations shall be to facilitate the earliest possible identification of such cases.

Section 30G Meetings with injured employees requiring vocational rehabilitation services

Section 30G. The office of education and vocational rehabilitation shall contact and meet with each injured employee who it believes may require vocational rehabilitation services in order to return to suitable employment. Any such employee who refuses to meet with the office of education and vocational rehabilitation shall not be entitled to weekly compensation benefits during the period of such refusal. An insurer may reduce by fifteen percent the weekly benefits payable to any employee deemed suitable for vocational rehabilitation services by said office when such employee refuses such services, during the period of such refusal. No lump sum settlement shall be reached between an insurer and any employee who has been deemed

suitable for vocational rehabilitation services by the office of education and vocational rehabilitation who has not completed an appropriate rehabilitation program pursuant to this section thirty, without the express written consent of said office. Any employee aggrieved by a reduction in weekly benefits or the prohibition of a lump sum settlement under this section may file a claim for reinstatement of such benefits or removal of such prohibition; provided, however, that compensation shall not be reinstated nor the settlement allowed unless the claimant demonstrates that no vocational rehabilitation program of any kind would be appropriate for such claimant.

The commissioner shall provide by rule a procedure for promptly following up on such meeting by assisting an employee who needs rehabilitation services to obtain such services from the insurer, and shall monitor the progress of rehabilitation agreements and programs.

Section 30H Applications for vocational rehabilitation services

Section 30H. If the insurer and employee fail to agree to a vocational rehabilitation program, the employee may apply to the office of education and vocational rehabilitation for vocational rehabilitation services. The office shall determine if vocational rehabilitation is necessary and feasible to return the employee to suitable employment. Such determination by the office shall be final and not subject to review by the board or reviewing board, but may be appealed to the commissioner. If the office determines that vocational rehabilitation is necessary and feasible, it shall promptly develop, after such consultation as it judges reasonable with the employee and the insurer, an appropriate program of no greater that one hundred and four weeks for the employee. It shall inform the insurer and the employee of its determination and of the program

developed. The insurer shall have ten days in which to review such determination and program. If the insurer refuses to provide the vocational rehabilitation program developed by the office, the office shall provide it to the employee with trust fund money pursuant to section sixty-five. The commissioner shall provide by rule for efficient procedures and quality controls in the office's management of such programs, which may be carried out under contract by private rehabilitation service providers. If, upon the completion of the program, the office determines that the program was successful and returned the employee to suitable employment, it shall assess the insurer no less than twice the cost incurred by the office and such assessment shall be paid into said trust fund. The insurer may contest any aspect of the assessment by filing a complaint with the division of dispute resolution. The injured employee shall not be a party to such proceedings.

A public employer or public employer self-insurance group which has filed a notice of non-participation according to the provisions of section sixty-five, and which has appealed the determination of the office to the commissioner as specified above shall be bound by the decision of the commissioner and, if required by such decision, shall provide the vocational rehabilitation program developed by the office. Such decision shall be enforceable in the same manner as an order pursuant to section twelve.

Section 30I Availability of new jobs and job training programs

Section 30I. The department shall assist and cooperate with the department of unemployment assistance, the United States Department of Labor, and any other appropriate state or federal agency, in attempting to make available to disabled employees eligible to receive compensation benefits, new jobs and job training programs, including, but not limited to, those conducted

under the job training partnership act of nineteen hundred and eighty-two and successor programs. The department of unemployment assistance shall assist in such efforts.

Section 31 Death; compensation for dependents; hearings

Section 31. If death results from the injury, the insurer shall pay the following dependents of the employee, including his or her children by a former spouse, wholly dependent upon his or her earnings for support at the time of his or her injury, or at the time of his or her death, compensation as follows, payable, except as hereinafter provided, in the manner set forth in section thirty-two.

To the widow or widower, so long as he or she remains unmarried, a weekly compensation equal to two-thirds of the average weekly wages of the deceased employee, but not more than the average weekly wage in the commonwealth, as determined according to the provisions of subsection (a) of section twenty-nine of chapter one hundred and fifty-one A, and promulgated by the deputy director of unemployment assistance on or before October first preceding the deceased employee's injury or death; provided, however, that in no instance shall said widow or widower, receive less than one hundred and ten dollars per week, to the widow or widower six dollars more a week for each child of the deceased employee under the age of eighteen or over said age and physically or mentally incapacitated from earning, or over said age and a full time student qualified for exemption as a dependent under section one hundred and fifty-one (e) of the Internal Revenue Code, except that no additional compensation for the benefits of the children of the employee shall be payable when combined with the compensation due the spouse of the deceased employee as hereinbefore provided in this section would allow the widow or widower an amount in excess of one hundred and fifty dollars per week; provided that in case any child of the deceased employee is a child by a former wife or husband, the

death benefit shall be divided between the surviving wife or husband and all dependent children of the deceased employee in equal shares, the surviving wife or husband taking the same share as a child. If the widow or widower dies or if there is no surviving wife or husband of the deceased employee, such amount or amounts as would have been payable to or for his or her own use and for the benefit of all children of the employee shall be paid in equal shares to all the surviving children of the employee.

If the widow or widower remarries, all payments under the foregoing provisions shall terminate and the insurer shall pay each week to each of such children sixty dollars but in no event shall the payments exceed the amount which would have been payable to the surviving spouse.

The total payments due under this section shall not be more than the average weekly wage in effect in the commonwealth at the time of the injury as determined according to the provisions of subsection (a) of section twenty-nine of chapter one hundred and fifty-one A, and promulgated by the deputy director of unemployment assistance on or before the October first prior to the date of the injury multiplied by two hundred and fifty plus any costs of living increases provided by this section except that payment to or for the benefit of children of the deceased employee under the age of eighteen shall not be discontinued prior to the age of eighteen, and except that after a dependent unremarried widow or widower or physically or mentally incapacitated child over the age of eighteen has received the maximum payments, he or she shall continue to receive further payments but only during such periods as he or she is in fact not fully self-supporting. Either party may request hearings at reasonable intervals before a board member on the question of granting such payments, or on the question of restoration of such payments or on the question of discontinuance of such payments. A member of the board may set a case for hearing on his or her initiative, after due notice to both parties.

In all other cases of total dependency, the insurer shall pay each person, wholly dependent upon the earnings of the deceased employee, for support at the time of the injury, or at the time of the employee's death a weekly payment equal to the weekly amount of that support but not more than two-thirds of the average weekly wage of the deceased employee or more than eighty dollars a week; provided, however, that if there is more than one such dependent, the total amount payable shall not exceed the weekly amount which is, or would be payable to a surviving spouse of the deceased employee. If at the time of the employee's injury or death the deceased employee leaves dependents only partially dependent upon the deceased employee's earnings or dependent's next of kin to whom the deceased has made contributions for support, independent of gifts and gratuities, the insurer shall pay such dependents a weekly compensation equal to the amount that they received from the deceased employee but individually or in combination, no more than would be paid to a surviving spouse.

When weekly payments have been made to an injured employee before the employee's death, compensation under this section to dependents shall begin from the date of death of the employee.

Section 32 Persons presumed dependent on employee; division of benefits and payments for children of former marriage; parent surviving dependent parent; dependency determined by facts; division of benefits

Section 32. The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employee:

(a) A wife upon a husband with whom she lives at the time of his death, or from whom, at the time of his death, the department shall find the wife was living apart for justifiable cause or because he had deserted her. The findings of the department upon the questions of such justifiable cause and desertion shall be final.

(b) A husband upon a wife with whom he lives at the time of her death.

(c) Children under the age of eighteen years (or over said age, if physically or mentally incapacitated from earning) upon the parent with whom they are living at the time of the death of such parent, there being no surviving dependent parent; provided, that in case of the death of an employee who has at the time of his death living children by a former wife or husband, under the age of eighteen years (or over said age, if physically or mentally incapacitated from earning), said children shall be conclusively presumed to be wholly dependent for support upon such deceased employee, and the death benefit shall be divided between the surviving wife or husband and all the children of the deceased employee in equal shares, the surviving wife or husband taking the same share as a child. The total sum due the surviving wife or husband and her or his own children shall be paid directly to the wife or husband for her or his own use and for the benefit of her or his own children, and the sums due to the children by the former wife or husband of the deceased employee shall be paid to their guardians or legal representatives for the benefit of such children. Children, within the meaning of this paragraph, shall also include any children of the deceased employee conceived but not born at the time of the employee's injury, and the compensation provided for by this chapter on account of any such children shall be payable from the date of their birth.

(d) Children under the age of eighteen years (or over said age but physically or mentally incapacitated from earning) upon a parent who was at the time of his death legally bound or ordered by law, decree or order of court or other lawful requirement to support such children although living apart from such child or children. Children, within the meaning of this paragraph, shall also include any children of the deceased employee conceived but not born at the time of the employee's injury, and the compensation provided for by this chapter on account of any such children shall be payable from the date of their birth.

(e) A parent upon an unmarried child under the age of eighteen years; provided, that such child was living with the parent at the time of the injury resulting in death.

If a parent determined to be dependent for support in whole or in part on a child shall die, leaving the other parent surviving, the surviving parent shall succeed to the rights to compensation of the deceased parent, if such child was living with such surviving parent at the time of the injury resulting in the death of such child.

In all other cases questions of dependency, in whole or in part, shall be determined in accordance with the fact as the fact may be at the time of the injury, or at the time of his death; and in such other cases, if there is more than one person wholly dependent the death benefit shall be divided equally among them, and persons partly dependent, if any, shall receive no part thereof, and if there is no one wholly dependent and more than one person partly dependent, the death benefit shall be divided among them according to the relative extent of their dependency.

Section 33 Burial expenses

[Text of section effective until March 24, 2015. For text effective March 24, 2015, see below.]

Section 33. In all cases, the insurer shall pay the reasonable expenses of burial, not exceeding four thousand dollars.

Chapter 152: Section 33. Burial expenses

[Text of section as amended by 2014, 144, Sec. 71 effective March 24, 2015. See 2014, 144, Sec. 81. For text effective until March 24, 2015, see above.]

Section 33. In all cases, the insurer shall pay the reasonable expenses of burial, not exceeding 8 times the average weekly wage in the commonwealth as determined pursuant to subsection (a) of section 29 of chapter 151A.

Section 34 Total incapacity; compensation

Section 34. While the incapacity for work resulting from the injury is total, during each week of incapacity the insurer shall pay the injured employee compensation equal to sixty percent of his or her average weekly wage before the injury, but not more than the maximum weekly compensation rate, unless the average weekly wage of the employee is less than the minimum weekly compensation rate, in which case said weekly compensation shall be equal to his average weekly wage.

The total number of weeks of compensation due the employee under this section shall not exceed one hundred fifty-six.

Section 34A Permanent and total incapacity; compensation

Section 34A. While the incapacity for work resulting from the injury is both permanent and total, the insurer shall pay to the injured employee, following payment of compensation provided in sections thirty-four and thirty-five, a weekly compensation equal to two-thirds of his average weekly wage before the injury, but not more than the maximum weekly compensation rate nor less than the minimum weekly compensation rate.

Section 34B Review date; supplemental benefits to Sec. 31 or 34A

Section 34B. October first of each year shall be the review date for the purposes of this section.

Any person receiving or entitled to receive benefits under the provisions of section thirty-one or section thirty-four A whose benefits are based on a date of personal injury at least twenty-four months prior to the review date shall have his weekly benefit adjusted, without application, in accordance with the following provisions; provided, however, that no increase in benefits shall be payable which would reduce any benefits the recipient is receiving pursuant to federal social security law.

(a) The director of administration shall determine the percentage change between the average weekly wage in the commonwealth on the date of the injury and the average weekly wage in the commonwealth on the review date. For purposes of this section, no increase in the average weekly wage in the commonwealth shall exceed the lesser of the following: (i) the percentage

change in the most recent annual consumer price index calculated by the Bureau of Labor Statistics of the United States Department of Labor for the northeast region for all urban consumers; (ii) five percent.

(b) The death benefit under section thirty-one or the permanent and total disability benefit under section thirty-four A that was being paid prior to any adjustments under this section shall be the base benefit. The base benefit shall be changed on each review date by the percentage change as calculated in paragraph (a); the resulting amount shall be termed the adjusted benefit and is the amount of benefit to be paid on and after the review date. If the adjusted benefit is larger than the base benefit, the difference shall be termed the supplemental benefit. In no instance shall the adjusted benefit under this section be greater than three times the base benefit.

(c) The supplemental benefits under this section shall be paid by the insurer concurrent with the base benefit. Insurers shall be entitled to quarterly reimbursements for supplemental benefits, pursuant to section sixty-five, for cases involving injuries that occurred on or before October first, nineteen hundred and eighty-six, and for those cases occurring thereafter, to the extent such supplemental benefits are due to the increase of greater than five percent in the average weekly wage in the commonwealth in any single year. No self-insurer, self-insurance group or municipality that has chosen non-participation in the assessment provisions for funding such reimbursements pursuant to section sixty-five shall be entitled to such reimbursements.

Section 35 Partial incapacity; compensation

Section 35. While the incapacity for work resulting from the injury is partial, during each week of incapacity the insurer shall pay the injured employee a weekly compensation equal to sixty percent of the difference between his or her average weekly wage before the injury and the weekly wage he or she is capable of earning after the injury, but not more than seventy-five percent of what such employee would receive if he or she were eligible for total incapacity benefits under section thirty-four. An insurer may reduce the amount paid to an employee under this section to the amount at which the employee's combined weekly earnings and benefits are equal to two times the average weekly wage in the commonwealth at the time of such reduction.

The total number of weeks of compensation due the employee under this section shall not exceed two hundred sixty; provided, however, that this number may be extended to five hundred twenty if an insurer agrees or an administrative judge finds that the employee has, as a result of a personal injury under this chapter, suffered a permanent loss of seventy-five percent or more of any bodily function or sense specified in paragraph (a), (b), (e), (f), (g), or (h) of subsection (1) of section thirty-six, developed a permanently life-threatening physical condition, or contracted a permanently disabling occupational disease which is of a physical nature and cause. Where applicable, losses under this section shall be determined in accordance with standards set forth in the American Medical Association Guides to the Evaluation of Permanent Impairments. Where the insurer agrees or the administrative judge finds such permanent partial disability as is described in this paragraph, the total number of weeks the employee may receive benefits under both this section and section thirty-four shall not exceed five hundred twenty. Where there has been no such agreement or finding the number of weeks the employee may receive benefits under these sections shall not exceed three hundred sixty-four.

Section 35A Added compensation for dependents; payment; presumed dependents; dependency determined by facts

Section 35A. Where the injured employee has persons conclusively presumed to be dependent upon him or in fact so dependent, the sum of six dollars shall be added to the weekly compensation payable under sections thirty-four, thirty-four A and thirty-five, for each person wholly dependent on the employee, but in no case shall the aggregate of such amounts exceed the average weekly wages of the employee. No weekly payment to the employee under this section shall allow the employee to receive an amount in excess of one hundred and fifty dollars per week when combined with the compensation due under sections thirty-four, thirty-five and thirty-four A. For the purposes of this section the following persons shall be conclusively presumed to be wholly dependent for support upon an employee:

(a) A wife upon a husband with whom she lives at the time of his injury.

(b) A husband upon a wife with whom he is living at the time of her injury.

(c) Children under the age of eighteen years, or over said age but physically or mentally incapacitated from earning, if living with the employee at the time of his injury, or, if the employee is bound or ordered by law, decree or order of court, or by any other lawful requirement, to support such children, although living apart from them, or over said age and a full-time student qualified for exemption as a dependent under section one hundred and fifty-one (e) of the Internal Revenue Code. Children within the meaning of this paragraph, shall also include any children of the injured employee conceived but not born at the time of the

employee's injury, and the compensation herein provided for shall be payable on account of any such children from the date of their birth.

(d) A parent upon an unmarried child under the age of eighteen. In all other cases questions of dependency shall be determined in accordance with the fact as the fact may be at the time of the injury.

An administrative judge or the reviewing board may in his or its discretion order the insurer or self-insurer to make payment of the six dollars aforesaid directly to the dependent.

Section 35B Return to work; subsequent injury; rate of compensation

Section 35B. An employee who has been receiving compensation under this chapter and who has returned to work for a period of not less than two months shall, if he is subsequently injured and receives compensation, be paid such compensation at the rate in effect at the time of the subsequent injury whether or not such subsequent injury is determined to be a recurrence of the former injury; provided, that if compensation for the old injury was paid in a lump sum, he shall not receive compensation unless the subsequent claim is determined to be a new injury.

Section 35C Date of eligibility; benefits applicable; adjustments

Section 35C. When there is a difference of five years or more between the date of injury and the initial date on which the injured worker or his survivor first became eligible for benefits under section thirty-one, thirty-four, thirty-four A, or section thirty-five, the applicable benefits shall be those in effect on the first date of eligibility for benefits.

For purposes of adjustments to compensation under sections thirty-four B and thirty-five F for employees subject to this section, the first date of eligibility for benefits rather than the date of injury shall be used for purposes of computing such supplemental benefits.

Section 35D Computation of weekly wage

Section 35D. For purposes of sections thirty-four, thirty-four A and thirty-five, the weekly wage the employee is capable of earning, if any, after the injury, shall be the greatest of the following:—

(1) The actual earnings of the employee during each week.

(2) The earnings that the employee is capable of earning in the job the employee held at the time of injury, provided, however, that such job has been made available to the employee and he is capable of performing it. The employee's receipt of a written offer of his former job from the employer, together with a written report from the treating physician that the employee is capable of performing such job shall be prima facie evidence of an earnings capability under this clause.

(3) The earnings the employee is capable of earning in a particular suitable job; provided, however, that such job has been made available to the employee and he is capable of performing it. The employee's receipt of a written report that a specific suitable job is available to him together with a written report from the treating physician that the employee is capable of performing such job shall be prima facie evidence of an earnings capability under this clause.

(4) The earnings that the employee is capable of earning.

(5) Implementation of this section is subject to the procedures contained in section eight. For purposes of this chapter, a suitable job or employment shall be any job that the employee is physically and mentally capable of performing, including light work, considering the nature and severity of the employee's injury, so long as such job bears a reasonable relationship to the employee's work experience, education, or training, either before or after the employee's injury. The fact that an employee has enrolled or is participating in a vocational rehabilitation program paid for by the insurer or the department shall not be used to support the contention that the employee's compensation rate should be decreased in any proceeding under this chapter.

Section 35E Persons eligible for old age benefits or pension; entitlement to benefits under Sec. 34 or 35

Section 35E. Any employee who is at least sixty-five years of age and has been out of the labor force for a period of at least two years and is eligible for old age benefits pursuant to the federal social security act or eligible for benefits from a public or private pension which is paid in part or entirely by an employer shall not be entitled to benefits under sections thirty-four or thirty-five unless such employee can establish that but for the injury, he or she would have remained active in the labor market. The presumption of non-entitlement to benefits created by this section shall not be overcome by the employee's uncorroborated testimony, or that corroborated only by any of his family members, that but for the injury, such employee would have remained active in the labor market. Claims for compensation, or complaint for modification, or discontinuance of benefits based on this section shall not be filed more often than once every twelve months.

Section 35F Repealed, 1991, 398, Sec. 67

Section 36 Specific injuries

Section 36. (1) In addition to all other compensation to the employee shall be paid the sums hereafter designated for the following specific injuries; provided, however, that the employee has not died from any cause within thirty days of such injury:

(a) For the loss by enucleation or otherwise or the total loss of use of one eye, or for injury to one eye which produces an inability which is not correctible to use both eyes together for single binocular vision, or the reduction to twenty-seventieths of normal vision in one eye, with glasses, a sum equal to the average weekly wage in the commonwealth at the date of the injury multiplied by thirty-nine.

(b) For the loss by enucleation or otherwise, or the total loss of use of both eyes, or the reduction to twenty-seventieths of normal vision in both eyes, with glasses, a sum equal to the average weekly wage in the commonwealth at the date of the injury multiplied by ninety-six.

(c) For any correctible permanent but partial reduction in either the acuity or field of vision of one or both eyes, such sum in proportion to the amount applicable in the event of total loss, total loss of use, or the reduction to twenty-seventieths of normal vision of one or both eyes as the correctible partial reduction bears to such total loss, total loss of use or reduction to twenty-seventieths of normal vision; provided that, for any permanent but partial reduction in either acuity or field of vision of either eye which requires the use of corrective device, such as glasses or contact lens, to produce normal vision, a sum equal to the average weekly wage in the commonwealth at the date of the injury multiplied by seven.

(d) For the loss of hearing of one ear, a sum equal to the average weekly wage in the commonwealth at the date of the injury multiplied by twenty-nine; for the loss of hearing of both ears, a sum equal to the average weekly wage in the commonwealth at the date of the injury multiplied by seventy-seven.

(e) For the amputation or permanent, total loss of use of the major arm, a sum equal to the average weekly wage in the commonwealth at the date of the injury multiplied by forty-three; for the amputation or permanent total loss of use of the minor arm, a sum equal to the average weekly wage in the commonwealth at the date of the injury multiplied by thirty-nine; for the amputation or permanent total loss of use of both arms, a sum equal to the average weekly wage in the commonwealth at the date of the injury multiplied by ninety-six.

(f) For the amputation or permanent, total loss of use of the major hand at the wrist, a sum equal to the average weekly wage in the commonwealth at the date of the injury multiplied by thirty-four; for the amputation or permanent, total loss of use of the minor hand at the wrist, a sum equal to the average weekly wage in the commonwealth at the date of injury multiplied by twenty-nine; for the amputation or permanent, total loss of use of both hands at the wrist, a sum equal to the average weekly wage in the commonwealth at the date of injury multiplied by seventy-seven.

(g) For the amputation or permanent, total loss of use of either leg, a sum equal to the average weekly wage in the commonwealth at the date of the injury multiplied by thirty-nine; for the amputation or permanent, total loss of use of both legs, a sum equal to the average weekly wage in the commonwealth on the date of injury multiplied by ninety-six.

(h) For the amputation or permanent, total loss of use of either foot at any point above the ankle joint, a sum equal to the average weekly wage in the commonwealth at the date of injury multiplied by twenty-nine; for the amputation or permanent, total loss of use of both feet at any point above the ankle joints, a sum equal to the average weekly wage in the commonwealth at the date of injury multiplied by sixty-eight.

(i) For any permanent but partial loss of use of a member, whether leg, foot, arm, or hand, such sum in proportion to the amount applicable in the event of amputation or permanent, total loss of use of said member as the said partial loss bears to the total loss of use of said member.

(j) For each loss of bodily function or sense, other than those specified in preceding paragraphs of this section, the amount which, according to the determination of the member or reviewing board, is a proper and equitable compensation, not to exceed the average weekly wage in the commonwealth at the date of injury multiplied by thirty-two; provided, however, that the total amount payable under this paragraph shall not exceed the average weekly wage in the commonwealth at the date of injury multiplied by eighty.

(k) For bodily disfigurement, an amount which, according to the determination of the member or reviewing board, is a proper and equitable compensation, not to exceed fifteen thousand dollars; which sum shall be payable in addition to all other sums due under this section. No amount shall be payable under this section for disfigurement that is purely scar-based, unless such disfigurement is on the face, neck or hands.

(2) Where applicable, losses under this section shall be determined in accordance with standards set forth in the American Medical Association Guides to the Evaluation of Permanent

Impairments. Nothing in this section shall adversely affect the employee's rights to any compensation which is or may become due under the provisions of any other section.

Section 36A Death before full payment of compensation for specified injuries; brain damage

Section 36A. In the event that an injured employee who has become entitled to compensation under section thirty-six dies before fully collecting the said compensation, the balance remaining shall become due and payable in a lump sum to his dependents, or if none, to his surviving issue, or if no surviving issue, then to surviving parents, or if no surviving parents then to surviving brothers and sisters. If there are none of the persons described in the preceding sentence remaining to receive such compensation, then the balance of compensation remaining at the death of the employee shall be paid into the special fund in the custody of the state treasurer established under section sixty-five, to be used for the purposes and in the manner prescribed in said section sixty-five.

Where any specified loss, losses or disfigurement under section thirty-six is a result of an injury involving brain damage, payment in total under that section for the sum of such loss, losses or disfigurement resulting from said brain damage shall not exceed an amount equal to the average weekly wage in the commonwealth at the date of injury multiplied by one hundred and five. In no event shall payments be made under this section to any employee where the death of such employee occurs within forty-five days of the injury.

Section 36B Unemployment compensation benefits; eligibility

Section 36B. (1) No benefits shall be payable under section thirty-four or section thirty-four A for any week in which the employee has received or is receiving unemployment compensation benefits.

(2) Any employee claiming or receiving benefits under section thirty-five who may be entitled to unemployment compensation benefits shall upon written request from the insurer apply for such benefits. Failure to do so within sixty days after written request shall constitute grounds for suspension of benefits under said section thirty-five. Any unemployment compensation benefits received shall be credited against partial disability benefits payable for the same time period, or, if for a period of time for which partial disability benefits have already been paid, shall be credited against any future partial disability benefits which are or may become payable.

Section 37 Compensation for disability subsequent to physical impairment; reimbursement

Section 37. Whenever an employee who has a known physical impairment which is due to any previous accident, disease or any congenital condition and is, or is likely to be, a hindrance or obstacle to his employment, and who, in the course of and arising out of his employment, receives a personal injury for which compensation is required by this chapter and which results in a disability that is substantially greater by reason of the combined effects of such impairment and subsequent personal injury than that disability which would have resulted from the subsequent personal injury alone, the insurer or self-insurer shall pay all compensation provided by this chapter. If said subsequent injury is caused by the preexisting impairment or if

said subsequent personal injury of such an employee shall result in the death of the employee, and it shall be determined that the death would not have occurred except for such pre-existing physical impairment, the insurer shall pay all compensation provided by this chapter.

Insurers making payments under this section shall be reimbursed by the state treasurer from the trust fund created by section sixty-five in an amount not to exceed seventy-five percent of all compensation due under sections thirty-one, thirty-two, thirty-three, thirty-four A, thirty-six A, and, where benefits are due under any of such sections, section thirty; provided, however, that the insurer is not a self-insurer, a group self-insurer or municipality that has chosen not to be subject to the assessments which fund said reimbursements; and, provided, further, that no reimbursement shall be made for any amounts paid during the first one hundred and four weeks from the onset of disability or death.

There shall be no reimbursement under this section unless the employer had personal knowledge of the existence of such pre-existing physical impairment within thirty days of the date of employment or retention of the employee by such employer from either a physical examination, employment application questionnaire, or statement from the employee. Proof of the pre-existence of such impairment shall be established only by the production of medical records existing prior to the date of employment or retention in employment of the employee. Nothing in this paragraph shall be construed to allow employers to compel an employee or job applicant to disclose any information regarding physical impairments in violation of any applicable law.

The office of legal counsel shall in all instances have the authority to defend claims against the fund. Such office shall have the right to contest any amount accredited to the above named

sections which has been redeemed by an insurer by payment of a lump sum settlement pursuant to section forty-eight, but reimbursement shall not require the approval of the lump sum by said office or by the state treasurer. No reimbursement shall be made for payments due during the first one hundred and four weeks from the date of onset of disability or death, whether paid under an agreement, decision, or lump sum settlement. Any petition for reimbursement under this section shall be filed no later than two years from the date on which the benefit payment for which the reimbursement request is being filed was made.

Section 37A Compensation for disabled war veteran; reimbursement

Section 37A. Any employee who is a war veteran and disabled as the result of his military or naval service and has been certified as such by the United States Veterans Administration and who, in the course of and arising out of his employment, receives a personal injury which is aggravated or prolonged by such disability for which he is receiving compensation from said administration, shall receive the compensation provided by this chapter, or said compensation shall be paid to his dependents, if death results from the injury. Such compensation shall be paid by the insurer or self-insurer, who shall be reimbursed, in an amount not to exceed fifty per cent thereof for any period up to one hundred and four weeks and thereafter in an amount not to exceed one hundred per cent, by the state treasurer from the fund created by section sixty-five. In the event that said fund becomes exhausted, the state treasurer shall make such payments from the general fund without appropriation.

Section 38 Consideration of employee's savings, insurance and other benefits

Section 38. Except as expressly provided elsewhere in this chapter, no savings or insurance of the injured employee independent of this chapter shall be considered in determining compensation payable thereunder, nor shall benefits derived from any other source than the insurer be considered in such determination.

Section 39 Payment of compensation payable in case of death; payment of expenses and for legal services

Section 39. The compensation payable in case of the death of the injured employee shall be paid to his legal representative; or, if he has no legal representative, to his dependents; or, if he leaves no dependents, to the persons to whom payment of the expenses for the last sickness and burial is due. If payment is made to the legal representative of the deceased employee, it shall be paid by him to the dependents or other persons entitled thereto under this chapter. When the appointment of a legal representative of a deceased employee or dependent, or the appointment of a guardian or conservator of an employee or dependent who is a minor or is otherwise legally incapacitated, is required to comply with this chapter, the insurer shall furnish or pay for legal services rendered in connection with the appointment of such legal representative, guardian or conservator or in connection with his duties, and shall pay the necessary disbursements for such appointment, the necessary expenses of such legal representative, guardian or conservator, and reasonable compensation to him for time necessarily spent in complying therewith. Said payments shall be in addition to sums paid for compensation.

Section 40 Guardian or next friend exercising employee's rights

Section 40. If an injured employee is mentally incompetent or is a minor when any right or privilege accrues to him, his guardian or next friend may in his behalf claim and exercise such right or privilege.

Section 41 Notice of proceedings for compensation; limitation of actions

Section 41. No proceedings for compensation payable under this chapter shall be maintained unless a notice thereof shall have been given to the insurer or insured as soon as practicable after the happening thereof, and unless any claim for compensation due with respect to such injury is filed within four years from the date the employee first became aware of the causal relationship between his disability and his employment. In the event of death, no claim shall be made later than four years after the death. Where an action against a third person, as provided

by section fifteen, is discontinued, no claim for compensation shall be made later than sixty days after such discontinuance.

The payment of compensation for any injury pursuant to this chapter or the filing of a claim for compensation as provided in this chapter shall toll the statute of limitations for any benefits due pursuant to this chapter for such injury.

Section 41A Repealed, 1985, 572, Sec. 51

Section 42 Notice in general

Section 42. The said notice shall be in writing, and shall state in ordinary language the time, place and cause of the injury, and shall be signed by the person injured, or, in case of his death, by his legal representative, or by a person to whom payments may be due under this chapter, or by a person in behalf of any one of them. Any form of written communication signed by a person who may give the notice as above provided, containing the information that the person has been so injured, giving the time, place and cause of the injury, shall be considered a sufficient notice.

Section 43 Service of notice

Section 43. The notice shall be served upon the insurer or an officer or agent thereof, or upon the insured, or upon one insured person if there is more than one, or upon any officer or agent of a corporation if the insured is a corporation, by delivering it to the person on whom it is to be served, or leaving it at his residence or place of business, or by sending it by registered mail addressed to the person on whom it is to be served, at his last known residence or place of business.

Section 44 Inaccuracies in, and want of, notice

Section 44. Such notice shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place or cause of the injury unless it is shown that it was the intention to mislead and that the insurer was in fact misled thereby. Want of notice shall not bar proceedings, if it be shown that the insurer, insured or agent had knowledge of the injury, or if it is found that the insurer was not prejudiced by such want of notice.

Section 45 Examination by physician; filing copy of report; refusing or obstructing examination; reimbursement of travel expenses and wages

Section 45. After an employee has received an injury, and from time to time thereafter during the continuance of his disability he shall, if requested by the insurer or insured, submit to an examination by a registered physician, furnished and paid for by the insurer or the insured. The employee may have a physician provided and paid for by himself present at the examination. If a physician provided by the employee is not present at the examination, it shall be the duty of the insurer to file with the division a copy of the report of its examining physician or physicians if and when such report is to be used as the basis of any order by the division. If the employee refuses to submit to the examination or in any way obstructs it, his right to compensation shall be suspended, and his compensation during the period of suspension may be forfeited. The employee's right to compensation shall also be suspended during any period the employee refuses the insurer's written request that the employee be evaluated by a vocational rehabilitation specialist within the department. This written request may occur only once every six months.

If the injured employee, at the request of the insurer or the division undergoes medical examination or treatment such employee shall be reimbursed by the insurer for reasonable travel expense incidental thereto and for any loss of wages as a result thereof in like manner as

though he were disabled under the provisions of this chapter. Such payments shall not be construed as an admission of liability by the insurer in those cases where the liability has not been assumed by it. If the amount of such reimbursement is not agreed upon by the parties, it may be determined by a hearing as provided under section twelve.

Section 46 Waiver of rights to compensation; arbitration

Section 46. No agreement by any employee to waive his right to compensation shall be valid. Nothing in this section shall be deemed to prohibit the parties from entering into an agreement to submit to binding arbitration pursuant to the provisions of section ten as an exclusive alternative to proceedings within the division of dispute resolution.

Section 46A Reimbursement for accident and health insurance benefits paid on compensable injuries; lien of insurers, et al., against award; child support claims

Section 46A. If medical, dental, hospital or lost time weekly benefits have been paid or furnished under any group or nongroup policy of accident and health insurance or certificate providing for hospital, medical or dental service benefits of any hospital, medical or dental service corporation which excludes the obligation for which the employer or his insurer may be held liable under any workers' compensation law, with respect to a claim which is subsequently found to be compensable under this chapter, or an insurer or self-insurer subsequently makes payment with respect to such disability pursuant to this chapter, the accident and health insurer which issued said policy or the hospital, medical or dental service corporation which issued said hospital, medical or dental service benefit certificate of the employer may, at any time before an award of workers' compensation benefits or approval of a lump sum settlement is paid, file with the department a claim for reimbursement out of the proceeds of such award

or lump-sum settlement. If cash assistance, relief or support, or medical assistance is paid to or on behalf of an employee or a dependent of an employee by the department of transitional assistance under chapter eighteen, chapter one hundred and seventeen, chapter one hundred and eighteen, or the division of medical assistance under chapter one hundred and eighteen E, with respect to a claim which is subsequently found to be compensable under this chapter, the department of transitional assistance and the division of medical assistance may, at any time before an award of workers' compensation benefits or approval of a lump sum settlement is paid, file with the division a claim for reimbursement out of the proceeds of such award or lump sum settlement. In those instances in which such a claim is filed, said accident and health insurer or hospital, medical or dental service corporation, the department of transitional assistance, the division of medical assistance or employer shall have a lien against the award, or lump sum, and upon satisfactory proof, the division or a member thereof shall order direct payment of the reimbursement to be made from such award or lump sum to the employer, health or accident insurer, hospital, medical or dental service corporations, the department of transitional assistance or the division of medical assistance who paid or furnished such benefits.

If an employee owes past-due child support that is subject to a lien pursuant to section six of chapter one hundred and nineteen A, the IV-D agency may, at any time before an award of worker's compensation benefits is paid or approval of a lump sum benefit is given or any other nonperiodic compensation is made pursuant to this chapter, file with the division a claim for past-due child support out of the proceeds of such award or lump sum settlement or other nonperiodic compensation. In those instances in which a claim is filed and upon satisfactory proof, the division or a member thereof shall order direct payment of the past-due child support to be made from such award or lump sum or other nonperiodic compensation to the IV-D agency on behalf of the obligee to whom past-due support is owed. Such direct payment

shall be made before payment of any claim of the department of transitional assistance and any claim of the division of medical assistance. The provisions of sections 6 and 17 of chapter 119A shall constitute the sole remedy for an employee to contest a lien for past due child support.

When a lump sum settlement or award is proposed or any other nonperiodic compensation is made or proposed pursuant to this chapter and the employee and the lienholder are unable to agree on a fair and reasonable amount to discharge a lien or claim filed pursuant to this section against the lump sum settlement or award provisions of this section or against any other nonperiodic compensation pursuant to this chapter, the reviewing board shall have the right to determine the fair and reasonable amount to be paid out of the lump sum settlement, award or other nonperiodic compensation to discharge the lien; provided, however, that in determining what amount is fair and reasonable, the reviewing board shall give primary consideration to the interests of the children of the employee in receiving past due child support and the public policy of the commonwealth that children shall be maintained, as completely as possible, from the resources of their parents, as provided in section 1 of chapter 119A; and, provided further, that if after payment of any attorneys' fees and any claim of the IV-D agency, the remaining amount of the award or lump sum or other nonperiodic compensation is insufficient to satisfy in full any competing claim of the department of transitional assistance and the division of medical assistance, the department and the division each shall be entitled to its respective pro rata share of such award or lump sum or other nonperiodic compensation. Upon the payment of such sums as found by the reviewing board to be fair and reasonable, the lien or claim against the award, lump sum or other nonperiodic compensation shall be discharged. In no event shall the reimbursement exceed the amount of the award or lump sum or other nonperiodic compensation.

Section 47 Assignments; attachments; liability for debts

[Text of section effective until July 1, 2013. For text effective July 1, 2013, see below.]

Section 47. No payment shall be assignable or subject to attachment or be liable in any way for debts, except to a veteran's agent or the commissioner of veterans' services as and to the extent permitted by section five of chapter one hundred and fifteen and except as permitted to the department of public welfare under chapters eighteen, one hundred and seventeen, one hundred and eighteen, and the division of medical assistance under one hundred and eighteen E, and except to an obligee of support payments who is entitled to receive such payments pursuant to a support order under chapter two hundred and eight, two hundred and nine, two hundred and nine C, two hundred and seventy-three or two hundred and nine D. The division shall permit a veteran's agent, the commissioner of veteran's services, the department of public welfare and the division of medical assistance to inspect the records of the division to ascertain the existence of a claim for personal injuries filed with the division by any employee under this chapter and the existence of any assignment, attachment, or liability for debts permitted under the provisions of this section. This section shall prevail over sections 9-405 and 9-407 of chapter 106 to the extent, if any, that such sections might otherwise apply.

Chapter 152: Section 47. Assignments; attachments; liability for debts

[Text of section as amended by 2013, 30, Sec. 82 effective July 1, 2013 applicable as provided by 2013, 30, Sec. 116. For text effective until July 1, 2013, see above.]

Section 47. No payment shall be assignable or subject to attachment or be liable in any way for debts, except to a veteran's agent or the commissioner of veterans' services as and to the extent permitted by section five of chapter one hundred and fifteen and except as permitted to the department of public welfare under chapters eighteen, one hundred and seventeen, one hundred and eighteen, and the division of medical assistance under one hundred and eighteen E, and except to an obligee of support payments who is entitled to receive such payments pursuant to a support order under chapter two hundred and eight, two hundred and nine, two hundred and nine C, two hundred and seventy-three or two hundred and nine D. The division shall permit a veteran's agent, the commissioner of veteran's services, the department of public welfare and the division of medical assistance to inspect the records of the division to ascertain the existence of a claim for personal injuries filed with the division by any employee under this chapter and the existence of any assignment, attachment, or liability for debts permitted under the provisions of this section. This section shall prevail over sections 9-406 and 9-408 of chapter 106 to the extent, if any, that such sections might otherwise apply.

Section 48 Lump sum agreements

Section 48. (1) Under the conditions and limitations specified in this chapter, the insurer and employee may, with the written consent of the employer if such employer is an experience modified insured, by an agreement pursuant to section nineteen, redeem any liability for compensation, in whole or in part, by the payment by the insurer of a lump sum amount. Where the employee is not represented by counsel, where the parties seek determination by an administrative judge or administrative law judge of the fair and reasonable amount to be

paid out of the lump sum to discharge a lien cognizable under section forty-six A, or where any party requests that such agreement be approved by an administrative judge or administrative law judge prior to the filing of such agreement with the department, a lump sum agreement shall not have been perfected until and unless approved by an administrative judge or administrative law judge as being in the claimant's best interest. In all other cases the agreement shall not have been perfected until reviewed and approved as complete by a conciliator, administrative judge or administrative law judge as appropriate. A conciliator shall be made available in each regional office to review settlements without appointment.

(2) When the insurer and the employee reach such agreement subsequent to insurer acceptance of liability or subsequent to a decision of an administrative judge, the reviewing board, or an appeals court of the commonwealth finding insurer liability which decision is in effect at the time such agreement is entered into, said agreement shall not redeem liability for the payment of medical benefits or vocational rehabilitation benefits with respect to such injury.

No lump sum agreement made prior to the establishment of liability for compensation shall prohibit an employee from subsequently filing a claim for medical benefits only, in any instance in which such employee has suffered a substantial deterioration of his medical condition which (i) could not reasonably have been foreseen at the time said agreement was entered into, and (ii) is the result of an injury for which the insurer would have been liable under this chapter, absent the lump sum settlement. Claims under this paragraph shall be considered only if brought within one year of the date the employee first became aware of the causal relationship between the substantial deterioration and the employment. Claims shall be consistent with the procedures set forth in sections ten, ten A, and eleven. No liability for such claims shall be

redeemed by any additional lump sum settlement; provided, however, that no employee shall be entitled to vocational rehabilitation benefits for any injury, unless such employee shall have requested such benefits within two years of the perfection of any settlement under this section of benefits due for said injury.

(3) No lump sum agreement shall contain as part of a settlement a general or specific release that would serve as a bar to (i) employment with any employer, (ii) the receipt by the employee of any pay or benefits due him by an employer, (iii) the bringing of any future workers' compensation claim or (iv) the bringing of any claims of wrongful discharge or breach of contract. All such general or specific releases shall be null and void. Any employer, insurer, employer or attorney attempting to obtain such release from an employee shall be punished by a fine of ten thousand dollars. Where the employee has been found suitable for vocational rehabilitation services pursuant to section thirty G, lump sum agreements shall be valid only where the employee returned to continuous employment for a period of six or more months; or completed an approved rehabilitation plan; or received express written consent from the office of education and vocational rehabilitation; or an order or decision from an administrative judge or administrative law judge authorizing such agreement. Any employee who receives an amount in violation of this paragraph shall have the right to re-open his or her claim for compensation. Any employee who accepts a lump sum settlement for benefits claimed under section 34A shall be precluded from any further lump sum settlements for said benefits.

(4) Whenever a lump sum agreement has been perfected in accordance with the terms of this section, such agreement shall affect only the insurer and the employee who are parties to such lump sum agreement and shall not affect any other action or proceeding arising out of a separate and distinct injury under this chapter, whether the injury precedes or arises

subsequent to the date of settlement, and whether or not the same insurer is claimed to be liable for such separate and distinct injury.

Notwithstanding any provision of this section or of sections seventy-five A or seventy-five B, the acceptance of any amount in return for the right to claim future weekly benefits shall create a presumption that the employee is physically incapable of returning to work with the employer where the alleged injury occurred. Such presumption shall continue for a period of one month for each fifteen hundred dollar amount included in the settlement for future weekly benefits. No re-employment rights shall inure to such employee under this chapter during any period of presumption of incapacity as herein provided.

(5) Whenever a lump sum agreement or payment has been approved by the reviewing board in accordance with the terms of this section, such agreement shall affect only the insurer and employee who are parties to such lump sum agreement and shall not affect any other action or proceeding arising out of a separate and distinct injury resulting in an incapacity whether the injury precedes or arises subsequent to the date of settlement.

Section 49 Claim in general

Section 49. The claim for compensation shall be in writing, and shall state the date, place, cause and nature of the injury. It shall be signed by the person injured, or, in the event of his death, by his legal representative, or by a person to whom payments may be due, or by a person in behalf of any of them, and shall be filed with the department. A claim for compensation shall not be held invalid or insufficient by reason of any inaccuracy in stating the date, place, cause or nature of the injury unless it is shown that it was the intention to mislead and that the insurer was in fact misled thereby.

Section 50 Interest on unpaid claims

Section 50. Whenever payments of any kind are not made within sixty days of being claimed by an employee, dependent or other party, and an order or decision requires that such payments be made, interest at the rate of ten percent per annum of all sums due from the date of the receipt of the notice of the claim by the department to the date of payment shall be required by such order or decision. Whenever such sums include weekly payments, interest shall be computed on each unpaid weekly payment.

Section 51 Natural increase considered in determining weekly wages

Section 51. Whenever an employee is injured under circumstances entitling him to compensation, if it be established that the injured employee was of such age and experience when injured that, under natural conditions, in the open labor market, his wage would be expected to increase, that fact may be considered in determining his weekly wage. A determination of an employee's benefits under this section shall not be limited to the circumstances of the employee's particular employer or industry at the time of injury.

Section 51A Decision in compensation case; law in effect

Section 51A. In any claim in which no compensation has been paid prior to the final decision on such claim, said final decision shall take into consideration the compensation provided by statute on the date of the decision, rather than the date of the injury.

Section 52 Repealed, 1987, 691, Sec. 13

Section 52A Repealed, 1957, 301

Section 52B Priority of premiums and interest charges over other claims

Section 52B. All premiums and interest charges on account of policies insuring the payment of the compensation provided for by this chapter which may be due from an employer to any insurance company authorized to transact the business of workers' compensation insurance in this commonwealth shall be entitled to priority or preference over claims not otherwise preferred by law in bankruptcy involving such employer.

Section 52C Rating organizations in general; subscribers; co-operative activities; rates; freedom of contract

Section 52C. (a) A corporation, an unincorporated association, a partnership, or an individual, located within this commonwealth may make application to the commissioner of insurance, hereinafter and in sections fifty-two D to fifty-two F, inclusive, called the commissioner, for license as a rating organization and shall file therewith (1) a copy of its constitution, its articles of agreement or association or its certificate of incorporation, and of its by-laws, rules and regulations governing the conduct of its business, (2) a list of its members and subscribers, (3) the name and address of a resident of this commonwealth upon whom notices or orders of the commissioner or process affecting such rating organization may be served and (4) a statement of its qualifications as a rating organization. If the commissioner finds that the applicant is competent, trustworthy and otherwise qualified to act as a rating organization and that its constitution, articles of agreement or association or certificate of incorporation, and its by-laws, rules and regulations governing the conduct of its business conform to the requirements of law, he shall issue a license authorizing it to act as a rating organization. Every such application shall be granted or denied in whole or in part by the commissioner within sixty days of the date of its filing with him. Licenses issued pursuant to this section shall remain in effect for three years unless sooner suspended or revoked by the commissioner. The fee for said license shall be determined annually by the commissioner of administration under the provision of section three B of chapter seven. Licenses issued pursuant to this section may be suspended or revoked

by the commissioner, after hearing upon due notice, in the event the rating organization ceases to meet the requirements of this section. Every rating organization shall notify the commissioner promptly of every change in (1) its constitution, its articles of agreement or association or its certificate of incorporation, and its by-laws, rules and regulations governing the conduct of its business, (2) its list of members and subscribers and (3) the name and address of the resident of this commonwealth designated by it upon whom notices or orders of the commissioner or process affecting such rating organization may be served.

(b) Subject to the rules and regulations which have been approved by the commissioner as reasonable, each rating organization shall permit any insurer not a member to be a subscriber to its rating services. Notice of proposed changes in such rules and regulations shall be given to subscribers. Each rating organization shall furnish its rating services without discrimination to its members and subscribers. The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any rating organization to admit an insurer as a subscriber, shall at the request of any subscriber or any such insurer, be reviewed by the commissioner at a hearing held upon at least ten days' written notice to such rating organization and to such subscriber or insurer. If the commissioner finds that such rule or regulation is unreasonable in its application to subscribers, he shall order that such rule or regulation shall not be applicable to subscribers. If the rating organization fails to grant or reject an insurer's application for subscribership within thirty days after it was made, the insurer may request a review by the commissioner as if the application had been rejected. If the commissioner finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, he shall order the rating organization to admit the insurer as a subscriber. If he finds that the action of the rating organization was justified, he shall make an order affirming its action.

(c) No rating organization shall adopt any rule the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

(d) Co-operation among rating organizations or among rating organizations and insurers in rate making or in other matters within the scope of this chapter is hereby authorized, provided the filings resulting from such co-operation are subject to all the provisions of this chapter which are applicable to filings generally. The commissioner may review such co-operative activities and practices and if, after due notice and a hearing, he finds that any such activity or practice is unfair or unreasonable or otherwise inconsistent with this section, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with this section, and requiring the discontinuance of such activity or practice.

(e) The commissioner shall, at least once in five years, make or cause to be made an examination of each rating organization licensed in this commonwealth as provided in this section. The reasonable cost of any such examination shall be paid by the rating organization examined upon presentation to it of a detailed account of such costs. The officers, manager, agents and employees of such rating organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents or agreements governing its method of operation.

The commissioner shall furnish two copies of the examination report to the organization, group or association examined and shall notify such organization, group or association that it may, within twenty days thereafter, request a hearing on said report or on any facts or recommendations therein. Before filing any such report for public inspection, the commissioner

shall grant a hearing to the organization, group or association examined. The commissioner may withhold the report of any such examination from public inspection for such time as he may deem proper.

(f) All rates shall be made in accordance with the following provisions:—(1) Due consideration shall be given to past and prospective loss experience within and outside this commonwealth, to catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, and to past and prospective expenses both countrywide and those specially applicable to this commonwealth, and to all other relevant factors within and outside this commonwealth; (2) the systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group of insurers.

(g) Nothing in this chapter shall abridge or restrict the freedom of contract between insurers and agents or brokers, or between agents and brokers, nor affect the customary right of insurers, agents or brokers to pay to or receive from each other, commission or brokerage; nor shall it abridge or restrict the freedom of contract between insurers, agents or brokers and their employees with respect to compensation.

Section 52D Appeal from action or decision of rating organization; rating information

Section 52D. Any member of or subscriber to a rating organization may appeal to the commissioner from the action or decision of such rating organization in approving or rejecting any proposed change in or addition to the filings of such rating organization and the

commissioner shall, after a hearing held upon not less than ten days' written notice to the appellant and to such rating organization, issue an order approving the action or decision of such rating organization or directing it to give further consideration to such proposal, or, if such appeal is from the action or decision of the rating organization in rejecting a proposed addition to its filings, he may, in the event he finds that such action or decision was unreasonable, issue an order directing the rating organization to make an addition to its filings, on behalf of its members and subscribers, in a manner consistent with his findings, within a reasonable time after the issuance of such order. In deciding such appeal the commissioner of insurance shall apply the standards set forth in section fifty-two.

Every rating organization and every insurer which makes its own rates shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate. Every rating organization and every insurer which makes its own rates shall provide within the commonwealth reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by his authorized representative, on his written request to review the manner in which such rating system has been applied in connection with the insurance afforded him. If the rating organization or insurer fails to grant or reject such request within thirty days after it is made, the applicant may proceed in the same manner as if his application had been rejected. Any party affected by the action of such rating organization or such insurer on such request may, within thirty days after written notice of such action, appeal to the commissioner, who, after a hearing held upon not less than ten days' written notice to the appellant and to such rating organization or insurer, may affirm or reverse such action.

Section 52E Violation of statutes; failure to comply with commissioner's orders; suspension and revocation of licenses

Section 52E. Any person or organization wilfully violating any provision of section fifty-two, fifty-two C or fifty-two D shall be punished by a fine of not more than five hundred dollars for each such violation. Such penalty may be in addition to any other penalty provided by law. The commissioner may suspend the license of any rating organization or insurer which fails to comply with an order of the commissioner within the time limited by such order, or any extension thereof which the commissioner may grant. The commissioner shall not suspend the license of any rating organization or insurer for failure to comply with an order until the time prescribed for an appeal therefrom has expired, or, if an appeal has been taken, until such order has been affirmed. The commissioner may determine when a suspension of license shall become effective and such suspension shall remain in effect for a period fixed by him, unless he modifies or rescinds such suspension, or until the order upon which such suspension is based is modified, rescinded or reversed. No license shall be suspended or revoked except upon a written order of the commissioner, stating his findings, made after a hearing held upon not less than ten days' written notice to such organization specifying the alleged violation.

Section 52F Hearing on order or decision of commissioner; suspension or postponement of action; review; stay of order or decision

Section 52F. (a) Any insurer or rating organization aggrieved by any order or decision of the commissioner made without a hearing may, within thirty days after notice of the order to the insurer or organization, make written request to the commissioner for a hearing thereon. The commissioner shall hear such party or parties within thirty days after receipt of such request and shall give not less than fifteen days' written notice of the time and place of the hearing. Within thirty days after such hearing the commissioner shall affirm, reverse or modify his previous action, specifying his reasons therefor. Pending such hearing and decision thereon the commissioner may suspend or postpone the effective date of his previous action.

(b) Nothing contained in sections fifty-two C to fifty-two F, inclusive, shall require the observance at any hearing held under authority thereof of formal rules of pleading or evidence.

(c) Any order or decision of the commissioner under authority of said sections shall be subject to review, which shall be on the basis of the record of the proceedings before the commissioner, by appeal to the supreme judicial court at the instance of any party in interest. The order or decision of the commissioner shall be reviewed in accordance with the standards for review provided in paragraph (8) of section fourteen of chapter thirty A.

The court shall determine whether the filing of the appeal shall operate as a stay of any such order or decision of the commissioner. The court may, in disposing of the issue before it, modify, affirm or reverse the order or decision of the commissioner in whole or in part.

Section 52G Partial invalidity of statute

Section 52G. If any section, subsection, subdivision, paragraph, sentence or clause of said sections fifty-two C to fifty-two F, inclusive, is held invalid or unconstitutional, such decision shall not affect the remaining portions of said sections.

Section 53 Mutual companies; distribution of risks into groups

Section 53. Any mutual liability insurance company authorized to do business in this commonwealth may with the approval of the commissioner of insurance distribute its risks into groups in accordance with the nature of the business and the degree of the liability of injury and with like approval fix by and for such groups in accordance with the experience of each group all premiums, assessments and dividends; but all the funds of the company both actual and contingent shall be available for the payment of any claim against the company.

Section 53A Classification of risks and premiums; distribution of premiums among employers

Section 53A. (1) Any insurance company authorized to transact business in this commonwealth under subclause (b) or (e) of clause Sixth of section forty-seven of chapter one hundred and seventy-five may, except as provided in clause (c) of section fifty-four of said chapter one hundred and seventy-five, insure the payment of the compensation provided for by this chapter, and when any such company insures such payment, it shall file with the commissioner of insurance, or, if it is a member of or subscriber to a rating organization under section fifty-two C, authorize such rating organization to file with the commissioner on its behalf, its classification of risks and premiums relating thereto and subsequent proposed classifications of premiums.

(2) Such classifications of risks and premiums shall be filed at least every two years and on any additional date that the commissioner of insurance may designate. Within sixty days after any filing the commissioner shall conduct a hearing to determine whether the classifications and rates are not excessive, inadequate or unfairly discriminatory for the risks to which they respectively apply and that they fall within a range of reasonableness.

(3) When a filing is not accompanied by the information upon which the insurer supports such filing, and the commissioner of the department of insurance does not have sufficient information to determine whether such filing meets the requirements of this section, he may require such insurer to furnish the information upon which it supports such filing. Any filing may be supported by the experience or judgment of the insurer or rating organization making the filing, the experience of other insurers or rating organizations, and any other factors which the insurer or rating organization deems relevant.

(4) Where a claim against an insured that has affected such insured's experience rating has been found non-compensable, or where an insurer recovers previously paid workers' compensation benefits from a negligent third party, or where an insurer has been reimbursed by the insured or the Workers' Compensation Trust Fund for payments made pursuant to subsection two of section sixty-five, the insurer shall submit a revised statistical unit report to the appropriate rating bureau within sixty days of such finding, recovery or reimbursement. The commissioner shall establish a procedure for reviewing and adjusting the premium of any insured subject to experience rating whose premium is adversely affected by changes in claim valuation by its insurer after those claims are removed from the experience rating calculation. A pattern or practice of making such changes shall be an unfair or deceptive act or practice under chapter one hundred and seventy-six D.

(5) The commissioner of insurance shall, by the use of experience rating credits, the institution of a payroll cap on premium computation, or other method, provide for equitable distribution of premiums among employers paying higher than average wages and those paying lower than average wages.

(6) (a) The advisory council, established pursuant to section fifteen of chapter twenty-three E may request without limitation any loss data, from any insurance company or rating organization. Any insurance company or rating organization which is the recipient of such a request may, if it believes that the request is unduly burdensome or unreasonable, file a motion to be heard by the commissioner of insurance concerning whether all or part of the request requires response. The commissioner of insurance may, if he finds the request is unduly burdensome or unreasonable, deny the request in whole or in part.

(b) At any hearing conducted pursuant to this section, the advisory council may present a written statement and oral testimony relating to any issues which may arise during the course of the hearing. Said advisory council may not cross-examine witnesses produced by other parties, or appeal any decision of the commissioner.

(7) No proposed classifications or premiums shall take effect until approved by the commissioner of insurance as not excessive, inadequate, or unfairly discriminatory for the risks to which they respectively apply, and as within a range of reasonableness. If the commissioner does not approve or disapprove proposed classifications or premiums within six months after a filing made pursuant to subsection (2), such classifications and premiums shall be deemed approved and shall be immediately effective. If said commissioner disapproves proposed premiums and classifications, stating his reasons for disapproval, any insurance company or rating organization may file new proposed classifications and premiums.

(8) If, after the conclusion of a hearing on classification and premiums pursuant to subsection (2), the commissioner of insurance determines that any already effective premium is excessive, he shall order a specific decrease in that premium to be effective six months from the date of the insurance company or rating organization filing under consideration. He shall order a specific decrease irrespective or whether any insurance company or rating organization has filed for a decrease in any premium rate.

(9) Any insurance company may make written application to the commissioner of insurance for permission to use, in place of premium rates approved pursuant to subsections (7) and (8), a percentage decrease from said premium rates which shall be uniform within any classification of risk in the commonwealth. The commissioner shall issue an order permitting the decrease

for such insurance company unless he finds that the resulting premium would be inadequate or unfairly discriminatory.

(10) Upon petition of an insurance company, rating organization, or other aggrieved party, any order or decision of the commissioner of insurance under this chapter shall be subject to review by the supreme judicial court.

(11) The commissioner shall establish a procedure for the identification and separate annual reporting by each insurer of any penalty payments and legal fees which this chapter requires to be excluded from any formula utilized to establish premium rates for workers' compensation insurance. Said commissioner may compare said reports by insurers to records of such penalty payments and legal fees maintained by the division of industrial accidents in order to judge the accuracy of said reports.

(12) Notwithstanding the provisions of section fifty-two C, the commissioner of insurance shall not approve any classifications or rates that contain provisions for any dividends, unabsorbed premium deposits, savings, or other payments allowed or returned by insurers to their policyholders, members, subscribers, or stockholders, or that contain provisions for expenses that exceed the expense need of the insurance company filing classifications or rates under this section or that exceed the average expense need of the members and subscribers authorizing the rating organization to file classifications or rates under this section, or that contain provisions for the agent or broker commission allowance that are not demonstrated both to be reasonable and to reflect the actual cost to agents or brokers of the services they provide.

(13) The commissioner shall make a finding on the basis of information submitted in any filing made pursuant to this section that the insurer or insurers employ cost control programs and

techniques acceptable to the commissioner which have had or are expected to have a substantial impact on fraudulent claim costs, unnecessary health care costs, and any other unreasonable costs and expenses, as well as on the collection of the appropriate premium charges owed to the insurer or insurers. If the commissioner does not so find, the commissioner may disapprove such filing. The commissioner shall also have authority to make findings, after a hearing on any filing made pursuant to this section, that the proposed rates or classifications are excessive and that the excess is due to the failure of the insurer or insurers to utilize adequate programs to control costs or expenses or to collect the appropriate premium charges. If the commissioner so finds, he shall disapprove such a filing or, in the alternative, shall limit in any manner he determines to be appropriate the amount of any adjustment in premium charges based upon changes in costs, expenses, and premium collections. The commissioner may issue regulations designed to further achievement by insurers of adequate controls on costs and expenses and of adequate collection of the appropriate premium charges owed to the insurers.

(14) Unless otherwise authorized by the commissioner, classifications or rates approved under this section shall remain in effect for a period of not less than twelve months.

(15) Notwithstanding the provisions of section fifty-two C the commissioner of insurance shall, prior to April first, nineteen hundred and ninety-two, and at such later times as the commissioner authorizes, establish after a hearing the amounts of all agent or broker commission fees paid to licensed insurance agents or brokers in connection with workers' compensation insurance policies written through the reinsurance pool. The amounts of the fees must be reasonable and must consider the actual cost to agents or brokers of the services they provide. When the commissioner sets the commission fees for the reinsurance pool established

pursuant to section sixty-five C, the commissioner may also consider incentives to agents and brokers to place such insurance policies through their customary markets when that is practicable. The commissioner shall set commission fees paid on original issue of coverage and on each renewal or reissue thereof.

(16) The commissioner of insurance shall establish loss control standards for insureds that meet criteria designed to identify those insureds that would significantly benefit from the adoption of a program to control workers' compensation costs. Such criteria shall be established by the commissioner and may include the number of persons employed by the insured, the amount of the insured's annual payroll, the amount of the insured's workers' compensation insurance premium, the experience modifier of the insured, the class code of the insured, the injury and illness lost workday rate of the insured, and any other relevant criteria as the commissioner may determine. Said loss control standards may require that an insured, in cooperation with its insurer, establish and maintain a safety committee, prepare and maintain a plan for medical evaluation and treatment, including immediate post-injury offsite care, establish and maintain a written plan for providing reasonable accommodation for injured workers to return to work, and implement other cost control measures acceptable to the commissioner. The loss control standards may also require that an insured have all employees engaged in construction work certified as having successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least ten hours in duration. The commissioner shall have the authority to establish a rating plan to effectuate compliance with the loss control standards established pursuant to this subsection. In establishing any such rating plan, the commissioner may create financial incentives to employees of insureds to encourage said employees to assist in controlling workers' compensation costs.

(17) The commissioner may promulgate rules and regulations as necessary to carry out the provisions of this section.

Section 54 Repealed, 1923, 139, Sec. 1

Section 54A Necessity of insurance contract insuring payment of compensation

Section 54A. Every contract or agreement the purpose of which is to insure an employer in whole or in part against liability on account of injury or death of an employee, other than seasonal or casual farm laborers, and seasonal or casual or part-time domestic servants who work in the employ of the employer less than sixteen hours a week for whom insurance under this chapter remains elective, shall be void unless it also insures the payment of the compensation provided for by this chapter. The second paragraph of section fifty-five shall not apply in case of a contract or agreement made void by this section.

Section 55 Approval of policy by commissioner; review; issuance of policy in violation of statute

Section 55. No policy of workers' compensation insurance shall be issued or delivered until a copy thereof has been filed with the commissioner of insurance at least thirty days prior to such issue or delivery, unless before the expiration of the thirty days the said commissioner shall have approved the form of the policy in writing, nor if the commissioner notifies the company in writing that in his opinion the form of said policy does not comply with the laws of the commonwealth, specifying the reasons for his opinion; provided, that upon petition of the company the opinion of the commissioner shall be subject to review by the supreme judicial court.

Any policy of insurance issued in violation of this section or of any other provision of this chapter shall nevertheless be valid and binding upon the company issuing it, and the rights, duties and obligations of the parties thereto shall be determined by this chapter and chapter one hundred and seventy-five.

Section 55A Mid-term notice of cancellation

Section 55A. Notwithstanding any general or special law to the contrary, a mid-term notice of cancellation of a workers' compensation policy shall be effective only if based on one or more of the following reasons: (i) nonpayment of premium; (ii) fraud or material misrepresentation affecting the policy or insured; (iii) a substantial increase in the hazard insured against. Nothing in this section shall limit an insurer's right to refuse to renew a workers' compensation policy.

Section 56 Joint and several policies

Section 56. Two or more insurance companies authorized to issue such insurance policies in the commonwealth may unite in issuing joint and several workers' compensation policies which may be headed by the names of all such companies. Such policies shall be subject to approval by the commissioner of insurance.

Section 57 Deposits of value of outstanding claims under contracts

Section 57. The commissioner of insurance may, whenever he deems it expedient, by a written order in such form as he may prescribe, require a domestic insurance company to deposit with the state treasurer the present value, as computed by him under section fifty-eight, of all or any part of its outstanding claims incurred under its contracts or policies providing for the payment of benefits under this chapter, in cash or in securities approved by the said commissioner, and he may, whenever he deems it expedient, require the company, as aforesaid, to make an

additional deposit. The order shall specify the amount to be deposited and the time within which the deposit shall be made, which shall be not less than three days from the date on which the company receives the said order. A duplicate or copy of any such order shall be forthwith filed by the said commissioner with the state treasurer and the department, and the state treasurer, upon the expiration of the time specified in said order, shall forthwith notify the commissioner in writing whether or not the company has made the deposit in accordance therewith.

Nothing in this section shall affect the powers conferred on the commissioner of insurance by section six of chapter one hundred and seventy-five.

Section 58 Computation of value of claims

Section 58. The commissioner of insurance shall compute the present value of outstanding claims on the basis of information furnished by the division, and shall assume a rate of interest not higher than four per cent.

Section 59 Holding deposits in trust; payment of claims; transfer to trustee; accounts; refunds; return of balance

Section 59. The state treasurer shall hold any deposit made under section fifty-seven in trust for the payment of claims for benefits under this chapter, including claims accruing after the deposit was made, and he shall make such payments upon the written request and under the direction of the department, or he may, if the company so requests in writing, transfer from time to time to a trustee appointed by the company and approved by the department, any part of any such deposit made with him, reasonably necessary for the prompt payment of said

benefits, and the trustee shall make such payments in accordance with the written directions of the department.

The state treasurer shall keep a separate account with the company of the amount so received, the amount of interest earned thereon and the payments made. If the amount deposited proves to be larger than required, portions thereof may, from time to time, be refunded to the company by the state treasurer or by such trustee, if any, subject to the written approval of the commissioner of insurance and the department. If any balance remains after the payment of all benefits due to claimants under this chapter, the state treasurer or such trustee, if any, shall return the balance to the company upon written notice from the department that there is no likelihood of further payments becoming due on account of such claims.

Section 60 Effect of appointment of receiver on order, deposit or payments; deposit by receiver

Section 60. The appointment of a receiver of a domestic company under section six of chapter one hundred and seventy-five shall not affect any order of the said commissioner or deposit made under section fifty-seven prior to such appointment, and the state treasurer or trustee appointed and approved as provided in section fifty-nine shall retain any deposit made with him as provided in section fifty-seven or fifty-nine and make the payments therefrom as provided in section fifty-nine. If a receiver is so appointed prior to compliance by the company with any such order, he shall, as soon as may be after his appointment, make the deposit required by said order, if the assets of the company in his hands are sufficient therefor.

Section 60A Review, suspension and reduction of order requiring deposit

Section 60A. Any company aggrieved by any order of the said commissioner made under section fifty-seven may, within five days from the date of its receipt, file a petition in the supreme judicial court for the county of Suffolk for a review thereof; but the filing of such a petition shall not suspend the operation of the order. The court shall summarily hear the

petition and may make any appropriate order or decree. If the court shall order or decree that the amount of the deposit be reduced, the state treasurer or such trustee, if any, shall return to the company so much of the deposit as exceeds the amount fixed by the order or decree, or, if the company has not complied with the order of the said commissioner, it shall forthwith deposit with the state treasurer the amount so fixed.

Section 60B Liability for expenses for custody and disbursement of deposit; determination; deduction from deposit

Section 60B. A company making a deposit under section fifty-seven shall pay to the state treasurer a reasonable amount for the expenses of his office, attributable to the custody and disbursement of the deposit. Any such amount may, upon written application of the state treasurer, and, after written notice to the company and a hearing, be determined by the commissioner of insurance, and, with the written approval of the said commissioner, be deducted from any funds of the company on deposit with the state treasurer.

Section 60C Failure to comply with order requiring deposit; certificate authorizing resumption of issuance of policies

Section 60C. Failure of a company to comply with any lawful order of the commissioner of insurance under section fifty-seven shall, without any further action by the said commissioner, terminate its authority to issue policies of workers' compensation insurance, and in such a case the company shall issue no such policies thereunder until it complies with such order and has received from said commissioner, as evidence of such compliance, a special certificate authorizing it to resume the issue of such policies. The commissioner may, in his discretion, refuse to issue such a certificate.

Section 60D Forfeiture for failure to comply with order requiring deposit; issuance of policy while in default; enforcement of order, fine or forfeiture

Section 60D. Any company failing to comply with any lawful order of the commissioner under section fifty-seven shall, in addition, forfeit one hundred dollars for each day of its default. Any forfeiture recovered under this section shall be paid to the state treasurer and shall be held and

expended by him in like manner as a deposit made under said section fifty-seven. Any company issuing any policy of workers' compensation insurance while in default of such compliance shall be punished by a fine of not less than one hundred nor more than one thousand dollars, and any officer or agent thereof issuing any such policy on the company's behalf during such default shall be punished by such fine or by imprisonment for not more than three months, or both.

The supreme judicial court for the county of Suffolk shall have jurisdiction in equity, upon an information filed by the attorney general at the relation of the commissioner of insurance, to enforce compliance with any order of the commissioner made under section fifty-seven, and the payment of any fine, forfeiture or penalty prescribed by this section.

Section 61 Bond for foreign company; other security

Section 61. Every foreign insurance company transacting the business of workers' compensation insurance in the commonwealth shall furnish a bond running to the commonwealth, with some surety company authorized to transact business in the commonwealth as surety, for such term and such amount and in such form as may be approved by the commissioner of insurance, the bond being conditioned upon the making of the deposits required by the following section. The annual license of such a company shall not be issued or renewed until it has filed with the commissioner a bond as aforesaid covering a future period at least as long as that covered by the license. In place of a bond as aforesaid the company may furnish other security, upon a like condition, satisfactory to the commissioner.

Section 62 Deposits by foreign companies; payment of obligations

Section 62. Every such foreign insurance company shall, within five days after its withdrawal from the transaction of business in the commonwealth or after the revocation of its license issued by the commissioner of insurance or of his refusal to renew it, deposit with a trustee to be named by the department an amount equal to twenty-five per cent of its obligations incurred or to be incurred under workers' compensation policies issued to employers in the

commonwealth; and within thirty days after such withdrawal, revocation of or refusal to renew a license, such company shall deposit with said trustee an amount equal to the remainder of such obligations incurred or to be incurred, the amount of which obligations shall be determined by the department. The amounts so deposited shall be available for the payment of the said obligations of the company to the same extent as if the company had continued to transact business in the commonwealth, and the trustee so receiving said deposits shall pay such obligations at the times and in a manner satisfactory to the department.

Section 63 Insurance company information requested by department; rating organizations; notices furnished by companies

Section 63. Insurance companies insuring employees under this chapter shall, at the request of the department, furnish it in writing any information required in connection with the administration by said department of this chapter, including any statistics and the names of all employers insured by them. Notice of issuance of a policy of insurance insuring employers under this chapter shall be given to the rating organization authorized by section fifty-two C by the company issuing such policy within five days after the date of issuance thereof. No further notice need be filed in case such insurance is renewed, extended or otherwise continued by such company. Such insurance shall not be cancelled or shall not be otherwise terminated until ten days after written notice of such cancellation or termination is given to the rating organization or until a notice has been received by said organization that the employer has secured insurance from another insurance company or has otherwise insured the payment of compensation provided for by this chapter. Said organization shall immediately make available to the department, by electronic transmission or otherwise, all information collected pursuant to this section. The organization may charge companies for the reasonable cost of gathering, processing and maintaining the data.

Section 64 Insurer's regulations for prevention of injuries; review; inspector's access to premises

Section 64. The insurer shall make and enforce reasonable rules and regulations for the prevention of injuries on the premises of insured persons, and for this purpose inspectors of the insurer shall have free access to all such premises during regular working hours. Insured persons or employees thereof aggrieved by such rules or regulations may petition the executive office of labor and workforce development for a review, and it may affirm, amend or annul the rule or regulation.

Section 65 Special Fund; Trust Fund; assessment base; assessment rates; payments; reports; audits

Section 65. (1) There is hereby established a special revenue fund in the state treasury, known as the Workers' Compensation Special Fund, the proceeds of which may be expended by the department, subject to appropriation, for the operating expenses of the department.

(2) There is hereby established a trust fund in the state treasury, known as the Workers' Compensation Trust Fund, the proceeds of which shall be used to pay or reimburse the following compensation: (a) reimbursement of adjustments to weekly compensation pursuant to section thirty-four B; (b) reimbursement of adjustments to weekly compensation pursuant to section thirty-five C; (c) reimbursement of certain apportioned benefits pursuant to section thirty-seven; (d) payment of vocational rehabilitation benefits pursuant to section thirty H; (e) payment of benefits resulting from approved claims against employers subject to the personal jurisdiction of the commonwealth who are uninsured in violation of this chapter; provided, however, that (i) the claimant is not entitled to workers' compensation benefits in any other jurisdiction; (ii) no benefits pursuant to section twenty-eight and no interest pursuant to section fifty shall be payable out of the trust fund; (f) reimbursement of benefits pursuant to section twenty-six; and (g) reimbursement of certain apportioned benefits pursuant to section thirty-seven A. No reimbursements from the Workers' Compensation Trust Fund shall be made under clauses (a) to (g), inclusive, to any non-insuring public employer, self-insurer or self-insurance group which has chosen not to participate in the fund as hereinafter provided.

The reasonable and necessary costs of administering and representing the Workers' Compensation Trust Fund may be paid out, without appropriation, of said trust fund. Such costs

shall include, but not be limited to: the taking of depositions, the hiring of private investigators, the filing and service of summonses and subpoenas and other associated court costs, the retention of outside legal counsel and medical providers, and the provision of services relating to the management of the fund. Revenues for the special fund and the trust fund established herein shall be raised by an assessment on all employers subject to this chapter.

No private employer with a license to self-insure and no private self-insurance group shall be required to pay assessments levied to pay for disbursements under clauses (a) to (g), inclusive, and neither the commonwealth, nor any city, town, or other political subdivision of the commonwealth or public employer self-insurance group shall be required to pay assessments levied to pay for disbursements under clause (a), (b), (c), (d), (e), (f) or (g) if such employer or group has given up an entitlement to reimbursement under said clauses by filing a notice of non-participation with the department. Such notice shall be made to the commissioner on or before March first of any year in order to be effective as of July first of that year. Notice of non-participation shall be irrevocable and shall be signed by the chief executive officer or board of trustees of the employer or group. Non-participation shall not be allowed any employer or group that has not paid all assessments due at the time of the department's receipt of notice of non-participation. No private employer or group shall be relieved of the requirement to pay assessments levied to fund disbursements under clause (d) or (e).

A public employer which has a policy with a workers' compensation insurer shall have the ability to file a notice of non-participation as specified above; provided, however, that its insurer shall not be entitled to reimbursement from the Workers' Compensation Trust Fund, and the insured public employer shall be required to reimburse its insurer for any payments the

insurer makes on its behalf that would otherwise be subject to reimbursement under clauses (a) to (g), inclusive.

(3) Each insurer authorized to write workers' compensation in the commonwealth, each self-insurer, each self-insurance group, and the commonwealth shall report to the department annually on or before May first, the assessment base amount for employers subject to this chapter. The Massachusetts workers' compensation rating bureau shall report aggregate base amount data for employers insured by its members. The assessment base amount for all employers shall be the losses paid under this chapter for the preceding twelve month period beginning January first and ending on the last day of December.

If an insurer, self-insurer, or self-insurance group fails to report such base amounts to the department on or before May first, the department may assess a one thousand dollar fine for each month or part thereof that its report is late and may estimate a base amount, until the actual base amount is determined, by taking into consideration the actual base amount last reported for the assessment payor; provided, however, that no estimated base amount shall be greater than one hundred and twenty per cent of the actual base amount reported.

(4) The department shall determine the special fund and trust fund assessment rates pursuant to the following procedures:

(a) The sum of the following two amounts shall be known as the special fund budget: (i) the total amount of funds appropriated each year to pay the operating expenses of the department pursuant to subsection (1); and, (ii) the total amount of funds estimated to be expended from the General Fund in the fiscal year for indirect and fringe benefit costs attributable to compensation of state personnel of the department, as determined by the commissioner of

administration, who shall reduce, or increase, his estimate by the actual amount of such indirect and fringe benefit costs over-assessed, or under-assessed, by the department in the prior fiscal year.

(b) On or before July first of each year the department shall estimate the total amount of funds required to make payments during the following twelve months for the compensation payable pursuant to subsection (2) of this section. The total amount of this estimate, subject to the approval of the secretary of labor and workforce development, shall be known as the trust fund budget. The trust fund budget shall be reviewed by the advisory council. Upon the affirmative vote of at least seven voting members, the advisory council may submit its own estimate of the trust fund budget to the secretary of labor and workforce development. The department's estimate shall separately state that portion of projected disbursements pursuant to subsection (2) that is attributable to expected claims against (i) private employers and (ii) the commonwealth and its political subdivisions subject to this chapter. The separately stated estimate for private employers shall be known as the private employer trust fund budget. The separately stated estimate for the commonwealth and its political subdivisions shall be known as the public employer trust fund budget.

(c) If the balance of the special fund at the end of the fiscal year exceeds thirty-five per cent of the previous year's disbursements from that fund, the budget for that fund, for the purpose of calculating the fund assessment rate, shall be reduced by that part of the balance in excess of thirty-five per cent of the previous year's disbursements. If the balance of either the private employer portion or the public employer portion of the trust fund at the end of the fiscal year, exceeds thirty-five per cent of the previous year's disbursements from that portion of the fund, as reported pursuant to subsection (9), the budget for that portion of the fund, for the purpose

of calculating the fund assessment rate shall be reduced by that part of the balance for that portion of the fund in excess of thirty-five per cent of the previous year's disbursements, reported pursuant to subsection (9). Additional assessments may be levied by the commissioner, subject to the approval of the secretary of labor and workforce development, if he finds such assessments necessary in order to make disbursements for any expenses or compensation payments in the fiscal year which exceed the revenue generated by the assessments for the fiscal year levied pursuant to subsection (5). Any additional assessment proposed by the commissioner shall be reviewed by the advisory council. Upon the affirmative vote of at least seven voting members, the advisory council may submit its estimate of the necessary additional assessment to the director of labor and workforce development.

(d) For each assessment payor, except for the commonwealth and any of its political subdivisions subject to this chapter, the assessment rate shall be determined by dividing the sum of the special fund and the total of those portions of the private employer trust fund and the total of those portions of the private employer trust budget from which such payor is entitled to seek reimbursement pursuant to subsection (2) by the sum of the base amounts reported by such assessment payors pursuant to subsection (3). For the commonwealth and any of its political subdivisions subject to this chapter, the assessment rate shall be determined by dividing the total of those portions of the public employer trust fund budget from which such payor is entitled to seek reimbursement pursuant to subsection (2) by the sum of the base amounts reported by such assessment payors pursuant to subsection (3).

(5) Each self-insurance group shall pay to the treasurer of the commonwealth a sum assessed by the department equal to the product of its standard premium and the assessment rates determined pursuant to subsection (4), multiplied by the total base amount for all self-insured

groups divided by the estimated total standard premiums for all self-insured groups for the next twelve-month period beginning January first and ending on the last day of December. For each insured employer, the assessment shall be equal to the product of its standard workers' compensation premium and the assessment rate determined pursuant to subsection (4), multiplied by the ratio of the aggregate base amount for all insured employers as reported pursuant to subsection (3), to the aggregate written estimated premium for these said employers for the next twelve-month period beginning January first and ending on the last day of December. Such aggregate written estimated premiums shall be based on currently applicable rates as approved by the commissioner of insurance. The Rating Bureau shall compute said ratio and submit it to the division of industrial accidents by May first of each year for review and approval. Insurers shall bill and collect assessments on insured employers. Such assessments shall be separately stated amounts on all premium notices, and shall not be reported as premiums for any tax or regulatory purposes under chapter sixty-three, one hundred and seventy-five, or any other law. Assessment rates for insured employers shall apply to standard premiums for policy years beginning on or after July first following the determination of such rates. The assessment for each self-insurer shall be equal to the product of the assessment rate and the self-insurer's imputed premium multiplied by the total base amount for all self-insurers, divided by the total imputed premium for all self-insurers as determined by the department. Insurers shall transmit assessments collected during each quarter, and self-insurers and self-insurance groups shall pay assessments due each quarter, to the state treasurer no later than one month after the end of the quarter.

Each failure to pay an assessment within thirty days of the payor's receipt of any bill from the department shall result in a separate fine in the amount of five percent of the balance of any such overdue assessment. The commissioner may establish a commonwealth lien on any

employer to collect assessments and fines for which such employer is liable under this section. Similar fines and liens may be imposed on insurers for failure to transmit assessments collected under this section.

In the case of self-insurers or self-insurance groups that have been operating for less than twelve months, the department shall establish procedures under which the assessments to be paid by the self-insurer or self-insurance group shall be related to the prior status of such employers.

(6) The revenue received from assessments levied under this section shall be kept in the special fund or the trust fund separate and apart from all other monies received by the commonwealth; provided, however, that revenues received from assessments on account of indirect and fringe benefit costs determined pursuant to clause (ii) of paragraph (a) of subsection (4), and any interest thereon, shall be credited to the General Fund. The proceeds from any fine or fee imposed pursuant to this chapter shall be kept in the special fund. The treasurer of the commonwealth shall be the custodian of the special fund and trust fund, and revenues received shall be deposited in each fund proportional to that fund's share of the total budget. For the purposes of determining the proportional shares of amounts to be deposited in the special fund and trust fund, the special fund budget and the total budget shall be reduced by the amount of said indirect and fringe benefit costs. The monies in the special fund and trust fund shall be invested by the treasurer in accordance with law; provided, however, that the treasurer shall make no investments that prevent the treasurer from making timely payment of disbursements pursuant to subsections (1) and (2). Interest income and dividends from such investments shall be credited to the fund from which the interest or dividends accrue.

(7) The treasurer shall make payments from accounts of the trust fund on the submission of a warrant listing all payments to be made and the accounts to be debited, which has been approved in writing by the director of labor and workforce development or his designee.

(8) If the trust fund pays compensation to a claimant pursuant to clause (e) of subsection (2), it may seek recovery from the uninsured employer for an amount equal to the amount paid on behalf of the claimant under this chapter, plus any necessary and reasonable attorney fees. Any action by the trust fund to seek recovery from the uninsured employer shall be commenced within twenty years of the claimant's filing a claim for benefits under this chapter against the trust fund.

(9) The treasurer shall, on or before October first of each year, submit to the advisory council, the governor, the clerk of the senate, and the clerk of the house of representatives, an annual report for the previous fiscal year. The report shall include a statement of the revenues and disbursements of the special fund and trust fund for the fiscal year, the balance existing at the beginning and the end of the fiscal year for each fund, and any other information the treasurer deems appropriate. The report shall include a statement of revenues, disbursements, and the balance existing at the beginning and end of the fiscal year for private employers and a separate statement of these amounts for the commonwealth and its political subdivisions subject to this chapter.

(10) The books and records of the special fund and trust fund shall be subject to a biennial audit by the auditor of the commonwealth.

(11) The intent of the separate financial reports and assessment calculations for public employers under this section is to prevent said employers from bearing inappropriate costs.

Nothing in this section shall be construed to prohibit the rights of any political subdivision of the commonwealth to rescind acceptance of this chapter pursuant to section sixty-nine; provided, however, that any such rescinding political subdivision shall be deemed to be an uninsured person and shall be subject to the provisions of section sixty-six.

(12) The commissioner shall supervise, monitor and establish procedures for all aspects of the assessment of insured and self-insured employers and self-insurance groups including but not limited to the proper reporting of base amounts; the determination of proper assessment rates; the calculation, billing and collection of assessment payments; proper accounting; reporting and transmittal by insurers of assessment payments by insured employers; and all other matters necessary to assure proper compliance with this section; and may issue regulations and conduct hearings for this purpose. He also shall establish procedures for the review and adjudication of grievances by employers with respect to the propriety and accuracy of assessed payment.

(13) Claims against the Workers' Compensation Trust Fund for payment of compensation pursuant to clause (e) of subsection (2) shall be handled in accordance with section ten; provided, however, that no penalty pursuant to section seven shall be levied against the fund and no referral fee pursuant to section ten or filing fee pursuant to section eleven A or eleven C shall be required of the fund. No voluntary payment for any period of time shall alone be held to foreclose the fund from defending any issue involved in a claim for compensation. On a motion of a claimant or representative of the fund, an administrative judge may join the uninsured employer as a party.

Section 65A Designation of insurer to issue policy; equitable distribution of risks; servicing carriers; service fees

Section 65A. (1) Any employer whose application for workers' compensation insurance has been rejected or not accepted within five days by two insurers may appeal to the commissioner of insurance and if it shall appear that such employer has complied with or will comply substantially with all laws, orders, rules and regulations in force and effect relating to the welfare, health and safety of his employees, and shall not be in default of payment of any premium for such insurance, then the commissioner shall designate an insurer who shall forthwith, upon the receipt of the payment for the premium therefore, issue to such employer a policy of insurance contracting to pay the compensation provided for by this chapter. The commissioner of insurance shall make equitable distribution of such risks among insurers in a reasonable manner that, so far as practicable, does not discriminate against any insurer or group of insurers. Subject to subsection (4), the commissioner may establish a servicing carrier fee for insurers, third party administrators or other claims service handling companies as authorized by the commissioner which shall be paid by the reinsurance pool established under section sixty-five C, and which shall not be unreasonable or discriminatory.

(2) The commissioner of insurance may delegate his duties under this section to the rating organization designated by him under section sixty-five C to administer the reinsurance pool established under that section; provided, however, that such organization shall adopt rules and procedures for assigning rejected risks, shall incorporate such rules and procedures into its plan of operation subject to the approval of the commissioner under section sixty-five C, and shall each year submit to the commissioner a report of the assigned risks for the preceding year. The commissioner of insurance may, upon reasonable notice to the rating organization designated

by him under section sixty-five C and after a hearing, revoke the delegation of authority provided for by this section.

(3) The commissioner may require one or more insurers to be servicing carriers issuing policies of insurance to employers qualified hereunder. The commissioner may also designate third party claims administrators to service claims for policies issued by the plan. The commissioner may competitively bid any contract to service the claims for the plan. The commissioner shall adopt rules and regulations governing the conduct of any third party administrator approved to provide claim services to the plan.

(4)(a) Except as provided under paragraph (b) and (c), the servicing carrier fee shall not exceed twenty-five percent of the total written premium serviced by the servicing carrier or administrator.

(b) The commissioner may authorize an additional service fee of up to five percent of the total written premium serviced by the servicing carrier or administrator. In determining whether to authorize an additional service fee amount the commissioner shall consider:

(i) the performance of the carrier, third party administrator, or other claims service handling companies as authorized by the commissioner in reducing the loss costs of the insured risks to which it was assigned during the previous calendar year;

(ii) evidence that the carrier, administrator, or other claims service handling company as authorized by the commissioner has aggressively and effectively assisted employers to improve workplace safety;

(iii) whether the carrier, administrator, or other claims service handling company as authorized by the commissioner has complied in all respects with established performance standards approved by the commissioner; and

(iv) whether the carrier, administrator, or other claims service handling company as authorized by the commissioner has a superior record in handling and investigating claims promptly and properly.

(c) The commissioner may establish a different service carrier fee than is specified in paragraphs (a) and (b) if the commissioner holds a hearing regarding the appropriate service fee to be established and determines that a different fee is indicated. Thereafter, the commissioner may, after a hearing, establish a new service carrier fee whenever the commissioner determines that such a fee is appropriate.

Section 65B Cancellation or termination of policy; review

Section 65B. If, after the issuance of a policy under section sixty-five A, it shall appear that the employer to whom the policy was issued is not or has ceased to be entitled to such insurance, the insurer may cancel or otherwise terminate such policy in the manner provided in this chapter; provided, however, that any insurer desiring to cancel or otherwise terminate such a policy shall give notice in writing to the rating organization and the insurer of its desire to cancel or terminate the same. Such cancellation or terminations shall be effective unless the employer, within ten days after the receipt of such notice, files with the department's office of insurance objections thereof, and, if such objections are filed, the commissioner, or his designee shall hear and decide the case within a reasonable time thereafter. Further appeal of the decision of the department may be taken to the superior court for the county of Suffolk.

Section 65C Equitable distribution of losses; reinsurance pools; necessity of membership; plan of operation; cost containment programs

Section 65C. (1) All losses incurred under policies issued to employers under section sixty-five A shall be equitably distributed among all insurers authorized to transact and transacting workers' compensation insurance in the commonwealth. Such distribution of losses shall be effected through a reinsurance pool constituted by and comprised of all insurers writing workers' compensation insurance in the commonwealth. No insurer, as defined in subparagraph (7) of section one, and including any insurance company, reciprocal or interinsurance exchange which has contracted with an employer to pay the compensation provided for by this chapter, shall be authorized to write or to continue to write workers' compensation insurance in this commonwealth unless such insurer is a member of the reinsurance pool established herein.

The commissioner of insurance shall designate a rating organization, duly qualified under section fifty-two C, to administer the reinsurance pool in such manner as shall be approved by the commissioner. Such rating organization shall adopt a plan of operation, which shall be submitted for approval to the commissioner of insurance and, upon approval by the commissioner, shall be binding upon all members of the reinsurance pool. If a rating organization fails to adopt a plan of operation within a reasonable period of time of its designation by the commissioner, the commissioner may promulgate a plan of operation for the administration of the reinsurance pool. Such plan of operation shall contain rules and procedures for the allocation of losses of the reinsurance pool among its members consistent with this section, and shall otherwise be consistent with law. Amendments to such plan of operation may be made by the rating organization designated by the commissioner or may be made at the direction of the commissioner upon reasonable notice to such rating organization

and after a hearing. All amendments to the plan of operation proposed by the rating organization designated to administer the reinsurance pool shall be submitted for approval to the commissioner of insurance.

(2) Notwithstanding the provisions of subsection (1), in order to reduce the number of risks in and the volume of premium in the reinsurance pool the commissioner shall establish and maintain cost containment programs in the reinsurance pool, including a program requiring service carriers to establish and maintain a comprehensive employer safety assistance program, and may take any or all of the following actions:

(a) require all insurers that write workers' compensation insurance to participate as service carriers, but allow any such carrier to contract with another insurer or third party administrator approved by the commissioner to service the claims;

(b) in conjunction with paragraph (a), require insurers to assume a percentage of losses for an individual risk for which the insurer is designated as the servicing carrier, such percentage to be as the commissioner shall reasonably determine;

(c) consider, in allocating the losses of the pool, the number of risks and the volume of premium rejected, non-renewed, cancelled, or terminated by an insurer;

(d) prohibit a service carrier, in its handling and servicing of claims, from differentiating claims originating from insureds in the pool and claims originating from insureds written voluntarily by the insurer;

(e) establish credits, discounts or other incentives to encourage insurers to voluntarily write coverage;

(f) impose an assessment on insurers to pay for the pool's cost containment and anti-fraud programs; and

(g) establish rates or rating plans which reasonably estimate the additional risk of business in the reinsurance pool.

(3) On or before January fifteen, nineteen hundred and ninety-two, the commissioner shall hold a hearing regarding the development of a plan, based on the powers authorized under this section, designed to reduce the number of risks and amount of premium in the pool. The commissioner may issue regulations designed to implement the plan. These regulations shall be effective no later than April first, nineteen hundred and ninety-two.

(4) In developing the plan required to be submitted under this section, the insurance commissioner shall attempt to reduce the number of risks, at a minimum, in the pool as percentage of all risks in the state to sixty percent by September first, nineteen hundred and ninety-two, fifty percent by February first, nineteen hundred and ninety-three; forty-five percent by September first, nineteen hundred and ninety-three; and thereafter, such reductions as the commissioner may determine are reasonable and appropriate.

Section 65D Issuance of policy to employer assigned to another insurer

Section 65D. By arrangement between insurers which are members of the reinsurance pool, and with the approval of the commissioner of insurance, an insurer referred to in section sixty-

five C may issue a policy to an employer who had been assigned by the commissioner of his designee to another insurer, and such issuance of a policy shall constitute a compliance with and be subject to section sixty-five A.

Section 65E, 65F Repealed, 1990, 462, Sec. 5

Section 65G "Losses incurred" defined; determination of amounts to be paid

Section 65G. The words "Losses incurred," as used in section sixty-five C shall mean, with respect to each policy, the losses paid and estimated to be paid thereunder. Any dispute as to the amounts to be paid under section sixty-five C, or as to an assignment under section sixty-five A, shall be resolved by the commissioner of insurance upon hearing after reasonable notice to all interested parties.

Section 65H Adjustment of payments

Section 65H. Provision may be made under the plan of operation established under section sixty-five C for the subsequent adjustment of payments originally made on behalf of assigned risks on the basis of estimated losses incurred.

Section 65I Primary liability to pay benefits

Section 65I. Nothing in sections sixty-five A to sixty-five M, inclusive, shall be construed to affect, in any way, the primary liability of the insurer to which the risk is assigned to pay compensation benefits in accordance with the provisions of this chapter.

Section 65J Inspection of risks; rules

Section 65J. At any time while a policy issued pursuant to section sixty-five A is in force, the insurer, upon its own initiative, may make a careful inspection of the risk for the purpose of measuring the hazards, making recommendations for the health and safety of employees, and determining the rate or rates which will be adequate and reasonable for its insurance. Every

such inspection shall be made and reported in accordance with such rules as the executive office of labor and workforce development may prescribe.

Section 65K Appeal on ground premium is unreasonable or discriminatory; effect of determined rates

Section 65K. Any employer to whom a policy is issued pursuant to section sixty-five A may appeal, within sixty days after the effective date of such policy, to the commissioner of insurance on the ground that the premium charged upon such policy is not reasonable or is unfairly discriminatory, and said commissioner may, in his discretion, after a hearing of which all interested parties shall have reasonable notice, approve or disapprove the premium charged. In the event the premium charged is disapproved by said commissioner, he shall direct the insurer to which the employer was assigned to issue a policy or to adjust the premium thereof at a rate or rates found by the commissioner of insurance to be adequate, reasonable and not unfairly discriminatory, and the rate or rates so determined shall be effective as of the date of the policy, and be binding upon both the insurer and the employer.

Section 65L Failure of insurer to comply with statutes, order or rule; revocation or suspension of licenses; injunction

Section 65L. If an insurer refuses or neglects to comply with any provision of sections sixty-five A to sixty-five K, inclusive, or with any lawful order or ruling made by the commissioner of insurance pursuant thereto, he shall issue an order to such insurer to show cause why it should not be proceeded against as hereinafter provided, and after due notice and a hearing shall make a finding thereon or order such insurer forthwith to comply. If the insurer is found by the commissioner of insurance to have refused or neglected to comply with any provision of sections sixty-five A to sixty-five K, inclusive, or with any lawful order or ruling made thereunder by the commissioner of insurance, he shall, in the case of a foreign company, revoke or suspend the license issued to it under section one hundred and fifty-one of chapter one hundred and seventy-five and the licenses issued to all of its agents under section one hundred and sixty-three of said chapter, as provided in and subject to all the provisions of section five of said chapter, until it shall comply with such order or ruling, and, in case of a domestic company, he shall apply to the supreme judicial court for an injunction and such court shall have jurisdiction to restrain such company from further transaction of its business until it shall comply with such order or ruling.

Section 65M Review of orders or rulings; time; suspension and stay of order or rulings

Section 65M. Any employer or insurer aggrieved by any order or ruling of the division or of the commissioner of insurance under any provision of sections sixty-five A to sixty-five L, inclusive, may, within thirty days after notice thereof, and despite any different limitation of time for filing petitions contained in section five of chapter one hundred and seventy-five, file a petition in the superior court for a review thereof; but the filing of such a petition shall not suspend such order or ruling unless a stay thereof shall be allowed by a justice of said court pending the final determination of the review. The court shall summarily hear the petition and make any appropriate order or decree.

Section 65N Repealed, 1973, 855, Sec. 6

Section 65O Employer's choice of insurance agent or broker; commission fees; service fees

Section 65O. Any employer to whom an insurer is assigned under the provisions of section sixty-five A shall be entitled to designate any licensed insurance agent or insurance broker to assist him in dealing with said insurer to which he is assigned and with the reinsurance pool described in section sixty-five C. The said agent or broker shall be entitled to a commission fee as set by the commissioner of insurance pursuant to section fifty-three A. An employer may apply directly to the workers' compensation plan of Massachusetts for coverage under section sixty-five A or sixty-five D. The plan may not charge a service fee, an application fee, or a transaction fee to any employer who makes an application for coverage directly to the plan.

Section 66 Actions for injuries sustained by employees; limitations; defenses

Section 66. Actions brought against employers to recover damages for personal injuries or consequential damages sustained within or without the commonwealth by an employee in the course of his employment or for death resulting from personal injury so sustained shall be commenced within twenty years from the date the employee first became aware of the causal relationship between the disability and his employment. In such actions brought by said

employees or by the Workers' Compensation Trust Fund pursuant to the provisions of subsection (8) of section sixty-five, it shall not be a defense:

1. That the employee was negligent;

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

3. That the employee had assumed voluntarily or contractually the risk of the injury;

4. That the employee's injury did not result from negligence or other fault of the employer, if such injury arose out of and in the course of employment.

Section 67 Application to insureds and employers having right of election, of statutes relating to defenses to actions

Section 67. Section sixty-six shall not apply to actions to recover damages for personal injuries received by employees of an insured person or a self-insurer.

Paragraph 4 of said section sixty-six shall not apply to actions to recover damages for personal injuries sustained by any person, whose employer has a right of election as provided in paragraph 4 of section one.

Section 68 Applicability of statutes relating to employers' liabilities

Section 68. Chapter one hundred and fifty-three and sections two B and six C to six F, inclusive, of chapter two hundred and twenty-nine shall not apply to employees of an insured person or a self-insurer, nor to laborers, workmen or mechanics employed by the commonwealth or any county, city, town or district subject to sections sixty-nine to seventy-five, inclusive, who are entitled to the benefits provided by said sections, while this chapter is applicable thereto.

Section 69 Commonwealth, counties, cities, towns and districts in general; members of a police or fire force in work under a contract

Section 69. The commonwealth and any county, city, town or district having the power of taxation which has accepted chapter eight hundred and seven of the acts of nineteen hundred and thirteen, and any town or district having the power of taxation which accepts the provisions of this section at an annual meeting or at any special meeting called for the purpose, and any county tuberculosis hospital district under sections seventy-eight to ninety, inclusive, of chapter one hundred and eleven, if the trustees of said district accept the provisions of this section and any regional school district which accepts this section by vote of its regional district school committee, shall pay to laborers, workmen, mechanics, and nurses, employed by it who receive injuries arising out of and in the course of their employment, or, in case of death resulting from such injury, to the persons entitled thereto, the compensation provided by this chapter. Compensation payable under this chapter to an injured employee of the commonwealth or of any such county, city, town or district who receives full maintenance in addition to his cash salary or wage, and compensation payable thereunder to his dependents in case of his death, shall be based upon his average weekly wages plus the sum of thirty dollars a week in lieu of the full maintenance received by him; provided, that, in the discretion of the superintendent or other person in charge or control of any institution where such an employee is employed, such maintenance, computed at the rate per week hereinbefore set forth, may be continued during total incapacity, in which event such weekly compensation shall be based

solely upon the cash salary or wages of such employee. No cash salary or wages shall be paid by the commonwealth or any such county, city, town or district to any person for any period for which weekly total incapacity compensation under this chapter is payable, except that such salary or wages may be paid in full until any overtime or vacation which the said employee has to his credit has been used, without deduction of any compensation herein provided for which may be due or become due the said employee during the period in which said employee may be totally incapacitated, and except that such salary or wages may be paid in part until any sick leave allowance which the employee has to his credit has been used, any other provisions of law notwithstanding except as otherwise provided in a collective bargaining agreement. An employee who is entitled to any sick leave allowance may take such of his sick leave allowance payment as, when added to the amount of any disability compensation herein provided, will result in the payment to him of his full salary or wages. Sections seventy to seventy-five, inclusive, shall apply to the commonwealth and to any county, city, town or district having the power of taxation which has accepted said chapter eight hundred and seven, and to any town or district having the power of taxation which accepts the provisions of this section as hereinbefore provided, and to any county tuberculosis hospital district under said sections seventy-eight to ninety, inclusive, if the trustees of said district accept the provisions of this section. The terms laborers, workmen and mechanics, as used in sections sixty-eight to seventy-five, inclusive, shall include all employees of any such city or town, except members of a police or fire force, who are engaged in work being done under a contract with the state department of highways, and shall include other employees except members of a police or fire force, regardless of the nature of their work, of the commonwealth or of any such county, city, town, district, county tuberculosis hospital district, or regional school district to such extent as the commonwealth or such county, city, town, district, county tuberculosis hospital district or regional school district, acting respectively through the governor and council, county

commissioners, city council, the qualified voters in a town or district meeting, the trustees of such county tuberculosis hospital district, or the regional district school committee, shall determine, as evidenced by a writing filed with the department. The terms laborers, workmen and mechanics, as used in sections sixty-eight to seventy-five, inclusive, shall, if the city council or the town meeting so votes, also include such elected or appointed officers of the city or town, except the mayor, city councillors, selectmen or members of the police or fire force, as the mayor or board of selectmen may, from time to time, designate, as evidenced by a writing filed with the division.

Any county, city, town or district which accepts this section may provide for payment of compensation of certain or all of its employees by insurance with an insurer, subject, however, to the provisions and limitations of this section.

The term “employee” as used in this section shall include the manager of the municipal light plant, municipal gas plant or municipal gas and electric plant of any city or town owning and operating such plant either pursuant to the provisions of chapter one hundred and sixty-four or of any special law.

Section 69A Repealed, 1992, 133, Sec. 507

Section 69B Vouchers; examinations and investigations; reports

Section 69B. Payments of compensation, or payments of medical or other expenses or fees by the commonwealth under this chapter shall be made only upon vouchers bearing the certification of the personnel administrator. Said personnel administrator shall make or shall cause to be made such examinations and investigations as may assist in determining whether or not the injured employee is still incapacitated and whether such payments are due under this chapter.

Said personnel administrator shall obtain such information as will assist in the prevention of injuries, arising out of and in the course of employment, to public employees, in the rehabilitation of injured employees, and in their reemployment. He shall require from the workers' compensation agents, appointed under section seventy-five, preliminary reports on such injuries within forty-eight hours of their occurrence, and detailed reports within two weeks. He shall require from such agents the name and status of any employee who has remained incapacitated for three months following an injury, and shall refer such reports to the office of education and vocational rehabilitation for consideration and recommendation under the provisions of sections thirty E to thirty H, inclusive.

Section 70 Procedure and jurisdiction; compensation paid by commonwealth and its subdivisions

Section 70. Procedure under sections sixty-nine to seventy-five, inclusive, and the jurisdiction of the department shall be the same as under sections one to sixty-eight, inclusive, and the commonwealth or such county, city, town or district shall have the same rights in proceedings under said sections as the insurer. The state treasurer or the treasurer or officer having similar duties of such county, city, town or district shall pay compensation awarded for injury to persons in its employment upon proper vouchers without further authority.

Section 71 Liability of county, city, town or district for employee's injuries

Section 71. Except as provided in the following section, such county, city, town or district shall not be liable in any action for a personal injury sustained by a laborer, workman or mechanic in the course of his employment by such county, city, town or district, or for death resulting from such injury

Section 72 Employee claiming or waiving rights against county, city, town or district

Section 72. A laborer, workman or mechanic entering the service of such county, city, town or district who would, if injured, have a right of action against the county, city, town or district by law, may claim or waive his right of action as provided in section twenty-four, and shall be deemed to have waived such right of action unless he claims it.

Section 73 Election to receive compensation or pension; retirement boards; prosecuting claims; attorney; notice to boards; special pensions

Section 73. Any person entitled under section sixty-nine to receive compensation from the commonwealth or from such county, city, town or district and any person entitled under section thirty-one, thirty-four, thirty-four A, thirty-five, thirty-five A or thirty-six to receive compensation from the Massachusetts Department of Transportation or the Massachusetts Port Authority, the Blue Hills Regional Vocational School system, the Greater Lawrence Sanitary District, the Minuteman Regional Vocational Technical School District, the Massachusetts Water Resources Authority or the Massachusetts Bay Transportation Authority so entitled to compensation under said sections and who is also entitled to a pension by reason of the same injury, shall elect whether he will receive such compensation or such pension, and shall not receive both, except in the manner and to the extent provided by section fourteen of chapter thirty-two. Notwithstanding the any general or special law to the contrary, any present or former Massachusetts Bay Transportation Authority employee or retiree entitled to

compensation under section 31, 34, 34A, 35, 35A or 36 who is also entitled to a pension by reason of the same injury shall elect whether he will receive such compensation or such pension and shall not receive both, except in the manner and to the extent provided by section 14 of chapter 32; provided, however, that the requirement to make such election shall apply to all former Massachusetts Bay Transportation Authority employees or retirees presently receiving or entitled to receive benefits under said section 31, 34, 34A, 35, 35A or 36 who are also receiving or entitled to a pension by reason of the same injury. A retirement board, for the purposes of the last-mentioned section, may prosecute in the name and for the benefit of a member or beneficiary of its system or his legal representative or any of his dependents, who is or may become entitled to a pension under chapter thirty-two, all claims which he or they may have for compensation under this chapter, if such member, beneficiary, legal representative or dependent has failed, or such board is of opinion that he will fail, to make or prosecute such claim with reasonable promptness and diligence. Said board, so prosecuting such remedy, shall be deemed to be a party in interest and may take an appeal and institute any proceeding which the employee or his legal representative or dependent might take or institute. In proceedings where the commonwealth, county, city, town or district is represented by the attorney general, city solicitor, town counsel or other attorney, the retirement board may be represented by an attorney of its own selection. Agents of the commonwealth under section seventy-five and such agents, and insurers, of counties, cities, towns or districts, executing agreements for compensation under this chapter, shall forthwith notify the appropriate retirement board.

If a person entitled to such compensation from the commonwealth or from such county, city, town or district receives by special act a pension for the same injury, he shall forfeit all claim for compensation; and any compensation received by him or paid by the commonwealth or by such county, city, town or district which employs him for medical or hospital services rendered

to him may be recovered back in an action at law. No further payment shall be awarded by vote or otherwise to any person who has claimed and received compensation under sections sixty-nine to seventy-five, inclusive.

Section 73A Employment of partially disabled employee; temporary employment to fill vacancy

Section 73A. Any employee who by reason of partial disability is entitled to receive compensation as provided by section sixty-nine from the commonwealth, or from such county, city, town or district, and who in the opinion of the head of any department or of any appointing officer, can be suitably employed in such department or by such officer in a position with duties adapted to his reduced earning capacity, may, subject in the case of a state employee to the approval of the division of personnel administration, be so employed at a salary based on his reduced earning capacity as determined by the industrial accident board or a member thereof after a hearing; provided, that no such employee shall be so employed in a position within the classified civil service without the approval of the personnel administrator. The head or appointing officer of the department in which such employee was employed previous to the injury causing his disability, may, subject to the provisions of chapter thirty-one, temporarily employ a person to fill any vacancy in the original position of such employee that may be caused by his disability, pending the return of such employee to full time employment at his regular duties.

Section 74 Application of statutes to all public employees; inmates of institutions; employees of boards or commissions and welfare districts

Section 74. Sections sixty-nine to seventy-five, inclusive, shall apply to all laborers, workmen and mechanics in the service of the commonwealth or of such county, city, town or district under any employment or contract of hire, expressed or implied, oral or written, including those employed in work done in performance of governmental duties as well as those employed in municipal enterprises conducted for gain or profit. Said sections shall not apply to inmates of institutions performing labor under sections forty-eight to seventy-seven, inclusive, of chapter one hundred and twenty-seven. For the purposes of sections sixty-nine to seventy-five, inclusive, all laborers, workmen and mechanics paid by the commonwealth, but serving under boards or commissions exercising powers within defined districts, shall be deemed to be

in the service of the commonwealth. For the purposes of sections sixty-nine to seventy-five, inclusive, all employees of welfare districts, organized under the provisions of section forty-four of chapter one hundred and seventeen, shall be deemed to be employees of such town as the district welfare committee shall determine, and if such town has provided for the payment of compensation required by this chapter, the said district welfare committee shall apportion the expenses of providing such compensation among the towns comprising the said welfare district.

Section 74A Employee of one governmental unit or electric company aiding another unit or company; reimbursement of compensation

Section 74A. Any governmental unit, which words as used in this section shall mean the commonwealth or any political subdivision thereof or any municipal gas or electric commission, may, by action of the executive or board having jurisdiction in the commonwealth, the county commissioners in a county, the mayor in a city, the board of selectmen in a town, or by the action of any other executive or board having jurisdiction, as the case may be, request and authorize any employee in its service to go to the aid of a second governmental unit or an electric company as defined in section one of chapter one hundred and sixty-four, if in the judgment of the head of the department in which such employee is regularly employed such action is necessary. Any electric company may go to the aid of any governmental unit or other electric company. While in the performance of his duties pursuant to such request and authorization, any such employee of the commonwealth and any county, city, town, or district having the power of taxation which has accepted chapter eight hundred and seven of the acts of nineteen hundred and thirteen, or any town or district having the power of taxation which has accepted or accepts the provisions of section sixty-nine, or any electric company shall be subject to the provisions of and shall be paid the compensation provided by this chapter, as if performing the same duties within the scope of his regular employment.

The governmental unit or electric company so requesting such assistance shall reimburse in full, in accordance with the provisions of this paragraph, the first governmental unit or electric company for any compensation payments lawfully made by it or on its behalf on account of any injuries suffered by such employee in the course of rendering such aid, or on account of his death as a result of such injuries. The treasurer of the first governmental unit or electric company shall annually, on or before January fifteenth, upon the certification of the compensation agent or the insurer furnishing the benefits due under sections sixty-nine to seventy-five, inclusive, notify the treasurer of the second governmental unit or requesting electric company of the amount of reimbursement due therefrom for the previous fiscal year, and such latter treasurer shall forthwith take such steps as may be necessary to insure prompt payment of such amount. All such payments due under the provisions of this paragraph from the second governmental unit or requesting electric company shall be paid by the insurer of the second governmental unit or requesting electric company, or if such governmental unit or electric company has not provided for payment of compensation by insurance with an insurer, then they shall be paid by the requesting electric company or by such governmental unit from a special appropriation, or from an insurance fund established under section thirteen A of chapter forty, and as received they shall be credited to the insurer of the governmental unit which made the payments. On default of any such payment, the first governmental unit or electric company may maintain an action of contract to recover the same.

Section 75 Agents designated to furnish benefits and carry out statutes

Section 75. Every board, commission and department of the commonwealth, and every such county, city, town and district shall through its executive officers or board, designate one or more persons, as it may deem necessary, to act as its agent or agents in furnishing the benefits

due under sections sixty-nine to seventy-five, inclusive. Such agent or agents shall be responsible for the proper carrying out of said sections under the direction and supervision of the department until his or their agency is revoked and a new agent or new agents designated. The name and address of every such agent shall be filed with the division, and, in the case of every such agent acting for any board, commission or department of the commonwealth, with the personnel administrator immediately upon his designation. This section shall not apply to counties, cities, towns and districts which have provided by insurance for the payment of compensation required by this chapter for all of their employees.

Section 75A Preferences for hiring

Section 75A. Any person who has lost a job as a result of an injury compensable under this chapter shall be given preference in hiring by the employer for whom he worked at the time of compensable injury over any persons not at the time of application for reemployment employed by such employer; provided, however, that a suitable job is available. Actions may be filed under this section with the superior court department of the trial court for the county in which the alleged violation occurred. An employer found to have violated this section shall be exclusively liable to pay to the employee lost wages, shall grant the employee a suitable job, and shall reimburse such reasonable attorney fees incurred in the protection of rights granted by this section as shall be determined by the court.

In the event that any right set forth in this section is inconsistent with an applicable collective bargaining agreement or chapter thirty-one, the collective bargaining agreement or said chapter thirty-one shall prevail.

Section 75B Qualified handicapped persons; discrimination against employees exercising rights under this chapter; disclosure of data

Section 75B. (1) Any employee who has sustained a work-related injury and is capable of performing the essential functions of a particular job, or who would be capable of performing the essential functions of such job with reasonable accommodations, shall be deemed to be a qualified handicapped person under the provisions of chapter one hundred and fifty-one B.

(2) No employer or duly authorized agent of an employer shall discharge, refuse to hire or in any other manner discriminate against an employee because the employee has exercised a right afforded by this chapter, or who has testified or in any manner cooperated with an inquiry or proceeding pursuant to this chapter, unless the employee knowingly participated in a fraudulent proceeding. Any person claiming to be aggrieved by a violation of this section may initiate proceedings in the superior court department of the trial court for the county in which the alleged violation occurred. An employer found to have violated this paragraph shall be exclusively liable to pay to the employee lost wages, shall grant the employee suitable employment, and shall reimburse such reasonable attorney fees incurred in the protection of rights granted as shall be determined by the court. The court may grant whatever equitable relief it deems necessary to protect rights granted by this section.

(3) In the event that any right set forth in this section is inconsistent with an applicable collective bargaining agreement, such agreement shall prevail. An employee may not otherwise waive rights granted by this section.

(4) Upon a determination by the commissioner that a request for data maintained by the department is intended to be used in such a manner as to violate the purposes of this section, the commissioner may find that the disclosure of such data constitutes an unwarranted invasion of personal privacy pursuant to chapter four and deny said request. Nothing in this

section shall be construed to prohibit an insurer's right to obtain any information held by the department regarding any employee who has filed a claim against such insurer.

Section 76 Repealed, 1955, 234, Sec. 1

Section 77 to 85 Repealed, 1950, 220

Section 86 Public employees; certified copy of order, decision, or agreement mailed to public employee retirement administration commission, etc.

Section 86. Within fifteen days of an order or decision of the division, of a member or of a reviewing board, or the approval of a memorandum of agreement by the division, with respect to a claim by an employee of the commonwealth, a city, a town or a district which has accepted the provisions of chapter eight hundred and seven of the acts of nineteen hundred and thirteen, or of any town or district which has accepted or accepts the provisions of section sixty-nine, the division shall mail to the public employee retirement administration commission, and the board of the retirement system of which the employee is a member, a certified copy of said order or decision of the division, of a member or of a reviewing board or the memorandum of agreement approved by the division.