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MISSISSIPPI WORKERS' COMPENSATION LAW

§ 71-3-1. Short title; commission; definitions

- (1) This chapter shall be known and cited as "Workers' Compensation Law," and shall be administered by the Workers' Compensation Commission, hereinafter referred to as the "commission," cooperating with other state and federal authorities for the prevention of injuries and occupational diseases to workers and, in event of injury or occupational disease, their rehabilitation or restoration to health and vocational opportunity; and this chapter shall be fairly and impartially construed and applied according to the law and the evidence in the record, and, notwithstanding any common law or case law to the contrary, this chapter shall not be presumed to favor one party over another and shall not be liberally construed in order to fulfill any beneficent purposes.
- (2) Wherever used in this chapter, or in any other statute or rule or regulation affecting the former Workmen's Compensation Law and any of its functions or duties:
 - (a) The words "workmen's compensation" shall mean "workers' compensation"; and
 - (b) The word "commission" shall mean the Workers' Compensation Commission.
- (3) The primary purposes of the Workers' Compensation Law are to pay timely temporary and permanent disability benefits to every worker who legitimately suffers a work-related injury or occupational disease arising out of and in the course of his employment, to pay reasonable and necessary medical expenses resulting from the work-related injury or occupational disease, and to encourage the return to work of the worker.

§ 71-3-3. Definitions

Unless the context otherwise requires, the definitions which follow govern the construction and meaning of the terms used in this chapter:

- (a) "Person" includes an individual, firm, voluntary association or a corporation.
- (b) "Injury" means accidental injury or accidental death arising out of and in the course of employment without regard to fault which results from an untoward event or events, if contributed to or aggravated or accelerated by the employment in a significant manner. Untoward event includes events causing unexpected results. An untoward event or events shall not be presumed to have arisen out

of and in the course of employment, except in the case of an employee found dead in the course of employment. This definition includes injuries to artificial members, and also includes an injury caused by the willful act of a third person directed against an employee because of his employment while so employed and working on the job, and disability or death due to exposure to ionizing radiation from any process in employment involving the use of or direct contact with radium or radioactive substances with the use of or direct exposure to roentgen (X-rays) or ionizing radiation. In radiation cases only, the date of disablement shall be treated as the date of the accident. Occupational diseases, or the aggravation thereof, are excluded from the term "injury," provided that, except as otherwise specified, all provisions of this chapter apply equally to occupational diseases as well as injury.

- (c) "Death," when mentioned as a basis for the right to compensation, means only death resulting from such an injury.
- (d) "Employee" means any person, including a minor whether lawfully or unlawfully employed, in the service of an employer under any contract of hire or apprenticeship, written or oral, express or implied, provided that there shall be excluded therefrom all independent contractors and especially any individual performing service in, and at the time of, the sale of newspapers or magazines to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by the individual at a fixed price, the individual's compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to the individual, whether or not the individual is guaranteed a minimum amount of compensation for such service or is entitled to be credited with the unsold newspapers or magazines returned. A student of an educational institution who, as a part of such educational institution's curriculum, is receiving practical training at any facility, who is under the active and direct supervision of the personnel of the facility and/or an instructor of the educational institution, and who is not receiving wages as a consequence of participation in such practical training shall not be considered an employee of such facility on account of participation in such practical training.
- (e) "Employer," except when otherwise expressly stated, includes a person, partnership, association, corporation and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association or corporation.
- (f) "Carrier" means any person authorized in accordance with the provisions of this chapter to insure under this chapter and includes self-insurers.
- (g) "Self-insurer" is an employer who has been authorized under the provisions of this chapter to carry his own liability on his covered employees without insuring in a stock or mutual carrier.
- (h) "Commission" means the Workers' Compensation Commission.
- (i) "Disability" means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or other employment, which incapacity and the extent thereof must be supported by medical findings.

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- (j) “Compensation” means the money allowance payable to an injured worker or his dependents as provided in this chapter, and includes funeral benefits provided therein.
 - (k) “Wages” includes the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of injury, and also the reasonable value of board, rent, housing, lodging or similar advantage received from the employer and gratuities received in the course of employment from others than the employer. The term “wages” shall not include practical training received by students of an educational institution as a part of such educational institution’s curriculum.
 - (l) “Child” shall include a posthumous child, a child legally adopted prior to the injury of the employee, a child in relation to whom the deceased employee stood in the place of a parent for at least one (1) year prior to the time of injury and a stepchild or acknowledged illegitimate child dependent upon the deceased, but does not include married children unless wholly dependent on him. “Grandchild” means a child as above defined of a child as above defined. “Brother” and “sister” include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but does not include married brothers nor married sisters unless wholly dependent on the employee. “Child,” “grandchild,” “brother” and “sister” include only persons who are under eighteen (18) years of age, and also persons who, though eighteen (18) years of age or over, are wholly dependent upon the deceased employee and incapable of self-support by reason of mental or physical disability, and also a child eighteen (18) years of age or older, until his twenty-third birthday, who is dependent upon the deceased and is pursuing a full-time education.
 - (m) “Parent” includes stepparents and parents by adoption, parents-in-law or any person who for more than three (3) years prior to the death of the deceased employee stood in the place of a parent to him, or her, if dependent on the injured employee.
 - (n) The term “surviving spouse” includes the decedent’s legal wife or husband, living with him or her or dependent for support upon him or her at the time of death or living apart for justifiable cause or by reason of desertion at such time, provided, however, such separation had not existed for more than three (3) years without an award for separate maintenance or alimony or the filing of a suit for separate maintenance or alimony in the proper court in this state. The term “surviving spouse” shall likewise include one not a legal wife or husband but who had entered into a ceremonial marriage with the decedent at least one (1) year prior to death and who, on the date of the decedent’s death, stood in the relationship of a wife or husband, provided there was no living legal spouse who had protected her or his rights for support by affirmative action as hereinabove required. The term “surviving spouse” as contemplated in this chapter shall not apply to any person who has, since his or her separation from decedent, entered into a ceremonial marriage or lived in open adultery with another.
 - (o) The term “adoption” or “adopted” means legal adoption prior to the time of the injury.
 - (p) The singular includes the plural and the masculine includes the feminine and neuter.

- (q) It is expressly provided, agreed and understood in determining beneficiaries under this section that a surviving spouse suffering a mental or physical handicap and children under the age of eighteen (18) years are presumed to be dependent.
- (r) "Independent contractor" means any individual, firm or corporation who contracts to do a piece of work according to his own methods without being subject to the control of his employer except as to the results of the work, and who has the right to employ and direct the outcome of the workers independent of the employer and free from any superior authority in the employer to say how the specified work shall be done or what the laborers shall do as the work progresses, one who undertakes to produce a given result without being in any way controlled as to the methods by which he attains the result.
- (s) "Average weekly wage for the state" means an amount determined by the commission as of October 1 of each year based upon wage and employment statistics reported to the commission by the Mississippi Employment Security Commission. Such amount shall be based upon data for the preceding twelve-month period and shall be effective from and after January 1 of the following year.

§ 71-3-5. Employers subject to statute; proof of insurance

The following shall constitute employers subject to the provisions of this chapter:

Every person, firm and private corporation, including any public service corporation but excluding, however, all nonprofit charitable, fraternal, cultural, or religious corporations or associations, that have in service five (5) or more workmen or operatives regularly in the same business or in or about the same establishment under any contract of hire, express or implied.

Any state agency, state institution, state department, or subdivision thereof, including counties, municipalities and school districts, or the singular thereof, not heretofore included under the Workers' Compensation Law, may elect, by proper action of its officers or department head, to come within its provisions and, in such case, shall notify the commission of such action by filing notice of compensation insurance with the commission. Payment for compensation insurance policies so taken may be made from any appropriation or funds available to such agency, department or subdivision thereof, or from the general fund of any county or municipality.

From and after July 1, 1990, all offices, departments, agencies, bureaus, commissions, boards, institutions, hospitals, colleges, universities, airport authorities or other instrumentalities of the "state" as such term is defined in Section 11-46-1, Mississippi Code of 1972, shall come under the provisions of the Workers' Compensation Law. Payment for compensation insurance policies so taken may be made from any appropriation or funds available to such office, department, agency, bureau, commission, board, institution, hospital, college, university, airport authority or other instrumentality of the state.

From and after October 1, 1990, counties and municipalities shall come under the provisions of the Workers' Compensation Law. Payment for compensation insurance policies so taken may be made from any funds available to such counties and municipalities.

From and after October 1, 1993, all "political subdivisions," as such term is defined in Section 11-46-1, Mississippi Code of 1972, except counties and municipalities shall

come under the provisions of the Workers' Compensation Law. Payment for compensation insurance policies so taken may be made from any funds available to such political subdivisions.

From and after July 1, 1988, the "state" as such term is defined in Section 11-46-1, Mississippi Code of 1972, may elect to become a self-insurer under the provisions elsewhere set out by law, by notifying the commission of its intent to become a self-insurer. The cost of being such a self-insurer, as provided otherwise by law, may be paid from funds available to the offices, departments, agencies, bureaus, commissions, boards, institutions, hospitals, colleges, universities, airport authorities or other instrumentalities of the state.

The Mississippi Transportation Commission, the Department of Public Safety and the Mississippi Industries for the Blind may elect to become self-insurers under the provisions elsewhere set out by law by notifying the commission of their intention of becoming such a self-insurer. The cost of being such a self-insurer, as provided elsewhere by law, may be paid from funds available to the Mississippi Transportation Commission, the Department of Public Safety or the Mississippi Industries for the Blind.

The Mississippi State Senate and the Mississippi House of Representatives may elect to become self-insurers under provisions elsewhere set out by law by notifying the commission of their intention of becoming such self-insurers. The cost of being such self-insurers, as provided elsewhere by law, may be paid from funds available to the Mississippi State Senate and the Mississippi House of Representatives. The Mississippi State Senate and the Mississippi House of Representatives are authorized and empowered to provide workers' compensation benefits for employees after January 1, 1970.

Any municipality of the State of Mississippi having forty thousand (40,000) population or more desiring to do so may elect to become a self-insurer under provisions elsewhere set out by law by notifying the commission of its intention of becoming such an insurer. The cost of being such a self-insurer, as provided elsewhere by law, may be provided from any funds available to such municipality.

The commission may, under such rules and regulations as it prescribes, permit two (2) or more "political subdivisions," as such term is defined in Section 11-46-1, Mississippi Code of 1972, to pool their liabilities to participate in a group workers' compensation self-insurance program. The governing authorities of any political subdivision may authorize the organization and operation of, or the participation in such a group self-insurance program with other political subdivisions, provided such program is approved by the commission. The cost of participating in a group self-insurance program may be provided from any funds available to a political subdivision.

Domestic servants, farmers and farm labor are not included under the provisions of this chapter, but this exemption does not apply to the processing of agricultural products when carried on commercially. Any purchaser of timber products shall not be liable for workers' compensation for any person who harvests and delivers timber to such purchaser if such purchaser is not liable for unemployment tax on the person harvesting and delivering the timber as provided by United States Code Annotated, Title 26, Section 3306, as amended. Provided, however, nothing in this section shall be construed to exempt an employer who would otherwise be covered under this section from providing workers' compensation coverage on those employees for whom he is liable for unemployment tax.

Employers exempted by this section may assume, with respect to any employee or classification of employees, the liability for compensation imposed upon employers by

this chapter with respect to employees within the coverage of this chapter. The purchase and acceptance by such employer of valid workers' compensation insurance applicable to such employee or classification of employees shall constitute, as to such employer, an assumption by him of such liability under this chapter without any further act on his part notwithstanding any other provisions of this chapter, but only with respect to such employee or such classification of employees as are within the coverage of the state fund. Such assumption of liability shall take effect and continue from the effective date of such workers' compensation insurance and as long only as such coverage shall remain in force, in which case the employer shall be subject with respect to such employee or classification of employees to no other liability than the compensation as provided for in this chapter.

An owner/operator, and his drivers, must provide a certificate of insurance of workers' compensation coverage to the motor carrier or proof of coverage under a self-insured plan or an occupational accident policy. Any such occupational accident policy shall provide a minimum of One Million Dollars (\$1,000,000.00) of coverage. Should the owner/operator fail to provide written proof of coverage to the motor carrier, then the owner/operator, and his drivers, shall be covered under the motor carrier's workers' compensation insurance program and the motor carrier is authorized to collect payment of the premium from the owner/operator. In the event that coverage is obtained by the owner/operator under a workers' compensation policy or through a self-insured or occupational accident policy, then the owner/operator, and his drivers, shall not be entitled to benefits under the motor carrier's workers' compensation insurance program unless the owner/operator has elected in writing to be covered under the carrier's workers' compensation program or policy or if the owner/operator is covered by the carrier's plan because he failed to obtain coverage. Coverage under the motor carrier's workers' compensation insurance program does not terminate the independent contractor status of the owner/operator under the written contract or lease agreement. Nothing shall prohibit or prevent an owner/operator from having or securing an occupational accident policy in addition to any workers' compensation coverage authorized by this section. Other than the amendments to this section by Chapter 523, 2006 Regular Session,¹ the provisions of this section shall not be construed to have any effect on any other provision of law, judicial decision or any applicable common law.

This chapter shall not apply to transportation and maritime employments for which a rule of liability is provided by the laws of the United States.

This chapter shall not be applicable to a mere direct buyer-seller or vendor-vendee relationship where there is no employer-employee relationship as defined by Section 71-3-3, and any insurance carrier is hereby prohibited from charging a premium for any person who is a seller or vendor rather than an employee.

Any employer may elect, by proper and written action of its own governing authority, to be exempt from the provisions of the Workers' Compensation Law as to its sole proprietor, its partner in a partnership or to its employee who is the owner of fifteen percent (15%) or more of its stock in a corporation, if such sole proprietor, partner or employee also voluntarily agrees thereto in writing. Any sole proprietor, partner or employee owning fifteen percent (15%) or more of the stock of his/her corporate employer who becomes exempt from coverage under the Workers' Compensation Law shall be excluded from the total number of workers or operatives toward reaching the mandatory coverage threshold level of five (5).

§ 71-3-7. Payment of compensation by employer

- (1) Compensation shall be payable for disability or death of an employee from injury or occupational disease arising out of and in the course of employment, without regard to fault as to the cause of the injury or occupational disease. An occupational disease shall be deemed to arise out of and in the course of employment when there is evidence that there is a direct causal connection between the work performed and the occupational disease. In all claims in which no benefits, including disability, death and medical benefits, have been paid, the claimant shall file medical records in support of his claim for benefits when filing a petition to controvert. If the claimant is unable to file the medical records in support of his claim for benefits at the time of filing the petition to controvert because of a limitation of time established by Section 71-3-35 or Section 71-3-53, the claimant shall file medical records in support of his claim within sixty (60) days after filing the petition to controvert.
- (2) Where a preexisting physical handicap, disease, or lesion is shown by medical findings to be a material contributing factor in the results following injury, the compensation which, but for this subsection, would be payable shall be reduced by that proportion which such preexisting physical handicap, disease, or lesion contributed to the production of the results following the injury. The preexisting condition does not have to be occupationally disabling for this apportionment to apply.
- (3) The following provisions shall apply to subsections (1) and (2) of this section:
 - (a) Apportionment shall not be applied until the claimant has reached maximum medical recovery.
 - (b) The employer or carrier does not have the power to determine the date of maximum medical recovery or percentage of apportionment. This must be done by the attorney-referee, subject to review by the commission as the ultimate finder of fact.
 - (c) After the date the claimant reaches maximum medical recovery, weekly compensation benefits and maximum recovery shall be reduced by that proportion which the preexisting physical handicap, disease, or lesion contributes to the results following injury.
 - (d) If maximum medical recovery has occurred before the hearing and order of the attorney-referee, credit for excess payments shall be allowed in future payments. Such allowances and method of accomplishment of the same shall be determined by the attorney-referee, subject to review by the commission. However, no actual repayment of such excess shall be made to the employer or carrier.
- (4) No compensation shall be payable if the use of drugs illegally, or the use of a valid prescription medication(s) taken contrary to the prescriber's instructions and/or contrary to label warnings, or intoxication due to the use of alcohol of the employee was the proximate cause of the injury, or if it was the willful intention of the employee to injure or kill himself or another.
- (5) Every employer to whom this chapter applies shall be liable for and shall secure the payment to his employees of the compensation payable under its provisions.
- (6) In the case of an employer who is a subcontractor, the contractor shall be liable for and shall secure the payment of such compensation to employees of the subcontractor, unless the subcontractor has secured such payment.

§ 71-3-9. Employer liability exclusive

The liability of an employer to pay compensation shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next-of-kin, and anyone otherwise entitled to recover damages at common law or otherwise from such employer on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this chapter, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under this chapter, or to maintain an action at law for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, nor that the employee assumed the risk of his employment, nor that the injury was due to the contributory negligence of the employee.

§ 71-3-11. Commencement of compensation

No compensation except medical benefits shall be allowed for the first five (5) days of the disability. In case the injury results in disability of fourteen (14) days or more, the compensation shall be allowed from the date of disability.

§ 71-3-13. Maximum and minimum compensation limits

- (1) Compensation for disability or in death cases shall not exceed sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the average weekly wage for the state per week, nor shall it be less than Twenty-five Dollars (\$25.00) per week except in partial dependency cases and in partial disability cases.
- (2) Maximum recovery: The total recovery of compensation hereunder, exclusive of medical payments under Section 71-3-15, arising from the injury to an employee or the death of an employee, or any combination of such injury or death, shall not exceed the multiple of four hundred fifty (450) weeks times sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the average weekly wage for the state.

§ 71-3-15. Medical services for injured employee

- (1) The employer shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, artificial members, and other apparatus for such period as the nature of the injury or the process of recovery may require. The injured employee shall have the right to accept the services furnished by the employer or, in his discretion, to select one (1) competent physician of his choosing and such other specialists to whom he is referred by his chosen physician to administer medical treatment. Referrals by the chosen physician shall be limited to one (1) physician within a specialty or subspecialty area. Except in an emergency requiring immediate medical attention, any additional selection of physicians by the injured employee or further referrals must be approved by the employer, if self-insured, or the carrier prior to obtaining the services of the physician at the expense of the employer or carrier. If denied, the injured employee may apply to the commission for approval of the additional selection or referral, and if the commission determines that such request is reasonable, the employee may be authorized to obtain such treatment at the expense of the employer or carrier. Approval by the employer or carrier does not require approval by the commission. A physician to whom the employee is

referred by his employer shall not constitute the employee's selection, unless the employee, in writing, accepts the employer's referral as his own selection. However, if the employee is treated for his alleged work-related injury or occupational disease by a physician for six (6) months or longer, or if the employee has surgery for the alleged work-related injury or occupational disease performed by a physician, then that physician shall be deemed the employee's selection. Should the employer desire, he may have the employee examined by a physician other than of the employee's choosing for the purpose of evaluating temporary or permanent disability or medical treatment being rendered under such reasonable terms and conditions as may be prescribed by the commission. If at any time during such period the employee unreasonably refuses to submit to medical or surgical treatment, the commission shall, by order, suspend the payment of further compensation during such time as such refusal continues, and no compensation shall be paid at any time during the period of such suspension; provided, that no claim for medical or surgical treatment shall be valid and enforceable, as against such employer, unless within twenty (20) days following the first treatment the physician or provider giving such treatment shall furnish to the employer, if self-insured, or its carrier, a preliminary report of such injury and treatment, on a form or in a format approved by the commission. Subsequent reports of such injury and treatment must be submitted at least every thirty (30) days thereafter until such time as a final report shall have been made. Reports which are required to be filed hereunder shall be furnished by the medical provider to the employer or carrier, and it shall be the responsibility of the employer or carrier receiving such reports to promptly furnish copies to the commission. The commission may, in its discretion, excuse the failure to furnish such reports within the time prescribed herein if it finds good cause to do so, and may, upon request of any party in interest, order or direct the employer or carrier to pay the reasonable value of medical services rendered to the employee.

- (2) Whenever in the opinion of the commission a physician has not correctly estimated the degree of permanent disability or the extent of the temporary disability of an injured employee, the commission shall have the power to cause such employee to be examined by a physician selected by the commission, and to obtain from such physician a report containing his estimate of such disabilities. The commission shall have the power in its discretion to charge the cost of such examination to the employer, if he is a self-insurer, or to the insurance company which is carrying the risk.
- (3) In carrying out this section, the commission shall establish an appropriate medical provider fee schedule, medical cost containment system and utilization review which incorporates one or more medical review panels to determine the reasonableness of charges and the necessity for the services, and limitations on fees to be charged by medical providers for testimony and copying or completion of records and reports and other provisions which, at the discretion of the commission, are necessary to encompass a complete medical cost containment program. The commission may contract with a private organization or organizations to establish and implement such a medical cost containment system and fee schedule with the cost for administering such a system to be paid out of the administrative expense fund as provided in this chapter. All fees and other charges for such treatment or service shall be limited to such charges as prevail in the same community for similar treatment and shall be subject to regulation by the commission. No medical bill shall be paid to any doctor

until all forms and reports required by the commission have been filed. Any employee receiving treatment or service under the provisions of this chapter may not be held responsible for any charge for such treatment or service, and no doctor, hospital or other recognized medical provider shall attempt to bill, charge or otherwise collect from the employee any amount greater than or in excess of the amount paid by the employer, if self-insured, or its workers' compensation carrier. Any dispute over the amount charged for service rendered under the provisions of this chapter, or over the amount of reimbursement for services rendered under the provisions of this chapter, shall be limited to and resolved between the provider and the employer or carrier in accordance with the fee dispute resolution procedures adopted by the commission.

- (4) The liability of an employer for medical treatment as herein provided shall not be affected by the fact that his employee was injured through the fault or negligence of a third party, not in the same employ, provided the injured employee was engaged in the scope of his employment when injured. The employer shall, however, have a cause of action against such third party to recover any amounts paid by him for such medical treatment.
- (5) An injured worker who believes that his best interest has been prejudiced by the findings of the physician designated by the employer or carrier shall have the privilege of a medical examination by a physician of his own choosing, at the expense of the carrier or employer. Such examination may be had at any time after injury and prior to the closing of the case, provided that the charge shall not exceed One Hundred Dollars (\$100.00) and shall be paid by the carrier or employer where the previous medical findings are upset, but paid by the employee if previous medical findings are confirmed.
- (6) Medical and surgical treatment as provided in this section shall not be deemed to be privileged insofar as carrying out the provisions of this chapter is concerned. All findings pertaining to a second opinion medical examination, at the instance of the employer shall be reported as herein required within fourteen (14) days of the examination, except that copies thereof shall also be furnished by the employer or carrier to the employee. All findings pertaining to an independent medical examination by order of the commission shall be reported as provided in the order for such examination.
- (7) Any medical benefits paid by reason of any accident or health insurance policy or plan paid for by the employer, which were for expenses of medical treatment under this section, are, upon notice to the carrier prior to payment by it, subject to subrogation in favor of the accident or health insurance company to the extent of its payment for medical treatment under this section. Reimbursement to the accident or health insurance company by the carrier or employer, to the extent of such reimbursement, shall constitute payment by the employer or carrier of medical expenses under this section. Under no circumstances, shall any subrogation be had by any insurance company against any compensation benefits paid under this chapter.

§ 71-3-17. Disability compensation payments

Compensation for disability shall be paid to the employee as follows:

- (a) Permanent total disability: In case of total disability adjudged to be permanent, sixty-six and two-thirds percent (66-2/3%) of the average weekly wages of the

injured employee, subject to the maximum limitations as to weekly benefits as set up in this chapter, shall be paid to the employee not to exceed four hundred fifty (450) weeks or an amount greater than the multiple of four hundred fifty (450) weeks times sixty-six and two-thirds percent (66-2/3%) of the average weekly wage for the state. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two (2) thereof shall constitute permanent total disability. In all other cases, permanent total disability shall be determined in accordance with the facts.

- (b) Temporary total disability: In case of disability, total in character but temporary in quality, sixty-six and two-thirds percent (66-2/3%) of the average weekly wages of the injured employee, subject to the maximum limitations as to weekly benefits as set up in this chapter, shall be paid to the employee during the continuance of such disability not to exceed four hundred fifty (450) weeks or an amount greater than the multiple of four hundred fifty (450) weeks times sixty-six and two-thirds percent (66-2/3%) of the average weekly wage for the state. Provided, however, if there arises a conflict in medical opinions of whether or not the claimant has reached maximum medical recovery and the claimant's benefits have been terminated by the carrier, then the claimant may demand an immediate hearing before the commissioner upon five (5) days' notice to the carrier for a determination by the commission of whether or not in fact the claimant has reached maximum recovery.
- (c) Permanent partial disability: In case of disability partial in character but permanent in quality, the compensation shall be sixty-six and two-thirds percent (66-2/3%) of the average weekly wages of the injured employee, subject to the maximum limitations as to weekly benefits as set up in this chapter, which shall be paid following compensation for temporary total disability paid in accordance with paragraph (b) of this section, and shall be paid to the employee as follows:

Member Lost Number	Weeks Compensation
(1) Arm	200
(2) Leg	175
(3) Hand	150
(4) Foot	125
(5) Eye	100
(6) Thumb	60
(7) First finger	35
(8) Great toe	30
(9) Second finger	30
(10) Third finger	20
(11) Toe other than great toe	10
(12) Fourth finger	15
(13) Testicle, one	50
(14) Testicle, both	150
(15) Breast, female, one	50
(16) Breast, female, both	150

- (17) Loss of hearing: Compensation for loss of hearing of one (1) ear, forty (40) weeks. Compensation for loss of hearing of both ears, one hundred fifty (150) weeks.
- (18) Phalanges: Compensation for loss of more than one (1) phalange of a digit shall be the same as for loss of the entire digit. Compensation for loss of the first phalange shall be one-half (1/2) of the compensation for loss of the entire digit.
- (19) Amputated arm or leg: Compensation for an arm or leg, if amputated at or above wrist or ankle, shall be for the loss of the arm or leg.
- (20) Binocular vision or percent of vision: Compensation for loss of binocular vision or for eighty percent (80%) or more of the vision of an eye shall be the same as for loss of the eye.
- (21) Two (2) or more digits: Compensation for loss of two (2) or more digits, or one (1) or more phalanges of two (2) or more digits, of a hand or foot may be proportioned to the loss of the use of the hand or foot occasioned thereby, but shall not exceed the compensation for loss of a hand or foot.
- (22) Total loss of use: Compensation for permanent total loss of use of a member shall be the same as for loss of the member.
- (23) Partial loss or partial loss of use: Compensation for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member.
- (24) Disfigurement: The commission, in its discretion, is authorized to award proper and equitable compensation for serious facial or head disfigurements not to exceed Five Thousand Dollars (\$5,000.00). No such award shall be made until a lapse of one (1) year from the date of the injury resulting in such disfigurement.
- (25) Other cases: In all other cases in this class of disability, the compensation shall be sixty-six and two-thirds percent (66-2/3%) of the difference between his average weekly wages, subject to the maximum limitations as to weekly benefits as set up in this chapter, and his wage-earning capacity thereafter in the same employment or otherwise, payable during the continuance of such partial disability, but subject to reconsideration of the degree of such impairment by the commission on its own motion or upon application of any party in interest. Such payments shall in no case be made for a longer period than four hundred fifty (450) weeks.
- (26) In any case in which there shall be a loss of, or loss of use of, more than one (1) member or parts of more than one (1) member set forth in subparagraphs (1) through (23) of this paragraph (c), not amounting to permanent total disability, the award of compensation shall be for the loss of, or loss of use of, each such member or parts thereof, which awards shall run consecutively, except that where the injury affects only two (2) or more digits of the same hand or foot, subparagraph (21) of this paragraph (c) shall apply.

§ 71-3-19. Additional compensation and limitations

An employee who as a result of injury is or may be expected to be totally or partially incapacitated for a remunerative occupation and who, under the direction of the commission is being rendered fit to engage in a remunerative occupation may, in the discretion of the commission under regulations adopted by it, receive additional compensation necessary for his maintenance, but such additional compensation shall not exceed Twenty-five Dollars (\$25.00) a week for not more than fifty-two (52) weeks.

§ 71-3-21. Compensation for temporary partial disability

In case of temporary partial disability resulting in decrease of earning capacity, there shall be paid to the injured employee sixty-six and two-thirds percent (66- $\frac{2}{3}$ %) of the difference between the injured employee's average weekly wages before the injury and his wage-earning capacity after the injury in the same or other employment, subject to the maximum limitations as to weekly benefits as set up in this chapter, payable during the continuance of such disability but in no case exceeding four hundred fifty (450) weeks or an amount greater than the multiple of four hundred fifty (450) weeks times sixty-six and two-thirds percent (66- $\frac{2}{3}$ %) of the average weekly wage for the state.

§ 71-3-23. Compensation for hernia or rupture

In all cases of claim for hernia, it shall be shown by a preponderance of the evidence:

- (a) That the descent or protrusion of the hernia or rupture immediately followed as the result of sudden effort, severe strain, or the application of force to the abdominal wall;
- (b) That there was severe pain in the region of the hernia or rupture;
- (c) That there has been no descent or protrusion of the hernia or rupture prior to the accident for which compensation is claimed;
- (d) That the physical distress resulting from the descent or protrusion of the hernia or rupture was noticed immediately by claimant, and communicated to his employer within a reasonable time; and
- (e) That the physical distress following the descent or protrusion of the hernia or rupture was such as to require the attendance of a licensed physician or surgeon within five (5) days after the injury for which compensation is claimed. Postoperative hernias shall be considered as original hernias.

In every case of hernia or rupture as above defined, it shall be the duty of the employer forthwith to provide the necessary and proper medical, surgical, and hospital care and attention to effectuate a cure by radical operation of said hernia or rupture, and to pay compensation under the provisions of paragraph (b) of Section 71-3-17, not exceeding, however, a period of twenty-six (26) weeks.

In case the employee shall refuse to permit such operation, it shall be the duty of the employer to provide all necessary first aid, medical and hospital care and services, to supply the proper and necessary truss or other mechanical appliance to enable said employee to resume work, and shall further pay compensation under the provisions of paragraph (b) of Section 71-3-17, not exceeding, however, the period of thirteen (13) weeks.

In case death results within a period of one year, either from the hernia or rupture or from the radical operation thereof, compensation shall be paid the dependents as provided in other death cases under this chapter.

§ 71-3-25. Death benefit payment and amount

If the injury causes death, the compensation shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:

- (a) An immediate lump-sum payment of One Thousand Dollars (\$1,000.00) to the surviving spouse, in addition to other compensation benefits.
- (b) Reasonable funeral expenses not exceeding Five Thousand Dollars (\$5,000.00) exclusive of other burial insurance or benefits.
- (c) If there be a surviving spouse and no child of the deceased, to such surviving spouse thirty-five percent (35%) of the average wages of the deceased during widowhood or dependent widowhood and, if there be a surviving child or children of the deceased, the additional amount of ten percent (10%) of such wages for each such child. In case of the death or remarriage of such surviving spouse, any surviving child of the deceased employee shall have his compensation increased to fifteen percent (15%) of such wages, provided that the total amount payable shall in no case exceed sixty-six and two-thirds percent (66-2/3%) of such wages, subject to the maximum limitations as to weekly benefits as set up in this chapter. The commission may, in its discretion, require the appointment of a guardian for the purpose of receiving the compensation of a minor dependent. In the absence of such a requirement, the appointment of a guardian for such purposes shall not be necessary, provided that if no legal guardian be appointed, payment to the natural guardian shall be sufficient.
- (d) If there be a surviving child or children of the deceased but no surviving spouse, then for the support of each such child twenty-five percent (25%) of the wages of the deceased, provided that the aggregate shall in no case exceed sixty-six and two-thirds percent (66-2/3%) of such wages, subject to the maximum limitations as to weekly benefits as set up in this chapter.
- (e) If there be no surviving spouse or child, or if the amount payable to a surviving spouse and to children shall be less in the aggregate than sixty-six and two-thirds percent (66-2/3%) of the average wages of the deceased, subject to the maximum limitations as to weekly benefits as set up in this chapter, then for the support of grandchildren or brothers and sisters, if dependent upon the deceased at the time of the injury, fifteen percent (15%) of such wages for the support of each such person; and for the support of each parent or grandparent of the deceased, if dependent upon him at the time of injury, fifteen percent (15%) of such wages during such dependency. But in no case shall the aggregate amount payable under this subsection exceed the difference between sixty-six and two-thirds percent (66-2/3%) of such wages and the amount payable as hereinbefore provided to surviving spouse and for the support of surviving child or children, subject to the maximum limitations as to weekly benefits as set up in this chapter.
- (f) The total weekly compensation payments to any or all beneficiaries in death cases shall not exceed the weekly benefits as set up in this chapter and shall in no case be paid for a longer period than four hundred fifty (450) weeks or

for a greater amount than the multiple of four hundred fifty (450) weeks times sixty-six and two-thirds percent (66-2/3%) of the average weekly wage for the state.

- (g) All questions of dependency shall be determined as of the time of the injury. A surviving spouse, child or children shall be presumed to be wholly dependent. All other dependents shall be considered on the basis of total or partial dependence as the facts may warrant.

§ 71-3-27. Compensation to nonresident aliens

Compensation under this chapter to aliens not residents (or about to become non-residents) of the United States or Canada shall be in the same amount as provided for residents, except that dependents in any foreign country shall be limited to surviving wife and child or children or, if there be no surviving wife or child or children, to surviving father or mother whom the employee has supported, either wholly or in part, for the period of one (1) year prior to the date of the injury, and except that the commission may, at its option or upon the application of the insurance carrier, commute all future installments of compensation to be paid to such aliens by payment of a lump sum equal to the present value of all future payments of compensation computed at four percent (4%) discount compounded annually.

§ 71-3-29. Commission rules govern when schedules not applicable

Rules of the commission shall govern compromise payments where the prescribed schedules are not applicable and which, in its discretion, may be made in cases where it is not possible to determine the exact extent of disability, as for example in certain injuries to the back or head. The commission shall also have full authority to adjudicate the disposition of death claims. Commutation and lump sum settlement payments shall be governed by rules of the commission, and shall not be made except when determined to be in the best interest of the injured worker or his dependents, the commission having final authority in such questions.

§ 71-3-31. Computation of wages

Except as otherwise specifically provided, the basis for compensation under this chapter shall be the average weekly wages earned by the employee at the time of the injury, such wages to be determined from the earnings of the injured employee in the employment in which he was working at the time of the injury during the period of 52 weeks immediately preceding the date of the injury divided by fifty-two; but if the injured employee lost more than seven days during such period, although not in the same week, then the earnings for the remainder of such 52 weeks shall be divided by the number of weeks remaining after the time so lost has been deducted. When the employment prior to the injury extended over a period of less than 52 weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed, provided that results just and fair to both parties will thereby be obtained. Where, by reason of the shortness of time during which the employee has been in the employment of his employer, it is impracticable to compute the average weekly wages by the above method of computation, regard shall be had to the average weekly amount which, during the first fifty-two (52) weeks prior to the injury or death, was being earned by a person in the same grade, employed at the same or similar

work in the community. Wherever allowances of any character are made to an employee in lieu of wages or specified as part of the wage contract, they shall be deemed a part of his earnings.

§ 71-3-33. Appointment of guardian or representative

The commission may require the appointment by a court of competent jurisdiction, for any person who is mentally incompetent or a minor, of a guardian or other representative to receive compensation payable to such person under this chapter and to exercise the powers granted to or to perform the duties required of such person under this chapter.

§ 71-3-35. Notice to employer of injury

- (1) No claim for compensation shall be maintained unless, within thirty (30) days after the occurrence of the injury, actual notice was received by the employer or by an officer, manager, or designated representative of an employer. If no representative has been designated by posters placed in one or more conspicuous places, then notice received by any superior shall be sufficient. Absence of notice shall not bar recovery if it is found that the employer had knowledge of the injury and was not prejudiced by the employee's failure to give notice. Regardless of whether notice was received, if no payment of compensation (other than medical treatment or burial expense) is made and no application for benefits filed with the commission within two years from the date of the injury or death, the right to compensation therefor shall be barred.
- (2) If a person who is entitled to compensation under this chapter is mentally incompetent or a minor, the limitation for filing application for benefits shall not be applicable so long as such person has no guardian or other authorized representative, but shall be applicable in the case of a person who is mentally incompetent or a minor from the date of appointment of such guardian or other representative, or in the case of a minor, if no guardian is appointed before he becomes of age, from the date he becomes of age.
- (3) Where recovery is denied to any person, in a suit brought at law or admiralty to recover damages in respect of injury or death, on the ground that such person was an employee and that the defendant was an employer within the meaning of this chapter and that such employer had secured compensation to such employee under this chapter, the limitation upon filing application for benefits shall begin to run only from the date of termination of such suit.

§ 71-3-37. Compensation payments

- (1) Compensation under this chapter shall be paid periodically, promptly, in the usual manner, and directly to the person entitled thereto, without an award except where liability to pay compensation is controverted by the employer.
- (2) The first installment of compensation shall become due on the fourteenth day (14th) after the employer has notice, as provided in Section 71-3-35, of the injury or death, on which date all compensation then due shall be paid. Thereafter, compensation shall be paid in installments, every fourteen (14) days, except where the commission determines that payment in installments should be made at some other period.

- (3) Upon making the first payment and upon suspension of payment for any cause, the employer shall immediately notify the commission in accordance with a form prescribed by the commission that payment of compensation has begun or has been suspended, as the case may be. No suspension in payments of compensation shall be made for refusing to submit to medical or surgical treatment until the reasonableness of such request or refusal has been determined by the commission, and a written order suspending payment issued.
- (4) If the employer controverts the right to compensation he shall file with the commission, on or before the fourteenth (14th) day after he has knowledge of the alleged injury or death, a notice in accordance with a form prescribed by the commission, stating that the right to compensation is controverted, the name of the claimant, the name of the employer, the date of the alleged injury or death, and the grounds upon which the right to compensation is controverted. Failure to file this notice shall not prevent the employer raising any defense where claim is subsequently filed by the employee, nor shall the filing of the notice preclude the employer raising any additional defense.
- (5) If any installment of compensation payable without an award is not paid within fourteen (14) days after it becomes due, as provided in subsection (2) of this section, there shall be added to such unpaid installment an amount equal to ten percent (10%) thereof, which shall be paid at the same time as, but in addition to, such installment unless notice is filed under subsection (4) of this section, or unless such nonpayment is excused by the commission after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.
- (6) If any installment payable under the terms of an award is not paid within fourteen (14) days after it becomes due, there shall be added to such unpaid installment an amount equal to twenty percent (20%) thereof, which shall be paid at the same time as, but in addition to, such compensation unless review of the compensation order making such award is had.
- (7) Within thirty (30) days after the final payment of compensation has been made, the employer shall send to the commission a notice in accordance with a form prescribed by the commission, stating that such final payment has been made, the total amount of compensation paid, the name of the employee and of any other person to whom compensation has been paid, the date of the injury or death, and the date to which compensation has been paid. If the employer fails so to notify the commission within such time, the commission may assess against such employer a civil penalty in an amount not exceeding One Hundred Dollars (\$100.00). No case shall be closed nor any penalty be assessed without notice to all parties interested and without giving to all such parties an opportunity to be heard.
- (8) The commission (a) may upon its own initiative at any time in a case in which payments are being made without an award, and (b) shall in any case where right to compensation is controverted or where payments of compensation have been stopped or suspended, upon receipt of notice from any person entitled to compensation or from the employer that the right to compensation is controverted or that payments of compensation have been stopped or suspended, make such investigations, cause such medical examinations to be made, hold such hearings, and take such further action as it considers will properly protect the rights of all parties.

- (9) Whenever the commission deems it advisable, it may require any self-insurer to make a deposit with the State Treasurer to secure prompt and convenient payment of such compensation; and payments therefrom upon any awards shall be made upon order of the commission.
- (10) Whenever the commission determines that it is for the best interests of a person entitled to compensation, the liability of the employer for compensation, or any part thereof as determined by the commission, may be discharged by the payment of a lump sum equal to the present value of future compensation payments commuted, computed at four percent (4%) true discount compounded annually. The probability of the death of the injured employee or other person entitled to compensation shall be determined in accordance with validated actuarial tables or factors as the commission finds equitable and consistent with the purposes of the Workers' Compensation Law, and the probability of the remarriage of the surviving spouse or other person entitled to compensation may be determined in accordance with rules adopted by the commission which shall apply validated actuarial tables or factors as the commission finds equitable and consistent with the purposes of the Workers' Compensation Law. The probability of the happening of any other contingency affecting the amount or duration of the compensation shall be disregarded. The commission shall be the sole judge as to whether or not a lump-sum payment shall be to the best interest of the injured worker or his dependents.
- (11) If the employer has made advance payments of compensation, he shall be entitled to be reimbursed out of any unpaid installment or installments of compensation due.
- (12) An injured employee or, in case of death, his dependents or personal representative shall give receipts for payment of compensation to the employer paying the same; and whenever required, such employer shall produce the same for inspection by the commission.
- (13) Whenever a dispute arises between two (2) or more parties as to which party is liable for the payment of workers' compensation benefits to an injured employee and there is no genuine issue of material fact as to the employee's employment, his average weekly wage, the occurrence of an injury, the extent of the injury, and the fact that the injury arose out of and in the course of the employment, the commission may require the disputing parties involved to pay benefits immediately to the employee and to share equally in the payment of those benefits until it is determined which party is solely liable, at which time the liable party must reimburse all other parties for the benefits they have paid to the employee with interest at the legal rate.

§ 71-3-38. Highway commission account

While acting as a self-insurer as authorized by Section 71-3-5, the state highway commission is authorized and empowered to establish and maintain, from funds made available upon requisition from the state treasury, a special workmen's compensation account, and to deposit such funds therein, and to pay therefrom the workmen's compensation benefits as authorized by Section 71-3-37, and to pay such awards as may be entered and such other costs, expenses and benefits as may be incidental to the settlement of such workmen's compensation claims. Disbursement from such special account shall be by check properly drawn against such account and signed by such personnel as may be duly authorized by the state highway commission. Payment from the special account shall be deemed payments of and from the State of Mississippi.

§ 71-3-39. Record of compensation payments

Every insurance company which transacts the business of compensation insurance and every employer who is subject to the workmen's compensation law, but who has not insured his liability, shall keep a record of all payments made under the provisions of this law, and of the time and manner of making such payments, and shall furnish such reports based upon these records to the workmen's compensation commission as it may require by general order, upon forms approved by the commission.

§ 71-3-41. Agreements requiring employee payments invalid

No agreement by an employee to pay any portion of premium paid by his employer or to contribute to a benefit fund or department maintained by such employer for the purpose of providing compensation or medical services and supplies as required by this chapter shall be valid. Any employer who makes a deduction for such purpose from the pay of any employee entitled to the benefits of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars (\$1,000.00).

No agreement by an employee to waive his right to compensation under this law shall be valid.

§ 71-3-43. Assignment invalid; exemption from creditors

No assignment, release, or commutation of compensation or benefits due or payable under this chapter, except as provided by this chapter, shall be valid; and such compensation and benefits shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, which exemption may be waived. This section prevails over Sections 75-9-406 and 75-9-408 of Article 9 of the Uniform Commercial Code to the extent, if any, that these sections may otherwise be applicable.

§ 71-3-45. Compensation lien

Any person entitled to compensation under the provisions of this chapter shall have a lien against the assets of the carrier or employer for such compensation without limit of amount, and shall, upon insolvency, bankruptcy, or reorganization in bankruptcy proceedings of the carrier or employer, or both, be entitled to preference and priority in the distribution of the assets of such carrier or employer, or both.

§ 71-3-47. Proceeding for adjudication of claims

Except as otherwise provided by this chapter, the details of practice and procedure in the settlement and adjudication of claims shall be determined by rules of the commission, the text of which shall be published and be readily available to interested parties.

The commission shall have full power and authority to determine all questions relating to the payment of claims for compensation. The commission shall make or cause to be made such investigation as it deems necessary and, upon application of either party or upon its own initiative, shall order a hearing, shall make or deny an award, and shall file the same in its office.

Informal conferences and hearings in contested cases may be conducted by a duly designated representative of the commission. Upon the conclusion of any such hearing,

the commission's representative shall make or deny an award, and file the decision in the office of the commission. Immediately after such filing, a notice of decision shall be sent to all interested parties. This decision shall be final unless within twenty (20) days a request or petition for review by the full commission is filed.

§ 71-3-49. Default in payment of compensation

- (1) In case of default by the employer in the payment of any compensation due under an award for the period of thirty (30) days after payment is due and payable or, where the employer has failed to secure the payment of compensation to his employees as required, where there is such default in payment for a period of ten (10) days after same is due, any party in interest may file with the county clerk for the county in which the injury occurred or the county in which the employer has his principal place of business a certified copy of the decision of the commission awarding compensation or ending, diminishing or increasing compensation previously awarded, from which no appeal has been taken within the time allowed therefor or, if an appeal has been taken by an employer who has not complied with the provisions of Section 71-3-75, where he fails to deposit with the commission the amount of the award as security for its payment within ten (10) days after same is due and payable, and thereupon judgment must be entered in the circuit court by the clerk of such county in conformity therewith immediately upon the filing of such decision. If the payment in default be an installment, the commission may declare the entire award due and judgment may be entered in accordance with the provisions of this section. Such judgment shall be entered in the same manner, have the same effect, and be subject to the same proceedings as though rendered in a suit duly heard and determined by the circuit court, except that no appeal may be taken therefrom. The court shall vacate or modify such judgment to conform to any later award or decision of the commission upon presentation of a certified copy of such award or decision. The award may be so compromised by the commission as in its discretion may best serve the interest of the persons entitled to receive the compensation or benefits. Neither the commission nor any party in interest shall be required to pay any fee to any public officer for filing or recording any paper or instrument or for issuing a transcript of any judgment executed in pursuance of this section.
- (2) In case of default by a self-insurer in payment of any compensation due under an award where the default is due to the insolvency of the self-insurer, the claimant may file a claim based on the award with the Mississippi Workers' Compensation Self-insurer Guaranty Association, pursuant to the rules and regulations of said association, as established and provided for in Sections 71-3-151 through 71-3-181.

§ 71-3-51. Right of appeal

The final award of the commission shall be conclusive and binding unless either party to the controversy shall, within thirty (30) days from the date of its filing in the office of the commission and notification to the parties, appeal therefrom to the Supreme Court.

Such appeal may be taken by filing notice of appeal with the commission, whereupon the commission shall under its certificate transmit to the Supreme Court all documents and papers on file in the matter, together with a transcript of the evidence, the findings, and award, which shall thereupon become the record of the cause. Appeals shall be

considered only upon the record as made before the commission. The Supreme Court shall always be deemed open for hearing of such appeals. The Supreme Court shall review all questions of law and of fact. If no prejudicial error be found, the matter shall be affirmed and remanded to the commission for enforcement. If prejudicial error be found, the same shall be reversed and the Supreme Court shall enter such judgment or award as the commission should have entered. An appeal from the commission to the Supreme Court shall not act as a supersedeas unless the court shall so direct, and then upon such terms as such court shall direct.

No controversy shall be heard by the commission or an award of compensation made therein while the same matter is pending either before a federal court or in any court in this state.

Any award of compensation made by the Supreme Court shall bear the same interest and penalties as do other judgments awarded in circuit court.

§ 71-3-53. Review of award by commission

Upon its own initiative or upon the application of any party in interest on the ground of a change in conditions or because of a mistake in a determination of fact, the commission may, at any time prior to one (1) year after date of the last payment of compensation, whether or not a compensation order has been issued, or at any time prior to one (1) year after the rejection of a claim, review a compensation case, issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation, or award compensation. Such new order shall not affect any compensation previously paid, except that an award increasing the compensation rate may be made effective from the date of the injury; and if any part of the compensation due or to become due is unpaid, an award decreasing the compensation rate may be made effective from the date of the injury, and any payment made prior thereto in excess of such decreased rate shall be deducted from any unpaid compensation in such manner and by such method as may be determined by the commission.

§ 71-3-55. Commission hearings and proceedings

- (1) In making an investigation or inquiry or conducting a hearing, the commission shall not be bound by common law or statutory rules of evidence or by technical or formal rules or procedure, except as provided by this chapter, but may make such investigation or inquiry or conduct such hearing in such manner as best to ascertain the rights of the parties. Declarations of a deceased employee concerning the injury in respect of which the investigation or inquiry is being made or the hearing conducted shall be received in evidence and shall, if corroborated by other evidence, be sufficient to establish the injury.
- (2) Hearings before the commission shall be open to the public and shall be stenographically reported or recorded and transcribed. The commission shall by regulations provide for the preparation of a record of the hearings and other proceedings.
- (3) Unless otherwise ordered by the commission, hearings shall be conducted in the county where the injury occurred.

§ 71-3-57. Witnesses before commission

The commission shall regulate, by rules published and available to the parties, the summoning, attendance, use, and compensation of witnesses, and determine the qualifications of specialists and their scale of fees as expert witnesses. Unless otherwise provided by the commission, witnesses summoned in a proceeding before the commission or whose depositions are taken shall receive the same fees and mileage as witnesses in civil cases in courts of record.

§ 71-3-59. Liability for costs

- (1) If the court having jurisdiction of proceedings in respect of any claim or compensation order determined that the proceedings in respect of such claim or order have been instituted or continued without reasonable ground, the costs of such proceedings shall be assessed against the party who has so instituted or continued such proceedings.
- (2) If the full commission determines that proceedings in respect to a claim have been instituted, continued or delayed, including by way of appeal to the commission, without reasonable ground, the full commission shall require the party who has so instituted, continued or delayed such proceedings or the attorney advising such party, or both, to pay the reasonable expenses, including attorney's fees, caused by such institution, continuance or delay to the opposing party. In addition to requiring the payment of reasonable expenses, including attorney's fees, to the opposing party, the commission may levy a civil penalty not to exceed Ten Thousand Dollars (\$10,000.00) against such party, or attorney advising or assisting such party, or both, payable to the commission. Any such civil penalty levied and collected by the commission shall be deposited into the Administrative Expense Fund provided for in Section 71-3-97 and any such penalty which is not voluntarily paid may be collected by civil suit brought by the commission.

§ 71-3-61. Commission authority to conduct proceedings

- (1) The commission and its hearing officers shall have power to preserve and enforce order during hearings; to issue subpoenas for, to administer oaths to, and to compel the attendance and testimony of witnesses or the production of books, papers, documents, and other evidence, or the taking of depositions before any designated individual competent to administer oaths; to examine witnesses; and to do all things conformable to law which may be necessary to enable them effectively to discharge the duties of their office.
- (2) If any person in proceedings before the commission disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper, or document, or refuses to appear after having been subpoenaed or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the commission shall certify the facts to the court having jurisdiction in the place in which it is sitting, and the court shall thereupon in a summary manner hear the evidence as to the acts complained of and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such

person upon the same condition as if the doing of the forbidden act had occurred with reference to the process of or in the presence of the court.

§ 71-3-63. Commission approval of claimed fees

- (1) No claim for legal services or for any other services rendered in respect of a claim or award for compensation, to or on account of any person, shall be valid unless approved by the commission or, if proceedings for review of the order of the commission in respect of such claim or award are had before any court, unless approved by such court. Any claim so approved shall, in the manner and to the extent fixed by the commission or such court, be a lien upon such compensation.
- (2) Any person (a) who receives any fee, other consideration, or any gratuity on account of services so rendered, unless such consideration or gratuity is approved by the commission or such court, or (b) who makes it a business to solicit employment for a lawyer or for himself in respect of any claim or award for compensation, shall be guilty of a misdemeanor and, upon conviction thereof, shall for each offense be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment not to exceed one (1) year, or by both such fine and imprisonment.
- (3) Representation of one other than himself or herself before the commission shall be considered the practice of law, and all statutes applying to and regulating the practice in all other courts of law in this state shall likewise apply to practice before the commission, insofar as the qualifications of those practicing before the commission are concerned. This paragraph shall not be construed as tightening the rules of evidence which are otherwise relaxed in other sections of this chapter.

In no instance shall the amount recovered by an attorney for an appearance before the commission exceed twenty-five percent (25%) of the total award of compensation. Such limitations, however, shall not be construed as applying to a fee awarded for additional services by any superior court. Legal services rendered where no motion to controvert has been filed by either employer or employee shall be considered as consultation, and that factor shall be taken into consideration in awarding a fee. Attorneys may not recover attorney's fees based upon benefits voluntarily paid to an injured employee for temporary or permanent disability. Any settlement negotiated by an attorney shall not be considered a voluntary payment. In all instances, fees shall be awarded on the basis of fairness to both attorney and client. Although exceptions may be made in the interest of justice, it shall be deemed conducive to the best interest of all concerned for the commission to approve contracts for attorney's fees voluntarily entered into between attorney and client, within the limitations hereinabove set out.

When an award of compensation becomes final and an attorney's fee is outstanding, a partial lump-sum settlement sufficient to cover the attorney's fee approved therein by the commission shall be made immediately, from payments last to become due, and the deductions allowed by the law shall be borne equally by the attorney and the client.

§ 71-3-65. Employer to keep injury records

Every employer shall keep a record in respect of any injury to an employee. Such record shall contain such information of disability or death in respect of such injury as the commission may by regulation require, and shall be available to inspection by the

commission or by any state authority at such times and under such conditions as the commission may by regulation prescribe.

§ 71-3-66. Access to records

The noncontroverted case medical reports, rehabilitation counselor reports and psychological reports of the commission, insofar as they refer to accidents, injuries and settlements, shall not be open to the public under the Mississippi Public Records Act of 1983, but only to the parties satisfying the commission of their interest in such records and the right to inspect them. Under such reasonable rules and regulations as the commission may adopt, the records of the commission as to any employee in any previous case in which such employee was a claimant shall be open to and made available to such claim to an employer or its insurance carrier which is called upon to pay compensation, medical expenses and/or funeral expenses, or to any party at interest, except that the commission may make such reasonable charge as it deems proper for furnishing information by mail and for copies of records.

§ 71-3-67. Report of injury to commission

- (1) Within ten (10) days after the fatal termination of any injury, the employer, if self-insured, or its carrier, shall file a report thereof with the commission on a form approved by the commission for this purpose.

In the event of an injury which shall cause loss of time in excess of the waiting period prescribed in Section 71-3-11, a report thereof shall be filed with the commission by the employer or carrier, on a form approved by the commission for this purpose, within ten (10) days after the prescribed waiting period has been satisfied.

Within ten (10) days after the employer or carrier knows, or reasonably should know, that an injury has resulted, or likely will result, in permanent disability or serious head or facial disfigurement, but which does not cause a loss of time in excess of the prescribed waiting period, a report thereof shall be filed with the commission on a form approved by the commission for this purpose.

- (2) Injuries not otherwise provided for in this section, and for which only medical benefits are due, are not required to be reported to the commission. Records of such injuries shall be maintained by the employer, if self-insured, or its carrier, and shall contain the name and address of the employee, the date of the accident, the name and address of the employer, the nature of the injury, the number of days lost and the total medical expense. These records shall be made available to the commission upon request.

If an injury provided for in this subsection subsequently causes a loss of time in excess of the prescribed waiting period, or causes permanent disability or serious head or facial disfigurement, it shall be reported within ten (10) days thereafter on the form approved for such claims.

Any additional reports shall be sent to the commission in such time and in such manner as the commission may prescribe.

- (3) Filing may be by mail, electronic means or other form of delivery reasonably calculated to accomplish receipt by the commission. Any such report required to be filed hereunder shall be considered filed on the date of mailing, if filing is by mail, and on the date the electronic equipment being used acknowledges receipt of the

material, if filing is by electronic means. Otherwise, the date of filing shall be the date of receipt by the commission.

- (4) Whenever an employer or carrier fails or refuses to file any report required by this section within the time prescribed, the commission may, in its discretion, and after giving the employer or carrier notice and an opportunity to show cause to the contrary, levy a penalty against such employer or carrier not to exceed One Hundred Dollars (\$100.00). This penalty shall be payable to the Administrative Expense Fund provided for by this chapter, and if not voluntarily paid, may be collected by civil suit brought by the commission.

In addition to the above civil penalty, a sum not to exceed One Hundred Dollars (\$100.00) may, in the discretion of an administrative judge or the commission, be added to any award which may be made as a result of any injury not timely reported hereunder.

§ 71-3-69. Obtaining benefits or withholding payments by false representations

Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining or wrongfully withholding any benefit or payment under this chapter is guilty of a felony and on conviction thereof may be punished by a fine of not to exceed Five Thousand Dollars (\$5,000.00) or double the value of the fraud, whichever is greater, or by imprisonment not to exceed three (3) years, or by both fine and imprisonment.

§ 71-3-71. Action by employee against other parties; intervention by employer or insurer

The acceptance of compensation benefits from or the making of a claim for compensation against an employer or insurer for the injury or death of an employee shall not affect the right of the employee or his dependents to sue any other party at law for such injury or death, but the employer or his insurer shall be entitled to reasonable notice and opportunity to join in any such action or may intervene therein. If such employer or insurer join in such action, they shall be entitled to repayment of the amount paid by them as compensation and medical expenses from the net proceeds of such action (after deducting the reasonable costs of collection) as hereinafter provided.

The commencement of an action by an employee or his dependents (or legal representative) against a third party for damages by reason of the injury, or the adjustment of any such claim, shall not affect the right of the injured employee or his dependents (or legal representative) to recover compensation, but any amount recovered by the injured employee or his dependents (or legal representative) from a third party shall be applied as follows: reasonable costs of collection as approved and allowed by the court in which such action is pending, or by the commission of this state in case of settlement without suit, shall be deducted; the remainder, or so much thereof as is necessary, shall be used to discharge the legal liability of the employer or insurer; and any excess shall belong to the injured employee or his dependents. The employee or his dependents bringing suit against the third party must notify the employer or carrier within fifteen days of the filing of such suit.

An employer or compensation insurer who shall have paid compensation benefits under this chapter for the injury or death of the employee shall have the right to maintain an action at law against any other party responsible for such injury or death, in the name of such injured employee or his beneficiaries, or in the name of such employer or insurer, or any or all of them. If reasonable notice and opportunity to be represented in such action by counsel shall have been given to the compensation beneficiary, all claims of such compensation beneficiary shall be determined in such action, as well as the claim of the employer or insurer. If recovery shall be had against such other party, by suit or otherwise, the compensation beneficiary shall be entitled to any amount recovered over and above the amount that the employer and insurer shall have paid or are liable for in compensation or other benefits, after deducting the reasonable costs of collection.

In case of settlement of any action before the trial thereof, such settlement shall be subject to the approval of the court wherein such action is pending, and settlement before an action is brought shall be subject to the approval of the commission. Distribution of the portion belonging to the dependents shall be made among such dependents in the manner provided in this chapter.

In case of liability of the employer or insurer to make payment to the state treasury under the second injury fund provisions, if the injury or death creates a legal liability against a third party, the employer or insurer shall have a right of action against such third party for reimbursement of any sum so paid into the state treasury, which right may be enforced in the action heretofore provided or by an independent action.

§ 71-3-73. Compensation under Second Injury Fund

If an employee who has previously lost, or lost the use of, one (1) hand, one (1) arm, one (1) foot, one (1) leg, or one (1) eye, becomes permanently and totally incapacitated through the loss, or loss of use, of another member or organ, the employer shall be liable only for the compensation payable for such second injury. In addition to such compensation and after the completion of the payment therefor, the employee shall be paid the remainder of the compensation that would be due for permanent total incapacity, out of a special fund known as the "Second Injury Fund," and created for such purpose in the following manner:

In every case of compensable death of an employee under this chapter, the employer or, if insured, his insurance carrier shall pay to the commission the sum of Three Hundred Dollars (\$300.00) except in cases where there is no dependency, then there shall be paid to the commission the sum of Five Hundred Dollars (\$500.00) to be deposited with the State Treasurer for the benefit of said fund. A suspension of said payments of Three Hundred Dollars (\$300.00) per death shall be made when the total amount of all such payments, together with the accumulated interest thereon, equals or exceeds Three Hundred Fifty Thousand Dollars (\$350,000.00), and no further contributions to said fund shall be made except in cases where there is no dependency. Whenever, thereafter, the amount of such sum shall be reduced below One Hundred Fifty Thousand Dollars (\$150,000.00) by reason of payments made pursuant to this section, then such contributions of Three Hundred Dollars (\$300.00) per death shall be resumed forthwith and shall continue until such sum, together with accumulated interest thereon, shall again amount to Three Hundred Fifty Thousand Dollars (\$350,000.00); and the commission shall direct the distribution thereof.

§ 71-3-75. Employer responsibility to insure payment; Exemption from insuring; pooling of liabilities

- (1) Insurance of liability: An employer liable under this chapter to pay compensation shall insure payment of such compensation by a carrier authorized to insure such liability in this state unless such employer shall be exempted from doing so by the commission.
- (2) Exemption from insuring: An employer desiring to be exempt from insuring its liability for compensation shall make application to the commission, showing its financial ability to pay such compensation and agreeing as a condition for the granting of the exemption to faithfully report all injuries under compensation according to law and the requirement of the commission, and to comply with the provisions of this chapter and the rules of the commission pertaining to the administration thereof; whereupon the commission by written order may make such exemption. The commission may from time to time require further statement of financial ability of such employer to pay compensation and may, upon ten (10) days' notice in writing, for financial reasons or for failure of the employer to faithfully discharge its obligations according to the agreements contained in its application for exemption, revoke the order granting such exemption, in which case such employer shall immediately insure its liability as otherwise required under this chapter. As a condition for the granting of an exemption, the commission shall have authority to require the employer to furnish such security as the commission may consider sufficient to insure payment of all claims of such employer under compensation. State agencies qualified as self-insured status shall not be required to furnish any security to insure or guarantee payment of claims or expenses and shall not be required to establish and maintain reserves for claims incurred but not reported and expenses associated therewith, as a condition for the granting or continuation of an exemption as herein provided. Where the security is in the form of a bond or other personal guaranty, the commission may, at any time either before or after the entry of an award upon at least ten (10) days' notice and opportunity to be heard, require the sureties to pay the amount of the award, the same to be enforced in like manner as the award itself may be enforced. Where an employer procures an exemption as herein provided and thereafter enters into any form of agreement for insurance coverage with an insurance company or interinsurer not licensed to operate in this state, its conduct shall automatically operate as a revocation of such exemption. An order exempting an employer from insuring its liability for compensation shall be null and void if the application contains a financial statement which is false in any material respect. The commission shall revoke the self-insurance permit if the employer is found to have directly or indirectly induced an employee to forego his right to workers' compensation benefits.
- (3) Pooling of liabilities: The commission may, under such rules and regulations as it prescribes, permit two (2) or more employers engaged in a common type of business activity or pursuit, or having other reasons to associate, to enter into agreements to pool their liabilities under this section for the purpose of qualifying as group self-insurers, and, in conjunction therewith, to enter into agreements to pool any other liabilities to their employees, and each employer member of such approved group shall be classified as a self-insurer. A self-insured group under this section shall be comprised of employer members of the same bona fide trade association or trade group. Such trade association or trade group shall be domiciled in the State of

Mississippi, shall have been in existence for five (5) or more consecutive years as of the date of application for an approved group and shall not be comprised solely of employer members who are affiliates of a person possessing controlling interest in such affiliates.

§ 71-3-77. Regulation of compensation insurance

- (1) Every contract for the insurance of the compensation herein provided, or against liability therefor, shall be deemed to be made subject to the provisions of this chapter, and provisions thereof inconsistent with this chapter shall be void. Such contract shall be allowed to offer deductibles on all liability of the assured under and according to the provisions of this chapter, notwithstanding any agreement of the parties to the contrary. However, the payments of the claims, including the deductible amounts, shall be made directly from the insurance company to the employee, except for medical benefits which shall be paid to the medical provider. A copy of such payments shall be forwarded to the employer. The insurance company shall collect the deductible from the employer as shall be provided in the contract between the employer and the insurer. No such policy shall be subject to nonrenewal, or cancelled by the insurer within the policy period, until a notice in writing shall be given to the commission and to the insured, fixing the date on which it is proposed to cancel it or declaring that the company does not intend to renew the policy upon expiration date. Notice to the insured shall be served personally or by registered or certified mail. Notice to the commission shall be provided in such manner and on such form as the commission may prescribe or direct. No such cancellation or nonrenewal shall be effective until thirty (30) days after the service of such notice on the insured and the provision of notice to the commission, unless the employer has obtained other insurance coverage, in which case such policy shall be deemed cancelled as of the effective date of such other insurance, whether or not such notice has been given.

The insured may also cancel such a policy on the day that the insured either (a) returns the policy to the agent, or (b) signs and delivers to the agent a "lost policy release." If the insured desires to cancel a policy before the policy has become effective, he may cancel the policy by written notice of cancellation to the agent or company without return of the policy or a release.

- (2) In any case where the employer is not a self-insurer, in order that the liability for compensation imposed by this chapter may be most effectively discharged by the employer and in order that the administration of this chapter in respect of such liability may be facilitated, the commission shall by regulation provide for the discharge, by the carrier or carriers for such employer, of such obligations and duties of the employer in respect of such liability imposed by this chapter upon the employer as it considers proper in order to effectuate the provisions of this chapter. For such purpose (a) notice to or knowledge of an employer of the occurrence of the injury shall be notice to or knowledge of the carrier or carriers; (b) jurisdiction of the employer by the commission or any court under this chapter shall be jurisdiction of the carrier or carriers; and (c) any requirement by the commission or any court under any compensation order, finding, or decision shall be binding upon the carrier or carriers in the same manner and to the same extent as upon the employer.

§ 71-3-79. Estoppel to deny insurance liability

Acceptance of a premium on a policy securing to an employee compensation, either alone or in connection with other insurance, shall estop the carrier so accepting from pleading that the employment of such employee is not covered under this chapter or that the employment is not carried on for pecuniary gain.

When any member of a partnership, firm, or association who does or does not perform manual labor, and where there is coverage of fellow employees, elects to take coverage under the provisions of this chapter, the intent of the insured as well as acceptance by the carrier shall be shown by endorsement to the policy. Any such affirmative action by the parties shall entitle said members or officers to the benefits enjoyed by an employee under this chapter. Every executive officer elected or appointed and empowered in accordance with a charter and bylaws of a corporation, other than nonprofit charitable, fraternal, cultural, or religious corporations or associations, shall be an employee of such corporation under this chapter, provided that said executive officer may reject said coverage by giving notice in writing to the carrier of this election not to be covered as an employee.

Any such executive officer of a nonprofit charitable, fraternal, cultural, or religious corporation or association may, notwithstanding any other provision of this chapter, be brought within the coverage of its insurance contract by any such corporation or association by specifically including such executive officer in such contract of insurance. The election to bring such executive officer within the coverage shall continue for the period such contract of insurance is in effect, and during such period such executive officers thus brought within the coverage of the insurance contract shall be employees of such corporation or association under this chapter.

§ 71-3-81. Notice of security for compensation

Every employer who has secured compensation under the provisions of this chapter shall keep notices posted in a conspicuous place or places in and about his place or places of business, in accordance with a form prescribed by the commission, stating that such employer has secured the payment of compensation in accordance with the provisions of this chapter. Such notices shall contain the name and address of the carrier, if any, with whom the employer has secured payment of the compensation and the date of the expiration of the policy.

§ 71-3-83. Failure to secure compensation penalized

- (1) Any employer required to secure the payment of compensation under this chapter who fails to secure such compensation is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment. If the employer is a corporation, the president, secretary and treasurer thereof shall be also severally liable to such fine or imprisonment as herein provided for the failure of such corporation to secure the payment of compensation; and such president, secretary and treasurer shall be severally personally liable, jointly with such corporation, for any compensation or other benefit which may accrue under this chapter in respect to any injury which may occur to any employee of such corporation while it shall so fail to secure the payment of compensation as required by this chapter.

- (2) Any uninsured employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes or destroys any property belonging to such employer after one of his employees has been injured within the purview of this chapter, and with intent to avoid the payment of compensation under this chapter to such employee or his dependents, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment. If the employer is a corporation, the president, secretary and treasurer thereof shall be also severally liable to such penalty of imprisonment as well as jointly liable with such corporation for such fine.
- (3) This section shall not affect any other liability of the employer under this chapter.
- (4) In addition to the criminal penalties set forth above, and under the same circumstances, terms and conditions as set forth in subsections (1) and (2), the commission may assess a civil penalty in an amount to be determined by the commission on a case by case basis, but not to exceed Ten Thousand Dollars (\$10,000.00). Any civil penalty levied and collected by the commission shall be deposited into the Administrative Expense Fund provided for in Section 71-3-97, and any penalty not voluntarily paid may be collected by civil suit brought by the commission.

§ 71-3-85. Creation of workers' compensation commission

- (1) There is hereby created a commission to be known as the workmen's compensation commission, consisting of three (3) members, who shall devote their entire time to the duties of the office. The governor shall appoint the members of the commission, by and with the consent of the Mississippi State Senate, one (1) for a term of two (2) years, one (1) for a term of four (4) years, and one (1) for a term of six (6) years. Upon the expiration of each term as above set forth, the governor shall appoint a successor for a term of six (6) years, and thereafter the term of office of each commissioner shall be for six (6) years. One (1) member shall be a person who by reason of his previous vocation or affiliation can be classed as a representative of employers, and one (1) member shall be a person who by reason of his previous vocation or affiliation can be classed as a representative of employees. One (1) member shall be an attorney at law of recognized ability with at least five (5) years' active practice in Mississippi prior to his appointment. The governor shall designate the chairman of the commission, whose term of chairman shall run concurrently with his appointment as a commissioner.

The chairman shall be the administrative head of the commission and shall have the final authority in all matters relating to assignment of cases for hearing and trial and the administrative work of the commission and its employees, except in the promulgation of rules and regulations wherein the commission shall act as a body, and in the trial and determination of cases as otherwise provided.

Upon the expiration of the term of a commissioner, he shall continue to serve until his successor has been appointed. Because cumulative experience is conspicuously essential to the proper administration of a workmen's compensation law, it is declared to be in the public interest to continue workmen's compensation commissioners in office as long as efficiency is demonstrated. A commissioner may be removed for cause prior to the expiration of his term, but shall be furnished a written copy of the charges against him and shall be accorded a public hearing.

Each member of the commission and each administrative law judge shall receive an annual salary fixed by the legislature.

- (2) A vacancy in the commission, if there remain two (2) members of it, shall not impair the authority of such two (2) members to act. In case of illness or continued absence for other reasons, the same authority of such two (2) members shall apply.
- (3) The commission shall have the powers and duties necessary for effecting the purposes of this chapter, including the powers of a court of record for compelling the attendance of witnesses, examining them under oath, and compelling the production of books, papers, documents and objects relevant to the determination of a claim for compensation, and the power to adopt rules and regulations and make or approve the forms relating to notices of injuries, payment of claims and other purposes. The authority of the commission and its duly authorized representatives to investigate and determine claims for compensation shall include the right to enter the premises where an injury occurred, to ascertain its causes and circumstances.
- (4) The office of the commission shall be situated in the City of Jackson, but hearings may be held at such places as it may deem most convenient for the proper and speedy performance of its duties. The commission is authorized, if it deems it necessary for the convenient and efficient dispatch of business, to lease office space and facilities in other than publicly owned buildings.
- (5) The commission shall adopt detailed rules and regulations for implementing the purposes of this chapter at hearings attended by the main parties interested. Such rules, upon adoption, shall be published and be at all reasonable times made available to the public and, if not inconsistent with law, shall be binding upon those participating in the responsibilities and benefits of the workmen's compensation law.
- (6) The commission shall adopt or approve the forms required for administering the chapter, such notices of injury, application for benefits, receipts for compensation and all other forms needed to assure the orderly and prompt operation of the law, and may require the exclusive use of any or all such approved forms.

§ 71-3-87. Commission member bond requirement

Members of the commission shall give bond in the sum of ten thousand dollars (\$10,000.00) of a surety company authorized to do business in the state, for the faithful performance of their duties. The premium upon such bonds shall be paid out of the workmen's compensation administration fund.

§ 71-3-89. Workers' compensation commission seal

The commission shall have a seal for authentication of its orders, awards, and proceedings, upon which shall be inscribed the words "workmen's compensation commission-Mississippi-seal," and it shall be judicially noticed.

§ 71-3-91. Reimbursement of members' travel expenses

Commissioners and employees of the commission shall receive their necessary traveling expenses and costs of subsistence while traveling on official business and away from their designated station. Expense accounts shall be sworn to by the person presenting them and, upon approval by the chairman of the commission, shall be allowed and paid as provided in Section 71-3-97.

§ 71-3-93. Commission officers and employees

The commission shall appoint such officers and employees as are necessary adequately to administer the Workers' Compensation Law, including not more than eight (8) administrative judges to be appointed by the commission with the consent of the Governor and an executive director who shall serve at the will of the commission and shall have such administrative duties as are assigned by the commission, a secretary, a statistician, a rehabilitation unit, and any other employees deemed essential to the administration of the law including court reporters whose salaries shall be the same as set for court reporters for circuit and chancery courts by Section 9-13-19. The annual salary of the executive director shall be equal to that of an administrative judge. An administrative judge shall be a member of the Mississippi State Bar and shall have a minimum of three (3) years' experience in the practice of law.

All salaries not specifically fixed by law shall be set by the commission. The establishing of a merit system or career service for employees of the commission is declared to be in the public interest because of the length of time required for understanding the details and problems involved in administering this legislation. The commission shall establish and enforce fair and reasonable rules for the appointment, promotion and demotion of personnel. All employees of the commission with the exception of medical consultants shall devote their entire time to the duties of their office.

For the purpose of conducting hearings and making decisions upon claims, the administrative judge or administrative judges appointed by the commission shall have the authority of a commissioner.

§ 71-3-95. Payment of commission expenditures

- (1) The commission shall make such expenditures as may be necessary for the adequate administration of this chapter, including salaries and traveling expense, the cost of personal services, office rent at the seat of government and elsewhere, the purchase of books, periodicals, office equipment and supplies, printing and binding reports, the cost of membership in official organizations, and other purposes. All expenditures of the commission in the administration of this chapter shall be allowed and paid out of the Administration Expense Fund as provided in Section 71-3-97, upon the presentation of itemized vouchers therefor approved by the chairman of the commission.
- (2) The commission is authorized, in its discretion, to transfer a sum or sums not to exceed Two Hundred Thousand Dollars (\$200,000.00) from the Administration Expense Fund to the Second Injury Fund. The commission is further authorized, in its discretion, to replace any funds so transferred in the event that funds become available.

§ 71-3-97. Special fund for commission expenses

- (1) There is hereby established in the state treasury a special fund for the purpose of providing for the payment of all expenses in respect to the administration of this chapter. Such fund shall be administered by the commission. The state treasurer shall be the custodian of such funds, and all monies and securities in such fund shall be held in trust by such treasurer and shall not be the money or property of the state.

- (2) The state treasurer is authorized to disburse monies from such fund only upon order of the commission. The official bond of the state treasurer shall be conditioned for the faithful performance of his duty hereunder.
- (3) The state treasurer shall deposit any monies paid into such fund into such qualified depository banks as the commission may designate, and is authorized to invest any portion of the fund which, in the opinion of the commission, is not needed for current requirements, in the same manner and subject to all the provisions of the law with respect to the deposit of state funds by such treasurer. All interest earned by such portion of the fund as may be invested by the state treasurer shall be collected by him and placed to the credit of such fund.
- (4) All civil penalties provided in this chapter, if not voluntarily paid, may be collected by civil suit brought by the commission, and shall be paid into such fund.

§ 71-3-99. Budgeting and assessments by commission

- (1) The commission shall estimate annually in advance the amounts necessary for the administration of this chapter, in the following manner:
 - (a) The commission shall, as soon as practicable after the first day of January in each year, determine the expense of administration of this chapter for the one-year period preceding the first day of January. The expense of administration for such period shall be used as the basis for determining the amount to be assessed against each carrier and self-insurer in order to provide for the expenses of the administration of this chapter for the one-year period.
 - (b) Each carrier and self-insurer shall be assessed Two Hundred Fifty Dollars (\$250.00). The proceeds of such assessment shall be deducted from the estimate of total expenses and the remaining expenses of administration shall be prorated among the carriers writing compensation insurance in the state and self-insurers. The gross claims for compensation and medical services and supplies paid by the insurance carriers and self-insurers is the basis for computing the amount to be assessed, in the proportion that the total gross claims for compensation and medical services and supplies paid by such carrier or self-insurer during the preceding one-year period bore to the total gross claims for compensation and medical supplies and services paid by all carriers and self-insurers during such period. This amount may be assessed as a specific amount or as a percentage of gross claims for compensation and medical supplies and services paid by the insurance carriers and self-insurers as the commission may direct, and shall be such amount as shall be reasonably necessary to defray the necessary expense of such administration.
- (2) The commission shall provide by regulation for the collection of the amounts assessed against each carrier and self-insurer. Such amounts shall be paid within thirty (30) days from the date that notice is served upon such carrier. If such amounts are not paid within such period, there may be assessed, for each thirty (30) days the amount so assessed remains unpaid, a civil penalty equal to ten percent (10%) of the amount so unpaid, which shall be collected at the same time and as a part of the amount assessed.
- (3) If any carrier or self-insurer fails to pay the amounts assessed against it under the provisions of this section within sixty (60) days from the time such notice is served,

the commission may suspend or revoke the authorization to insure compensation or to be self-insured.

- (4) All amounts collected under the provisions of this section shall be paid into the Administration Expense Fund.
- (5) The commission may require from each carrier and self-insurer, at such time and in accordance with regulations as the commission may prescribe, reports in respect to all payments of compensation and medical supplies and services by such carriers or self-insurers during each prior period, and may determine the amounts paid by each carrier and self-insurer and the amounts paid by all carriers and self-insurers during such period.
- (6) Every carrier and self-insurer shall file with the commission on or before the first day of March of each year, a statement on the prescribed forms showing the gross claims for compensation and medical services and supplies paid by such carrier or self-insurer during the preceding one-year period ending on the thirty-first day of December. Any carrier or self-insurer which neglects to make and file its annual written statement within the time provided in this chapter shall pay to the commission Twenty Dollars (\$20.00) for each day's neglect.

§ 71-3-100. Funds paid into state treasury

All funds received by the workmen's compensation commission, as established by Section 71-3-85 et seq., shall be paid to the state treasurer, who shall issue receipts therefor and who shall deposit such funds in the state treasury in a special fund to the credit of said commission. All such funds shall be expended only pursuant to appropriation approved by the legislature and as provided by law.

§ 71-3-101. Workers' compensation insurers' registration requirements

Each insurance company and all other carriers which desire to write workmen's compensation insurance in compliance with this chapter shall be required, before writing such insurance, to register with the workmen's compensation commission and pay a registration fee of one hundred dollars (\$100.00). This shall be deposited by the commission in the administration expense fund.

§ 71-3-103. Commission to report to Governor

The commission shall each calendar year make a report to the governor upon the operation of this chapter, including suggestions and recommendations as to improvements in the law and administration, a detailed statement of receipts and disbursements, and an exposition of industrial injury experience and compensation and medical cost.

§ 71-3-105. Rehabilitation of handicapped workers

The commission shall cooperate with federal, state, and local agencies in the rehabilitation of handicapped workers, and shall promptly report to the proper authority industrial injury cases in which retraining or job placement may be needed.

§ 71-3-107. Benefits to illegally employed minors

Compensation and death benefits shall be double the amount otherwise payable if the injured employee at the time of the injury is a minor under eighteen (18) years of age employed, permitted, or suffered to work in violation of any provision of the Mississippi labor laws. The employer alone and not the insurance carrier shall be liable for such increased compensation or increased death benefits. Any provision in an insurance policy undertaking to relieve an employer from such increased liability shall be void. The provisions of this section shall not apply, and double compensation and double death benefits shall not be payable, for death or injury to an employee under eighteen (18) years of age employed in the following programs:

- (a) Students fourteen (14) years of age and over and regularly enrolled in an accredited secondary school or college and employed between regular terms or semesters with the written consent of their parent or parents or person standing in loco parentis.
- (b) Students fourteen (14) years of age and over and employed in on-the-job training as a part of a regular program of education in an accredited secondary school with the written consent of their parent or parents or person standing in loco parentis.

§ 71-3-109. Provisions applicable in other jurisdictions

- (1) If an employee who has been hired or is regularly employed in this state receives personal injury by accident arising out of and in the course of his employment while temporarily employed outside of this state, he or his dependents in case of his death shall be entitled to compensation according to the law of this state. This provision shall apply only to those injuries received by the employee within six months after leaving this state unless, prior to the expiration of such six months' period, the employer has filed with the commission of Mississippi notice that he has elected to extend such coverage a greater period of time.
- (2) The provisions of this section shall not apply to an employee whose departure from this state is caused by a permanent assignment or transfer.
- (3) Any employee who has been hired or is regularly employed outside of this state and his employer shall be exempted from the provisions of this chapter while such employee is temporarily within this state doing work for his employer if such employer has furnished workmen's compensation insurance coverage under the workmen's compensation or similar laws for a state other than this state so as to cover such employee's employment while in this state, provided the extra-territorial provisions of this chapter are recognized in such other state and provided employers and employees who are covered in this state are likewise exempted from the application of the workmen's compensation or similar laws of such other state. The benefits under the workmen's compensation or similar laws of such other state shall be the exclusive remedy against such employer for any injury, whether resulting in death or not, received by such employee while working for such employer in this state.

§ 71-3-111. Assigned risk compensation insurance coverage

- (1) The Department of Insurance is directed to promulgate such rules and regulations as will enable the department to provide the "Mississippi Workers' Compensation

Assigned Risk Plan” for the assignment of risks which in good faith are entitled to insurance under this chapter but which, because of unusual conditions and circumstances, are unable to obtain such insurance.

- (2) The Commissioner of Insurance is designated as the Director of the Mississippi Workers’ Compensation Assigned Risk Plan, and he shall design the assigned risk plan in such a manner that the plan should become self-supporting with no outside assessments. The commissioner may contract for a safety program.
- (3) The Commissioner of Insurance is authorized to advertise and contract with any workers’ compensation insurance carriers that are licensed and writing workers’ compensation insurance within the State of Mississippi or providers of workers’ compensation claims and loss control services within the State of Mississippi to be servicing carriers. A servicing carrier shall provide all insurance services to employers insured under the plan as are otherwise rendered to those covered by policies voluntarily written by companies licensed to write workers’ compensation insurance in the state.
- (4) The Commissioner of Insurance may establish the “Mississippi Workers’ Compensation Assigned Risk Pool” as a reinsurance mechanism for the “Mississippi Workers’ Compensation Assigned Risk Plan” to accomplish the equitable distribution of all underwriting profit or loss of the plan to the companies licensed to write workers’ compensation insurance in the state in direct proportion to their share of the total voluntary workers’ compensation premiums written in the state. If established, all insurance companies licensed to write workers’ compensation insurance under this chapter shall be members of and participants in this pool.
- (5) The Commissioner of Insurance shall be responsible for the administration of both the “Mississippi Workers’ Compensation Assigned Risk Plan” and the “Mississippi Workers’ Compensation Assigned Risk Pool” but may designate an administrator of either or both, at his discretion. The Commissioner of Insurance may levy special assessments against the Mississippi Workers’ Compensation Assigned Risk Pool, if necessary, to provide funding for administrative expenses.
- (6) The commissioner is hereby authorized to establish a temporary joint underwriting association that shall consist of all insurers authorized to write, or engaged in writing, within this state on any basis, workers’ compensation insurance as reported in the companies’ annual statements.

The purpose of the association shall be to provide a market for workers’ compensation insurance on a self-supporting basis.

The association shall not be established nor begin underwriting operations until the commissioner, after due hearing and investigation, has determined that workers’ compensation insurance is not readily available. A determination that such insurance is not readily available shall be necessary before the association begins operations.

Upon such determination, the association shall be authorized to issue policies of workers’ compensation insurance.

If the commissioner determines at any time that workers’ compensation insurance can be made readily available in the voluntary market, the association shall then cease its underwriting operations for such workers’ compensation insurance that has been determined to be available in the voluntary market.

The Commissioner of Insurance is authorized to promulgate rules and regulations to effectuate the purposes of this section, to include levying assessments, if necessary, to provide funding for start-up and administrative expenses.

§ 71-3-115. Appointment of medical advisory board

- (1) The Mississippi Workers' Compensation Commission shall appoint a medical advisory board to serve in an advisory capacity to study the possibility of the use of a medical fee schedule and to provide assistance to the commission in the performance of its functions relating to regulation of medical fees and charges pursuant to Section 71-3-15(3), Mississippi Code of 1972.
- (2) Such board shall consist of five (5) members, one (1) appointed from each congressional district as they existed on January 1, 1985. Members of the board shall serve at the will and pleasure of the commission. All members of the medical advisory board shall be health care providers.
- (3) Such board shall meet upon the call of the chairman of the Mississippi Workers' Compensation Commission. The board shall receive per diem and mileage as authorized by Section 25-3-69, Mississippi Code of 1972, for attendance at called meetings to be paid from the administrative expense fund as provided in Section 71-3-97, Mississippi Code of 1972.
- (4) The Mississippi Workers' Compensation Commission shall provide all office space and clerical assistance that might be required by the board.
- (5) The Workers' Compensation Commission shall file a report with the Secretary of the Senate and the Clerk of the House of Representatives not later than December 15, 1987, concerning the result of the medical fee schedule study, together with any recommendations that the commission may consider necessary in regard to the regulation of medical fees and other costs. Such report shall contain any available comparative data generated by the commission or the medical advisory board.

§ 71-3-117. Alternative workers' compensation systems

- (1) The Mississippi Workers' Compensation Commission is hereby authorized and directed to review and make recommendations to the Legislature concerning alternative systems of workers' compensation for the State of Mississippi. The commission shall evaluate (a) the feasibility of group self-insurance and a self-insurance guarantee fund; (b) the deregulation of compensation insurance rates, including the impact of reserving practices, return on investments and profitability on workers' compensation ratemaking; (c) structural alternatives, such as the utilization of a state fund to operate the compensation system; and (d) the provisions of vocational rehabilitation services for covered employees. The Mississippi Department of Insurance shall cooperate and assist the Workers' Compensation Commission in preparing its recommendations.
- (2) The Mississippi Workers' Compensation Commission may employ an actuary and such other staff as may be required to properly conduct this study. The expense of this study shall be paid from the administrative expense fund as provided in Section 71-3-97, Mississippi Code of 1972.
- (3) The Mississippi Workers' Compensation Commission shall file its report with the Clerk of the House of Representatives and the Secretary of the Senate, together with recommendations for legislation, no later than December 15, 1987, with respect to the

subject matter set forth in paragraphs (1)(a) and (1)(d) and no later than November 1, 1988, with respect to the subject matter set forth in paragraphs (1)(b) and (1)(c).

§ 71-3-119. Advisory Council established

- (1) There is hereby created the Mississippi Workers' Compensation Advisory Council composed of individuals who, by their practice, experience and expertise, reflect the general composition of those involved with the workers' compensation field. The council shall consist of not more than twenty-five (25) members excluding the members of the Mississippi Workers' Compensation Commission, who shall be ex officio members. The members of such council shall be appointed by the Mississippi Workers' Compensation Commission within thirty (30) days of March 19, 1987 to a one-year term or until their successors are appointed and qualified. The members of the council shall select one of their number to be chairman. The advisory council shall consider and advise the Mississippi Workers' Compensation Commission on all matters related to the administration of the Mississippi Workers' Compensation Law. In its discretion the council may recommend to the Mississippi Workers' Compensation Commission changes it deems needed in the substance and administration of the Mississippi Workers' Compensation Law. The council shall report periodically to the Mississippi Workers' Compensation Commission regarding the performance of its duties and functions.
- (2) The members of the advisory council shall receive the per diem under Section 25-3-69 for attendance of meetings of the council and shall be reimbursed for actual and necessary mileage and travel expenses incurred in the discharge of their duties pursuant to Section 25-3-41. The Mississippi Workers' Compensation Commission may provide personnel to aid the council in the performance of its functions. The amounts allowed to the members of the council for per diem compensation, travel and other council expenses is an expense incurred in the administration of the Mississippi Workers' Compensation Law.

§ 71-3-121. Establishment of insurer safety programs

- (1) In the event that an employee sustains an injury at work or asserts a work-related injury, the employer shall have the right to administer drug and alcohol testing or require that the employee submit himself to drug and alcohol testing. If the employee has a positive test indicating the presence, at the time of injury, of any drug illegally used or the use of a valid prescription medication(s) taken contrary to the prescriber's instructions and/or contrary to label warnings, or eight one-hundredths percent (.08%) or more by weight volume of alcohol in the person's blood, it shall be presumed that the proximate cause of the injury was the use of a drug illegally, or the use of a valid prescription medication(s) taken contrary to the prescriber's instructions and/or contrary to label warnings, or the intoxication due to the use of alcohol by the employee. If the employee refuses to submit himself to drug and alcohol testing immediately after the alleged work-related injury, then it shall be presumed that the employee was using a drug illegally, or was using a valid prescription medication(s) contrary to the prescriber's instructions and/or contrary to label warnings, or was intoxicated due to the use of alcohol at the time of the accident and that the proximate cause of the injury was the use of a drug illegally, or the use of a valid prescription medication(s) taken contrary to the prescriber's instructions and/or contrary to label

warnings, or the intoxication due to the use of alcohol of the employee. The burden of proof will then be placed upon the employee to prove that the use of drugs illegally, or the use of a valid prescription medication(s) taken contrary to the prescriber's instructions and/or contrary to label warnings, or intoxication due to the use of alcohol was not a contributing cause of the accident in order to defeat the defense of the employer provided under Section 71-3-7.

- (2) The results of the drug and alcohol tests, employer-administered or otherwise, shall be considered admissible evidence solely on the issue of causation in the determination of the use of drugs illegally, or the use of a valid prescription medication(s) taken contrary to the prescriber's instructions and/or contrary to label warnings, or the intoxication due to the use of alcohol of an employee at the time of injury for workers' compensation purposes under Section 71-3-7.
- (3) No cause of action for defamation of character, libel, slander or damage to reputation arises in favor of any person against an employer under the provisions of this section.

§ 71-3-123. Report on assigned risk plan

The Commissioner of Insurance shall submit a report consisting of the condition of the assigned risk plan and the safety programs established by insurers in accordance with Laws, 1992, ch. 577 to the Senate and House Insurance Committees by January 1 of each year, beginning January 1, 1993.

§ 71-3-125. Insurers' claims offices

- (1) Each insurance carrier or commission approved self-insured employer shall maintain a workers' compensation claims office, subject to the waiver provisions herein, within the borders of the State of Mississippi beginning July 1, 1993. Alternatively, each insurance carrier or commission approved self-insured employer may provide by contract the same services within the borders of the State of Mississippi beginning July 1, 1993. This claims office shall maintain workers' compensation claims files and shall be the office responsible to the Mississippi Workers' Compensation Commission for the proper filing of all commission forms for the employer/insureds. This office shall be the sole contact for the commission for the administration of all claims filed within the jurisdiction of the Mississippi Workers' Compensation Commission. Authority to issue checks and to pay claims shall be vested in personnel located within the State of Mississippi.

The insurance carrier and self-insured employer shall notify the commission of the address of its claims office before July 1, 1992, and shall report any subsequent changes of address before the effective date of the change. After October 1, 1992, no processing or payment of workers' compensation claims shall occur outside the State of Mississippi without the specific written waiver by the commission.

Waiver requests must be submitted to the commission in writing and shall not be considered unless the applicant has exercised claims management and filing practices that illustrate proper compliance with the law and other commission regulations. Proper compliance shall be measured by the commission by continued monitoring of the timeliness of reporting by the carrier/self-insured employer and by monitoring the resolution, or lack thereof, of written complaints regarding noncompliance to all

aspects of the Mississippi Workers' Compensation Law and rules of the commission and orders of the administrative law judges, commission or court.

The commission shall prepare a report at least twice each year as to the filing performance, first payment performance and problems resolution of each carrier and self-insured employer during the calendar year beginning January 1, 1993, and each successive year. Carrier's and self-insured employer's performance as measured in each calendar year shall be the basis for approval or continuation of the waiver beginning on July 1 of each successive year.

Any and all waivers previously granted by the commission under prior versions of this section are subject to review under this section in effect at the time the waiver request is submitted for approval or continuation.

- (2) Any failure to comply with the provisions of Laws, 1992, Chapter 577, shall subject the carrier/self-insured employer to the sanctions of the Workers' Compensation Law.

§ 71-3-127. Arbitration of disputes

The Workers' Compensation Commission may utilize one or more arbitrators to resolve disputes under such procedures as prescribed by the commission in its uniform procedure rules.

§ 71-3-129. Child and spousal support liens

- (1) The Mississippi Department of Human Services, Division of Child Support Enforcement (the department) or the obligee may cause a lien for unpaid and delinquent child or spousal support to be placed upon any workers' compensation benefits payable to an obligor delinquent in child support or spousal support payments where a minor child is living with such spouse and such maintenance or spousal support is collected in conjunction with child support.
- (2) The lien shall be effective upon notice being filed with the Executive Director of the Mississippi Workers' Compensation Commission. The notice shall contain the name and address of the delinquent obligor, the Social Security number of the obligor, if known, the name of the obligee, and the amount of delinquent child or spousal support.
- (3) Any person(s), firm(s), corporation(s), including an insurance carrier, making any payment of workers' compensation benefits to such obligor or to his attorney(s), heir(s) or legal representative(s), after receipt of such notice, if support has been assigned to the department pursuant to Section 43-19-31, Mississippi Code of 1972, shall be liable to the obligee. In such event, the lien may be enforced by the department against any person(s), firm(s), corporation(s) making the workers' compensation benefit payment.
- (4) Upon the filing of a notice under this section, the Executive Director of the Mississippi Workers' Compensation Commission shall mail to the obligor and to all attorneys and insurance carriers of record, a copy of the notice. The obligor, attorneys and insurance carriers shall be deemed to have received the notice within five (5) days of the mailing of the notice by the Executive Director of the Mississippi Workers' Compensation Commission. The lien described in this section shall attach to all workers' compensation benefits which are thereafter payable.

- (5) In cases in which the department is not a party, the obligee or his attorney shall file notice of the lien with such payor as described in subsection (3) above. This notice shall have attached a certified copy of the court order with all modifications and a sworn statement by the obligee attesting to or certifying the amount of the arrearages.
- (6) Notice of the lien shall be filed with the Executive Director of the Mississippi Workers' Compensation Commission either by serving a certified copy of the court order by first class mail; or by transmittal of the information described in subsection (2) via automated means.
- (7) Any amount deducted and withheld pursuant to subsection (1) shall be paid by the commission to the department.
- (8) Any amount deducted and withheld pursuant to subsection (1) shall for all purposes be treated as if it were paid to the individual as benefits and paid by such individual to the department in satisfaction of the individual's child support obligations.
- (9) For purposes of this section, the term "benefits" means any compensation payable under this chapter (including amounts payable by the commission pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to injury or death).
- (10) The department and the Mississippi Workers' Compensation Commission may enter into agreements to carry out the provisions of subsection (6) of this section.
- (11) The term "child support obligation" shall be as defined in Section 93-11-101, Mississippi Code of 1972.

§ 71-3-151. Short title

Sections 71-3-151 through 71-3-181 shall be known and may be cited as the "Mississippi Workers' Compensation Self-insurer Guaranty Association Law."

§ 71-3-153. Statement of purpose

The purpose of Sections 71-3-151 through 71-3-181 is to provide a mechanism for the payment of the covered claims under the Workers' Compensation Law, to avoid excessive delay in payment and to avoid financial loss to claimants because of the insolvency of a self-insurer, to assist in the detection and prevention of self-insurer insolvencies, and to provide associations to assess the cost of such protection among self-insurers.

Sections 71-3-151 through 71-3-181 shall apply to all employers who are self-insurers under the provisions of Section 71-3-75, Mississippi Code of 1972.

§ 71-3-155. Liberal construction

Sections 71-3-151 through 71-3-181 shall be liberally construed to effect the purpose under Section 71-3-153, which shall constitute an aid and guide to interpretation.

§ 71-3-157. Definitions

For the purposes of Sections 71-3-151 through 71-3-181, the following words shall have the meanings ascribed herein unless the context shall otherwise require:

- (a) "Individual association" means the Mississippi Workers' Compensation Individual Self-insurer Guaranty Association created under Section 71-3-159.

- (b) "Group association" means the Mississippi Workers' Compensation Group Self-insurer Guaranty Association created under Section 71-3-159.
- (c) "Commission" means the Mississippi Workers' Compensation Commission.
- (d) "Compensation" means amounts payable to claimants under the Mississippi Workers' Compensation Law as defined in Section 71-3-3(j), Mississippi Code of 1972.
- (e) "Covered claim" means an unpaid claim upon which compensation or medical is payable by an individual self-insurer or a group self-insurer under the Workers' Compensation Law.
- (f) "Self-insurer in default" means an individual self-insurer or a group self-insurer as defined by this chapter that has defaulted or failed for any reason to satisfy any of its obligations under the Workers' Compensation Law, including, without limitation, all obligations for payment of indemnity compensation, disability, expenses of medical, hospital, surgical, rehabilitation and other services, death benefits and funeral expenses, whether such default or failure is the result of insolvency or bankruptcy or receivership or otherwise.
- (g) "Member self-insurer" means a self-insurer as defined by this chapter who is a member of the Mississippi Workers' Compensation Individual Self-insurer Guaranty Association or the Mississippi Workers' Compensation Group Self-insurer Guaranty Association.
- (h) "Individual self-insurer" is an employer who has been authorized under Section 71-3-75(2), Mississippi Code of 1972, to insure under the Workers' Compensation Law.
- (i) "Group self-insurer" is a group of employers who have been authorized under Section 71-3-75(3), Mississippi Code of 1972, to insure under the Workers' Compensation Law.
- (j) "Person" means any individual, corporation, partnership, association or voluntary organization.

§ 71-3-159. Creation of guaranty association

The Mississippi Workers' Compensation Self-insurer Guaranty Association created under this chapter shall be renamed as the "Mississippi Workers' Compensation Individual Self-insurer Guaranty Association" and there is created a separate nonprofit unincorporated legal entity to be known as the "Mississippi Workers' Compensation Group Self-insurer Guaranty Association." All individual self-insurers shall be and remain members of the individual association and all group self-insurers shall be and remain members of the group association as a condition of their authority under Section 71-3-75, Mississippi Code of 1972. These associations shall perform their functions under plans of operation established and approved under Section 71-3-165 and shall exercise their powers through boards of directors established under Section 71-3-161. However, any individual or group self-insurer composed of the state, or any agency thereof, or county or municipal governments shall not be required to be members of the individual association or the group association.

§ 71-3-161. Composition of association board

- (1) The boards of directors of the individual association and the group association shall each consist of not less than five (5) nor more than nine (9) persons, serving terms as established in their plans of operation. The members of each of the boards shall be selected by their respective member self-insurers, subject to the approval of the commission. Vacancies of the boards shall be filled for the remaining period of the term in the same manner as initial appointments.
- (2) In approving selections to the boards, the commission shall consider, among other things, whether all member self-insurers of their respective association are fairly represented.
- (3) Subject to board approval, members of the boards may be reimbursed from the assets of their respective associations for expenses, including, but not limited to, attorney fees, incurred by them as members of the boards of directors.

§ 71-3-163. Association powers and duties

- (1) Each association shall:
 - (a) Be obligated to the extent of its covered claims existing prior to the date of default and arising within thirty (30) days after the date of default. In no event shall an association be obligated to a claimant in an amount in excess of the obligation of the defaulting member self-insurer of such association.
 - (b) Be deemed the self-insurer to the extent of obligations on its covered claims and to such extent shall have all rights, duties and obligations of the individual self-insurer in default or insolvent group self-insurer in default as if such self-insurer were not in default.
 - (c) Assess its respective individual self-insurers or group self-insurers amounts necessary to pay the obligations of the association under subsection (2) of this section, the expenses of handling covered claims and other expenses authorized by Sections 71-3-151 through 71-3-181. The assessments of each individual self-insurer and each group self-insurer shall be two percent (2%) of the gross paid compensation and medical supplies and services of said member self-insurer during each period of six (6) months. Said two percent (2%) assessment shall be collected by the commission at the same time as and pursuant to the procedures adopted by the commission pursuant to Section 71-3-99, Mississippi Code of 1972. If the obligations of the individual association incurred on or after July 1, 2004, for covered claims arising before July 1, 2004, plus necessary expenses of the individual association incurred on or after July 1, 2004, in evaluating, adjusting, defending or settling such covered claims, exceed the total amount of funds held by the individual association on July 1, 2004, then and to that extent all individual employers and groups of employers who were self-insurers on the dates that the covered claims arose shall be liable for a special assessment in the amount of such deficiency. This special assessment shall be collected by the commission in accordance with the procedures adopted by the commission under Section 71-3-99. All obligations for covered claims arising on or after July 1, 2004, shall be the sole obligation of the association to which the self-insurer in default belongs. The two percent (2%) assessment on each individual self-insurer and on each group self-insurer shall be collected by the commission until

the sum of Two Million Dollars (\$2,000,000.00) is accumulated by the individual association and the sum of One Million Dollars (\$1,000,000.00) is accumulated by the group association. At that time the assessments shall be suspended. However, any employer that becomes authorized under Section 71-3-75 to be a member self-insurer after July 1, 1996, is not entitled to have the two percent (2%) assessment suspended until such member self-insurer has contributed to the guaranty fund to which it belongs for the first four (4) years such employer is a member self-insurer regardless of the amount in the guaranty fund of the association to which it belongs. The two percent (2%) assessment shall be reinstated for all member self-insurers of the individual association at any time that the guaranty fund balance of the individual association reaches One Million Five Hundred Thousand Dollars (\$1,500,000.00) and such assessment shall continue until such time as the balance is Two Million Dollars (\$2,000,000.00). The two percent (2%) assessment shall be reinstated for all member self-insurers of the group association at any time that the guaranty fund balance of the group association reaches Seven Hundred Fifty Thousand Dollars (\$750,000.00) and such assessment shall continue until such time as the balance is One Million Dollars (\$1,000,000.00). If the maximum assessment, together with the other assets of an association, does not provide in any one (1) year an amount sufficient to make all necessary payments, the funds available in such association shall be paid as directed by the commission and any unpaid portion shall be paid as soon thereafter as funds in such association become available. When the guaranty fund balance of the group association reaches One Million Dollars (\$1,000,000.00), the commission may waive the need for bonding requirements for self-funded pools.

- (d) Investigate claims brought against the association; adjust, compromise, settle and pay covered claims to the extent of the association's obligations; deny all other claims; and may review settlements, releases and judgments to which the member self-insurer in default were parties to determine the extent to which such settlements, releases and judgments may be properly contested.
 - (e) Notify such persons as the commission directs under Section 71-3-167(2)(a).
 - (f) Handle claims through its employees or through one or more other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commission.
 - (g) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association, and shall pay the other expenses of the association authorized by Sections 71-3-151 through 71-3-181.
- (2) Each association may:
- (a) Employ or retain such persons as are necessary to handle claims and perform other duties of the association.
 - (b) Sue or be sued.
 - (c) Negotiate and become a party to such contracts as are necessary to carry out the purposes of Sections 71-3-151 through 71-3-181.
 - (d) Perform such other acts as are necessary or proper to effectuate the purposes of Sections 71-3-151 through 71-3-181.

§ 71-3-165. Submission of plan of operation

- (1) Each association shall submit to the commission a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commission.
- (2) If at any time an association fails to submit suitable amendments to its plan, the commission shall, after notice and hearings, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of Sections 71-3-151 through 71-3-181. Such rules shall continue in force until modified by the commission or superseded by a plan submitted by the noncomplying association and approved by the commission.
- (3) All member self-insurers shall comply with the plan of operation of the association to which they belong. The plan of operation of each association shall:
 - (a) Establish the procedures whereby all the powers and duties of the association under Section 71-3-163 will be performed.
 - (b) Establish procedures for handling assets of the association.
 - (c) Establish the amount and method of reimbursing members of the board of directors under Section 71-3-161.
 - (d) Establish procedures by which claims may be filed with the association, and establish acceptable forms of proof of covered claims.
 - (e) Establish regular places and times for meetings of the board of directors.
 - (f) Establish procedures for records to be kept of all financial transactions of the association, its agents and the board of directors.
 - (g) Provide that any individual self-insurer or group self-insurer aggrieved by any final action or decision of the association to which it belongs may appeal to the commission within thirty (30) days after the action or decision.
 - (h) Establish the procedures whereby selections for the board of directors will be submitted to the commission.
 - (i) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.
- (4) The plan of operation of each association may provide that any or all powers and duties of the association, except those under Section 71-3-163(1)(c) and Section 71-3-174, are delegated to a corporation, association or other organization which performs or will perform functions similar to those of the association. Such a corporation, association or organization shall be reimbursed as a servicing facility would be reimbursed, and shall be paid for its performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors of the association and the commission, and may be made only to a corporation, association or organization which extends protection not substantially less favorable and effective than that provided by Sections 71-3-151 through 71-3-181.

§ 71-3-167. Commission powers and authority

- (1) The commission shall:
 - (a) Upon the request of an association or of any other party or without any request on its own motion, enter any appropriate order finding a member self-insurer to be in default and to determine the date of such default and promptly notify the association to which such member self-insurer belongs of the existence of such default and the date of such default.
 - (b) Upon request of the board of directors of an association, provide such association with a statement of compensation payments of each member self-insurer of such association.
- (2) The commission may:
 - (a) Require that the group association notify the member self-insurers of any group self-insurer in default and any other interested parties of the default. Such notification shall be by mail at their last known address, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient.
 - (b) Suspend or revoke, after notice and hearing, the authority to self-insure granted under Section 71-3-75, Mississippi Code of 1972, of any member self-insurer who fails to pay an assessment when due, or fails to comply with the plan of operation of the association to which it belongs. As an alternative, the commission may levy a fine on any member self-insurer who fails to pay an assessment when due or fails to comply with the plan of operation. Such fine shall not exceed five percent (5%) of the unpaid assessment per month, except that no fine shall be less than One Hundred Dollars (\$100.00) per month.
 - (c) Revoke the designation of any servicing facility if it finds claims are being handled unsatisfactorily.
- (3) Any final action or order of the commission under Sections 71-3-151 through 71-3-181 shall be subject to judicial review in a court of competent jurisdiction.

§ 71-3-169. Assignment of rights to association

- (1) Any person recovering from an association under Sections 71-3-151 through 71-3-181 shall be deemed to have assigned his rights under the Workers' Compensation Law to such association to the extent of his recovery from such association. Any claimant seeking the protection of Sections 71-3-151 through 71-3-181 shall cooperate with the association against which claim is made to the same extent as such person would have been required to cooperate with the member self-insurer in default. Such association shall have no cause of action under the Workers' Compensation Law against the claimant of the member self-insurer in default for any sums it has paid out except such causes of action as such member self-insurer in default would have had if such sums had been paid by such member self-insurer in default.
- (2) An association may recover from the self-insurer in default and from a group self-insurer in default all amounts paid by such association on account of covered claims of employees of the member self-insurer in default and any group self-insurer in default to which such member self-insurer in default belongs, as well as all expenses incurred by such association in evaluating, adjusting, defending or settling covered claims of such employees. It shall be presumed that all amounts paid by such association

under this section are reasonable, necessary and otherwise in compliance with this chapter. There shall be added to any recovery under this section expenses of litigation of such association in obtaining such recovery, interest at the rate of eight percent (8%) per annum commencing on the date of such default and a ten percent (10%) penalty.

§ 71-3-173. Inquiry into solvency of individual and group self-insurers

To aid in the detection and prevention of individual self-insurer insolvencies and group self-insurer insolvencies:

- (a) The board of directors of an association may, upon majority vote, request that the commission order an examination of any of its member self-insurers and group self-insurers which the board in good faith believes may be in a financial condition hazardous to the potential claimants or the public. Upon making any such request to the commission, such board of directors shall recommend for commission approval persons to perform the examination. The examination shall commence within thirty (30) days following the commission's approval of such request for examination. The commission may request a board of directors to recommend for commission approval, and a board of directors can request the commission to approve, alternative persons to complete an examination if it is believed the examination is not being performed in a timely and efficient manner. The cost of such examination shall be paid by the association requesting such examination, and examination reports shall be forwarded to the commission and treated as are other examination reports. In no event shall reports of such examination be released to the board of directors of such association prior to release to the public, but this shall not preclude the commission from complying with paragraph (b) of this section. The commission shall notify the board of directors of such association when the examination is completed. Each request for an examination by an association shall be kept on file by the commission, but it shall not be open to public inspection prior to the release of an examination report to the public.
- (b) It shall be the duty of the commission to report to the board of directors of an association when it has reasonable cause to believe that any member self-insurer or group self-insurer examined or being examined at the request of the board of directors of such association may be insolvent or in a financial condition hazardous to potential claimants or the public.
- (c) The board of directors of an association may, upon majority vote, make reports and recommendations to the commission upon any matter germane to the solvency, bankruptcy or reorganization of any of its member self-insurers and group self-insurers. Such reports and recommendations shall not be considered public documents.
- (d) The board of directors of an association may, upon majority vote, make recommendations to the commission for the detection and prevention of member self-insurer insolvencies and group self-insurer insolvencies.
- (e) The board of directors of an association shall, at the conclusion of any insolvency, bankruptcy case or default where such association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency and

bankruptcy, based on the information available to such association, and submit such report to the commission.

§ 71-3-174. Submission of special assessment plans by association assuming obligations of under-funded self-insurer

If an association assumes any obligations of an individual self-insurer or group self-insurer under this chapter, and payments of such obligations exceed the assets of such association, such association shall within not less than sixty (60) days thereafter submit for approval by the commission a plan for special assessment of each individual self-insurer and group self-insurer who may be responsible for payment of such obligations in excess of the assets of such association. Such plan for special assessment shall also include the expenses of such association related to the processing of obligations covered by the special assessment plan. Failure to comply with a commission-approved special assessment plan of an association shall create a cause of action in favor of such association against any noncompliant member self-insurer and any noncompliant group self-insurer for recovery of payments and expenses by such association for which the noncompliant member self-insurer or noncompliant group self-insurer should have been obligated. It shall be presumed that all obligations paid by an association pursuant to a commission-approved special assessment plan, including, but not limited to, expenses associated with processing such obligations, are reasonable, necessary and otherwise in compliance with the requirements of this chapter. There shall be added to any recovery under this section expenses of litigation of such association related to such cause of action, interest at the rate of eight percent (8%) per annum beginning on the date of such noncompliance and a ten percent (10%) penalty.

§ 71-3-175. Examination of individual and group associations by commission

The individual association and group association shall be subject to examination and regulation by the commission. The board of directors of each association shall submit, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the commission. The commission shall furnish the board of directors of an association any records of the commission which would aid in the preparation of this financial report.

§ 71-3-177. Tax exempt status of association

The individual association and group association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on real or personal property.

§ 71-3-179. Immunity in carrying out statute; exception

Subject to Section 71-3-174, there shall be no liability on the part of and no cause of action of any nature shall arise against any individual self-insurer, any group self-insurer, association, agents and employees of an association, board of directors of an association, and the commission and its employees and representatives, or any of them, for any good faith, affirmative action taken by any of them in the performance of their powers and duties under Sections 71-3-151 through 71-3-181. This section does not apply to individual

employers who are members of a group self-insurer. Such immunity shall not extend to any acts of gross negligence by any such individual self-insurer, group self-insurer, association, agents and employees of an association, board of directors of an association and the commission and its employees and representative committed in the performance of their duties hereunder.

§ 71-3-181. Proceedings stayed where self-insurer insolvent

All proceedings in which any individual self-insurer in default or group self-insurer in default is a party before the commission or in any court in this state, on order of the commission, may be stayed for a period not to exceed six (6) months from the date of the default to permit proper defense by such association of all covered claims. If any judgment, order, decision, verdict or finding is made or entered against such individual self-insurer in default or group self-insurer in default while the stay provided in this section is effective, the association to which such individual self-insurer or group self-insurer belongs may apply to have such judgment, order, decision, verdict or finding set aside by the same court or administrator that made such judgment, order, decision, verdict or finding. Such association shall be permitted to enter its appearance and defend against any covered claim which is pending on the date of default or which is filed thereafter.

§ 71-3-201. Short title

Sections 71-3-201 through 71-3-225 shall be known and may be cited as the “Drug-Free Workplace Workers’ Compensation Premium Reduction Act.”

§ 71-3-203. Legislative intent

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

§ 71-3-205. Definitions

The following words and terms in Sections 71-3-201 through 71-3-225 shall have meanings as follows:

- (a) “Employee” means any person who works for salary, wages or other remuneration for an employer.
- (b) “Employer” means a person or entity that is subject to the Mississippi Workers’ Compensation Law as found in Section 71-3-1 et seq., Mississippi Code of 1972.

§ 71-3-207. Drug-free workplace program; premium reduction

- (1) If an employer implements a drug-free workplace program substantially in accordance with Sections 71-3-201 through 71-3-225, the employer shall qualify for certification for a five percent (5%) premium discount if offered under the employer’s workers’ compensation insurance policy.

- (2) For each policy of workers' compensation insurance issued or renewed in the state on or after July 1, 1997, a five percent (5%) reduction in the premium for such policy may be granted by the insurer if the insured certifies to the insurer that it has established and maintains a drug-free workplace program that complies with the requirements of Sections 71-3-201 through 71-3-225.
- (3) The premium discount provided by this section shall be applied to an insured's workers' compensation insurance pro rata as of the date of receipt of certification by the insurer.
- (4) The Workers' Compensation Commission shall promulgate appropriate forms and procedures to allow self-certification by an insured to its insurer. Certification by an insured shall be required for each year in which a premium discount is granted.
- (5) The insured's workers' compensation insurance policy shall be subject to an additional premium for the purposes of reimbursement of a previously granted premium discount if it is determined that such insured misrepresented the compliance of its drug-free workplace program within the provisions of Sections 71-3-201 through 71-3-225.
- (6) The Workers' Compensation Commission shall be authorized to promulgate rules and regulations necessary for the implementation and enforcement of this section.

§ 71-3-209. Program elements

A drug-free workplace program must contain the following elements:

- (a) Written policy statement as provided in Section 71-3-211;
- (b) Comply with the substance abuse testing procedures as provided in Sections 71-7-1 through 71-7-33, Mississippi Code of 1972, if testing is initiated by the employer;
- (c) Resources of employee assistance providers or other rehabilitation resources, maintained in accordance with Section 71-3-213;
- (d) Employee education as provided in Section 71-3-215; and
- (e) Supervisor training in accordance with Section 71-3-217.

§ 71-3-211. Written policy statement

A drug-free workplace must provide a written policy statement on substance abuse in order to qualify for the provisions of Section 71-3-207. All employees must be given a written policy statement from the employer that contains:

- (a) A general statement of the employer's policy on substance abuse notifying employees that the unlawful manufacture, sale, distribution, solicitation, possession with intent to sell or distribute, or use of alcohol or other drugs is prohibited in the person's workplace;
- (b) A statement advising an employee or job applicant of the existence of Sections 71-3-201 through 71-3-225;
- (c) A general statement concerning confidentiality;
- (d) A statement advising an employee of the employee assistance program, external employee assistance program, or the employer's resource file of employee assistance programs and other persons, entities or organizations designed to assist employees with personal or behavioral problems;

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

§ 71-3-213. Private sector drug-free workplace; requirements

In order for an employer's workplace to qualify as a private sector drug-free workplace and to qualify for the provisions of Section 71-3-207, the following must be met:

- (a) If an employer has an employee assistance program, the employer must inform the employee of the benefits and services of the employee assistance program. An employer shall post notice of the employee assistance program in conspicuous places and explore alternatives to publicize such services. In addition, the employer must provide the employee with notice of the policies and procedures regarding access to and utilization of the program.
- (b) If an employer does not have an employee assistance program, the employer must maintain a resource file of employee assistance service providers, alcohol and other drug abuse programs, mental health providers, and other persons, entities or organizations available to assist employees with personal or behavioral problems. The employer shall provide all employees information about the existence of the resource file and a summary of the information contained within the resource file. The summary should contain, but need not be limited to, all information necessary to access the services listed in the resource file. In addition, the employer shall post in conspicuous places a listing of multiple employee assistance providers in the area.

§ 71-3-215. Education program

An employer must provide all employees with an education program on alcohol and other drug abuse prior to instituting a private sector drug-free workplace program under Sections 71-3-201 through 71-3-225. Also, an employer must provide all employees with an annual education program on alcohol and other drug abuse, in general, and its effects on the workplace, specifically. An education program for a minimum of one (1) hour should include, but is not limited to, the following information:

- (a) The explanation of the disease of addiction for alcohol and other drugs;
- (b) The effects and dangers of the commonly abused substances in the workplace; and
- (c) The company's policies and procedures regarding alcohol and other drug use or abuse in the workplace and how employees who wish to obtain substance abuse treatment can do so.

§ 71-3-217. Training required

In order to qualify as a private sector drug-free workplace and to qualify for the provisions of Section 71-3-207, and in addition to the educational program provided in Section 71-3-215, an employer must provide all supervisory personnel a minimum of two (2) hours of training prior to the institution of a drug-free workplace program under Sections 71-3-201 through 71-3-225, and each year thereafter which should include, but is not limited to, the following:

- (a) Recognition of evidence of employee alcohol and other drug abuse;

- (b) Documentation and corroboration of employee alcohol and other drug abuse;
- (c) Referral of alcohol and other drug abusing employees to the proper treatment providers;
- (d) Recognition of the benefits of referring alcohol and other drug abusing employees to treatment programs, in terms of employee health and safety and company savings; and
- (e) Explanation of any employee health insurance or HMO coverage for alcohol and other drug problems.

§ 71-3-219. Confidential communications

- (1) All information, interview, reports, statements, memoranda and test results, written or otherwise, received by the employer through a substance abuse program are confidential communications as they pertain to the employee only and may not be used or received in evidence, obtained in discovery or disclosed in any public or private proceedings, except as provided in Sections 71-7-1 through 71-7-33, Mississippi Code of 1972.
- (2) Release of any such information under any other circumstance shall be solely pursuant to a written consent form signed voluntarily by the person tested, unless such release is compelled by an agency of the state or a court of competent jurisdiction or unless deemed appropriate by a professional or occupational licensing board in a related disciplinary proceeding. The consent form must contain at a minimum:
 - (a) The name of the person who is authorized to obtain the information;
 - (b) The purpose of the disclosure;
 - (c) The precise information to be disclosed;
 - (d) The duration of the consent; and
 - (e) The signature of the person authorizing release of the information.
- (3) Nothing in Sections 71-3-201 through 71-3-225 shall be construed to call for actions that may violate federal or state confidentiality statutes for employee assistance professionals and alcohol and other drug abuse counseling or treatment providers.

§ 71-3-221. Failure to establish program; effect

No cause of action shall arise in favor of any person against an employer based upon the failure of an employer to establish a substance abuse program in accordance with Sections 71-3-201 through 71-3-225.

§ 71-3-223. Other laws

Nothing in Sections 71-3-201 through 71-3-225 shall be construed to operate retroactively, and nothing in Sections 71-3-201 through 71-3-225 shall abrogate the right of an employer under state law to conduct substance abuse tests, or implement employee substance abuse testing programs. Only those programs that meet the criteria outlined in Sections 71-3-201 through 71-3-225 qualify for reduced workers' compensation insurance rates under Section 71-3-207.

§ 71-3-225. Severability

If any provision of Sections 71-3-201 through 71-3-225 or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of Sections 71-3-201 through 71-3-225 that can be given effect without the invalid provision or application, and to this end the provisions of Sections 71-3-201 through 71-3-225 are severable.