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South Carolina Workers' Compensation Law

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CHAPTER 67 - SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

ARTICLE 1 - ADMINISTRATION

67-101 South Carolina Workers' Compensation Commission, Location, Transaction of Business.

A. The South Carolina Workers' Compensation Commission's offices are located in Columbia, South Carolina.

B. The Commission transacts business weekdays 8:30 A.M. to 5:00 P.M., excluding State holidays.

C. The South Carolina Workers' Compensation Commission remains in continuous session and meets regularly to transact business which comes before it.

D. The Commission determines the assignment of districts within the State and the district assignment of each Commissioner.

ARTICLE 2 - GENERAL

67-201 Application of Regulations.

A. These regulations are entitled to a liberal construction in the furtherance of the purpose for which the South Carolina Workers' Compensation Law is intended.

B. In doubtful cases, the application of these regulations shall be in favor of the injured employee.

67-202 Words and Phrases, Defined.

A. The definition of words and phrases used in this Chapter include:

(1) Accident Reporting Division: A division of the Commission responsible for receipt and processing of the employer's first report of injury, Form 12A (ACORD 4) and Form 12M.

(2) Certified Mail: Mail including that which is certified by the U. S. Postal Service and that carried by a commercial carrier that keeps proper documentation.

(3) Claimant: The party making a claim including his or her attorney.

(4) Claims Department: A department of the Commission responsible for managing the workers' compensation file. The department reviews case files that are not contested and assures compliance with the provisions of this Chapter and the Act by requesting and, if necessary, assessing a fine for failure to file reports required by this Chapter and the Act.

(5) Compliance Division : A division of the Commission responsible for investigation and, if necessary, requests prosecution of an employer who refuses or neglects to comply with the insurance provisions of this Chapter and the Act. The division is authorized to request and, if necessary, assess a fine for failure to file reports required under this Chapter and the Act.

(6) Coverage Division: A division responsible for monitoring and maintaining coverage records of employers, employees, insurance carriers, self insurance

funds, and the State Accident Fund's compliance with the Chapter and the Act. The division is authorized to request and, if necessary, assess a fine for failure to file reports required under this Chapter and the Act.

(7) Employer's Representative.

(a) The employer's insurance carrier, the claims administrator for a self insurance fund or a self insured employer, the State Accident Fund, and counsel of record for the employer and its insurance carrier.

(b) If an employer is operating as an unqualified self insured, the term "employer's representative" shall mean the unqualified self insured employer and its attorney, if any, who shall be directly responsible for compliance with the provisions of this Chapter and the Act.

(8) Federal Employer Identification Number: "FEIN."

(9) Informal Conference: Also called a "viewing," an informal conference is a meeting with the claimant, the employer's representative, and a Commissioner or claims mediator. At the informal conference, the Commissioner or claims mediator answers questions about the claim and reviews, for approval, a proposed settlement of a claim. An informal conference may be held for the purpose of certifying a Form 17 according to R.67 505E and R.67 506F.

(10) Judicial Department: A department of the Commission which assigns the informal conference, contested case, and Commission review docket and issues the hearing notice. The department reviews the Commission's files and assures compliance with the provisions of this Chapter and the Act by requesting and, if necessary, assessing a fine for failure to file reports required by this Chapter and the Act.

(11) Medical Services Division: A division of the Commission which administratively reviews physician fees and hospital charges to assure compliance with the Medical Services Provider Manual and the Hospital and Ambulatory Surgery Center Payment Manual.

(12) Public Affairs Division: A division of the Commission responding to the general inquiries of employees and employers concerning their rights, benefits, and obligations under the Act. The service does not provide legal advice or offer opinions concerning a particular claim.

(13) Self Insurance Division: A division of the Commission which monitors the compliance of self insured employers and self insurance funds with this Chapter and the Act. The division reviews applications to self insure and is authorized to request and, if necessary, assess a fine for failure to file reports required under this Chapter and the Act.

(14) South Carolina Workers' Compensation Commission: the Commission.

(15) Unqualified Self Insured Employer: An employer who refuses or neglects to comply with the insurance provisions of this Chapter and the Act.

(16) Workers' Compensation Law: the Act.

(17) Workers' Compensation Commission's file number: the W.C.C. file number.

(18) Rehabilitation professionals: coordinators of medical rehabilitation services.

B. In addition, other words and phrases are defined in the article most closely associated with the word or phrase.

HISTORY: Amended by State Register Volume 20, Issue No. 5, eff May 24, 1996; State Register Volume 21, Issue No. 4, eff April 25, 1997; State Register Volume 34, Issue No. 2, eff February 26, 2010.

67-203 Official Forms and Documents.

A. The Commission prepares and approves all required forms. A person shall use a Commission form and shall not substitute another document for a form. Reproduction of a form the same size is permitted, provided content is not altered.

B. Commission forms are available on the web site. The Commission supplies at a reasonable charge, upon written request to the Commission's Mail Room, the following forms.

(1) Form S 1, Notice of Third Party Action, Employer;

(2) Form S 2, Notice of Third Party Action, Employee;

(3) Form S 3, Entitlement to Right of Action;

(4) Form S 4, Court Certificate;

(5) Form 2, Employer's Notice of Being Subject to the Act;

(6) Form 5, Corporate Officer Notice to Reject;

(7) Form 6, Application to Create a Self Insurance Fund;

(8) Form 6A, Application for Membership in a Self Insurance Fund;

(9) Form 7, Application to Individually Self Insure;

(10) Form 7A, Corporate Guaranty;

(11) Form 8, Proof of Compliance, Surety Bond;

(12) Form 8A, Proof of Compliance, Securities Pledge;

(13) Form 8B, Proof of Compliance, Memorandum of Understanding, and Irrevocable Letter of Credit;

(14) Form 8C, Proof of Compliance, Excess Insurance;

(15) Form 9, Certificate for Self Insurance;

(16) Form 10, Self Insurance Tax Return;

(17) Form 11, Self Insurer's Quarterly Financial Report;

(18) Form 11A, Self Insurer's Annual Financial Report;

(19) Form 12A, Employer's First Report of Injury (ACORD 4);

(20) Form 12M, Annual Minor Medical Report;

(21) Form 14A, Health Insurance Claim Form (HCFA 1500);

(22) Form 14B, Physician's Statement;

(23) Form 15, Temporary Compensation Report;

(24) Form 15S, Supplemental Report of Varying Temporary Partial Payments;

(25) Form 16, Agreement for Permanent Disability/Disfigurement Compensation (prior to July 1, 2007);

(26) Form 16A, Agreement for Permanent Disability/Disfigurement Compensation (after July 1, 2007);

(27) Form 17, Receipt of Compensation;

(28) Form 18, Periodic Report;
(29) Form 19, Status Report and Compensation Receipt;
(30) Form 20, Statement of Earnings of Injured Employee;
(31) Form 21, Employer's Request for Hearing;
(32) Form 24, Application for Lump Sum Award;
(33) Form 27, Subpoena;
(34) Form 30, Request for Commission Review;
(35) Form 31, Notice of Review Hearing;
(36) Form 32, Request to Waive Appeal Filing Fee;
(37) Form 36, Medical Fee Approval;
(38) Form 38, Employer's Withdrawal of Election to Adopt the South Carolina Workers' Compensation Act;
(39) Form 39, Coverage Coding Form;
(40) Form 50, Employee's Notice of Claim and/or Request for Hearing;
(41) Form 51, Employer's Answer to Request for Hearing;
(42) Form 52, Employee's Notice of Claim and/or Request for Hearing, Death Case;
(43) Form 53, Employer's Answer to Request for Hearing, Death Case;
(44) Form 54, Employer's Notice of Claim and/or Request for Hearing;
(45) Form 55, Second Injury Fund's Answer to Employer's Request for Hearing;
(46) Form 58, Pre hearing Brief;
(47) Form 59, Appellant's Informal Brief;
(48) Form 61, Attorney Fee Petition;
(49) Form 65, Waiver of Claim Involving an Occupational Disease;
(50) Second Injury Fund Form 1, Agreement to Reimburse Compensation;
(51) Second Injury Fund Form 2, Reimbursement Request;
(52) Second Injury Fund Form 3, Employer's Notice of Claim for Reimbursement from Second Injury Fund;
(53) Second Injury Fund Form 4, Medical Information Request.

HISTORY: Amended by State Register Volume 16, Issue No. 4, eff April 24, 1992; State Register Volume 21, Issue No. 4, eff April 25, 1997; State Register Volume 34, Issue No. 2, eff February 26, 2010.

67-204 Completing Forms.

A. A person filing a form with the Commission shall complete each information blank on the form. Each form shall contain the W.C.C. file number and the employer's FEIN, if known.

B. The Commission may return an incomplete form to the sender with an explanation of its deficiency.

67-205 Filing with the Commission, Defined.

A. The date of filing a form or document with the Commission is provided in subsections B, C, and D, below.

B. A form or document delivered to the Commission electronically, by first class mail or by hand delivery is filed the date of receipt in the Commission's offices as indicated by the earliest date stamped on the form or document by an official Commission stamp with the exception of forms and documents delivered pursuant to R.67 205C and R.67 205D.

C. A form or document delivered to the Commission by certified or registered mail is deemed filed the date of deposit in the United States Postal Service as indicated by the date of postmark.

D. The following forms or documents are deemed filed on the date on the accompanying certificate of service properly addressed to the Commission: Forms 15(III), 50, 51, 52, 53, 54, 55, 58, 30, and appellate briefs.

HISTORY: Amended by State Register Volume 20, Issue No. 5, eff May 24, 1996; State Register Volume 21, Issue No. 4, eff April 25, 1997; State Register Volume 34, Issue No. 2, eff February 26, 2010.

67-206 Filing a Claim.

A. To file a claim, file with the Commission's Claims Department a Form 50, Form 52, or a letter as provided below.

B. To file a claim on a Form 50 or Form 52, mark the box at the signature line which states "I am filing a claim. I am not requesting a hearing at this time."
   (1) Address and deliver the form to the Claims Department.
   (2) Filing a claim requires the WCC file number or the Coverage Coding Form 39 must be included. This requirement may be waived for unrepresented claimants.
   (3) Filing a claim does not request a hearing nor is the employer's representative required to file a Form 51 or 53.

C. A letter filed with the Commission also files a claim. The letter should include the information listed in items (1) through (13) below:
   (1) Claimant's name (and worker's name, if different);
   (2) Claimant's address (and worker's address, if different);
   (3) Claimant's home and work telephone numbers (and worker's home and work telephone numbers, if different);
   (4) Claimant's social security number (and worker's social security number, if different);
   (5) Employer's name;
   (6) Employer's address;
   (7) Employer's telephone number;
   (8) Employer's insurance carrier, if known;
   (9) Date of injury;
   (10) The county in which the injury occurred;

(11) Type of injury (to which area of body);

(12) Description of the accident;

(13) The WCC file number or Coverage Coding Form must be included.

D. Failure to include any of the information above does not bar the claim if the information necessary to an issue in the claim is given to the Commission upon request.

E. The Commission will notify the employer's representative a claim has been filed. The employer's representative shall immediately contact the claimant.

HISTORY: Amended by State Register Volume 21, Issue No. 4, eff April 25, 1997; State Register Volume 34, Issue No. 2, eff February 26, 2010.

67-207 Requesting a Hearing, Claimant.

A. To request a hearing, file a Form 15, Form 50, or Form 52 with the Commission's Judicial Department as provided below:

(1) Mark the box at the signature line on the Form 50 or Form 52 which states, "I am requesting a hearing," or sign and date under Section III of the Form 15 "Notice to Injured Worker or Legal Representative When Temporary Compensation Has Been Stopped."

(2) Address and deliver the form to the Judicial Department.

(3) The Commission serves the Form 15, Form 50, or Form 52 on the employer according to R.67 210 and R.67 211.

(4) When under the laws of this State the employer and its insurance carrier, if any, are required to be represented by an attorney in a contested case hearing, an attorney shall be designated according to R.67 603.

(5) The WCC file number or Coverage Coding Form must be included.

B. Filing a Form 50 or Form 52 with the Commission requesting a hearing also files the claim if a claim has not been filed before.

HISTORY: Amended by State Register Volume 19, Issue No. 5, eff May 26, 1995; State Register Volume 21, Issue No. 4, eff April 25, 1997; State Register Volume 34, Issue No. 2, eff February 26, 2010.

67-208 Requesting a Hearing, Employer.

A. The employer's representative may request a hearing by filing the appropriate form as provided below with the Commission's Judicial Department and serving the form pursuant to R.67 211.

B. To request a hearing for permission to pay compensation due to death, permanent partial, or permanent total compensation, file a Form 21 with the Judicial Department.

(1) The claimant may, but is not required to, file a response to the Form 21 in writing.

(2) File a response, if any, as provided by R.67 604B(1) and B(2).

C. To request a hearing for permission to terminate temporary compensation after one hundred fifty days after notice of the injury to the employer, file a Form 21 with the Judicial Department pursuant to R.67 506.

D. To request a hearing between the employer and the Second Injury Fund, file a Form 54 with the Judicial Department and serve the Form 54 on the Second Injury Fund pursuant to R.67 211.

E. When under the laws of this State an employer and its insurance carrier, if any, are required to be represented by an attorney in a contested case hearing, its attorney must file a letter of representation with the Judicial Department and provide a copy to the opposing party no later than thirty days from the date of service of the Form 21 or Form 54. Notice will be served pursuant to R.67 210 based on the Commission records on the day the notice is mailed.

HISTORY: Amended by State Register Volume 19, Issue No. 5, eff May 26, 1995; State Register Volume 21, Issue No. 4, eff April 25, 1997.

67-209 Computation of Time.

A. The day of the event, after which a designated period of time begins, is excluded. The last day, of the designated time period, is included.

B. Saturdays, Sundays, State, and Federal holidays are included unless the designated time period ends on a Saturday, Sunday, State, or Federal holiday in which case the next day that is not a Saturday, Sunday, State, or Federal holiday is included as the last day.

67-210 Parties Served.

A. Serve the following parties:

    (1) The insurer's designated recipient as in R.67 401 (the employer is not served);

    (2) The employer directly when the employer is uninsured;

    (3) The party when the party is not represented by an attorney;

    (4) The Second Injury Fund;

    (5) The State Accident Fund.

B. When an attorney represents a party, and notifies the Commission of his or her representation, the attorney is served. The party is not served.

HISTORY: Amended by State Register Volume 21, Issue No. 4, eff April 25, 1997.

67-211 Service of Forms and Documents.

A. Claimant's Request for Hearing.

    (1) When the claimant is represented by an attorney, the attorney shall serve a copy of the Form 15(III), Form 50, or Form 52 hearing request electronically or by depositing the form in the United States Postal Service first class postage, addressed to the opposing parties pursuant to R.67 210. Service is deemed complete upon mailing unless the form is returned. If the form is returned, service may be completed pursuant to the South Carolina Rules of Civil Procedure. A hearing will not be set until service is complete and proof of service is filed with the Judicial Department.

(2) When the claimant is not represented, the claimant may serve the Form 15(III), Form 50, or Form 52 hearing request as set forth in A(1) above. When the claimant does not serve the hearing request, the Commission will serve the request electronically or by depositing the form in the United States Postal Service first class postage, addressed to the opposing parties per R.67 210.

B. Employer's Representative's Request for Hearing and/or Response to a Request For Hearing.

(1) When the claimant is represented by an attorney, the employer's representative shall serve a copy of the Form 21, Form 51, or Form 53 electronically or by depositing the form in the United States Postal Service first class postage, addressed to the claimant's attorney. Service is deemed complete upon mailing unless the form is returned. If the form is returned, service may be completed pursuant to the South Carolina Rules of Civil Procedure. A hearing will not be set until service is complete and proof of service is filed with the Judicial Department.

(2) When the claimant is not represented by an attorney, the employer's representative shall serve a copy of the Form 21, Form 51, or Form 53 by personal service or by certified mail, return receipt requested, delivery restricted to the addressee. When service is by certified mail, service is complete the date of the addressee's receipt of the form as indicated by the signed certified mail return receipt. If the form is returned, service may be completed pursuant to the South Carolina Rules of Civil Procedure. A hearing will not be set until service is complete and proof of service is filed with the Judicial Department.

C. Other Forms and Documents.

(1) Unless otherwise specified in this Chapter, serve other forms and documents electronically or by depositing the form or document in the United States Postal Service first class postage, addressed to the opposing parties per R.67 210. Service is deemed complete upon mailing unless the document is returned. If the document is returned, service may be completed pursuant to the South Carolina Rules of Civil Procedure.

(2) When the claimant is not represented by an attorney, the claimant may serve a form or document according to C(1) above. When the claimant does not serve the form or document, the Commission will serve it by depositing the form or document in the United States Postal Service first class postage, addressed to the opposing parties per R.67 210.

(3) Hearing notices may be served electronically pursuant to R.67 210. All unrepresented claimants and uninsured employers shall be served by depositing the notice in the United States Postal Service, first class postage per R.67 210.

HISTORY: Amended by State Register Volume 16, Issue No. 4, eff April 24, 1992; State Register Volume 21, Issue No. 4, eff April 25, 1997; State Register Volume 34, Issue No. 2, eff February 26, 2010.

67-213 Service of Orders, Hearing Notices, and Review Hearing Notices.

A. The Commission serves orders electronically, by certified mail, return receipt requested or by deposit in the United States Postal Service, first class postage, addressed to the parties according to R.67 210.

  (1) Service is made by delivering a copy of the order to a party representing himself or herself or to the attorney representing the party.

  (2) When service is made by certified mail, the date of service is the date of the addressee's receipt indicated by the certified mail return receipt. When service is made by first class mail, five days are added to the date of mailing. Service by first class mail is deemed complete five days after the date of deposit in the United States Postal Service.

B. The Commission serves hearing notices and Form 31, Review Hearing Notices, electronically or by deposit in the United States Postal Service first class postage, addressed to the parties according to R.67 210. Service is deemed complete upon mailing. All unrepresented claimants and uninsured employers shall be served by depositing the notice in the United States Postal Service, first class postage per R.67 210. The Commission may, but is not required to, serve such notices by certified mail, return receipt requested. Service by certified mail is complete upon receipt.

C. When an attorney represents a party, the party is not served. If the mailing is returned, service may be completed as in R.67 211.

HISTORY: Amended by State Register Volume 16, Issue No. 4, eff April 24, 1992; State Register Volume 21, Issue No. 4, eff April 25, 1997; State Register Volume 34, Issue No. 2, eff February 26, 2010.

67-214 Subpoenas.

A. To subpoena a person or document(s), complete and serve a Form 27 as set out below.

B. When the party issuing the Form 27 is represented by an attorney, the attorney shall complete and sign the Form 27.

C. When the party issuing the Form 27 is not represented by an attorney, the party may obtain a blank Form 27 signed by an authorized representative of the Commission.

D. When the individual being served is represented by an attorney, serve by depositing the Form 27 in the United States Postal Service, first class postage addressed to the attorney. Service is deemed complete upon mailing, unless the form is returned. If the form is returned, service may be completed pursuant to South Carolina Rules of Civil Procedure.

E. When the individual being served is not represented by an attorney, serve the individual by personal service or by certified mail, return receipt requested, delivery restricted to the addressee. When service is by certified mail, service is complete the date of the addressee's receipt of the form as indicated by the signed certified receipt. If the form is returned, service may be completed pursuant to the South Carolina Rules of Civil Procedure.

F. Do not file the Form 27 with the Commission. When the Form 27 is to be used at a hearing, retain a copy and proof of service to be presented as necessary.

G. An individual may contest a Form 27 by filing and serving a motion to quash or modify pursuant to R.67 215.

HISTORY: Amended by State Register Volume 19, Issue No. 5, eff May 26, 1995; State Register Volume 21, Issue No. 4, eff April 25, 1997.

67-215 Motions.

A. A party may file a motion when a form is not applicable. The Commission will accept motions including, but not limited to, a motion

(1) Relating to a subpoena or discovery;

(2) Relating to the appointment of a Guardian ad Litem;

(3) Relating to an attorney's appearance, withdrawal, or fee;

(4) Relating to a claim pending Commission review;

(5) Relating to postponing or adjourning a hearing;

(6) Relating to self insurance privileges;

(7) Relating to penalties and or interest;

(8) Relating to third party practice.

B. The Commission will not address a motion involving the merits of the claim, including, but not limited to, a motion

(1) For dismissal; or

(2) For summary judgment.

C. The Commission does not provide a form for a motion. A motion shall contain a complete caption of the case including the title of the action, the state and county in which the injury occurred, the Commission's name, the workers' compensation file number, and a designation of the relief or order sought.

D. The body of the motion shall contain numbered paragraphs each limited to a statement of a single set of circumstances. The final paragraph of the motion shall state specifically the relief or order sought.

(1) If the grounds on which the motion or reply depend is based on the existence of facts not in the Commission's file, the moving party shall file an affidavit or affidavits evidencing those facts. The opposing party may file an affidavit or affidavits in reply.

(2) If the motion or reply depends on the existence of facts in evidence or are admitted in forms on file with the Commission, the party shall cite the document and page number.

E. When the claimant or an uninsured employer is not represented by an attorney, the moving party shall serve the motion by personal service or by certified mail, return receipt requested, delivery restricted to the addressee.

(1) When service is by certified mail, service is complete the date of the addressee's receipt of the mailing as indicated by the signed certified return receipt. Otherwise, the moving party shall serve the motion by any of the methods

listed or by depositing the motion in the United States Postal Service, first class postage, addressed to the appropriate party.

(2) If the mailing is returned, service may be completed pursuant to the South Carolina Rules of Civil Procedure.

F. The moving party shall file the motion and proof of service with the Judicial Department. The moving party may attach a memorandum in support. The opposing party may file a memorandum in reply within ten days of service of the motion. The parties may agree to an extension by filing a written consent. Failure to respond is deemed a general denial. No further memoranda are allowed, unless requested by a Commissioner.

G. The jurisdictional commissioner may consider the motion after the opposing party has had ten days notice of the motion and shall grant or deny the relief requested.

(1) The jurisdictional commissioner may hear the parties in any county or by telephone conference call, however, a hearing is not necessary.

(2) The jurisdictional commissioner shall issue a written decision to be filed with the record and served on all parties.

HISTORY: Amended by State Register Volume 16, Issue No. 4, eff April 24, 1992; State Register Volume 21, Issue No. 4, eff April 25, 1997.

67-216 Guardian ad Litem, Appointment.

A. When a minor or mentally incompetent person is a party, a Guardian ad Litem shall represent the minor or mentally incompetent.

B. When a claim involves a fatality, a Guardian ad Litem shall represent the minor child or children.

C. A Guardian ad Litem may file proof of guardianship with the Commission's Judicial Department or a person may request a Commissioner appoint a Guardian ad Litem by filing and serving a motion pursuant to R.67 215.

D. The qualifications of and proceedings for appointment of a Guardian ad Litem shall be the same as those found in the South Carolina Rules of Civil Procedure; but, a Commissioner may require the appointment of an attorney as the Guardian ad Litem.

E. The Commission shall not hold a hearing for final determination of benefits until proof of appointment of a Guardian ad Litem is filed with the Commission.

F. The Commissioner may order the Guardian ad Litem paid from the proceeds of the claim for services rendered. If the parties settle the case according to Article 8, the Guardian ad Litem shall file a Form 61, Attorney Fee Petition, according to R.67 1204 for approval of the fee. The employer's representative is not liable for the Guardian ad Litem's expenses; however, upon conclusion of the claim, the employer's representative may pay the Guardian ad Litem directly as provided by an approved Form 61 or as ordered by the Commission with such payment deducted from the recipient's compensation.

HISTORY: Amended by State Register Volume 16, Issue No. 4, eff April 24, 1992; State Register Volume 21, Issue No. 4, eff April 25, 1997.

ARTICLE 3 - NOTICES REQUIRED UNDER THE ACT

67-301 Posting Notice.

A. All employers operating under the Act, whether by law or by election, shall post publicly and keep posted in their place of business a Form 2, Employer's Notice of Being Subject to the Act.

B. The notice shall state, substantially, the following:

"We are operating under and subject to the Workers' Compensation Act of South Carolina. In case of accidental injury or death to an employee, the injured employee, or someone acting on his or her behalf, shall give immediate notice to the employer or general authorized agent. Failure to give immediate notice may be the cause of serious delay in the payment of compensation to the injured employee or his or her beneficiaries and may result in failure to receive any compensation benefits whatsoever."

ARTICLE 4 - REPORTS REQUIRED, EMPLOYERS AND INSURANCE CARRIERS

67-401 Designation of Authorized Recipient of Service and Other Demands.

A. Every workers' compensation insurance carrier, self insured employer, and self insurance fund doing business in this State shall designate one address and one electronic address as the authorized recipient in underwriting matters of service, mail, documentation, requests, inquiries, and other demands concerning the employer, the insurance carrier, the self insured, the self insurance fund, and a member of the self insurance fund.

B. Every workers' compensation insurance carrier, self insured employer, and self insurance fund doing business in this State shall designate one address and one electronic address as the authorized recipient in claims and all other non underwriting matters of service, mail, documentation, requests, inquiries, and other demands concerning the employer, the insurance carrier, the self insured, the self insurance fund, and a member of the self insurance fund.

C. The workers' compensation insurance carrier, self insured employer, and self insurance fund shall provide in writing the name, address, electronic address, and telephone number of the authorized recipient to the Commission.

D. The designation is deemed continuous. A change in designation shall not be effective until after thirty days written notice to the Commission.

E. If coverage has been reported to the Commission by EDI and the report included an underwriting office address, the address most recently reported shall be deemed the designated address for all underwriting matters related to that coverage in lieu of the address designated under R.67 401A.

F. If a claim has been reported to the Commission by EDI and the report included a claims office address, the address most recently reported shall be deemed the designated address for all matters related to that claim in lieu of the address designated under R.67 401B.

G. Every workers' compensation insurance carrier, self insured employer, and self insurance fund shall provide in writing their home office address, electronic address, and telephone number.

HISTORY: Amended by State Register Volume 34, Issue No. 2, eff February 26, 2010.

67-402 Corporate Officer Rejection of the Act.

A. A corporate officer may reject the Act by taking the following action:
   (1) The corporate officer shall complete and file with the employer's insurance carrier a Form 5, Corporate Officer Notice to Reject.
   (2) The effective date of rejection is the effective date listed on the Form 5, no sooner than the day following the day the corporate officer signed the form.
   (3) The corporate officer shall provide notice to the employer of the rejection of the Act by giving a copy of the Form 5, personally, to the employer or its agent or by sending it by registered or certified mail to the employer or its agent.

B. An insurance carrier or self insured fund may substitute its own form for the Form 5. Any substitute form must:
   (1) Include substantially the same information included on the Form 5, including information that advises the corporate officer of the effects of rejecting the Act; and
   (2) Require the corporate officer's signature be notarized.

HISTORY: Amended by State Register Volume 21, Issue No. 4, eff April 25, 1997.

67-403 Election to Adopt the Act.

A. An employer adopts the Act by obtaining workers' compensation insurance or by operating under an approved self insurance program.

B. When an employer exempt from the Act has with its employees elected to operate under the Act and has filed notice of such agreement and complied with the provisions of the Act, the employer and its employees who have elected with the employer shall, until notice to the contrary is filed with the Commission, continue to operate under the Act without additional election.

HISTORY: Amended by State Register Volume 21, Issue No. 4, eff April 25, 1997.

67-404 Withdrawing from the Act.

A. An employer who, having elected to come under the Act, being at that time exempt, is deemed to continue to operate under the Act until a Form 38, Notice of Withdrawal from the Act, is filed with the Commission's Coverage and Compliance Department and its employees are provided written notice in section B below.

B. An employer shall withdraw from the Act by filing a Form 38 with the Coverage and Compliance Department as in subsection B(1), or, by notifying its insurance carrier as in subsection B(2) below.
   (1) The employer shall complete and file with the Coverage and Compliance Department the original and one copy of a Form 38.

(a) Upon receipt of a completed, signed, and notarized Form 38, the Coverage and Compliance Department will return to the employer an approved Form 38.

(b) The effective date of withdrawal, sixty days from the date of filing, will appear on the form.

(c) The employer shall provide notice to its employees before the effective date of withdrawal by posting the approved Form 38 conspicuously in the place of employment or by giving each employee, personally, a copy of the approved Form 38.

(2) If the employer elects to withdraw from the Act by notifying in writing its workers' compensation insurance carrier, the employer's representative shall provide notice to the Commission by taking the following action:

(a) Before the effective date of the employer's insurance policy's cancellation, the insurance carrier shall complete and file with the Coverage and Compliance Department the original and one copy of a Form 38 signed by the employer.

(b) Upon receipt of a completed, signed, and notarized Form 38, the Coverage and Compliance Department will return to the insurance carrier an approved Form 38. The insurance carrier shall give the approved Form 38 to the employer.

(c) The effective date of withdrawal, sixty days from the date of filing, will appear on the form.

(d) The employer shall provide notice to its employees as in B(1)(c) above.

C. The insurance carrier's filing a policy cancellation or termination notice with the Coverage and Compliance Department or the National Council on Compensation Insurance shall not operate as notice of withdrawal from the Act. The insurance carrier shall file the Form 38 in addition to a notice of termination required in R.67 405.

D. A nonexempt employer, becoming exempt from the insurance provisions of this Chapter and the Act, may file an exemption with the Coverage and Compliance Department as provided below:

(1) File a Form 38, an attached affidavit, and supporting documentation with the Coverage and Compliance Department.

(2) The affidavit and supporting documentation must establish the employment and the employer are exempt from the insurance provisions of the Act.

(3) The form is subject to approval by the department if the supporting documentation establishes an exemption under the Act.

(4) It is the employer's responsibility to assure compliance with the insurance provisions of the Act.

(a) A Form 38 approved according to this Regulation creates a rebuttable presumption of exemption from the Act.

(b) An exemption established by a Form 38 shall not prevent the department from investigating and, if necessary, requesting prosecution of the employer.

(5) The Commission may impose the maximum penalty and fine available against the employer who, although previously exempt from the Act, then operates subject to the Act and fails to comply with the insurance provisions of this Chapter and the Act.

67-405 Employers and Insurance Carriers, Proof of Compliance.

A. Every employer operating under the Act shall file with the Commission proof of its compliance with the insurance provisions of this Chapter and the Act.

B. When an employer insures its liability under the Act, the insurer shall file a report of coverage within thirty days of the inception date of the policy with the Commission's authorized agent as proof of the employer's compliance with the insurance provisions of this Chapter and the Act and as provided herein.

(1) A workers' compensation insurance carrier shall file a report of coverage in accordance with R.67 416.

(2) The State Accident Fund shall file a report of coverage in accordance with R.67 416.

(3) A self insurance fund shall comply with the insurance reporting requirements in Article 15 of this Chapter.

C. If the employer fails to renew its insurance, or the insurer cancels the policy, the employer's insurer shall immediately notify the Commission's authorized agent that it no longer insures the employer .

(1) A worker's compensation insurance carrier shall file a notice of termination in accordance with R.67 416. Such termination shall not be effective until thirty days after receipt by the Commission's authorized agent.

(2) The State Accident Fund shall file a notice of termination in accordance with R.67 416. Such termination shall not be effective until thirty days after receipt by the Commission's authorized agent.

(3) A self insurance fund shall file notice of termination of a fund member's self insurance privileges as provided in Article 15 of this Chapter.

D. The employer's representative and the State Accident Fund shall on behalf of the employer file with the Commission all reports and documents required by this Chapter and the Act.

HISTORY: Amended by State Register Volume 34, Issue No. 2, eff February 26, 2010.

67-409 Duplicate or Dual Insurance Coverage.

A. When duplicate or dual coverage exists by reason of two different insurance carriers issuing two policies to the same employer securing the same liability, the Commission shall presume the policy with the later effective date is in force and the earlier policy terminated on the effective date of the later policy.

B. When both policies carry the same effective date, one policy may be cancelled by filing a notice of termination retroactive to the date of the policy's inception.

(1) Cancellation must be reported as provided in R.67 405.

(2) The insurance carrier issuing the notice of termination shall provide the employer notice of termination.

HISTORY: Amended by State Register Volume 34, Issue No. 2, eff February 26, 2010.

67-411 Employer's Report of Injury, Form 12A.

A. Each employer shall keep a record of all injuries, fatal or otherwise, received by its employees in the course of their employment.

   (1) The record must be made on the Form 12A and retained or filed according to section B below.

   (2) The Commission shall not construe the filing of a Form 12A as an admission of liability on the part of the employer or the employer's representative.

B. Employer's Responsibilities

   (1) The employer shall make a record of all work related injuries reported by its employees on the Form 12A and retain the record for a period of two years.

   (2) When an injury requires less than five hundred dollars in medical treatment and does not cause more than one lost workday or permanency, the employer may pay for the medical treatment. The employer is not required to make a written report to the employer's representative or to the Commission.

   (3) If the employer denies the claim for injuries or does not elect to pay for the medical treatment, the employer shall send a copy of the Form 12A to the employer's representative immediately after the occurrence and knowledge of the injury.

   (4) When an injury requires five hundred dollars or more in medical treatments or when it is determined more than one workday will be missed as a result of the injury or there is likely to be permanency, the employer shall send a copy of the Form 12A to the employer's representative immediately.

   (5) The employer shall report all fatalities to its representative.

C. Employer's Representative's Responsibilities

   (1) When an injury requires less than two thousand five hundred dollars in medical treatments and does not result in compensable lost time or permanency, the employer's representative shall retain the Form 12A filed by the employer for two years. The employer's representative shall make a report of the injuries in this category to the Commission as required in R.67 412.

   (2) When an injury requires two thousand five hundred dollars or more in medical treatments or results in compensable lost time or permanency, the employer's representative shall send the Form 12A to the Commission within ten business days after the occurrence and the employer's knowledge of the injury. In the event the injury was previously processed under section C(1) above, the Form 12A shall be filed with the Commission within ten business days of the employer's representative's knowledge the limits set in section C(1) above have been exceeded. The Form 12A shall be marked "Previously Processed As Medical Only."

   (3) If the employer's representative, or the employer, denies the claim for injuries, the employer's representative shall notify the claimant in writing and send the Form 12A, a Form 19 (reference R.67 414), and a copy of the letter denying the claim to the Commission within ten business days after the occurrence and the employer's knowledge of the reportable injury.

   (4) The employer's representative is required to report all fatalities to the Commission.

D. An unqualified self insured employer shall file a Form 12A with the Commission within ten business days after the occurrence and knowledge of an injury, regardless of the nature or seriousness of the injury.

HISTORY: Amended by State Register Volume 21, Issue No. 4, eff April 25, 1997; State Register Volume 34, Issue No. 2, eff February 26, 2010.

67-412 Employer's Report of Injury, Form 12M.

A. The employer's representative shall report to the Commission injuries reported by the employer pursuant to R.67 411C(1).

B. This report shall be made in accordance with R.67 416 within ten days of closing by the employer's representative.

C. Late reports shall be subject to a fine for late reporting plus an additional penalty of five dollars for each day late.

HISTORY: Amended by State Register Volume 21, Issue No. 4, eff April 25, 1997; State Register Volume 34, Issue No. 2, eff February 26, 2010.

67-413 Periodic Report.

A. The employer's representative shall file a Form 18, Periodic Report, as follows:

   (1) Six months after the alleged date of injury and each six months thereafter until the Commission's file is closed;

   (2) To request an informal conference;

   (3) Within thirty days of service of a claimant's Form 50 or Form 52 request for a hearing or request for an informal conference; and

   (4) At the request of the Commission.

B. The employer's representative may file a Form 18 at any time to transmit a message to the Commission.

HISTORY: Amended by State Register Volume 20, Issue No. 5, eff May 24, 1996; State Register Volume 21, Issue No. 4, eff April 25, 1997.

67-414 Status Report and Compensation Receipt.

A. After payment of all compensation the employer's representative shall file with the Commission's Claims Department a Form 19, Status Report and Compensation Receipt, as provided in Section C below. If an individual claim file has been created by the Commission, a Form 19 is required to close the file, even if no compensation has been paid.

B. When the employer's representative denies the claim, a Form 19 must be filed with the Claims Department, and the employer's representative shall:

   (1) Attach to the form a copy of the letter provided to the claimant denying the claim; and

   (2) Complete, sign, and file a Form 19. The claimant's signature is not necessary.

C. In all other cases, complete and file a Form 19 as provided below:
   (1) When more than one person receives payment of compensation, prepare a separate Form 19 for each person or Guardian and a final, additional Form 19 indicating the total amount of compensation paid and all medical expenses incurred in the claim.
   (2) Complete each line indicating payment of temporary total (TT), temporary partial (TP), and permanent partial (PP) compensation, disfigurement, and final release (an Agreement and Final Release), if applicable.
   (3) The claimant's signature is required on the Form 19 when permanent disability, disfigurement, or death benefits are paid or when the claim is settled by a Full and Final Release. The preparer shall sign and date the Form 19.
   (4) File the completed Form 19 with the Claims Department.

HISTORY: Amended by State Register Volume 19, Issue No. 5, eff May 26, 1995; State Register Volume 20, Issue No. 5, eff May 24, 1996; State Register Volume 21, Issue No. 4, eff April 25, 1997.

67-415 Documentation of Insurance.

A. For purposes of Section 42 1 415, either of the following is acceptable as documentation of insurance:
   (1) The declaration page of a standard workers' compensation policy, as issued by the insurance carrier for the insured, serves as documentation of insurance for both South Carolina and out of state employers, provided South Carolina is indicated as a named state in section 3A or 3C.
   (2) The ACORD Form 25 S, Certificate of Insurance, as issued by the insurance carrier for the insured, is acceptable documentation of insurance, provided the Certificate of Insurance indicates a valid South Carolina address for the insured, is dated, signed and issued by an authorized representative of the insurance carrier for the insured. For an out of state employer, the ACORD Form 25 S is acceptable, provided the authorized representative of the insurance carrier for the insured affirms the following in an accompanying statement: South Carolina is a named state in section 3A or 3C of the declaration page of the insured's policy.

B. If the employer is a member of a self insured fund approved by the Commission, the ACORD Form 25 S, Certificate of Insurance, must be dated, signed, and issued by an authorized representative of the self insured fund.

C. If the employer has been approved by the Commission to individually self insure according to R.67 1500, et seq., the self insurance certificate issued by the Commission shall serve as documentation of insurance as provided in Section 42 1 415.

HISTORY: Added by State Register Volume 21, Issue No. 4, eff April 25, 1997. Amended by State Register Volume 34, Issue No. 2, eff February 26, 2010.

67-416 Electronic Data Interface.

A. All insurance carriers, third party administrators, self insureds, self insured funds, and the State Accident Fund reporting coverage, accident, and claims information to

the Commission shall report such information using electronic interchange standards prescribed by the Commission.

B. Failure to comply with the Commission's prescribed electronic data interchange standard shall result in the assessment of fines in accordance with R.67 1401.

HISTORY: Added by State Register Volume 21, Issue No. 4, eff April 25, 1997. Amended by State Register Volume 34, Issue No. 2, eff February 26, 2010.

67-417 Examination of Claim Files.

A. As part of the claims review process, the Commission may conduct on site examinations of all records relating to injuries, fatal or otherwise, sustained in the course and scope of an employee's employment.

B. Insurance carriers, self insured employers, self insured funds, the State Accident Fund, and any claims administrator acting on their behalf are required to cooperate with examinations.

C. Claims will be reviewed to ensure timely and accurate payment of benefits and the proper filing of reports as required under Title 42 and Chapter 67.

D. Repeated violations of reporting standards shall be reported to the South Carolina Department of Insurance pursuant to Section 38 13 10.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 3, eff June 26, 1998.

ARTICLE 5 - TEMPORARY COMPENSATION

67-502 Words and Phrases, Defined.

A. Day of incapacity: The day of the injury is the first day of incapacity unless the injured person receives full pay for the day. In that event, the first day of incapacity is the day following receipt of full pay from the employer.

B. Disability:

    (1) Incapacity because of injury to earn wages which the employee was receiving at the time of injury in the same or any other employment.

    (2) Disability is presumed to continue until the employee returns to work or compensation is otherwise suspended or terminated according to Section 42 9 260.

C. Fractional part of a week: For a fractional part of a week, the daily wage is one seventh of the weekly wage.

D. Return to work without restriction: A statement of the authorized health care provider about the capacity of the claimant to meet the demands of a job and the conditions of employment. The determination must be made when the claimant's physical condition is static or is stabilized with or without medical treatment. The determination is appropriate when there are no physical limitations on the claimant's ability to perform the same or other suitable job as the claimant performed before the injury.

E. Temporary Partial Incapacity: Partial incapacity for work resulting from the injury.

F. Temporary Total Incapacity: Total incapacity for work resulting from the injury.

G. Waiting Period: The day or days lost because of inability to work on account of the injury are counted in the waiting period even though the days may not be consecutive.

HISTORY: Amended by State Register Volume 20, Issue No. 5, eff May 24, 1996; State Register Volume 21, Issue No. 4, eff April 25, 1997.

67-503 Payment of Temporary Total and Temporary Partial Compensation.

A. Medical, surgical, hospital, and other treatment including medical and surgical supplies are allowed from the first day of injury.
   (1) Temporary total or temporary partial compensation is incurred on the eighth calendar day of incapacity and from the first day of incapacity if the injury results in incapacity for more than fourteen calendar days. The seven and fourteen day periods need not be consecutive days.
   (2) Payment and acceptance of temporary compensation files a claim.

B. When the employer's representative begins to pay either temporary total or temporary partial compensation, or salary in lieu of temporary compensation, the employer's representative shall complete Section I of the Form 15, Temporary Compensation Report.
   (1) The employer's representative shall file the Form 15 with the Claims Department within ten days of the date of first payment of compensation.
   (2) The employer's representative shall serve the Form 15 on the Claimant according to R.67 211 with the claimant's first check.

C. When the compensation rate changes, the employer's representative shall complete, file, and serve, as set out above, a new Form 15.
   (1) In an ongoing period of temporary partial compensation where the rate varies from week to week, the employer's representative shall report the first payment on the Form 15 as set out above.
   (2) Supplemental payments shall be reported on the Form 15S, Supplemental Report of Compensation, to be filed with the document stopping that period of temporary partial compensation or with the Form 18, whichever becomes due first.

D. If the employer's representative does not pay temporary compensation, the claimant may request a hearing to receive benefits according to R.67 207. Payment of temporary total or temporary partial compensation does not prevent the claimant from seeking any other benefits available under the Act.

HISTORY: Amended by State Register Volume 19, Issue No. 5, eff May 26, 1995; State Register Volume 21, Issue No. 4, eff April 25, 1997.

67-504 Terminating Payment of Temporary Total or Temporary Partial Compensation During the First One Hundred Fifty Days After Employer's Notice of the Accident.

A. The employer's representative may terminate or suspend temporary compensation during the first one hundred fifty days after the employer has notice of the injury

according to Section 42 9 260. When compensation is terminated or suspended, the employer's representative shall complete Section I and Section II of the Form 15, Temporary Compensation Report. The employer's representative shall file the Form 15 immediately with the Claims Department and shall serve two copies of the Form 15 immediately on the claimant according to R.67 211 with documentation attached as to the reason for termination or suspension.

B. To terminate or suspend compensation pursuant to Section 42 9 260(B)(2), the employer's representative must obtain a signed Form 17.

C. The claimant may request a hearing to dispute the termination or suspension of temporary compensation by completing Section III of the Form 15 and filing it according to R.67 207.

HISTORY: Amended by State Register Volume 16, Issue No. 4, eff April 24, 1992; State Register Volume 21, Issue No. 4, eff April 25, 1997.

67-505 Suspending Temporary Compensation after the First One Hundred Fifty Days after the Employer's Notice of the Injury.

A. After the one hundred fifty day period, the employer's representative shall not suspend or terminate temporary compensation except as provided in this regulation or R.67 506.

B. Disability is presumed to continue until the claimant returns or agrees he or she is able to return to work for fifteen calendar days.

C. Temporary compensation may be suspended as follows:

(1) When the authorized health care provider reports the claimant is able to return to work without restriction to the same or other suitable job, and such job is provided by the employer, the employer's representative may suspend temporary compensation while the claimant is working unless temporary partial compensation is due.

(2) When the authorized health care provider reports the claimant is able to return to work at limited duty and the employer provides limited duty work consistent with the terms upon which the claimant has been released, the employer's representative may suspend temporary compensation while the claimant is working unless temporary partial compensation is due.

(3) When the claimant returns to work for another employer, the employer's representative may suspend temporary compensation while the claimant is working, unless temporary partial compensation is due.

D. When the claimant is unable to complete fifteen calendar days of work, the employer's representative shall reinstate temporary compensation according to the terms of the Form 15 and may request a hearing to terminate compensation by filing a Form 21 according to R.67 506.

E. When the claimant completes fifteen calendar days of work, or fifteen days after the claimant agrees he or she could have returned to work, the employer's representative immediately shall submit a completed Form 17 to the claimant for signature.

(1) The employer's representative shall file the Form 17 signed by the claimant and the employer's representative with the Claims Department within thirty one

days of the date the claimant returned to work or agreed he or she was able to return to work.

(2) Temporary compensation is terminated by the filing of the signed Form 17.

(3) A signed Form 17 does not prevent the claimant from seeking any other benefits available under the Act.

(4) When the claimant returns to work for at least fifteen calendar days but refuses to sign a Form 17, the employer's representative shall file a Form 21 according to R.67 506. The Commission may certify the Form 17 at an informal conference.

F. When the employer's representative suspends temporary compensation for refusal of medical treatment according to Section 42 15 60 or Section 42 15 80, the employer's representative shall file a Form 21 according to R.67 506.

G. If the employer's representative reinstates temporary compensation after the fifteen day period above, the employer's representative shall file a new Form 15 according to R.67 503.

H. If the employer's representative refuses to reinstate temporary compensation after the fifteen day period above, the claimant may request a hearing according to R.67 207.

HISTORY: Amended by State Register Volume 21, Issue No. 4, eff April 25, 1997.

67-506 Terminating Temporary Compensation after the First One Hundred Fifty Days after the Employer's Notice of the Injury.

A. After the one hundred fifty day period, the employer's representative shall not suspend or terminate temporary compensation except as provided in this regulation or in R.67 505. Disability is presumed to continue until the employee returns to work, except as provided herein.

B. After the one hundred fifty day period, when the claimant is receiving temporary compensation and the authorized health care provider reports the claimant has reached maximum medical improvement, the employer's representative shall continue payment of temporary compensation until the Commission finds the employer's representative may terminate compensation unless compensation has been suspended according to R.67 505. When compensation has been suspended according to R.67 505, see section F below.

C. After the one hundred fifty day period, when the claimant is receiving temporary compensation and the authorized health care provider reports the claimant may return to work at the same or other suitable job and such job has been offered by the employer but the claimant refuses to return to work, the employer's representative must continue payment of temporary compensation until the Commission finds the employer's representative may terminate temporary compensation.

D. After the one hundred fifty day period, when the claimant is receiving temporary compensation and the authorized health care provider assigns an impairment rating and reports the claimant is unable to return to work at the same or other suitable job, the employer's representative must continue payment of temporary compensation until the Commission finds the employer's representative may terminate temporary compensation.

E. To request a hearing for permission to terminate temporary compensation, the employer's representative shall file a Form 21 with the Judicial Department.
   (1) The employer's representative shall serve a copy of the Form 21 on the claimant according to R.67 211.
   (2) The employer's representative shall certify temporary compensation is current or no hearing will be set.

F. After the one hundred fifty day period, when the employer's representative has suspended temporary compensation according to R.67 505, the employer's representative shall request permission to terminate compensation by filing a Form 21 with the Judicial Department.
   (1) Serve a copy of the Form 21 on the claimant according to R.67 211.
   (2) The Commission may schedule an informal conference to certify a Form 17 when compensation has been suspended according to R.67 505.

HISTORY: Amended by State Register Volume 21, Issue No. 4, eff April 25, 1997.

67-509 Medical Treatment While Receiving Temporary Compensation Benefits.

A. The employer's representative chooses an authorized health care provider and pays for authorized treatment.

B. The claimant should contact the employer's representative with questions about medical care and payment.

67-510 Unauthorized Suspension or Termination of Temporary Compensation Benefits.

A. If the employer's representative suspends, terminates, or reduces temporary total or temporary partial compensation benefits without first complying with the procedures in this Article, the claimant may be entitled to additional compensation and penalty as provided in this Chapter and the Act.

B. The claimant may request a hearing as provided in R.67 207 for the relief in section A above.

ARTICLE 6 - CONTESTED CASE PROCEDURE

67-601 Hearings, Generally.

A. The Commission may, on its own motion, order a hearing.

B. The Commission will not set a hearing until a conflict arises.

67-602 Hearings, Required Information.

A. The Commission's file must contain all required forms and medical reports filed according to R.67 1301.

B. In a claim involving a fatality, the claimant must obtain the following items:
   (1) The death certificate;
   (2) Marriage license, if any;

(3) Divorce decree, if any;

(4) Birth certificates of children, if any; and

(5) A statement of burial expenses.

C. In a claim involving a change of condition, the moving party must attach to the hearing request form a medical report(s) indicating a change in the claimant's condition. The claimant may request an informal conference to determine if the claimant may receive a medical evaluation at the expense of the employer's representative by writing the Commission's Judicial Department. Additional experts reports may be admitted at the hearing according to R.67 612.

D. The documents listed in sections A, B, and C must be filed in the Commission's file before the date set for the hearing.

HISTORY: Amended by State Register Volume 16, Issue No. 4, eff April 24, 1992.

67-603 Employer's Answer to a Request for Hearing, Time for Filing and Service.

A. The employer's representative shall respond to a Form 50 by preparing a Form 51 and respond to a Form 52 by preparing a Form 53.

B. The employer's attorney shall fully state its position and defenses, if any, replying to each specification in the Form 50 or Form 52 and:

(1) File the Form 51 or Form 53 and a proof of service with the Commission's Judicial Department within thirty days of service of the Form 50 or Form 52; and

(2) Serve the claimant a copy of the Form 51 or Form 53 according to R.67 211.

C. Failure to file a Form 51 or Form 53 within the period in section B(1) shall be deemed a general denial of liability for the benefits claimed and the employer and its representative by the failure to respond within the period in section B(1) shall forfeit each special and affirmative defense allowed by the Act including the defenses available in Sections 42 9 60, 42 15 20, 42 15 40, and 42 17 90 of the Act.

D. When under the laws of this State an employer and its insurance carrier, if any, are required to be represented by an attorney in a contested case hearing, its attorney must file a letter of representation with the Judicial Department and provide a copy to the opposing party no later than sixty days from the date of service of the Form 50 or Form 52.

E. A Form 51 must describe with as much specificity as possible the defenses to be relied upon by the defendants. A Form 51 shall not state "all defenses apply" or other similar language unless such is actually the case. A Form 51 not complying with this regulation shall not be considered at a hearing.

HISTORY: Amended by State Register Volume 21, Issue No. 4, eff April 25, 1997; State Register Volume 34, Issue No. 2, eff February 26, 2010.

67-604 General Denial to Employer's Request for Hearing.

A. Except when the employer is seeking permission to pay compensation as provided by R.67 208B, each allegation made in a Form 21 is deemed denied.

B. The claimant may, but is not required to, file a response to the Form 21 in writing.

(1) File the response, if any, and proof of service with the Commission's Judicial Department within thirty days of service of the Form 21.

(2) Serve the employer's representative according to R.67 211.

HISTORY: Amended by State Register Volume 21, Issue No. 4, eff April 25, 1997.

67-605 Second Injury Fund's Answer to a Request for Hearing, Time for Filing and Service.

A. The attorney for the Second Injury Fund shall file and serve a Form 55, Answer of the Second Injury Fund to Employer's Request for Hearing, as provided below.

B. File the Form 55 and proof of service with the Commission's Judicial Department within thirty days of service of the Form 54.

C. Serve the employer according to R.67 211.

D. Failure to file a Form 55 within the period in section B above shall be deemed a general denial of liability for the benefits claimed and the Second Injury Fund by the failure to respond within the period allowed in Section B shall forfeit each special and affirmative defense allowed by the Act.

HISTORY: Amended by State Register Volume 21, Issue No. 4, eff April 25, 1997.

67-606 Employee's Wage Determination.

A. The average weekly wage and compensation rate is an issue for determination at the hearing unless stipulated by the parties.

B. The employer's representative shall prepare, file, and serve a Form 20 according to R.67 1603.

HISTORY: Amended by State Register Volume 16, Issue No. 4, eff April 24, 1992; State Register Volume 21, Issue No. 4, eff April 25, 1997.

67-607 Hearing Notice.

A. Each party is afforded at least thirty days notice of a hearing.

B. The Commission issues a hearing notice to the parties which includes the date, place, time, and purpose of the hearing.

C. Hearing notices may be issued electronically.

HISTORY: Amended by State Register Volume 34, Issue No. 2, eff February 26, 2010.

67-608 Failure to Appear at a Hearing.

A. The Commission may issue an order assessing a fine of up to one hundred dollars against a party who properly served a hearing notice fails to appear at a scheduled hearing.

B. The party has the right to review and appeal as in other cases.

67-609 Withdrawing a Request for Hearing.

A. A claimant may withdraw a Form 50 or Form 52 once as a matter of right with leave to renew.

(1) A Form 50 or Form 52 may be withdrawn by writing the Commission's Judicial Department, if a hearing notice has not been issued, or, the Commissioner's office identified on the hearing notice.

(2) When a Form 50 or Form 52 is withdrawn, a notice removing the case from the docket will be filed in the Commission's record and a copy sent electronically or mailed to the parties in R.67 210.

B. The notice is without prejudice to the claimant's right to proceed with his or her claim.

(1) If the nature of the claim and the relief requested does not change, write the Judicial Department requesting the Form 50 or Form 52 be reset for hearing.

(2) If the nature of the claim or relief requested changes, file according to R.67 207, a new Form 50 or Form 52 with the word "Amended" printed or typed boldly on the top of the form.

C. Withdrawing a Form 50 or Form 52 the second time without good cause may operate as a voluntary dismissal of the claim when the form is withdrawn by a claimant who has once withdrawn a Form 50 or Form 52 based on the same set of facts, and, in the opinion of the Commissioner, the form is withdrawn merely for the purpose of delay.

D. Withdrawing a Form 15 request for hearing waives the sixty day hearing requirement. If the jurisdictional commissioner is unable to reschedule the case, the file will be returned to the Judicial Department to be reassigned.

HISTORY: Amended by State Register Volume 21, Issue No. 4, eff April 25, 1997; State Register Volume 34, Issue No. 2, eff February 26, 2010.

67-610 Continuing Obligation to Update, Request for Hearing, and Answer.

A. After a Request for Hearing and Answer are filed with the Commission, an "Amended" form must be filed to indicate a change in the nature of the claim, relief requested, or another defense.

B. A party may amend a form once as a matter of course at any time before or within thirty days after it is served. Otherwise a party may amend a form no later than ten days prior to the hearing and only by leave of the Commissioner or by written consent of the adverse party.

(1) A party shall file and serve an amended form and move at the hearing to go forward on the issue(s), as amended. Type or print boldly across the top of the form the word "Amended".

(2) Leave shall be freely given when justice so requires and does not prejudice any other party.

(3) A party shall plead in response to an amended form within the time remaining for response to the original form or within ten days after service of the amended form, whichever period may be longer, unless the Commission otherwise orders.

(4) Attorneys for the parties shall serve the opposing party according to R.67 211.

(5) If the claimant is not represented by an attorney, the Commission will serve the employer's representative or attorney.

C. An amended form must be timely filed and served. The Commissioner will determine at the hearing whether to allow a party to rely on new facts or defenses.

HISTORY: Amended by State Register Volume 16, Issue No. 4, eff April 24, 1992; State Register Volume 21, Issue No. 4, eff April 25, 1997.

67-611 Pre hearing Brief.

A. A claimant who is representing himself or herself is not required to file a Form 58, Pre hearing Brief.

(1) If the claimant elects to file a Form 58, mail the Form 58 to the Commissioner's office identified on the hearing notice.

(2) The Commissioner's office will send a copy of the Form 58 to the employer's attorney.

B. Each attorney representing a party at a hearing shall file and serve a Form 58 according to the following:

(1) File a Form 58 and proof of service at least ten days before the hearing with the Hearing Commissioner's office identified on the hearing notice. Complete the Form 58 and give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements including video recordings and/or transcribed audio recordings have been taken from one of the witnesses including the claimant and indicate who has possession of same. A party is under a duty to promptly supplement a response with respect to any question directly addressed on the form and amend a response if the party obtains information upon the basis of which the party knows the response was incorrect when made, or the party knows the response thought correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(2) Serve the opposing party according to R.67 211.

C. The Form 58 shall remain in the Commission's file but shall not constitute evidence or become part of the record of the hearing.

D. If an attorney fails to file and serve a Form 58, the Commissioner may postpone the hearing according to R.67 613 or assess against an attorney by written order a fine of up to one hundred dollars.

HISTORY: Amended by State Register Volume 16, Issue No. 4, eff April 24, 1992; State Register Volume 21, Issue No. 4, eff April 25, 1997.

67-612 Admission of Expert's Report as Evidence.

A. This regulation does not apply to the Form 14A filed according to R. 67 1301, nor shall this regulation be construed to limit a party's right to call a witness (lay or expert) or present evidence (lay or expert) in the form of a deposition.

B. A written expert's report to be admitted as evidence at the hearing must be provided to the opposing party as follows:

(1) The moving party must provide the report to the opposing party at least fifteen days before the scheduled hearing.

(2) The non moving party must provide to the moving party any report not provided by the moving party at least ten days before the scheduled hearing.

(3) Where both parties file hearing requests the first party to file shall be considered the moving party.

(4) The carrier shall be deemed the moving party in all hearings scheduled pursuant to a request under R. 67 504C.

C. Proof of notice as required under this section shall be filed with the Commission at the time such reports are provided to a party.

D. Any report submitted to the opposing party in accord with B(1) or B(2) above shall be submitted as an APA exhibit at the hearing unless withdrawn with the consent of the other party, and the non moving party shall submit only reports not submitted by the moving party. The actual report shall not be filed with the Commission prior to the hearing.

E. Failure to provide reports and notices as required under this section may result in the exclusion of such reports from the evidence of the case. This paragraph shall not be construed to limit the discretionary authority of a Hearing Commissioner to accept reports, depositions or other evidence at the conclusion of the scheduled hearing pursuant to subsection J below.

F. If the parties consent to the admission of a report, then the Hearing Commissioner shall receive such report into evidence without regard as to whether the parties have complied with this section.

G. The following rules in this subsection shall govern the format in which Administrative Procedures Act (APA) exhibits are submitted into evidence. Each APA or set of APA's shall have:

(1) An index sheet listing the APA number, name of the provider, dates of service and number of pages in the APA, with the records from each medical provider identified in groups, as APA #1, APA #2; etc. The reports of each expert shall be arranged in either chronological or reverse chronological order.

(2) A consecutive number beginning with the first page of APA #1 and continuing through the final page of the last APA submitted.

H. Counsel for all other parties appearing at the hearing shall be given the opportunity to review the APA exhibits as prepared in accordance with this regulation and to supplement the record with any properly noticed APA exhibits which may have been omitted from the Claimant's and Defendants' single sets.

I. By complying with this regulation, the parties do not waive any evidentiary objections to the introduction of a particular exhibit. Such objections may include, but are not limited to relevancy, materiality, qualification of the expert, timeliness, privilege, hearsay or authenticity as may relate to the document in controversy.

J. All available evidence and testimony shall be presented at the scheduled hearing or a party must move for an adjournment according to R.67 613.

(1) The Commissioner may adjourn the hearing, and testimony of a necessary witness unable to appear at the scheduled hearing may be presented by deposition or at a hearing reconvened at a later date.

(2) The Commissioner may order the party moving for adjournment to take the de bene esse deposition of the expert. The Commissioner may order the party moving for adjournment to pay hearing costs if it is necessary to reconvene.

HISTORY: Amended by State Register Volume 16, Issue No. 4, eff April 24, 1992; State Register Volume 21, Issue No. 4, eff April 25, 1997; State Register Volume 22, Issue No. 6, Part 3, eff June 26, 1998; State Register Volume 25, Issue No. 6, eff June 22, 2001.

67-613 Postponement or Adjournment of the Scheduled Hearing.

A. Each party shall arrange and present all evidence at the hearing. Testimony of a necessary witness unable to appear at the hearing may be presented by deposition.

B. A commissioner may postpone a hearing for good cause.

(1) Good cause includes but is not limited to:

(a) The attorney is actually engaged in another court;

(b) Illness;

(c) Additional discovery is necessary;

(d) A conflict of interest exists requiring another Commissioner hear the case;

(e) It is premature to hear the case.

(2) To request a postponement, file and serve a motion pursuant to R.67 215 at least ten days before the hearing. If the moving party can show emergency or other circumstance beyond its control, the motion may be filed and served as soon as reasonably possible before the hearing.

(3) If the moving party postpones a hearing set pursuant to Section 42 9 260, the requirement to hold the hearing within sixty days is waived. The hearing will be postponed only until the following month. If the commissioner cannot hear the case by the following month, the case will be returned to the Judicial Department for reassignment.

(4) All hearings other than those set pursuant to Section 42 9 260 are postponed only until the following month. If the commissioner cannot hear the case the following month, the hearing will not be reset until the moving party files a written request with the Judicial Department. If the nature of the claim or the relief requested changes, file a new hearing request according to R.67 207 unless R.67 610 applies.

C. A party may move for adjournment at a hearing under the following circumstances:

(1) To procure additional evidence when the evidence is in existence, identified, and necessary for the decision, but unavailable at the hearing.

(2) When a witness fails to appear.

(a) If the witness has been properly subpoenaed, produce a copy of the Form 27 and proof of service. The Commission may allow the testimony to be made part of the record by de bene esse deposition or by testimony at a reconvened hearing.

(b) If the witness has not been properly subpoenaed, the moving party shall provide a reasonable basis for failure to subpoena the witness. The testimony may be allowed at the Commissioner's discretion.

HISTORY: Amended by State Register Volume 21, Issue No. 4, eff April 25, 1997; State Register Volume 22, Issue No. 6, Part 3, eff June 26, 1998.

67-614 Hearing Costs.

A. A Commissioner may issue an order assessing the actual cost of a hearing as established by the Commission if the Commissioner determines that the hearing has been brought, prosecuted, or defended on unreasonable grounds.

B. The party assessed has the right to review and appeal as in other cases.

67-615 Transcripts of Hearings.

A. A person may request in writing to the Commissioner's office all or a portion of a transcript of a hearing.

B. A request for a portion of a transcript shall be limited to the entire testimony of a particular witness, the opening or closing statement.

C. The hearing reporter shall transcribe and deliver the request as soon as reasonably possible.

D. The cost will be at the prevailing rate established by the Commission and the responsibility of the party ordering the transcript. Bills shall be paid within thirty days of the receipt of the transcript, and failure to do so shall result in the party's inability to obtain additional transcripts or copies until the account is current.

HISTORY: Amended by State Register Volume 21, Issue No. 4, eff April 25, 1997.

ARTICLE 7 - REVIEW AND HEARING

67-701 Requesting Commission Review of the Hearing Commissioner's Decision.

A. Either party or both may request Commission review of the Hearing Commissioner's decision by filing the original and three copies of a Form 30, Request for Commission Review, with the Commission's Judicial Department within fourteen days of the day the Commissioner's order is received. The fourteen day period is jurisdictional. The Commission will not accept for filing a Form 30 that is not postmarked or delivered to the Commission by the fourteenth day from the date of receipt of the Hearing Commissioner's order. The appellant shall attach a copy of the Order and Decision being appealed to the Form 30 and to the brief.

(1) The party requesting review is the appellant. The opposing party is the respondent. Place the proper designation after the names of the parties on the form.

(2) The W.C.C. file number assigned to the case is retained and must be on the Form 30.

(3) The grounds for appeal must be set out in detail on the Form 30 in the form of questions presented.

(a) Each question presented must be concise and concern one finding of fact, conclusion of law, or other proposition the appellant believes is in error.

(b) References to evidence must be by title and exhibit number.

(4) To request oral argument, mark the space provided on the Form 30.

(a) If the space provided on the Form 30 requesting oral argument is not marked, oral argument is waived. The Commission will review the Commissioner's decision on the record without oral argument.

(b) If the appellant does not request oral argument, the respondent may request oral argument by writing the Judicial Department. A copy of the letter requesting oral argument must be sent to all opposing parties pursuant to R.67 211.

(c) If respondent requests oral argument, both parties may present oral argument.

(5) File the Form 30 and proof of service with the Judicial Department. Serve the opposing party pursuant to R.67 211.

(a) The Judicial Department will not set a Form 30 for review until proof of service is filed.

(b) Failure to file proof of service will result in receipt of a notice administratively dismissing the Form 30.

(c) An administrative dismissal does not bar review if the Form 30 has been timely filed. When service is completed, write the Judicial Department requesting the Form 30 be set for review.

B. If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of the Form 30 and serve the Form 30 on the opposing party.

HISTORY: Amended by State Register Volume 21, Issue No. 4, eff April 25, 1997; State Register Volume 34, Issue No. 2, eff February 26, 2010.

67-702 Filing Fee.

A. The appellant shall attach to the Form 30 the filing fee required by the Act.

B. If a party is representing himself or herself and is unable to pay the filing fee, the party must file the Form 30 within fourteen days of receipt of the Commission's order. The party may file a Form 32, Request to Waive Appeal Filing Fee, with the Form 30.

(1) The Commission's Chair reviews the Form 32.

(2) If the filing fee is not waived, the appellant must pay the filing fee within ten days of the date of receipt of a notice denying waiver of the filing fee.

67-703 Appeals without Merit.

A. At the conclusion of the review if the Commission determines that the appeal was without merit, it may charge, in its sole discretion, the appealing party an additional fee not to exceed two hundred fifty dollars.

B. The person charged the additional fee has the right to appeal as in other cases.

67-704 Notice of Review Hearing.

A. The Commission serves the parties in R.67 210 a Form 31, Notice of Review, at least thirty days before the date of review hearing.

   (1) The Form 31 states the date, place, time, purpose of the review hearing, and the filing date for the appellant's brief.

   (2) The appellant's brief must be filed with the Commission according to R.67 205 and R.67 705 on or before the date stated on the Form 31.

B. The Commission's Judicial Department will set several "standby" cases for review each month, issue a Form 31 as in A above, and notify the parties to appear for oral argument if the case is reached on the review hearing docket.

C. The Judicial Department will set cases for review on the record without oral argument and issue a Form 31 as in A above.

D. The appellant in B and C above must file his or her brief according to R.67 205 and R.67 705 on or before the date stated on the Form 31.

HISTORY: Amended by State Register Volume 16, Issue No. 4, eff April 24, 1992.

67-705 Briefs, Filing and Service.

A. On each case appealed to the Commission for review, the appellant shall file a brief that includes a statement of the case, questions presented, argument, and conclusion.

B. The appellant shall file the brief and proof of service on the opposing party with the Commission's Judicial Department according to R.67 205 on or before the date on the Form 31.

C. The respondent may file a brief and proof of service on the opposing party with the Judicial Department within fifteen days of service of the appellant's brief.

D. The appellant may file a reply brief and proof of service with the Judicial Department within ten days of service of the respondent's brief.

E. No further briefs are permitted unless requested by the Commission.

F. The original and three copies of the brief must be filed when a three member Commission panel reviews the case as indicated on the review hearing notice. The original and six copies of the brief must be filed when a six member Commission panel reviews the case as indicated on the review hearing notice.

G. Serve the briefs pursuant to R.67 211. If the claimant is representing himself or herself, the Judicial Department prepares the additional copies of the brief and serves the brief on the opposing party.

H. With the consent of the opposing party, the time for filing a brief may be extended if a letter acknowledging the agreement is filed with the Commission on or before the original filing date.

   (1) All briefs must be filed at least five days before the scheduled date for review. The Commission will exclude from consideration a brief filed later than five days before the scheduled review.

   (2) The party extending the time for filing a brief shall file with the Judicial Department a copy of the agreement. The agreement must state the date the brief is due.

(3) If the appellant fails to file a brief within ten days of receipt of the Form 31, the Judicial Department may remove the case from the review hearing docket by issuing an administrative order dismissing the appeal.

(4) An appeal administratively dismissed by the Judicial Department may be reinstated for a good cause upon motion to the Commission.

(a) A motion to reinstate the appeal must be filed with the Commission and served on all parties no later than thirty days from the date of service of the administrative order dismissing the appeal.

(b) The motion will be heard by the Full Commission without oral argument or appearance of the party.

(c) If the case is reinstated, the Commission may impose against the appellant costs up to two hundred fifty dollars.

HISTORY: Amended by State Register Volume 16, Issue No. 4, eff April 24, 1992; State Register Volume 21, Issue No. 4, eff April 25, 1997.

67-706 Oral Argument.

A. Each party is permitted ten minutes for oral argument. The appellant is permitted three minutes for reply.

B. If both parties have appealed, each party is permitted ten minutes for oral argument, and each party is permitted three minutes for reply.

C. A party may request additional time for argument by attaching a motion to the Form 30. The Commission will issue an order before the case is set for argument.

67-707 Additional and Newly Discovered Evidence.

A. When additional evidence is necessary for the completion of the record in a case on review the Commission may, in its discretion, order such evidence taken before a Commissioner.

B. When a party seeks to introduce new evidence into the record on a case on review, the party shall file a motion and affidavit with the Commission's Judicial Department.

C. The moving party must establish the new evidence is of the same nature and character required for granting a new trial and show:

(1) The evidence sought to be introduced is not evidence of a cumulative or impeaching character but would likely have produced a different result had the evidence been procurable at the first hearing; and

(2) The evidence was not known to the moving party at the time of the first hearing, by reasonable diligence the new evidence could not have been secured, and the discovery of the new evidence is being brought to the attention of the Commission immediately upon its discovery.

(a) File the motion and affidavit with proof of service as soon as the new evidence is discovered. The motion and affidavit may be filed with the Form 30.

(b) Serve the opposing party pursuant to R.67 215.

(c) Oral argument will not be heard on the motion. The Commission will act upon the motion and issue an order before the review hearing is held.

(d) If the Commission grants the motion, the review hearing is stayed. The case will be remanded to the original Hearing Commissioner who may, unless otherwise provided, reconvene the hearing or admit the deposition of a witness into the record.

(e) The original Hearing Commissioner will issue his or her findings and recommendations in the form of an order to the Commission and the parties.

(f) Upon the receipt of the Commissioner's order, the Judicial Department will reset the case on the review hearing docket.

(g) If the Commission denies the motion, the case may remain on the review hearing docket unless otherwise provided.

HISTORY: Amended by State Register Volume 21, Issue No. 4, eff April 25, 1997.

67-708 Postponement.

A. A review hearing may be postponed for the reasons in R.67 613.

B. Either party may contact the Commission's Judicial Department to request postponement. A case may be postponed administratively.

C. When the appellant has caused postponement of a review hearing two times, the appellant's request for oral argument is deemed waived. The case may be reviewed on the record.

67-709 Commission Review, Procedure.

A. Commission review may be conducted by a three or six member review panel either of which excludes the original Hearing Commissioner. An order of a three member review panel has the same force and effect as a six member review panel and is the final decision of the Commission.

B. The Commission's Chair with approval of the majority of the other Commissioners shall assign cases to a three member panel according to the following subsections:

(1) When a Form 30 is filed, the Hearing Commissioner is notified. If the Hearing Commissioner determines the review involves a novel issue of law or fact, the Hearing Commissioner may request the Commission's Chair set the case for review by a six member review panel.

(2) If the Hearing Commissioner does not request a six member review, the Commission's Chair may assign the review to a three member panel.

(3) The Commission's Chair may appoint by random selection two review panels and exclude, on a rotating basis, one Commissioner from the panels each month. The Commission's Chair may assign a case for review as in B(2) above to a three member panel that excludes the original Hearing Commissioner.

C. The Commissioners reviewing the case may confer and shall vote within ten days of the date of review. The original Hearing Commissioner's decision is neither a vote, nor shall it be considered as a vote, of the Commission's final decision.

D. To reverse the Hearing Commissioner's decision requires a majority decision of the Commissioners reviewing the case.

(1) A majority of a three member panel consists of two votes to reverse.

(2) A majority of a six member panel consists of four votes to reverse.

(3) If one Commissioner is temporarily incapacitated or a vacancy exists on the Commission, review may be conducted by the remaining Commissioners sitting as a five or three member panel.

(a) The Hearing Commissioner may request review of the case as in B(1) above, and a panel of five may review the case. A majority consists of four votes to reverse.

(b) If the Hearing Commissioner does not request review as in B(2) above, the Commission's Chair may assign the review to a three member panel. A majority consists of two votes to reverse.

E. A Hearing Commissioner's finding of fact or conclusion of law subject to review by the Commission may be modified by the entry of the review panel's order making a new finding of fact, conclusion of law, or modifying the Hearing Commissioner's finding of fact or conclusion of law.

(1) On review, a vote to affirm and modify is deemed a vote to affirm, or a vote to reverse and modify is deemed a vote to reverse.

(2) The Commissioners, together, shall agree on a modification if any and record their findings of fact and conclusions of law on a vote sheet.

(3) If the case is reviewed by a three member panel and the panel cannot agree on modifying the Hearing Commissioner's decision, the Commissioners on the three member panel may request the remaining Commissioners, excluding the Hearing Commissioner, review the case and the issue in dispute as follows:

(a) The panel may certify an issue for review to the remaining Commissioners, excluding the Hearing Commissioner, by completing a vote sheet and phrasing the issue in dispute in the form of a question.

(b) The Commission's Judicial Department will notify the parties of the question presented to the remaining Commissioners and the parties may file briefs according to R.67 705 on or before the date stated on the notice. Oral argument is not permitted.

(c) The remaining Commissioners shall consider the question presented, briefs if any, and register their decision on the vote sheet within thirty days of the date of notice to the parties.

(d) The panel members shall issue an order thirty days from the date the remaining Commissioners register their decision.

(4) The Commission sitting as a five or six member review panel shall register a vote in accordance with section C above. The Commission sitting as a five or six member panel may remand a case to the Hearing Commissioner only for taking additional or newly discovered evidence or for exceptional circumstances set forth in its order.

F. If a Commissioner fails to register a vote within the periods referred to above, the Commissioner is deemed to have registered a vote affirming the Hearing Commissioner and may not vote otherwise.

G. [Repealed]

HISTORY: Amended by State Register Volume 16, Issue No. 4, eff April 24, 1992; State Register Volume 34, Issue No. 2, eff February 26, 2010.

67-710 Settlement of a Claim Pending Review.

A. If the parties settle a claim after filing a Form 30, the appellant shall immediately notify the Commission's Judicial Department in writing.

B. The Judicial Department will remove the case from the review hearing docket or notify the Commission an order is not required.

C. When the terms of the settlement, as in Article 8, are filed with the Commission, an administrative order will be issued dismissing the appeal upon consent of the parties.

67-711 Transcripts.

A. Oral argument presented to the Commission is recorded.

B. A transcript may be requested by notifying the Commission's Judicial Department. The terms and costs as in R.67 615 shall apply.

67-712 Requesting Higher Court Review.

A. Notice shall be given to the Judicial Department of any and all subsequent appeals and orders. See Rule 203(b)(6), SCACR.

B. The appellant shall provide the Judicial Department with a copy of any orders issued.

HISTORY: Added by State Register Volume 34, Issue No. 2, eff February 26, 2010.

ARTICLE 8 - SETTLEMENTS, PROCEDURES

67-801 Settlement of the Claim, General.

A. After the claimant reaches maximum medical improvement the parties may agree to settle the claim by signing a Form 16 or Form 16A, Agreement for Permanent Disability/Disfigurement Compensation, or by signing an Agreement and Final Release (clincher).

B. If each party is represented by an attorney, an appearance before a Commissioner is not required for approval of a settlement unless either party requests an informal conference, or the Commissioner schedules a hearing.

C. If the claimant is not represented by an attorney, the parties must appear before the Commissioner assigned to the claim at an informal conference for approval of the settlement. At the informal conference, the Commissioner will review the proposed settlement and may approve it if the Commissioner finds the settlement fairly made and in accordance with the provisions of the Act.

D. A Form 16 or Form 16A retains the claimant's right to request a hearing according to R.67 207 for additional benefits not later than one year from the date of the last compensation payment. By signing the Form 16 or Form 16A, the employer's representative does not agree it will make any additional payments in the future unless the form specifically provides otherwise.

E. An Agreement and Final Release (clincher) relieves the employer and its representative from any further responsibility for payment of compensation or medical expenses, unless the Agreement and Final Release specifically provides otherwise.

When the claimant signs the Agreement and Final Release and it is approved, the claimant does not have the right to ask for additional payments in the future even if the claimant's medical condition worsens, unless otherwise specifically provided in the document.

F. An official copy of the settlement is approved and certified by the Commission as binding.

HISTORY: Amended by State Register Volume 21, Issue No. 4, eff April 25, 1997; State Register Volume 34, Issue No. 2, eff February 26, 2010.

67-802 Settlement, Form 16, Form 16A.

A. If parties agree to the terms of a Form 16 or Form 16A, the employer's representative completes a Form 16 or Form 16A by recording the claimant's compensation rate, the percent of disability agreed upon, disfigurement, if any, and the number of weeks of compensation the claimant will receive. The form may be approved as follows:

(1) If the claimant is not represented by an attorney, the Form 16 or Form 16A must be approved at an informal conference.

(a) The employer's representative must request an informal conference by filing an updated Form 18 showing the status of payment of temporary compensation, if any, and medical expenses with the Commission's Judicial Department. For claims arising after July 1, 2007 a Form 14B is also required. The claimant may request an informal conference by writing to the Judicial Department.

(b) If the parties reach an agreement at the informal conference which the Commissioner approves, or the claims mediator recommends, the parties sign the agreement. (A Commissioner must approve a claims mediator's recommendation before the settlement is recorded as binding.)

(c) If the parties do not reach an agreement with which the Commissioner approves the Commission will set a hearing according to R.67 804I.

(2) If the claimant is represented by an attorney, the claimant, his or her attorney, and the employer's representative sign the Form 16 or Form 16A. The Form 16 or Form 16A may then be filed with the Commission for approval without an appearance before a Commissioner, as follows:

(a) The employer's representative files an original and one copy of the Form 16 or Form 16A with the Commission's Claims Department. The employer's representative shall file the Form 14B with the Form 16A for claims arising after July 1, 2007.

(b) A Commissioner reviews the Form and may approve the Form.

(c) If the Commissioner signs the Form approving it, the Claims Department records the settlement and returns an approved copy of the Form to the employer's representative.

(d) The employer's representative must provide the claimant a copy of the approved Form 16 or Form 16A.

(3) If the claimant is represented by an attorney, and the employer is represented by an attorney, a Form 16 or a Form 16A shall be filed with the Commission.

(a) The attorney for the employer's representative files an original and one copy of the Form 16 with the Commission's Claims Department. A Commissioner reviews the Form and may approve the Form.

(b) The attorney for the employer's representative files an original and one copy of the Form 16A with the Commission's Claims Department.

(c) The Commission's Claims Department reviews and records the settlement and returns an official copy of the Form to the attorney for the employer's representative.

B. The Commissioner may schedule an informal conference to discuss the terms of the settlement when necessary.

HISTORY: Amended by State Register Volume 20, Issue No. 5, eff May 24, 1996; State Register Volume 34, Issue No. 2, eff February 26, 2010.

67-803 Settlement by Agreement and Final Release.

A. If the parties agree to the terms of a settlement by entering into an Agreement and Final Release, the document shall include the following:

(1) The caption of the claim;

(2) A statement of the facts at issue;

(3) The date and nature of the alleged injury coinciding with the date and nature of each injury on the Form 12A, Form 50, or Form 52;

(4) The amount of the settlement and terms of payment; and

(5) The signature of the claimant, his or her attorney, if any, and the attorney for the employer's representative.

B. An Agreement and Final Release shall be approved as follows:

(1) If the claimant is not represented by an attorney, the Agreement and Final Release must be approved at an informal conference.

(a) The employer's representative must request an informal conference by filing an updated Form 18 showing status of payment of temporary compensation, if any, and medical expenses with the Commission's Judicial Department. For claims arising after July 1, 2007 a Form 14B is also required. The claimant may request an informal conference by writing to the Judicial Department.

(b) The attorney for the employer's representative and the claimant attend the informal conference. If the parties reach an agreement at the informal conference that the Commissioner approves, the Agreement and Final Release is signed by the claimant, the attorney for the employer's representative, and the Commissioner.

(c) The attorney for the employer's representative must provide the original and two copies of the Agreement and Final Release to the Commissioner at the informal conference. The Commission returns an official copy to the attorney for the employer's representative, and the attorney for the employer's representative shall provide the claimant a copy of the official Agreement and Final Release.

(d) If the Commissioner does not approve the Agreement and Final Release, the Agreement and Final Release is neither approved nor binding. The Commission will set the claim for hearing according to R.67 804I.

(2) If the claimant is represented by an attorney, the claimant, his or her attorney, and the attorney for the employer's representative sign the Agreement and Final Release. The Agreement and Final Release shall be filed with the Claims Department.

(a) The attorney for the employer's representative files the original and two copies of the proposed Agreement and Final Release with the Claims Department.

(b) An official copy of the Agreement and Final Release is returned to the attorney for the employer's representative.

(c) The employer's representative shall provide the claimant an official copy of the Agreement.

C. The Commission shall not approve an Agreement and Final Release that is not fairly made and in accordance with the Act. An approved Agreement and Final Release is binding. The employer's representative shall pay compensation according to its terms.

HISTORY: Amended by State Register Volume 20, Issue No. 5, eff May 24, 1996; State Register Volume 24, Issue No. 4, eff April 28, 2000; State Register Volume 30, Issue No. 5, eff May 26, 2006; State Register Volume 34, Issue No. 2, eff February 26, 2010.

67-804 Informal Conference.

A. A claims mediator may appear on behalf of a Commissioner at an informal conference and review a proposed Form 16 or Form 16A settlement or review a R.67 505 or R. 67 506 request to certify a Form 17. A claims mediator may not appear on behalf of a Commissioner at an informal conference requested for review of a proposed Agreement and Final Release.

B. An informal conference is defined in R.67 202(8).

C. Request an informal conference as follows:

(1) File an updated Form 18 indicating the status of payment of temporary compensation, if any, and medical expenses and complete Section 6 by checking "yes."

(2) When a request for an informal conference is received, the Commission's file is reviewed for required reports. The employer's representative must assure the following reports are in the Commission's file before the informal conference is held or it may be subject to a fine.

(a) Form 14B, if applicable; and

(b) Form 15, if applicable; and

(c) Form 17, if applicable; and

(d) Form 20, if applicable; and

(e) All medical reports required by R.67 1301; and

(f) An authorized health care provider's report stating the claimant has reached maximum medical improvement and an impairment rating, if any; and

(g) An amputation chart, if applicable.

D. The claimant may request an informal conference by writing the Commission's Judicial Department and stating whether the parties propose to settle the claim on a Form 16, a Form 16A, or by Agreement and Final Release.

E. An informal conference may be held with less than thirty days notice to the parties. The conference shall be held at a hearing site as designated by the jurisdictional commissioner. If the parties request in writing to convene the conference in a different hearing site, all parties agree, and the letter is received before the conference hearing notice is issued, the request may be approved administratively.

F. Only the Commissioner assigned to the claim is authorized to approve a Form 16, a Form 16A, or an Agreement and Final Release.

G. When the claimant fails to appear at an informal conference, the Commission reschedules the conference.

(1) If the claimant fails to appear twice, the claim is taken from the informal conference roster and administratively dismissed.

(2) The claimant may request the Commission schedule another informal conference and the Commissioner assigned to the claim may, if a good cause is shown, allow the claimant to proceed with his or her claim.

H. If the employer's representative or an attorney, if any, fails to appear at the informal conference, the Commission reschedules the conference. The Commissioner assigned to the claim may impose on the employer's representative or an attorney, if any, the actual costs of the conference as established by the Commission.

I. If the parties fail to reach an agreement at the informal conference or the proposed Agreement and Final Release is not approved, the Commission will set the claim on the contested case hearing docket. A Form 50 or Form 52 is not required, but if filed, the opposing party must respond according to R.67 603.

J. Either party may request postponement of the informal conference by writing the Commissioner whose name appears on the informal conference notice or the Judicial Department. The Commissioner may reschedule the conference during the term the Commissioner is in the district. If the Commissioner cannot reschedule the conference during his or her term in the district, the Commission will reschedule the conference, unless otherwise provided.

HISTORY: Amended by State Register Volume 20, Issue No. 5, eff May 24, 1996; State Register Volume 21, Issue No. 4, eff April 25, 1997; State Register Volume 22, Issue No. 6, Part 3, eff June 26, 1998; State Register Volume 34, Issue No. 2, eff February 26, 2010.

67-805 Third Party Settlements.

A. The distribution of third party settlement proceeds must be filed with the Commission unless otherwise directed by a court of competent jurisdiction.

B. File the settlement documents with the Claims Department.

C. If the parties agree, third party settlements less than two thousand five hundred dollars do not need to be filed with the Commission.

D. If the claimant is not represented by an attorney, the third party settlement must be approved at an informal conference according to R.67 803B(1).

HISTORY: Added by State Register Volume 21, Issue No. 4, eff April 25, 1997. Amended by State Register Volume 34, Issue No. 2, eff February 26, 2010.

ARTICLE 9 - PROCEDURE FOR CLAIM INVOLVING A FATALITY

67-901 Notification that a Fatality has Occurred, Required.

A. The employer's representative must state on the Form 12A a fatality has occurred.

B. If after a Form 12A is filed the claimant dies, the employer's representative must notify the Commission's Claims Department by letter stating the date of death and whether the fatality is believed to be related to the earlier injury.

C. The Commission will notify the Second Injury Fund of reported fatalities.

67-902 Discovery of Beneficiaries.

A. The employer's representative must make a good faith effort to discover the decedent's beneficiaries.

B. The employer's representative shall attach to the Form 12A a list of the names, addresses, and ages of all known beneficiaries.

C. If the employer's representative discovers additional beneficiaries after the 12A is filed it shall immediately notify the Commission's Claims Department in writing of the beneficiaries names, addresses, and ages, if known.

67-903 Fatality, Statement on Liability Required.

A. When the Commission is notified a fatality has occurred, the Commission's Claims Department requests a statement from the employer's representative on liability.

   (1) The employer's representative shall file a reply in writing with the Claims Department at least thirty days from the date of the Commission's inquiry.

   (2) The letter must state the employer's position on liability and that all known beneficiaries have been reported.

   (3) The Claims Department will send a copy of the letter to all reported beneficiaries and request from the known beneficiaries the names and addresses of any other beneficiaries.

   (4) Failure of the employer's representative to respond may result in a fine imposed against the employer's representative. Failure to reply is deemed a denial of liability.

B. If the employer's representative determines upon good faith investigation there are no known beneficiaries, it may attach a Form 19 to the letter filed according to A above.

C. The file may be reopened by filing a Form 52 according to R.67 207.

67-904 Employer Accepts Liability, Procedure.

A. If the employer's representative accepts liability for a claim involving a fatality the Commission will automatically set a hearing to determine beneficiaries.

   (1) The parties are notified of the date, time, and place of the hearing.

(2) A Guardian ad Litem must be appointed according to R.67 216.

(3) The amount of compensation due each beneficiary will be determined at the hearing.

B. The parties are not required to file a request for hearing. If a request for hearing is filed, the opposing party must respond as provided in R.67 603.

67-905 Employer Denies Liability, Procedure.

A. If the employer's representative denies liability of a claim involving a fatality, the claimant must request a hearing by filing a Form 52 according to R.67 207.

B. A Guardian ad Litem must be appointed according to R.67 216.

C. If a hearing is not requested by a claimant within sixty days from the date the notice in R.67 903 is mailed to the known beneficiaries, the employer's representative may file a Form 19 with the Commission's Claims Department.

D. The file may be reopened by filing a Form 52 according to R.67 207.

ARTICLE 10 - OCCUPATIONAL DISEASE, PROCEDURE, AND WAIVER OF CLAIM

67-1001 Parties, Generally.

A. The proper parties in a claim involving an occupational disease are often a matter in dispute.

B. The claimant may request a report from the Commission of the insurers of an employer or employers at or during the period of alleged exposure. The period of alleged exposure must be provided for each employer.

HISTORY: Amended by State Register 34, Issue No. 2, eff February 26, 2010.

67-1002 Occupational Disease, Waiver of Claim.

A. A person affected by occupational disease who desires to continue in the same employment or to obtain new employment to which such disease is a hazard, may waive his or her right to further benefits for any incapacity or disability caused by an aggravation of the occupational disease in the same or new employment according to the following sections.

B. File a Form 65, Waiver of Claim Involving an Occupational Disease, and physician's statement with the Commission's Judicial Department at least ten days after signing the Form.

(1) The physician's statement must state the physician has examined the applicant, the nature, extent, and probable duration of the disease and an opinion as to whether or not the employee runs the risk of becoming partially or totally incapacitated due to the employment involved.

(2) The Judicial Department will notify the applicant, the employer, and the employer's representative of approval or disapproval of the form.

(3) The Commission's determination shall be deemed effective the date of filing the Form 65 with the Judicial Department.

C. The Commission may reject a Form 65 and recommend against the employment of an employee if the Commission concludes that to permit the employee to work in the employment will expose him or her to a hazard which may imminently render him disabled from an occupational disease.

D. An informal conference will be held with the applicant before the Commission rejects a Form 65.

ARTICLE 11 - SCHEDULED LOSSES

67-1101 Total or Partial Loss or Loss of Use of a Member, Organ, or Part of the Body.

A. This regulation does not include injury to the many bodily systems, organs, members, and anatomical parts for which compensation is payable due to disability or serious disfigurement under Section 42 9 10 and Section 42 9 20.

B. This schedule of organs, members, and bodily parts lists prominent parts of the anatomy subject to occupational injury and is not complete. The value of an organ, member, or bodily part not included may be determined in accordance with the American Medical Association's "Guide to the Evaluation of Permanent Impairment", or any other accepted medical treatise or authority. Compensation shall be payable shall be payable for total loss, permanent partial loss, or loss of use of a member, organ, or part of the body when compensation is not otherwise payable.

C. For total loss, partial loss, or loss of use of an organ, member, or body part listed in this regulation, disability shall be deemed to continue for the minimum period specified, if applicable. In cases involving impairment and disability in excess of the minimum period specified for partial loss of or loss of use of an organ, member, or bodily part, compensation shall be payable in such proportion as disability bears to the maximum number of weeks provided in this regulation. The maximum period of compensation for a combination of injuries is the legislative criterion of five hundred weeks.

Organ, Member or Body Part	Total Loss	Partial Loss or Loss of Use
Breast	75	10–75
Breasts	250	25–250
Coccyx	10	1–10
Gall Bladder	75	10–75
Kidney	400	25–250
Lung	400	25–250
Pancreas	500	10–250
Rib	10	1 /–10
(Maximum award of 200 weeks for total loss of 4 ribs)		
Scrotum and Testicles	350	30–300
Spleen	25	2 /-25

Organ, Member or Body Part	Total Loss	Partial Loss or Loss of Use
Testicle	75	10–75
Testicles	250	25–250
Tongue	500	50–500
Tooth	2	/-2
Biliary Tract		75–400
Bladder		25–250
Brain		25–250
Bronchi or Bronchus		25–400
Esophagus		25–400
Cervix		10–100
Clavicle		10–100
Colon		25–250
Diaphragm		25–250
Duodenum		10–250
Fallopian Tubes		10–100
Heart		25–250
Intestine, Small		10–400
Larynx		25–400
Liver		25–250
Mandible		10–100
Ovaries		10–100
Palate		25–250
Penis		25–250
Prostate		10–100
Rectum		10–250
Scapula		10–200
Skin		5–300
Spermatic Cord		10–100
Sternum		10–100
Stomach		25–250
Thyroid Gland		10–100
Ureter		10–100
Urethra		10–100
Vagina		25–250
Vulva		25–250
Nasal Pasage		10–75

Organ, Member or Body Part	Total Loss	Partial Loss or Loss of Use
Olfactory Nerve		10–75
Sinus		5–30
Zygomatic Arch or Facial Nerve (In accordance with the AMA ''Guides'')		

HISTORY: Amended by State Register Volume 16, Issue No. 4, eff April 24, 1992; State Register Volume 34, Issue No. 2, eff February 26, 2010.

67-1102 Loss of Hearing.

A. The method for determining hearing impairment is based on the American Academy of Otolaryngology "Guide for Evaluation of Hearing Handicap", copyright 1979, which is based upon the American Medical Association's "Guides to the Evaluation of Permanent Impairment", copyright 1977.

B. The calculation of a hearing handicap is derived from the pure tone audiogram, obtained with an audiometer calibrated to ANSI S3.6 1969 standards and as follows.

   (1) The average of the hearing threshold levels at 500 Hz, 1000Hz, 2000Hz, and 3000Hz are calculated for each ear.

   (2) The percent impairment for each ear is calculated by multiplying by 1.5% the amount that the above average hearing threshold level exceeds 25dB (low fence) up to a maximum of 100%, which is reached at 92dB (high fence).

   (3) The hearing handicap, a binaural assessment, is calculated by multiplying the smaller percentage (better ear) by five, adding this figure to the larger percentage (poorer ear), and dividing the total by six.

67-1103 Amputation of Finger or Toe.

A. The amputation of any portion of the bone of the distal phalange of a finger or toe to a point opposite the base of the nail is deemed the loss of one fourth of the finger or toe.

B. Amputation below the base of the nail of the bone in the distal phalange is deemed loss of one half of a finger or toe.

67-1104 Health Care for Injury Resulting in Hernia.

A. In a claim involving an injury resulting in a hernia in which liability is denied and the claimant will be disabled pending a hearing, the employer's representative may provide the claimant a truss.

B. Health care provided in section A above shall not be construed an admission of liability for payment of temporary total compensation.

C. The costs incurred in providing the claimant a truss may be charged as a medical expense.

67-1105 Loss of Vision.

A. Loss of vision is based on reading without the use of corrective lenses. Eighty percent loss of vision, or more, is considered one hundred percent industrial blindness.

B. The following table, derived from the Snellen Notation, is used to determine the percentage of impairment to vision. The physician also may rely upon the American Medical Association's "Guide to the Evaluation of Permanent Impairment" and any other accepted medical authority or treatise in deriving an impairment rating.

C. Loss in muscle function, in conjunction with other factors, may warrant a greater percentage of loss of vision.

Notation for Distance	Notation for Near	Percentage of Visual Efficiency	Percentage of Vision
20/20	14/14	100.0	0.0
20/25	14/17/5	95.7	4.3
20/30	14/21	91.5	8.5
20/35	14/24.5	87.5	12.5
20/40	14/28	83.6	16.4
20/45	14/31.5	80.0	20.0
20/50	14/35	76.5	23.5
20/60	14/42	69.9	30.1
20/70	14/49	64.0	36.0
20/80	14/56	58.5	41.5
20/90	14/63	53.4	46.6
20/100	14/70	48.9	51.1
20/120	14/84	40.9	59.1
20/140	14/96	34.2	66.8
20/160	14/112	28.6	71.4
20/180	14/126	23.9	76.1
20/200	14/140	20.0	80.0
(80% loss of vision is considered 100% industrial blindness.)			
20/220	14/154	16.7	83.3
20/240	14/168	14.0	86.0
20/260	14/182	11.7	88.3

ARTICLE 12 - ATTORNEY PRACTICE AND FEES

67-1201 Appearances Before the Commission.

A. In all contested cases before a single Commissioner and in all cases on Commission review, only attorneys licensed in South Carolina may practice before the Commission except as provide in section C below.

B. This regulation shall not be construed to prevent a party from representing himself or herself as otherwise allowed in this State.

C. An attorney licensed in another state may represent a party by associating himself or herself with an attorney licensed in South Carolina and receiving permission as provided below.

   (1) The attorney may file a motion with the Commission's Judicial Department according to R.67 215.

   (2) The motion must be limited to one case or proceeding and state the following:

      (a) The state in which the attorney is licensed to practice and the names of the Bars with which the attorney is in good standing.

      (b) That the attorney will represent the party until a final determination of the case or proceeding unless he or she is permitted to be relieved as counsel.

      (c) The attorney agrees to be subject to the orders, disciplinary rules, proceedings, and jurisdiction of the Commission and the State of South Carolina as if the attorney were a member of the South Carolina Bar.

      (d) The signature of an attorney licensed in South Carolina.

      (e) A statement that the South Carolina attorney is licensed, in good standing, is associated with the moving attorney for the case or proceeding, is authorized to receive service, orders, and other forms and documents, and that the South Carolina attorney will appear with the moving attorney in Article 6 or Article 7 proceedings.

   (3) Upon receipt of a motion, the Judicial Department will assign the motion to a Commissioner assigned the claim. The Commissioner may grant the motion without appearances by the attorneys or the parties.

67-1202 Attorney's Letter of Representation.

A. When an attorney is employed to represent a party before the Commission, the attorney must notify the Commission by writing the Commission's Judicial Department.

B. The attorney may notify the employer's representative.

C. If an attorney representing a claimant files a letter of representation with the Commission and at the same times files a claim as provided in R.67 206, the letter of representation must contain the information in R.67 206C(1) through (12).

   (1) The Commission will notify the employer's representative a claim has been filed unless the letter states the employer's representative has been given a copy of the letter.

   (2) The attorney may state in the letter the date the attorney was employed. If a date of employment is not included in a letter of representation, the date of the letter of representation is deemed the date of employment.

67-1203 Withdrawing Representation.

A. An attorney shall not withdraw as counsel without first obtaining an order from the Commission.

B. An attorney may withdraw as counsel on the showing of good cause. South Carolina Supreme Court Disciplinary Rules and the Common Law of this State define good cause.

C. An attorney may file with the Commission's Judicial Department a Motion To Withdraw As Counsel, according to R.67 215.

   (1) A Form 61, Attorney Fee Petition, may accompany the motion.

   (2) The Commissioner assigned the claim, or the Chair if a Commissioner has not been assigned the claim, will consider the motion.

   (3) The Commissioner may on a showing of good cause, order the attorney relieved as counsel. If a Form 61 accompanies the motion, the Commissioner may issue an appropriate order allowing a fee or ordering the attorney's fee considered upon the final resolution of the claim.

67-1204 Reporting Attorneys Fees for Approval.

A. An attorney shall report and obtain approval of any fee for services rendered in a worker's compensation claim as follows.

B. When the parties agree to a fee based on an hourly rate and/or retainer the total amount of the fee shall be reported on the Form 19, filed according to R.67 414.

C. When the parties agree to a contingent fee contract, the attorney shall report the fee by filing the original and one copy of a Form 61, Attorney Fee Petition, and an Order, along with a stamped, self addressed envelope with the Commission's Claims Department.

D. Upon receipt of a Form 61 and Order, the Order may be signed and a copy returned to the attorney when the fee calculation complies with R.67 1205.

E. The Commissioner may amend, sign, and return a copy of the Order. If the attorney disagrees with the Amended Order, the attorney may file a motion according to R.67 1205 with the Commission's Judicial Department. The motion may be heard according to R.67 215, unless the motion requests a hearing to present testimony or evidence.

F. If the Form 61 and Order do not comply with R.67 1205, the Commissioner reviewing the Form 61 and Order shall immediately schedule a hearing to consider argument of counsel and testimony, if any.

HISTORY: Amended by State Register Volume 16, Issue No. 4, eff April 24, 1992; State Register Volume 24, Issue No. 4, eff April 28, 2000; State Register Volume 34, Issue No. 2, eff February 26, 2010.

67-1205 Determining a Reasonable Fee.

A. If the parties fix the fee by contract and base the fee on an hourly rate and/or a retainer, the fee is deemed reasonable unless it conflicts with the South Carolina Supreme Court Disciplinary Rule on determining reasonable fees.

B. If the parties agree to a contingent fee contract, the fee is deemed reasonable when the following requirements are met and the requested fee does not conflict with the South Carolina Supreme Court Disciplinary Rule on determining a reasonable fee.

(1) The attorney fully explains the fee agreement to the client and informs the client of the total dollar amount of the fee that will be deducted from the client's benefits; and

(2) The client agrees to the fee by signing a completed Form 61; and

(3) The attorney calculates the fee according to C below.

C. An attorney may charge up to, but not more than, 33.3% of the total amount of compensation, except in the following situations, where the attorney shall set the fee as instructed. When unusual circumstances exist, the attorney may attach to the Form 61 a short memorandum supporting approval of a fee calculated on an hourly rate or by quantum meruit.

(1) If the amount of compensation secured is derived from an impairment rating rendered by an authorized health care provider before the party employed the attorney, the attorney shall base the fee on the difference between the original impairment rating and the disability rating ultimately secured. The attorney shall include on the Form 61 the date the impairment rating was rendered, the percentage and the name of the rating physician. The fee shall not exceed 33.3% of the difference between the original impairment rating and the disability rating secured.

(2) If the attorney secures temporary compensation for a client on a Form 15, the attorney shall calculate the fee on the number of weeks that are past due at the time that the Form 15 is approved. The attorney may not charge a fee on temporary compensation that is due in the future. If the attorney secures the payment of permanent disability later, the attorney may charge, according to these regulations, up to but not more than 33.3% of the settlement or award.

(3) If the claim involves a fatality and the employer's representative does not contest liability, compensability or beneficiaries, the attorney may charge a fee up to but not more than two thousand five hundred dollars. If the claim involves a fatality and the employer's representative contests liability, compensability or a party disputes the status of the client as a beneficiary, the attorney may charge up to but not more than 33.3% of the settlement or award.

(4) If the claim involves lifetime compensation and the employer's representative does not contest liability or the claimant's entitlement to lifetime compensation, the attorney may charge up to but not more than two thousand five hundred dollars. When the claim involves lifetime compensation benefits and the employer's representative contests liability and/or the claimant's entitlement to lifetime compensation, the attorney's fee shall be considered on a case by case basis. The attorney shall attach to a Form 61, a Motion to Award Fee, according to R.67 215.

(5) If the attorney files or intends to file a Form 24, Lump Sum Application, for the client, the attorney shall base his fee calculation on the amount paid or payable to the client after the award or settlement is reduced to present day value.

(6) The combined fee of all attorneys for one party may not total more than 33.3% of the compensation. The Commissioner shall review jointly the motion for

fee filed by a previous attorney for the client and the additional Form 61. The Commissioner assigned the claim shall indicate the portion of the fee approved for each attorney.

(7) When an attorney is employed after the employer's representative makes a written offer of settlement to the claimant, the attorney shall base his or her fee on the amount of compensation secured in excess of the settlement offer. The fee shall not exceed 33.3% of the difference between the offer of settlement and the amount of compensation secured.

D. If the claimant refuses to sign a Form 61, the attorney shall file the unsigned Form 61 and motion requesting a hearing which states the claimant refuses to sign the form. The Commission will notify the claimant by issuing a hearing notice according to R.67 213.

67-1206 Costs.

A. In addition to an attorney's contingent fee, an attorney may request approval of the actual costs incurred in the prosecution of a claim by attaching a statement of costs to the Form 61.

(1) The attorney waives the request for reimbursement of costs when he or she does not attach the statement to the Form 61.

(2) Costs include witness fees, expenses associated with the deposition of a witness, service costs, or expenses associated with the evaluation or treatment of the client.

B. If the attorney requests approval of costs not listed in A(2) above, the attorney must attach to the statement a copy of the employment contract. Additional costs may be allowed, in the commissioner's discretion, when the employment contract specifically states that the client agreed to pay the costs of phone calls, travel, copies, and other specifically stated expenditures.

HISTORY: Amended by State Register Volume 16, Issue No. 4, eff April 24, 1992.

67-1207 Collection of Attorney's Fee in a Lump Sum.

A. If the claimant receives an award or settlement of more than one hundred weeks that is not to be paid in a lump sum, and there are not sufficient accrued weeks to satisfy the attorney's fee and costs, the attorney may request collection of the commuted value of his or her approved fee directly from the employer's representative

B. To request payment of the attorney's fee in a lump sum, file a motion for Lump Sum Payment of Attorney's Fee according to R.67 215 with the Commission's Judicial Department.

(1) Attach a completed Form 61 to the Motion. The Commission will commute the fee to present day value as provided below.

(a) The number of weeks to which the fee is equivalent is determined by dividing the approved fee by the claimant's compensation rate.

(b) The present day value of the weeks is determined according to the discount tables approved by the Commission.

(c) The present day value is multiplied by the compensation rate, resulting in the attorney's fee reduced to present day value.

(2) The amount of each payment the claimant receives shall not be altered or interrupted. The attorney's fee is deducted from the end of the award. The attorney may obtain a calculation of the commuted value of the attorney fee by writing the Commission's Claims Department.

(3) If the parties agree to pay the attorney in a lump sum, the attorney shall attach to the motion, a consent order containing the signature of the client and the employer's representative. If the parties do not agree to the payment in lump sum, the attorney shall request, in the motion, a hearing.

ARTICLE 13 - MEDICAL REPORTS, PHYSICIAN'S FEES AND HOSPITAL CHARGES

67-1301 Medical Reports.

A. A medical practitioner or treatment facility shall furnish upon request all medical information relevant to the employee's complaint of injury to the claimant, the employer, the employer's representative, or the Commission. Payment for services rendered may be withheld from any medical practitioner or treatment facility who fails to comply with a request for this information.

B. The employer's representative shall submit to the Commission a report indicating the claimant's final rating of permanent impairment.

C. A health care facility and a health care provider may charge a fee for the search and duplication of a medical record not to exceed the fee published in the Medical Services Provider Manual.

HISTORY: Added by State Register Volume 14, Issue No. 9, effective September 2, 1990. Amended by State Register Volume 17, Issue No. 4, eff April 23, 1993; State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997; State Register Volume 34, Issue No. 2, eff February 26, 2010.

67-1302 Maximum Allowable Payments to Medical Practitioners.

A. The Commission shall establish maximum allowable payments for medical services provided by medical practitioners based on a relative value scale and a conversion factor set by the Commission.

(1) The maximum allowable payments and any policies governing the billing and payment of services provided by medical practitioners shall be published in a medical services provider manual.

(2) The Commission may review and update the relative values and/or the conversion factor as needed.

B. Medical practitioners submit claims for payment to the employer or insurance carrier on the Form 14A.

(1) The Commission recognizes the Health Care Financing Administration Form 1500 (HCFA 1500) as its Form 14A for medical practitioners.

(2) Any narrative records or reports pertaining to the services rendered must be attached to the Form 14A and supplied at no charge to the employer or carrier.

C. An employer or insurance carrier may not pay, and a medical practitioner may not accept, more than the maximum allowable payment amounts listed in the provider manual.

D. Providers of general dental services, pharmaceuticals, durable medical equipment, and other medical products and services not covered by the medical services provider manual shall bill at the provider's usual and customary charge.

HISTORY: Added by State Register Volume 14, Issue No. 9, effective September 2, 1990. Amended by State Register Volume 17, Issue No. 4, eff April 23, 1993; State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

67-1303 Payments for Hospital Inpatient Services.

A. The Commission shall maintain a prospective payment system based on diagnosis related groups with methodology and prices established by the Commission for the payment of inpatient hospital services.

   (1) Hospitals submit claims for payment to the employer or insurance carrier on the Form 14A.

   (2) The Commission recognizes the current uniform billing (UB) form as its Form 14A for hospitals.

   (3) The employer or insurance carrier reviewing the claim for payment shall be entitled to a copy of the applicable hospital records at no charge.

B. The Commission may review and revise the prospective payment system as needed.

C. An employer or insurance carrier may not pay, and a hospital may not accept, more than the amount set by the Commission for inpatient hospital services.

HISTORY: Added by State Register Volume 14, Issue No. 9, effective September 2, 1990. Amended by State Register Volume 17, Issue No. 4, eff April 23, 1993; State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

67-1304 Payments for Hospital Outpatient Services and Ambulatory Surgical Centers.

A. The Commission shall develop a prospective payment system for outpatient hospital services and services rendered by ambulatory surgical centers.

B. Until such time as the prospective payment system is operational the payments for hospital outpatient services and ambulatory surgical centers shall be set by the Commission based on a discount to the provider's usual and customary charge.

HISTORY: Amended by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

67-1305 Medical Bill Review.

A. Upon receipt of a medical claim, the employer or carrier shall review the bill for compliance with the policies and maximum payments set forth by the Commission.

(1) An employer or insurance carrier who reviews medical claims for payment must apply to the Commission for approval to review and reduce medical bills. An employer who is not an approved reviewer may solicit the services of an approved bill reviewer, but may not rely on the Commission for bill review services.

(2) In cases where the billing involves unusual or complex circumstances the bill may be sent to the Commission's Medical Services Division for initial review.

(3) Whenever a charge is reduced to the Commission's maximum allowable payment, the reviewer shall include on the explanation of benefits (EOB) form a statement which explains the reduction and indicates the provider's right to appeal the reduction as outlined in subsections B and C.

B. A medical provider who disagrees, based on Commission payment policy, with a reduction may appeal the decision directly to the payer/reviewing entity.

C. If the disagreement cannot be resolved between the provider and the payer/reviewer, the matter may then be referred to the Commission's Medical Services Division for review and resolution.

(1) A provider or reviewer may request a review by submitting to the Medical Services Division:

(a) A cover letter outlining the dispute and stating the requesting party's position regarding the correct payment;

(b) A copy of the bill;

(c) A copy of the explanation of benefits (EOB); and

(d) Any supporting documentation.

(2) The Medical Services Division shall review the bill and supporting documentation, using its medical consultant as needed, and shall make a determination regarding correct payment.

(3) The decision of the Medical Services Division shall be final.

D. Any medical provider who discovers an incorrect payment within two years of the original billing date may resubmit the claim to the payer for the correct payment.

E. Any payer who discovers an overpayment made to a provider within two years of the original billing date may request a refund from that provider.

HISTORY: Amended by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

67-1306 Medical Advisory Committees.

A. The Commission may convene advisory committees to make recommendations to the Commission on medical matters such as medical payment systems, rate setting methodology or other medical policy issues.

B. The advisory committees are convened at the Commission's discretion.

HISTORY: Amended by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

67-1307 Rehabilitation Professionals.

A. Rehabilitation professionals are coordinators of medical rehabilitation services, including but not limited to state, private, or carrier based, whether on site, telephonic, in or out of state.

B. The role of a rehabilitation professional is to ensure the primary concern and commitment in each workers' compensation case is to advance the medical rehabilitation of the injured worker.

C. A rehabilitation professional must comply with S.C. Section 42 15 95 and R.67 1308 when communicating with a health care provider who provides examination or treatment for any injury, disease, or condition for which compensation is sought. A rehabilitation professional shall possess one of the following certifications:

  (1) Registered Nurse RN;

  (2) Certified Rehabilitation Counselor CRC;

  (3) Certified Registered Rehabilitation Nurse CRRN;

  (4) Certified Disability Management Specialist CDMS;

  (5) Certified Occupational Health Nurse COHN; or

  (6) Certified case manager CCM.

D. Rehabilitation professionals shall be subject to the requirements, rules, regulations, and Code of Ethics specific to their license and certification.

HISTORY: Added by State Register Volume 34, Issue No. 2, eff February 26, 2010.

67-1308 Communication Between Parties And Health Care Providers.

A. A health care provider who provides examination or treatment for any injury, disease or condition for which compensation is sought under the provisions of this title may discuss or communicate an employee's medical history, diagnosis, causation course of treatment, prognosis, work restrictions, and impairments with the insurance carrier, employer, their respective attorneys or certified rehabilitation professionals or the Commission without the employee's consent.

B. The claimant must be:

  (1) Notified by the employer, carrier or its representative requesting the discussion or communication with the health care provider in a timely fashion, but no less than ten days notice unless the parties agree otherwise. Notification may be oral or in writing.

  (2) Allowed to attend and participate, along with claimant's attorney, if any.

  (3) Advised by the employer, carrier or its representative requesting the discussion or communication prior to the discussion or communication.

  (4) Provided a copy of the written questions at the same time the questions are submitted to the health care provider and provided a copy of the response by the health care provider.

HISTORY: Added by State Register Volume 34, Issue No. 2, eff February 26, 2010.

ARTICLE 14 - ENFORCEMENT PROCEEDINGS

67-1401 Fines, Assessment and Review.

A. The Commission is authorized to assess fines as provided in this Chapter and the Act. The following provisions shall apply to the assessment and request for review of a fine against a party or its representative.

B. The department or division of the Commission charged with assessing the fine shall provide written notice of a failure to file a form and an assessment.

(1) Within thirty days of the date of service of the notice, the form must be filed and the assessment paid to the Commission. A request for a director's review of the assessment may be filed according to C below.

(2) Failure to file the form and make prompt payment of an assessed fine or to request review of the assessment as provided in C below shall result in an order issued.

C. Review of an assessment and possible abatement of a fine may be requested as follows:

(1) Set forth in writing the reasons for contesting the assessment.

(2) File the request with the Department or Division that issued the assessment as indicated on the notice within thirty days of service of the notice.

(3) The department or division director will review the request and may abate the fine if good cause is shown.

(4) The director will provide written notice to the party requesting review and set forth the reasons for the director's determination.

(5) If the director affirms the assessment, a hearing may be requested and shall be granted if timely filed according to E below.

D. Failure to file a written request for a director's review of an assessment of fine within thirty days of service of the notice shall constitute waiver of a director's review.

E. A request for an opportunity to be heard to show cause why the person or party assessed is not in violation of the provisions of this Chapter or the Act shall be granted if timely filed as provided below.

(1) Request a hearing in writing.

(2) File the request for a hearing with the department or division director who reviewed the assessment within fourteen days of director's determination as in C(5) above or fourteen days from the date of service of an order as in B(2) above.

(3) An Order and Rule to Show Cause will be issued to the party requesting a hearing according to R.67 1404.

HISTORY: Amended by State Register Volume 20, Issue No. 5, eff May 24, 1996.

67-1402 Unqualified Self Insured Employer, Prosecution.

A. When it appears an employer is operating in violation of this Chapter and the Act by failing to provide proof of compliance with the insurance provisions of this Chapter

and the Act, the Commission shall institute an investigation of the employer and its operations.

(1) An officer of the department is authorized to conduct the investigation.

(2) The officer shall gather information necessary to make a recommendation concerning the employer's compliance with the provisions of this Chapter and the Act.

B. If the officer determines an employer has complied with the provisions of this Chapter and the Act, the department's director shall issue an administrative order dismissing the investigation.

(1) An administrative order dismissing an investigation shall not deny a claimant an opportunity to proceed with the prosecution of a claim.

(2) If an investigation is dismissed, a claimant may request a hearing by filing a Form 50 or Form 52 according to R.67 207. The hearing will be conducted according to Article 6.

(a) A Commissioner assigned to the claim shall determine the issue of jurisdiction and the underlying claim at the request of the claimant.

(b) The parties have the right to review as in other cases.

C. If the officer determines that the employer is not in compliance with the provisions of this Chapter and the Act, the officer shall issue a citation to the employer stating the officer's findings of fact and conclusions.

(1) The citation may recommend a fine as provided in this Chapter and the Act.

(2) The citation and Compliance Agreement shall be served on the employer according to R.67 213.

D. The employer shall respond to the citation within fourteen days of the date of receipt of the citation.

(1) The employer may sign the Compliance Agreement and pay the fine as proposed, if any, or request the director's review of the citation.

(2) Failure to respond to the citation within fourteen days of receipt shall result in prosecution of the employer according to R.67 I404.

E. The employer may request the director's review of a citation by writing the Commission within fourteen days of the date of receipt of the citation.

(1) The department director shall review the citation, confer with the employer and issue a written determination of the director's findings and conclusions.

(2) If the employer disputes the director's findings and conclusions, the employer may request an opportunity to appear at a hearing before a Commissioner to show cause why it is not in violation with the provisions of this Chapter and the Act.

(3) An Order and Rule to Show Cause shall be issued to the employer according to R.67 1404.

F. A Compliance Agreement is evidence of voluntary compliance with the insurance provisions of this Chapter and the Act. By signing and filing a Compliance Agreement, the employer is not required to appear at a compliance hearing. The form is an agreement to the following:

(1) The Commission's jurisdiction; and

(2) The employer should have had worker's compensation insurance during the period stated in the Compliance Agreement but did not; and

(3) The employer will comply with the insurance provisions of this Chapter and the Act, or otherwise comply with the provisions of this Chapter and the Act; and

(4) The employer will defend any worker's compensation claims brought against it; and

(5) If the claim is found compensable the employer will comply with the reporting requirements of this Chapter and the Act; and

(6) The employer will make prompt payment of a claim found compensable under the Act .

G. When a final decision concerning jurisdiction is rendered the claimant may proceed with a claim for compensation by filing a Form 50 or Form 52 as provided in R.67 207.

HISTORY: Amended by State Register Volume 34, Issue No. 2, eff February 26, 2010.

67-1404 Order and Rule to Show Cause, Hearings.

A. The Commission may issue an Order and Rule to Show Cause requiring an appearance before a Commissioner.

(1) An Order and Rule to Show Cause is served according to R.67 213.

(2) The hearing shall be convened at the Commission's offices located in Columbia, South Carolina unless otherwise provided by order of the Commission.

B. The party has the right to review as provided in Article 7.

C. Failure of a party to appear at a hearing after having been properly served with an Order and Rule to Show Cause shall constitute an admission of the allegations contained in the Order and Rule to Show Cause.

ARTICLE 15 - SELF INSURANCE

67-1501 Self Insurance, Application.

A. An employer may apply to individually self insure by filing a Form 7, Application To Individually Self Insure, with the Commission's Self Insurance Division and as follows.

(1) Complete and sign the Form 7 and attach to the form the following:

(a) A two hundred fifty dollar application fee; and

(b) A statement describing in detail the proposed claims administration program including the resume of each member of the claims administration staff if claims will be administered by the employer, or a copy of the service contract and quote for service fee if claims will be administered by a third party claims administrator; and

(c) A description of an outside safety consultant program and annual fee, if any; and

(d) Three year's audited financial statements, audited according to generally accepted accounting principles, or a 10K report for each of the previous three years; and

(e) Quotes for excess insurance according to R.67 1503.

(2) In lieu of submitting audited financial statements, the sworn statement or affidavit of an independent auditor may be provided which verifies, based on financial ratios and guidelines set by the Commission, the financial condition of the employer.

(a) Upon application to self insure, the Self Insurance Division will provide the applicant with the following financial ratios to be used by the independent auditor. The ratios provided to the applicant will be at the twenty fifth percentile for the applicant's industry and, if available, asset size will be obtained by the Self Insurance Division from an independent financial information provider.

(1) Current Ratio. The current ratio is calculated by dividing total current assets by total current liabilities.

(2) Total Liabilities to Net Worth. Total liabilities to net worth is calculated by dividing total current liabilities and long term debt by net worth.

(3) Fixed Assets to Net Worth. Fixed assets to net worth is calculated by dividing fixed assets by net worth.

(4) Return on Sales. Return on sales is calculated by dividing net profit after taxes by annual net sales.

(5) Return on Assets. Return on assets is calculated by dividing net profit after taxes by total assets.

(6) Return on Net Worth. Return on net worth is calculated by dividing net profit after tax by net worth.

(b) The independent auditor must provide to the Self Insurance Division a sworn statement or affidavit that the applicant has a net worth which equals or exceeds ten million dollars, that the applicant exceeds all six ratios, that the applicant's ratios are based on financial statements prepared according to generally accepted accounting principles and that the ratios were calculated according to R.67 1501 A(2)(a).

B. When a parent company applying to self insure desires to include a subsidiary company in the parent's self insurance program, the parent company shall attach to the Form 7 the following items in addition to the items in A(1)(a) through (e) above:

(1) A separate Form 7 and a Form 7A, Corporate Guaranty, for each subsidiary company.

(2) A one hundred dollar application fee for each subsidiary company.

C. When a subsidiary company applies to self insure under a parent company's existing self insurance program, the subsidiary company shall file a Form 7 as in A above and attach to the Form 7 the following items in addition to the items in A(1)(a) through (e) above:

(1) A Form 7A, Corporate Guaranty; and

(2) A one hundred dollar application fee.

D. When a subsidiary of a parent company desires to create its own self insurance program, the subsidiary company shall file a Form 7, as in A above and attach to the Form 7 the following items, in addition to the items in A(1)(a) through (e) above:
   (1) A Form 7A, Corporate Guaranty; and
   (2) A two hundred fifty dollar application fee.

E. To apply for approval of a proposed self insurance fund, an officer of the proposed fund shall file a Form 6, Application to Create a Self Insurance Fund, with the Commission's Self Insurance Division. The Form 6 must be completed, signed by an officer of the proposed fund, and have attached to it:
   (1) A two hundred fifty dollar application fee; and
   (2) A copy of the proposed fund's by laws; and
   (3) A current audited financial statement, audited according to generally accepted accounting principles, for each proposed member of the fund; and
   (4) A list of the estimated standard premium collected by the fund, by month, for the first fiscal year; and
   (5) An indemnity agreement which jointly and severally binds each member of the fund, signed by each proposed member; and
   (6) A statement describing in detail the proposed claims administration program including the resume of each member of the claims administration staff if claims will be administered by the fund, or, a copy of the service contract and quote for service fee if claims will be administered by a third party claims administrator; and
   (7) Quotes for excess insurance according to R.67 1503; and
   (8) A completed Form 6A, Application for Membership in a Self Insurance Fund for each employer applying for membership in the proposed fund. The proposed members of the fund must have a minimum combined total net worth of one million dollars.
   (9) Fund investments shall be restricted to bonds, notes, or other evidence of indebtedness by the United States of America, or by an agency or instrumentality thereof, certificates of deposit in a federally insured bank, shares or savings deposits in a federally insured savings and loan association or credit union, certificates of deposit insured by a commercial bank duly chartered under the laws of this State, and other investments the Self Insurance Division approves.

F. An employer may apply for membership in an existing self insurance fund as follows.
   (1) Qualify for membership in the self insurance fund by:
      (a) Operating a business similar in nature to the businesses in the fund; and
      (b) Qualifying under the by laws of the fund; and
      (c) Being financially sound and have a net worth of not less than twenty five thousand dollars.

(2) To apply for membership in a self insurance fund, file a completed and signed Form 6A, Application for Membership in a Self Insurance Fund, with the Commission's Self Insurance Division and attach:

(a) A twenty five dollar application fee; and

(b) A current financial statement.

G. The Self Insurance Division will notify the applicant by letter if the application does not contain required information and attachments.

(1) The applicant shall complete the application process within one hundred and twenty days from the date of filing the application by providing requested information and documentation required above.

(2) Failure to complete the application process within one hundred and twenty days from the date of filing the application shall be deemed a voluntary withdrawal of the application.

(3) Further requests for approval to individually self insure, to create a self insurance fund, or to join a self insurance fund shall be made by refiling the application and attaching the application fee and attachments provided above.

HISTORY: Amended by State Register Volume 19, Issue No. 7, eff July 28, 1995; State Register Volume 22, Issue No. 6, Part 3, eff June 26, 1998.

67-1502 Self Insurance, Granting the Privilege and Providing Proof of Compliance.

A. Each application in R.67 1501 is reviewed by the Commission's Self Insurance Division. The Commission may approve an application contingent on the applicant's filing the proper forms and documents evidencing proof of compliance.

(1) Proof of compliance consists of the following documents filed with the Self Insurance Division.

(a) A copy of the excess insurance policy according to R.67 1503; and

(b) A Form 8, Proof of Compliance, Surety Bond, or a Form 8A, Proof of Compliance, Securities Pledge, or a Form 8B, Proof of Compliance, Memorandum of Understanding and Irrevocable Letter of Credit; and

(c) Proof of a reserve account, if applicable, according to R.67 1504; and

(d) Compliance with the terms and conditions for approval of the self insurance program as ordered by the Commission.

(2) Commercial insurance must be continued until the forms as provided above are filed with the Commission's Self Insurance Division and until the effective date of the self insurance program as provided on the Form 9, Certificate for Self Insurance.

B. The Self Insurance Division notifies the applicant in writing of its recommendation to the Commission and the terms of the Commission's contingent approval, if any.

(1) The forms evidencing proof of compliance shall be filed at least sixty days from the date of the Commission's contingent approval.

(2) Failure to file proof of compliance provided in A above shall result in the administrative recision of the Commission's approval. The applicant may refile its application according to R.67 1501.

(3) The applicant may make a written request to the Self Insurance Division for a sixty day extension of time to file the forms and documents evidencing compliance.

(4) Each form and document evidencing compliance shall be filed no later than one hundred twenty days from the date of the Commission's contingent approval.

(5) Failure to file the forms and documents evidencing proof of compliance at least one hundred twenty days from the date of contingent approval shall result in the administrative rescission of approval. The applicant may refile its application according to R.67 1501.

67-1503 Proof of Compliance, Excess Insurance.

A. Each self insurer shall purchase specific excess insurance in an amount determined by the Commission. The Commission may also require a self insurer to purchase aggregate excess insurance, in addition to specific excess insurance, depending on the self insurer's financial condition, size, loss history, and exposure. The Self Insurance Division will notify the self insurer of the amount and type of excess insurance required.

B. Provide proof of excess insurance by filing a copy of the excess insurance policy with the Self Insurance Division.

(1) The self insurer may file an acceptable certificate of insurance, as proof of excess insurance coverage, in lieu of a policy, for the first forty five days following approval to self insure or a change in excess insurance carriers.

(2) The applicant shall file a copy of the excess insurance policy within the period in R.67 1502B.

C. The following provisions shall apply to excess insurance.

(1) The excess insurance shall be issued by a carrier licensed by the South Carolina Department of Insurance.

(2) The policy shall include as a named insured each subsidiary company in a parent company's self insurance program, if any.

(3) The excess insurance policy shall include an endorsement that cancellation shall not be effective until after sixty days written notice to the Commission's Self Insurance Division.

(4) Excess insurance shall be deemed continuous.

(5) Excess insurance may be cancelled only upon sixty days written notice to the Self Insurance Division.

HISTORY: Amended by State Register Volume 30, Issue No. 5, eff May 26, 2006.

67-1504 Proof of Compliance, Reserve Account, and Other Accounts.

A. Each proposed self insurance fund shall establish a reserve account and other accounts as necessary. To provide proof of a reserve account, an officer of the fund shall file an affidavit with the Self Insurance Division within the time provided in R.67 1502B.

(1) The affidavit shall state the name of the bank, the account number and the current account balance.

(2) The fund initially shall deposit into the reserve account not less than twenty five percent of the first year's total estimated annual standard premium.

(3) The fund initially shall deposit into accounts other than its reserve account seventy five percent of the first year's total estimated annual standard premium from which expenses may be paid.

(4) After the self insurance fund's first year, the fund shall maintain the reserve at no less than twenty five percent of the total estimated annual standard premium for all members of the fund.

B. The fund shall neither distribute nor pay a dividend from the reserve account or any part thereof to any member without approval of the Self Insurance Division.

67-1505 Proof of Compliance, Surety Bond.

A. File a Form 8, Proof of Compliance, Surety Bond, with the Self Insurance Division within the time provided in R.67 1502B. The amount of the bond is determined by the Commission based on an analysis of the total self insurance program including but not limited to an analysis of the applicant's excess insurance, loss history, and financial condition.

B. The minimum bond amount is two hundred and fifty thousand dollars.

C. The following provisions shall apply to a bond.

(1) The bonding company must be licensed by the South Carolina Department of Insurance.

(2) The bond shall be deemed continuous beginning with the date of contingent approval of the self insurance program and continuing until sixty days after a written notice of cancellation is reviewed by the Self Insurance Division.

(3) When the Self Insurance Division receives a bond cancellation notice, the self insured is notified to replace the bond before the expiration of the original bond. The Commission shall institute revocation proceedings upon the failure to renew or replace the bond as described in R.67 1513.

D. When a self insurer loses or withdraws its privilege of self insurance, the bond remains with the Commission to guarantee payment of any claims occurring during the self insured period.

(1) The Commission may release the bond, or any part thereof, when the Commission determines that all contingent liability arising during the period of self insurance has expired.

(2) The employer or fund may request the release of a bond, or any part thereof, by writing to the Self Insurance Division. The Self Insurance Division shall notify the employer or fund of its administrative determination. If the employer or fund disagrees with the administrative determination, the employer or fund may request a hearing by filing a motion for a hearing according to R.67 215. The parties shall proceed according to Article 6.

HISTORY: Amended by State Register Volume 30, Issue No. 5, eff May 26, 2006.

67-1506 Proof of Compliance, Securities Pledge.

A. The Commission in its discretion may accept a pledge of securities issued by this State or the federal government as proof of compliance instead of a bond or letter of credit.

B. The Commission shall determine the amount of securities required by R.67 1505A and shall notify the self insurer of the amount.

C. The securities shall be held by a trust department of a South Carolina bank and pledged to the South Carolina Workers' Compensation Commission.

D. To pledge securities, the bank shall provide an acceptable safekeeping receipt.

  (1) The bank safekeeping receipt must outline the details of the securities, and pledges the securities to the South Carolina Workers' Compensation Commission.

  (2) File the bank safekeeping receipt with the Self Insurance Division within the time provided in R.67 1502B.

E. When a self insurer loses or withdraws its privilege of self insurance, the securities remain pledged to the Commission to guarantee payment of any claim occurring during the self insured period.

  (1) The Commission may release the securities, or any part thereof, when the Commission determines that all contingent liability arising during the period of self insurance has expired.

  (2) The Commission may release the securities, or any part thereof, by notifying the bank holding the securities in trust to release the pledged securities.

  (3) Request the release of securities or any part thereof by writing to the Self Insurance Division.

    (a) The Self Insurance Division will notify the employer or fund of its administrative determination.

    (b) If the employer or fund disagrees with the Commission's determination, the employer or fund may request a hearing by filing a motion for hearing, according to R. 67 215. The parties proceed according to Article 6.

HISTORY: Amended by State Register Volume 30, Issue No. 5, eff May 26, 2006.

67-1507 Proof of Compliance, Irrevocable Letter of Credit.

A. The Commission in its discretion may accept a Form 8B, Proof of Compliance, Memorandum of Understanding and Irrevocable Letter of Credit, as proof of compliance instead of a surety bond or securities. The Commission will determine the amount as provided by R.67 1505A.

B. The applicant for self insurance shall file the Form 8B with the Commission's Self Insurance Division within the time provided in R.67 1502B.

C. The following provisions shall apply to a letter of credit.

  (1) The letter of credit must be issued by a bank chartered in this State or a federally chartered bank with a branch office in this State.

  (2) The bank shall offer the irrevocable letter of credit by completing a Form 8B.

(3) The South Carolina Workers' Compensation Commission shall be the named beneficiary.

(4) A proposed letter of credit must be approved by the Commission before the Commission issues a Form 9, Certificate for Self Insurance.

D. Once an irrevocable letter of credit is established, it may be revoked only with the consent of the Commission.

(1) The Self Insurance Division may grant consent only when the self insurer offers proof of the purchase of a surety bond, pledges securities or obtains another irrevocable letter of credit.

(2) Expiration or cancellation of a letter of credit is effective only after sixty days written notice filed with the Self Insurance Division.

(3) The self insurer shall file notice of the replacement to the Self Insurance Division in writing by certified mail.

(4) When the self insurer fails to replace the letter of credit with another accepted proof of compliance, the Commission may demand payment of the letter of credit and deposit the proceeds in the South Carolina State Treasurer's Office to guarantee payment of any claim occurring during the self insured period.

(5) The Commission may exercise the letter of credit at any time if the proceeds are needed for payment of a claim that occurred during the self insured period.

HISTORY: Amended by State Register Volume 30, Issue No. 5, eff May 26, 2006.

67-1508 Effective Date of R.67 1503.

A. Regulation 67 1503 shall not apply retroactively to a self insurance program existing on or before the effective date of these regulations.

B. Self insurance programs approved on or before the effective date of these regulations may continue to operate under the terms of the program previously approved but shall comply with all other provisions in this Chapter.

67-1509 The Self Insurance Program, Amendments to and Renewal of.

A. The Commission may amend the self insurance program when analysis of the program shows a significant change in the number of employees in the state, the financial condition, losses, the excess insurance program, management of funds, or in material conditions of the self insured program.

(1) The self insurer is notified in writing of the Commission's proposed amendment.

(2) If the self insurer does not comply within a time period determined by the Self Insurance Division, but not less than thirty days, the Self Insurance Division may institute revocation proceedings according to R.67 1513.

B. The self insurer shall report any proposed changes to its self insurance program to the Self Insurance Division.

(1) A change includes, but is not limited to, altering an endorsement or amending an excess insurance policy, any change to retention or limits of an excess insurance policy, any change in the carrier of a surety bond, pledged securities,

or letter of credit, any change regarding a letter of credit, replacement of matured securities, or changes in the by laws of a fund.

(2) The Self Insurance Division may administratively approve a proposed change determined not a material or substantial change to the program.

(3) If a change in a self insurance program is determined to affect the self insurance program materially, the Self Insurance Division may request the self insurer to comply with the program as approved. The self insured may request the Commission's approval of a change in the program by writing the Self Insurance Division.

(4) If the self insurer refuses or neglects to continue a self insurance program according to the terms approved by the Commission, the Self Insurance Division may institute revocation proceedings according to R.67 1513.

C. The self insurer shall report a renewal of existing excess insurance policies to the Self Insurance Division. When the renewal is with the same carrier, the self insurer may report the change by filing an acceptable certificate of insurance. When the self insurer changes carriers, the self insurer shall file a copy of the policy as required in R.67 1503B(1).

HISTORY: Amended by State Register Volume 30, Issue No. 5, eff May 26, 2006.

67-1510 Financial Analysis and Reports.

A. A self insured employer shall file audited financial statements, prepared in accordance with generally accepted accounting principles, or the United States Securities & Exchange Commission's Form 10K with the Self Insurance Division within ninety days following the close of each fiscal year for analysis of the self insurer's financial condition. In lieu of audited financial statements, a self insured employer may provide the sworn statement or affidavit from an independent auditor as provided in R.67 1501A(2).

B. Each self insurance fund shall file with the Self Insurance Division a Form 11, Self Insurer's Quarterly Financial Report, or equivalent financial report, immediately after each quarter of its fiscal year. Each self insurance fund also shall file with the Self Insurance Division audited financial statements, prepared in accordance with generally accepted accounting principles within one hundred twenty days following the close of each fiscal year.

C. A sixty day extension of time in which to file a Quarterly Financial Report or Annual Audited Financial Statements may be requested by writing the Self Insurance Division.

D. Failure to file timely the forms referred to above may result in the institution of revocation proceedings.

HISTORY: Amended by State Register Volume 19, Issue No. 7, eff July 28, 1995; State Register Volume 22, Issue No. 6, Part 3, eff June 26, 1998; State Register Volume 30, Issue No. 5, eff May 26, 2006.

67-1511 Audits.

A. The Self Insurance Division or its representative may audit the self insured employer and self insurance fund. The audit may include examination of evidence supporting the

information filed on the Form 10, Self Insurance Tax Return, Form 11, Self Insurer's Quarterly Financial Report, Form 11A, Self Insurer's Annual Financial Report, financial reports, claims administration, fund membership, and an evaluation of the financial condition of the self insurer.

B. The Commission may request additional documentation to support the information reported on the above referenced forms. If the Commission determines that the self insured or self insurance fund is financially unqualified to continue its privilege of self insurance, the Commission may institute revocation proceedings in accordance with R.67 1513.

HISTORY: Amended by State Register Volume 30, Issue No. 5, eff May 26, 2006.

67-1512 Voluntary Withdrawal from a Self Insurance Program and Cancellation of a Member's Self Insurance Privileges.

A. A self insured employer may withdraw its privileges to self insure by notifying the Self Insurance Division in writing of its intent to withdraw. Withdrawal shall not be deemed effective until thirty days after the date the Self Insurance Division receives notice of intent to withdraw.

B. A member of a self insurance fund may withdraw from a fund by the fund's notice to the Self Insurance Division in writing of the members intent to withdraw. Withdrawal is not effective until thirty days after the date the Self Insurance Division receives the written notice of intent to withdraw.

C. A self insurance fund may cancel a member's self insurance privileges by notifying the Self Insurance Division in writing of its intent to cancel membership. Cancellation shall not be deemed effective until thirty days after the date the Self Insurance Division receives notice of cancellation. Membership in a fund may be reinstated, without a lapse in coverage, by notifying the Self Insurance Division in writing of renewal. Notice of renewal must be filed with the Self Insurance Division at least thirty days from the date of the notice of cancellation to avoid a lapse in coverage, unless the letter states the reinstatement is retroactive.

D. The Commission may assess a penalty of not less than one hundred dollars but not more than two hundred and fifty dollars for the refusal or neglect to notify timely the Self Insurance Division of the intent to withdraw and cancellation.

67-1513 Revocation Proceedings.

A. The Commission institutes revocation proceedings by Order and Rule To Show Cause.

B. The self insurer or self insurance fund shall be afforded an opportunity to be heard and the right to review as in other cases.

67-1514 Self Insurance Tax.

A. Each self insured employer and each self insurance fund shall file a Form 10, Self Insurance Tax Return, and make payment of its tax liability according to the Act.

B. The Commission may assess a penalty and institute revocation proceedings for failure to pay the tax within fifteen days of its due date as required by the Act.

C. A sixty day extension of time in which to file a Form 10 may be requested in writing before the Form 10 is due. An extension of time in which to file the Form 10 may be granted by the Self Insurance Division provided the estimated tax liability is paid at the time of the request for an extension is made.

D. If an employer or fund withdraws its self insurance privileges, self insurance privileges are revoked, or an employer or fund ceases to operate, the self insured or the self insurance fund shall continue to file the Form 10 for a minimum of three years and continue to file the Form 10 until notified by the Self insurance Division that there exist no other contingent liabilities arising during the period of self insurance and the Form 10 is no longer required to be filed.

67-1515 Confidentiality of Information.

A. Records and information concerning the solvency and financial condition of an employer acquired by the Commission under the authority granted by this Chapter and the Act shall not be subject to inspection nor shall any information in any way be divulged by the Commission or any of its members unless by order of a Court.

B. The Commission shall not release to the public any information concerning a self insured or a self insurance fund other than confirmation that an employer is individually self insured or is a member of a specific self insurance fund, its address, the effective date of the such insurance program, and the name of the claims administrator.

67-1516 Municipalities and Political Subdivisions.

A. An application of a municipality or political subdivision shall be approved without submission of proof of financial ability and without deposit of bond or other security.

B. Assurance must be provided that provisions shall be made for payment of all awards for compensation, medical fees and burial expenses available under the Act.

C. As proof of the assurance in B above the Commission will accept a copy of the municipality's or political subdivision's annual budget or a letter signed by each member of a council.

ARTICLE 16 - AVERAGE WEEKLY WAGE, COMPENSATION RATE, AND PAYMENT

67-1601 Expenses Incurred in Receiving Medical Treatment, Reimbursement.

A. The expenses incurred for travel to receive medical attention which shall be reimbursed to the claimant are:

   (1) Mileage to and from a place of medical attention which is more than five miles away from home in accordance with the amount allowed state employees for mileage; and

   (2) Actual cost of expenses incurred in using public transportation; and

   (3) Actual cost of reasonable overnight lodging and subsistence.

B. The claimant shall receive reimbursement from the employer's representative.

67-1602 Payment of Compensation.

A. The employer's representative shall pay all compensation directly to the claimant or guardian, unless otherwise ordered by the Commission.

B. The employer's representative may make a check payable to the claimant and the claimant's attorney, as allowed according to an approved Form 61, Attorney Fee Petition, or by order of the Commission.

C. The employer's representative shall make each payment in the form of a check. Payment to a person other than as directed above shall not acquit, protect, or discharge the employer or its representative for the payment due.

D. The claimant may request a hearing to assess a penalty and, or, interest for late payment by filing with the Commission's Judicial Department a motion to increase compensation payments according to R.67 215.

HISTORY: Amended by State Register Volume 21, Issue No. 4, eff April 25, 1997.

67-1603 Calculating the Compensation Rate.

A. The employer's representative shall calculate the claimant's compensation rate by completing a Form 20, Statement of Earnings of Injured Employee. When using a Form 20 results in a compensation rate that is not fair and just to either the employer or the claimant, an alternative method of computing the average weekly wage may be used which will most nearly approximate the amount the injured employee would be earning were it not for the injury.

B. Wage information shall be provided by the employer. The employer shall report gross wages, not net, and shall include gross pay allowed for vacations, bonuses, overtime, and allowances of any character made to an employee in lieu of wages as specified in a wage contract.

C. Completion of Form 20 for claims involving temporary compensation.

(1) The employer's representative shall prepare a Form 20 and serve the claimant a copy of the Form 20 according to R.67 211 within thirty days after temporary compensation begins.

(2) If the claimant disagrees with the compensation rate on the Form 20, he or she should contact the employer's representative in an effort to reconcile the differences. If a fair and just amount cannot be agreed upon, the employer's representative shall refer the question to the Commission's Claims Department for an administrative recommendation. If the claimant does not agree with the administrative recommendation, the claimant may request a hearing to determine the correct compensation rate by filing a Form 50 according to R.67 207.

(3) When the compensation rate on the Form 20 differs from that previously reported on the Form 15, the employer's representative shall adjust temporary compensation payments to reflect the compensation rate on the Form 20. The employer's representative shall file and serve a new Form 15 according to R.67 503 within thirty days. Check "corrected compensation rate" on the new Form 15.

(a) When the compensation rate on the Form 20 is higher than previously reported on the Form 15, the employer's representative immediately shall

pay the accrued compensation to the claimant and begin paying the claimant the revised compensation rate.

(b) When the compensation rate on the Form 20 is less than previously reported on the Form 15 and:

(i) The claimant agrees to the reduction, the employer's representative may deduct no more than twenty five percent from the weekly payments to recover the overpayment. The employer's representative may not stop temporary compensation payments unless otherwise ordered by the Commission.

(ii) During the first one hundred fifty days, when the claimant does not agree to the reduction, the employer's representative shall adjust the compensation rate to that reported on the Form 20. The claimant may request a hearing by filing a Form 50 according to R.67 207.

(iii) After the first one hundred fifty days, when the claimant does not agree to the reduction, the employer's representative shall continue paying the compensation rate reported on the Form 15 and may file a Form 21 to request a reduction in compensation.

D. Completion of Form 20 when no temporary compensation has been paid.

(1) The employer's representative shall prepare and file with the Judicial Department a Form 20 with its request for an informal conference or hearing when no Form 15 or Form 20 has been previously filed or when salary is paid in lieu of temporary compensation. The employer's representative shall serve the claimant a copy of the Form 20 according to R.67 211.

(2) The employer's representative shall prepare and file a Form 20 with the Judicial Department within thirty days of the claimant's request for a hearing or informal conference when no Form 15 or Form 20 has been previously filed or when salary is paid in lieu of temporary compensation. The employer's representative shall serve the claimant a copy of the Form 20 according to R.67 211.

E. When the parties stipulate the maximum compensation rate applies, the employer's representative shall complete Section C of the Form 20. File and serve the Form 20 as set forth above.

F. The employer's representative may use an alternative method to calculate the compensation rate when the Form 20 results in a compensation rate that is not fair and just to the claimant or the employer's representative. The employer's representative shall complete Section A(1)(4) of the Form 20 and calculate the compensation rate by the alternative method. Serve the Form 20 on the claimant according to R.67 211 within the times set forth above and attach documentation to the Form 20 showing how the compensation rate was calculated. Refer to section C(2) above when the claimant does not agree with the calculated compensation rate.

G. Failure to file and/or serve the Form 20 as set forth above may result in a fine and/or the commissioner or claims mediator determining the average weekly wage and compensation rate from information in the Commission's file and statements or evidence presented at the hearing or conference.

H. If the claimant alleges he or she worked for two or more employers when the injury occurred, the claimant may request the additional wages be included as part of his or her average weekly wage. The claimant shall obtain a completed Form 20 from

each of the other employers and file the Forms 20 with the Claims Department. The claimant shall provide a copy of each Form 20 to the employer's representative. The Commission will calculate the new compensation rate and notify the parties. If the employer's representative does not agree to pay the new compensation rate, the claimant may request a hearing to determine the proper compensation rate by filing a Form 50 pursuant to R.67 207.

HISTORY: Amended by State Register Volume 16, Issue No. 4, eff April 24, 1992; State Register Volume 21, Issue No. 4, eff April 25, 1997.

67-1605 Lump Sum Payment.

A. The employer's representative shall pay, in lump sum, a settlement or award which is less than one hundred weeks. When a settlement or award is more than one hundred weeks, the Hearing Commissioner may order a lump sum payment or the claimant may request a lump sum payment by filing a Form 24, Application for Lump Sum Payment.

B. If the claimant is not represented by an attorney, the claimant may request lump sum payment by filing a Form 24 with the Commission's Claims Department. The department will contact the employer's representative to inquire if it consents to payment in lump sum.

C. An attorney for the claimant must request the employer's consent to payment in lump sum payment prior to filing a Form 24.

  (1) If the parties agree to payment in lump sum, the claimant's attorney may file with the Claims Department a Form 24 and attach to the Form 24 a signed agreement for payment in lump sum.

  (2) If the employer's representative does not consent to payment in lump sum, the claimant's attorney may file a Form 24 with the Claims Department and attach a letter stating that the insurance carrier does not consent to the lump sum payment.

  (3) The Commission will automatically set a hearing. The parties will be notified according to R.67 607.

D. If the employer's representative consents to payment by lump sum, the Claims Department forwards the Form 24 to the original Hearing Commissioner who reviews the Form 24 and may approve the Form 24 without the appearance of the parties.

  (1) If the Commissioner approves the Form 24, he or she signs the Form 24 and the Claims Department commutes the award or settlement to present day value as provided in E below.

  (2) The employer's representative is notified of the amount of the lump sum payment.

  (3) If the Commissioner does not approve the Form 24, a hearing will be set automatically and the parties notified according to R.67 607.

E. Unless a Commissioner orders otherwise, or unless the settlement or award is less than ten weeks, the insurance carrier receives a discount for payment in lump sum.

  (1) To determine the discount, the Commission subtracts the number of weeks already paid from the total number of weeks as awarded.

(2) Weeks that have accrued but are not paid at the time of the commutation are not included in the calculation.

(3) Three weeks of compensation are accrued into the future to allow for processing the Form 24 and issuing the check to the claimant.

(4) The number of accrued weeks are deducted from the total number of weeks due the claimant, resulting in the number of weeks commuted.

(5) The present worth of the remaining weeks is determined according to the discount tables designated by the Commission.

(a) Each installment yet to accrue of the first one hundred weeks of the award shall be discounted at a rate of two percent. The Commission shall publish a present value table showing the conversion factors for zero through one hundred weeks.

(b) Each installment yet to accrue of weeks one hundred and one through five hundred shall be discounted at the yield to maturity rate of the Five Year U.S. Treasury Note as published on the first business day after January 1st each year, but in no case shall the discount rate exceed six percent or be less than two percent. The Commission shall publish a present value table showing the conversion factors for weeks one hundred and one through five hundred on the first business day following January 1st of each year. The present value table for weeks one hundred and one through five hundred published on the first business day following January 1st shall apply to all awards made during the year and until a new present value table is published the following year. The present value of the commutable weeks shall be determined based on the present value tables in effect on the date of the award or settlement.

(c) In the event the Commission makes an award of a partial lump sum in excess of five hundred weeks in accordance with S.C. Code Section 42 9 10(C) and Section 42 9 10(D), the discount rate shall be determined on a case by case basis.

(6) Multiplying the present worth of the weeks by the claimant's compensation rate results in the commuted value of the remaining weeks.

(7) Adding the value of the accrued weeks to the commuted value of the remaining weeks results in the total amount due the claimant.

F. The dollar value of a lump sum payment may be requested by writing the Claims Department.

HISTORY: Amended by State Register Volume 38, Issue No. 6, Doc. No. 4399, eff June 27, 2014.

67-1606 Lump Sum Payment in a Claim Involving a Fatality.

A. When the Commissioner orders or approves a lump sum payment to whole dependent(s), the accrued weeks are subtracted from the number of weeks awarded.

(1) The present worth of the weeks remaining is calculated and multiplied by compensation rate to obtain the commuted value.

(2) Adding the commuted value to the accrued value results in the total amount to be paid. This amount is divided proportionally among the dependents as ordered.

(3) Burial expenses are payable in addition to the five hundred weeks and are not commuted.

B. When the Commissioner orders or approves a lump sum payment to partial dependent(s), the number of accrued weeks of compensation is determined and multiplied by the proportion of the compensation rate awarded to the partial dependent resulting in the accrued weeks the partial dependent receives.

(1) Subtract the total accrued weeks from the number of weeks awarded.

(2) The present worth of the weeks remaining is calculated and multiplied by the proportion of the compensation rate payable to that partial dependent. The partial dependent is paid its proportional commuted amount plus the accrued amount allotted.

(3) The present worth of the total award is multiplied by the remaining portion of the compensation rate to obtain the commuted value of the remainder of the award. From the commuted value, the entire funeral expenses are deducted. The employer's representative pays the remaining amount as ordered.

C. When the Commissioner orders payment to nondependent children, multiply the present worth of the award by the compensation rate to obtain the commuted value of the award.

(1) Subtract the entire amount of the funeral bill from the commuted amount.

(2) The employer's representative pays the amount remaining as ordered.

D. When the Commissioner orders payment to the mother and, or, father, multiply the present worth of the award by the compensation rate to obtain the commuted value of the award. Subtract the entire amount of the funeral bill from the commuted amount. The employer's representative pays the amount remaining to the mother and father, divided equally.

E. When the Commissioner finds the deceased had no dependents, nondependent children, or mother or father, and orders payment to the Second Injury Fund, the burial expenses and the costs of administration of the deceased's estate are deducted from the total amount of the award. The remaining amount is commuted by dividing the amount of money remaining by the compensation rate to obtain the number of weeks remaining. The present worth of the weeks remaining is determined and multiplied by the compensation rate to obtain the commuted value. The employer's representative pays this amount to the Second Injury Fund, as ordered.

F. Refer to Section 42 9 320 for the payment of benefits to a minor child. Refer to the Probate Code of this State for payment in excess of ten thousand dollars. A conservator must be appointed for receipt of benefits.

ARTICLE 17 - REPEAL AND ADOPTION

67-1701 Repeal of Existing Regulations and Adoption of Articles 1 through 17, Inclusive.

A. Existing Regulations 67 1 through 67 38, inclusive, are repealed effective ninety days from the date of the General Assembly's approval of the adoption of Chapter 67, Article 1 through Article 17, inclusive.

B. The Regulations in Chapter 67, Article 1 through Article 17, inclusive, shall apply to claims filed, claims pending review, and requests for review filed on and after ninety days from the date of the General Assembly's approval of the adoption of Chapter 67, Article 1 through Article 17, inclusive.

ARTICLE 18 - MEDIATION

67-1801 Mediation.

A. This mediation regulation is established to resolve disputes without the necessity of a hearing. The purpose is to afford a meaningful opportunity to the parties to achieve an efficient and a just resolution of their disputes in a timely and a cost effective manner.

B. A Commissioner has the discretion to order mediation in any pending claim before the Commissioner and to select a duly qualified mediator.

   (1) A Commissioner must retain jurisdiction of the claim solely for those issues being mediated.

   (2) A Commissioner does not retain jurisdiction of the claim for the life of the claim, unless the Commissioner so chooses, only until those pending issues are resolved.

   (3) A Commissioner's authority to order mediation in any pending claim is not limited by claims listed in Section 67 1802.

HISTORY: Added by State Register Volume 37, Issue No. 6, eff June 28, 2013.

67-1802 Mediation Required with Certain Claims.

A. It is ordered by the Commission that claims arising under Section 42 9 10, or claiming permanent and total disability pursuant to Section 42 9 30 (21), occupational disease cases, third party lien reduction claims, contested death claims, mental/mental injury claims, and cases of concurrent jurisdiction under the South Carolina Workers' Compensation Act and the Federal Longshore and Harbor Workers' Compensation Act must be mediated prior to a hearing.

   (1) In contested death claims, a Commissioner must still make a finding that a good faith dependency investigation has been completed.

   (2) Except for contested death claims, all claims listed in this section would apply only to claims where compensability of the accident is admitted by the employer/carrier.

   (3) Claims involving multiple employees arising out of employment with the same Employer, whether or not compensability has been admitted, shall be subject

to a scheduling order and shall be mediated prior to a hearing. Participation in mediation in no way constitutes an admission of compensability at any subsequent proceeding.

(4) Unless an unrepresented claimant requests that the claimant's case be mediated, the Commission shall enter an order dispensing with mediation.

HISTORY: Added by State Register Volume 37, Issue No. 6, eff June 28, 2013.

67-1803 Mediation Requested by Parties.

The parties may request mediation by the proper submission of a Form 21, Form 50, Form 51, or the response to the Form 21, indicating a request for mediation. Except as provided in section 67 1802 A, either party may object to mediation by the proper submission of the Form 21, Form 50, or the response to the Form 21. If the parties do not agree to mediation, pursuant to this section, then the case shall be set by the Judicial Department in the normal course of the docket scheduling.

HISTORY: Added by State Register Volume 37, Issue No. 6, eff June 28, 2013.

67-1804 Selection of Mediator and Required Schedule.

A. The parties may consent to use any mediator who is duly qualified. The mediator must be certified as a mediator per the certification process established by the South Carolina Bar Association.

B. The parties must select a mediator within ten days of the filing of the Form 51 or the response to the Form 21, and must promptly notify the Commission of the mediator and proposed mediation date.

C. The mediation must be completed within sixty days of the filing of the Form 51 or the response to the Form 21, unless otherwise agreed to by the parties. If the mediation is not completed within the sixty day timeframe then the case shall be set by the Judicial Department in the normal course of the docket scheduling.

D. If the parties cannot agree on a mediator, the Commission shall appoint a duly qualified mediator for them.

HISTORY: Added by State Register Volume 37, Issue No. 6, eff June 28, 2013.

67-1805 Parties Represented.

In addition to their attorney being present, each party shall provide a representative, who shall attend the mediation in person or via telephone. The representative shall have authority to enter into negotiations, in good faith, to resolve the issues in dispute. If the representative attends via telephone, they shall be available by telephone for the duration of the mediation. Reasonable notice shall be provided to the opposing party concerning attendance via telephone, prior to the mediation. This regulation does not prevent a claimant from proceeding pro se.

HISTORY: Added by State Register Volume 37, Issue No. 6, eff June 28, 2013.

67-1806 Mediation Communications Confidential.

A. All communications and statements that take place within the context of mediation shall be confidential and not subject to disclosure. Such communications or

statements shall not be disclosed by any mediator, party, attorney, or attendee and may not be used as evidence in any proceeding. An executed agreement resulting from mediation is not subject to the confidentiality requirements described above.

B. Neither the mediator nor any third party observer may be subpoenaed or otherwise required to testify concerning a mediation or settlement negotiation in any proceeding. The mediator's notes shall not be placed in the Commission's file, shall not be subject to discovery, and shall not be used as evidence in any proceeding.

HISTORY: Added by State Register Volume 37, Issue No. 6, eff June 28, 2013.

67-1807 Expense of Mediation.

The parties shall share the cost of mediation equally, unless otherwise agreed by the parties, or as otherwise ordered by the Commission.

HISTORY: Added by State Register Volume 37, Issue No. 6, eff June 28, 2013.

67-1808 Penalties.

Any party who refuses or neglects to act in good faith during the mediation may be subject to a fine not to exceed the actual cost of the mediation. Any party who believes this provision has been violated may file a Motion for a Rule to Show Cause before the jurisdictional Commissioner for purposes of assessing fines and penalties. The parties shall have the right of review and appeal as in other cases.

HISTORY: Added by State Register Volume 37, Issue No. 6, eff June 28, 2013.

67-1809 Forms Required Upon Completion.

A Form 70 shall be filed by the Mediator with the Judicial Department at the conclusion of the mediation. A Form 70 shall not become a part of the Commission's file and will solely be used for tracking purposes.

HISTORY: Added by State Register Volume 37, Issue No. 6, eff June 28, 2013.

FORMS

Form # Title of Form Filing Fee

5 Corporate Officer Notice to Reject No fee

6 Application to Create a Self Insurance Fund $250

6A Application for Membership in a Self Insured Fund $25

7 Application to Individually Self Insure $250.00 plus $100.00 for each subsidiary

7A Corporate Guaranty No fee

8 Bond Required of Employer Carrying His Own Risk No fee

8B Irrevocable Letter of Credit No fee

10 South Carolina Self Insurance Tax Form No fee

11 Fund Quarterly Financial Report No fee

12 A First Report of Injury No fee

12M Annual Minor Medical Report No fee

14A Health Insurance Claim Form No fee

14B Physician's Statement No fee
15 Temporary Compensation Report $25.00 for Section III only
15S Supplemental Report of Varying Temporary Partial Payments No fee
16 Agreement for Permanent Disability/Disfigurement Compensation $25.00 if Claimant is represented
16A Agreement for Permanent Disability/Disfigurement Compensation $25.00 if Claimant is represented
17 Receipt of Compensation No fee
18 Periodic Report No fee
19 Status Report and Compensation Receipt No fee
20 Statement of Earnings of Injured Employee No fee
21 Employer's Request for Hearing $25
22 Claimant's Answer to Request for Hearing No fee
24 Application for Lump Sum Award $25
27 Subpoena No fee
30 Request for Commission Review $150
32 Request to Waive Appeal Filing Fee No fee
33 Hearing Postponed No fee
38 Employer's Withdrawal of Election to Adopt the South Carolina Workers' Compensation Act No fee
39 Coverage Coding Sheet No fee
50 Employee's Notice of Claim and/or Request for Hearing $25.00 for Request for Hearing only
51 Employer's Answer to Request for Hearing No fee
52 Employee's Notice of Claim and/or Request for Hearing, Death Case $25.00 for Request for Hearing only
53 Employer's Answer to Request for Hearing, Death Case No fee
54 Employer's Notice of Claim and/or Request for Hearing $25
55 Second Injury Fund's Answer to Employee's Request for Hearing No fee
58 Pre Hearing Brief No fee
59 Appellant's Informal Brief No fee
61 Attorney Fee Petition No fee
61 Order Attorney Fee Petition No fee
61A Attorney Fee Petition Supplemental Information No fee
65 Occupational Disease Waiver No fee
70 Mediator Report No fee
S 1 Notice of Third Party Action, Employee Carrier No fee
S 2 Notice of Third Party Action, Employee No fee
S 3 Entitlement to Right of Action No fee
S 4 Court Certificate No fee

Code of Laws of South Carolina 1976 Annotated

§ 42-1-10. Short title.

This title shall be known and cited as "The South Carolina Workers' Compensation Law". All references in this title to "workmen's compensation" shall mean "workers' compensation"; provided, however, all state agencies and departments and all political subdivisions of the State must exhaust the use of all current forms, stationery, and any other printed material before using, printing, or preparing any new forms, stationery, or printed material reflecting the change effected by this section.

§ 42-1-20. Application of definitions.

When used in this title, unless the context otherwise requires, the terms dealt with in Sections 42-1-30 to 42-1-190 shall include the categories or shall have the meanings severally ascribed to them in said sections.

§ 42-1-30. "Adoption" and "adopted" defined.

The term "adoption" or "adopted" means legal adoption prior to the time of the injury.

§ 42-1-40. "Average weekly wages" defined.

Effective: March 30, 2010

"Average weekly wages" means the earnings of the injured employee in the employment in which he was working at the time of the injury during the period of fifty-two weeks immediately preceding the date of the injury, including the subsistence allowance paid to veteran trainees by the United States Government if the amount of the allowance is reported monthly by the trainee to his employer. "Average weekly wage" must be calculated by taking the total wages paid for the last four quarters immediately preceding the quarter in which the injury occurred as reported on the Department of Employment and Workforce's Employer Contribution Reports divided by fifty-two or by the actual number of weeks for which wages were paid, whichever is less. When the employment, prior to the injury, extended over a period of less than fifty-two 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, as long as results fair and just to both parties will be obtained. Where, by reason of a shortness of time during which the employee has been in the employment of his employer or the casual nature or terms of his employment, it is impracticable to compute the average weekly wages as defined in this section, regard is to be had to the average weekly amount which during the fifty-two weeks previous to the injury was being earned by a person of the same grade and character employed in the same class of employment in the same locality or community.

When for exceptional reasons the foregoing would be unfair, either to the employer or employee, such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury. Whenever allowances of any character made to an employee in lieu of wages are a specified part of a wage contract they are deemed a part of his earnings.

§ 42-1-50. "Average weekly wage in this State for the preceding fiscal year" defined.

Effective: March 30, 2010

As used in this title, the term "average weekly wage in this State for the preceding fiscal year" shall mean the average weekly wage for that period determined by the Department of Employment and Workforce for employment covered by the employment security compensation law.

§ 42-1-60. "Carrier" and "insurer" defined.

The term "carrier" or "insurer" means any person or fund authorized under Section 42-5-20 to insure under this title and includes self-insurers.

§ 42-1-70. "Child", "grandchild", "brother" and "sister" defined.

The term "child" shall include a posthumous child, a child legally adopted prior to the injury of the employee and a stepchild or acknowledged illegitimate child dependent upon the deceased, but does not include married children unless wholly dependent upon him. "Grandchild" means a child of a child. "Brother" and "sister" include stepbrothers and stepsisters, half-brothers and half-sisters and brothers and sisters by adoption, but do not include married brothers nor married sisters unless wholly dependent upon the employee. "Child," "grandchild," "brother" and "sister" include only persons under eighteen years of age or wholly dependent upon the employee.

§ 42-1-80. "Commission" defined.

The term "commission" means the South Carolina Workers' Compensation Commission created under the provisions of this title.

§ 42-1-90. "Commission" defined; reference to administrative or judicial department.

Whenever the word "commission" is used in this title, it shall refer to the administrative department in matters relating to administration and the judicial department in matters relating to the judicial function of the commission.

§ 42-1-100. "Compensation" defined.

The term "compensation" means the money allowance payable to an employee or to his dependents as provided for in this title and includes funeral benefits provided in this title.

§ 42-1-110. “Death” defined.

The term “death” as a basis for right to compensation means only death resulting from an injury.

§ 42-1-120. “Disability” defined.

The term “disability” means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment.

§ 42-1-130. “Employee” defined.

The term “employee” means every person engaged in an employment under any appointment, contract of hire, or apprenticeship, expressed or implied, oral or written, including aliens and also including minors, whether lawfully or unlawfully employed, but excludes a person whose employment is both casual and not in the course of the trade, business, profession, or occupation of his employer; and as relating to those employed by the State, the term “employee” includes all members of the South Carolina State and National Guard while performing duties in connection with the membership except duty performed pursuant to Title 10 and Title 32 of the United States Code; all volunteer state constables appointed pursuant to Section 23-1-60, while performing duties in connection with their appointments and authorized by the State Law Enforcement Division; and all officers and employees of the State, except those elected by the people, or by the General Assembly, or appointed by the Governor, either with or without the confirmation of the Senate; and as relating to municipal corporations and political subdivisions of the State, the term “employee” includes all officers and employees of municipal corporations and political subdivisions, except those elected by the people or elected by the council or other governing body of any municipal corporation or political subdivision, who act in purely administrative capacities and are to serve for a definite term of office. Any reference to an employee who has been injured or when the employee is dead, includes also his legal representative, dependents, and other persons to whom compensation may be payable.

Any sole proprietor or partner of a business whose employees are eligible for benefits under this title may elect to be included as employees under the workers’ compensation coverage of the business if they are actively engaged in the operation of the business and if the insurer is notified of their election to be included. Any sole proprietor or partner, upon this election, is entitled to employee benefits and is subject to employee responsibilities prescribed in this title.

§ 42-1-140. “Employer” defined.

The term “employer” means the State and all political subdivisions thereof, all public and quasi-public corporations therein, every person carrying on any employment and the legal representative of a deceased person or the receiver or trustee of any person.

§ 42-1-150. “Employment” defined.

The term “employment” includes employment by the State, all political subdivisions thereof, all public and quasi-public corporations therein and all private employments in which four or more employees are regularly employed in the same business or establishment.

§ 42-1-160. "Injury" and "personal injury" defined.

Effective: July 1, 2007

(A) "Injury" and "personal injury" mean only injury by accident arising out of and in the course of employment and shall not include a disease in any form, except when it results naturally and unavoidably from the accident and except such diseases as are compensable under the provisions of Chapter 11 of this title. In construing this section, an accident arising out of and in the course of employment includes employment of an employee of a municipality outside the corporate limits of the municipality when the employment was ordered by a duly authorized employee of the municipality.

(B) Stress, mental injuries, and mental illness arising out of and in the course of employment unaccompanied by physical injury and resulting in mental illness or injury are not considered a personal injury unless the employee establishes, by a preponderance of the evidence:

(1) that the employee's employment conditions causing the stress, mental injury, or mental illness were extraordinary and unusual in comparison to the normal conditions of the particular employment; and

(2) the medical causation between the stress, mental injury, or mental illness, and the stressful employment conditions by medical evidence.

(C) Stress, mental injuries, heart attacks, strokes, embolisms, or aneurisms arising out of and in the course of employment unaccompanied by physical injury are not considered compensable if they result from any event or series of events which are incidental to normal employer/employee relations including, but not limited to, personnel actions by the employer such as disciplinary actions, work evaluations, transfers, promotions, demotions, salary reviews, or terminations, except when these actions are taken in an extraordinary and unusual manner.

(D) Stress, mental injuries, and mental illness alleged to have been aggravated by a work-related physical injury may not be found compensable unless the aggravation is:

(1) admitted by the employer/carrier;

(2) noted in a medical record of an authorized physician that, in the physician's opinion, the condition is at least in part causally related or connected to the injury or accident, whether or not the physician refers the employee for treatment of the condition;

(3) found to be causally related or connected to the accident or injury after evaluation by an authorized psychologist or psychiatrist; or

(4) noted in a medical record or report of the employee's physician as causally related or connected to the injury or accident.

(E) In medically complex cases, an employee shall establish by medical evidence that the injury arose in the course of employment. For purposes of this subsection, "medically complex cases" means sophisticated cases requiring highly scientific procedures or techniques for diagnosis or treatment excluding MRIs, CAT scans, x-rays, or other similar diagnostic techniques.

(F) The word "accident" as used in this title must not be construed to mean a series of events in employment, of a similar or like nature, occurring regularly, continuously, or at frequent intervals in the course of such employment, over extended periods of

time. Any injury or disease attributable to such causes must be compensable only if culminating in a compensable repetitive trauma injury pursuant to Section 42-1-172 or an occupational disease pursuant to the provisions of Chapter 11 of this title.

(G) As used in this section, “medical evidence” means expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed health care provider.

§ 42-1-170. “Parent” defined.

The term “parent” includes stepparents and parents by adoption, parents-in-law and any person who for more than three years prior to the death of the deceased employee stood in the place of a parent to him, if dependent on the injured employee.

§ 42-1-172. Definitions.

Effective: July 1, 2007

(A) “Repetitive trauma injury” means an injury which is gradual in onset and caused by the cumulative effects of repetitive traumatic events. Compensability of a repetitive trauma injury must be determined only under the provisions of this statute.

(B) An injury is not considered a compensable repetitive trauma injury unless a commissioner makes a specific finding of fact by a preponderance of the evidence of a causal connection that is established by medical evidence between the repetitive activities that occurred while the employee was engaged in the regular duties of his employment and the injury.

(C) As used in this section, “medical evidence” means expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed and qualified medical physician.

(D) A “repetitive trauma injury” is considered to arise out of employment only if it is established by medical evidence that there is a direct causal relationship between the condition under which the work is performed and the injury.

(E) Upon reaching maximum medical improvement, the employee may be entitled to benefits pursuant to Section 42-9-10, 42-9-20, or 42-9-30. Medical benefits for compensable repetitive trauma injuries shall be as provided elsewhere in this title.

§ 42-1-175. “Surviving spouse” defined.

The term “surviving spouse” includes only the decedent’s wife or husband living with or dependent for support upon the decedent at the time of the decedent’s death or living apart from the decedent for justifiable cause or by reason of desertion by the decedent at such time.

§ 42-1-310. Presumption of acceptance of provisions of title.

Every employer and employee, except as stated in this chapter, shall be presumed to have accepted the provisions of this title respectively to pay and accept compensation for personal injury or death by accident arising out of and in the course of the employment and shall be bound thereby.

§ 42-1-315. Applicability of title respecting work-related injuries to program participants.

The provisions of this title apply to and include all participants in the Tech Prep or other structured school to work programs, whether compensated or not, for injuries by accident arising out of and in the course of their employment with a sponsoring employer.

§ 42-1-320. Applicability to public entities and their employees.

The State, its municipal corporations and political subdivisions thereof, and the employees of the State or its municipal corporations and political subdivisions are subject to this title.

§ 42-1-360. Exemption of casual employees and certain other employments.

Effective: July 1, 2007

This title does not apply to:

(1) a casual employee, as defined in Section 42-1-130;

(2) any person who has regularly employed in service less than four employees in the same business within the State or who had a total annual payroll during the previous calendar year of less than three thousand dollars regardless of the number of persons employed during that period;

(3) a state and county fair association, unless the employer voluntarily elects to be bound by this title, as provided by Section 42-1-380;

(4) an agricultural employee, unless the agricultural employer voluntarily elects to be bound by this title, as provided by Section 42-1-380;

(5) a railroad, railroad employee, railway express company, or railway express company employee; nor may this title be construed to repeal, amend, alter, or affect in any way the laws of this State relating to the liability of a railroad or railway express company for an injury to a respective employee;

(6) a person engaged in selling any agricultural product for a producer of them on commission or for other compensation, paid by a producer, when the product is prepared for sale by the producer;

(7) a licensed real estate sales person engaged in the sale, leasing, or rental of real estate for a licensed real estate broker on a straight commission basis and who has signed a valid independent contractor agreement with the broker;

(8) a federal employee in this State;

(9) an individual who owns or holds under a bona fide lease-purchase or installment-purchase agreement a tractor trailer, tractor, or other vehicle, referred to as “vehicle”, and who, under a valid independent contractor contract provides that vehicle and the individual’s services as a driver to a motor carrier. For purposes of this item, any lease-purchase or installment-purchase of the vehicle may not be between the individual and the motor carrier referenced in this title, but it may be between the individual and an affiliate, subsidiary, or related entity or person of the motor carrier, or any other lessor or seller. Where the lease-purchase or installment-purchase is between the individual and an affiliate,

subsidiary, or related entity or person of the motor carrier, or any other lessor or seller, the vehicle acquisition or financing transaction must be on terms equal to terms available in customary and usual retail transactions generally available in the State. This individual is considered an independent contractor and not an employee of the motor carrier under this title. The individual and the motor carrier to whom the individual contracts or leases the vehicle mutually may agree that the individual or workers, or both, is covered under the motor carrier's workers' compensation policy or authorized self-insurance if the individual agrees to pay the contract amounts requested by the motor carrier. Under any such agreement, the independent contractor or workers, or both, must be considered an employee of the motor carrier only for the purposes of this title and for no other purposes.

§ 42-1-380. Waiver of exemption by employer.

Any person employing employees in the State and exempted from the mandatory provisions of this title may come in under the terms of this title and receive the benefits and be subject to the liabilities of this title by filing with the commission a written notice of his desire to be subject to the terms and provisions of this title. Any such person shall come under the provisions of this title and be affected thereby thirty days after the date of such notice.

§ 42-1-390. Withdrawal of waiver of exemption by employer.

Any employer who, having elected to come under this title, being at that time exempt from this title, and subsequently desiring to withdraw from under its terms, may give notice in writing either to the commission that he no longer is under the terms of this title or to his insurer who shall give notice in writing to the commission that the employer is no longer under the terms of this title. If the insurer does not give the notice to the commission as required by this section, the insurer shall pay a penalty of one thousand dollars to the commission which shall be used by the commission to offset the costs of administering the provisions of Title 42. In the case where the employer gives the notice to the commission that he no longer is under the terms of this title, the commission shall, in turn, within thirty days of receipt of the employer's notice, inform the employer, in writing, that he must provide written notification by a date certain to his employees of his withdrawal from the terms of this title; however, no employer is required to so notify his employees unless the commission informs him he must do so, as required by this section. At the expiration of sixty days from the date of written notice to the commission the employer no longer is liable under the terms of this title and may be permitted to set up any defense as he may be advised to any action brought against him for personal injury or death by accident to any employee.

§ 42-1-400. Liability of owner to workmen of subcontractor.

When any person, in this section and Sections 42-1-420 and 42-1-430 referred to as "owner," undertakes to perform or execute any work which is a part of his trade, business or occupation and contracts with any other person (in this section and Sections 42-1-420 to 42-1-450 referred to as "subcontractor") for the execution or performance by or under such subcontractor of the whole or any part of the work undertaken by such owner, the owner shall be liable to pay to any workman employed in the work any compensation

under this title which he would have been liable to pay if the workman had been immediately employed by him.

§ 42-1-410. Liability of contractor to workmen of subcontractor.

When any person, in this section and Sections 42-1-420 to 42-1-450 referred to as "contractor," contracts to perform or execute any work for another person which is not a part of the trade, business or occupation of such other person and contracts with any other person (in this section and Sections 42-1-420 to 42-1-450 referred to as "subcontractor") for the execution or performance by or under the subcontractor of the whole or any of the work undertaken by such contractor, the contractor shall be liable to pay to any workman employed in the work any compensation under this title which he would have been liable to pay if that workman had been immediately employed by him.

§ 42-1-415. Representation of coverage; reimbursement from Uninsured Employers' Fund.

(A) Notwithstanding any other provision of law, upon the submission of documentation to the commission that a contractor or subcontractor has represented himself to a higher tier subcontractor, contractor, or project owner as having workers' compensation insurance at the time the contractor or subcontractor was engaged to perform work, the higher tier subcontractor, contractor, or project owner must be relieved of any and all liability under this title except as specifically provided in this section. In the event that employer is uninsured, regardless of the number of employees that employer has, the higher tier subcontractor, contractor, project owner, or his insurance carrier shall in the first instance pay all benefits due under this title. The higher tier subcontractor, contractor, project owner, or his insurance carrier may petition the commission to transfer responsibility for continuing compensation and benefits to the Uninsured Employers' Fund. The Uninsured Employers' Fund shall assume responsibility for claims within thirty days of a determination of responsibility made by the commission. The higher tier subcontractor, contractor, or project owner must be reimbursed from the Uninsured Employers' Fund as created by Section 42-7-200 for compensation and medical benefits as may be determined by the commission. Any disputes arising as a result of claims filed under this section must be determined by the commission.

(B) To qualify for reimbursement under this section, the higher tier subcontractor, contractor, or project owner must collect documentation of insurance as provided in subsection (A) on a standard form acceptable to the commission. The documentation must be collected at the time the contractor or subcontractor is engaged to perform work and must be turned over to the commission at the time a claim is filed by the injured employee.

(C) The knowing and wilful falsifying of information contained in standard forms submitted pursuant to this section must be considered fraud and subjects the person responsible for filing the false documentation to the penalties for fraud as provided by law. Knowing and wilful failure to notify, by certified mail, the higher tier subcontractor, contractor, or project owner who originally was provided documentation of workers' compensation coverage of a lapse in coverage within five days after the lapse is considered fraud and subjects the contractor or subcontractor who represented himself as having workers' compensation insurance to the penalties for fraud provided by law. Additionally, a contractor or subcontractor who knowingly and wilfully falsely documents workers'

compensation insurance or knowingly and wilfully fails to provide notice of lapse in workers' compensation coverage as specified in this section, or any contractor or subcontractor who refuses to reimburse the Uninsured Employers' Fund for a claim paid on its behalf shall suffer the revocation of his license or certificate as a contractor or residential home builder under applicable provisions of Title 40; provided, however, notwithstanding any other provision of law, the license or certificate of a contractor or residential home builder shall be revoked for a period of two years when the contractor or subcontractor knowingly and wilfully falsely documents workers' compensation insurance or knowingly or wilfully fails to provide notice of lapse in workers' compensation coverage as specified in this section. Upon expiration of the two-year revocation period, or when the license or certificate of any contractor or subcontractor is revoked for refusal to reimburse the Uninsured Employers' Fund for a claim paid on its behalf, the licensing entity of the contractor or subcontractor may reissue the license or certificate of the contractor or residential home builder in the same manner as any other revoked license.

(D) However, nothing in this section shall be construed to abrogate the immunity to tort liability of any subcontractor under this title or any higher tier subcontractor, contractor, or project owner who may be considered a statutory employer as provided by Sections 42-1-400, 42-1-410, 42-1-420, 42-1-430, and 42-1-450.

§ 42-1-420. Liability of subcontractor to workmen of sub-subcontractor.

When a subcontractor in turn contracts with still another person, in this section and Sections 42-1-430 to 42-1-450 also referred to as a "subcontractor," for the performance or execution by or under such last subcontractor of the whole or any part of the work undertaken by the first subcontractor, the liability of the owner or contractor shall be the same as the liability imposed by Sections 42-1-400 and 42-1-410.

§ 42-1-430. Construction of title when proceedings are against owner or contractor.

When compensation is claimed from or proceedings are taken against an owner or contractor then, in the application of this title, reference to the owner or contractor shall be substituted for reference to the subcontractor, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the subcontractor by whom he is immediately employed.

§ 42-1-440. Indemnity of principal contractor.

When the principal contractor is liable to pay compensation under any of Sections 42-1-400 to 42-1-450, he shall be entitled to indemnity from any person who would have been liable to pay compensation to the workmen independently of such sections or from an intermediate contractor, and have a cause of action therefor.

A principal contractor when sued by a workman of a subcontractor shall have the right to call in that subcontractor or any intermediate contractor or contractors as defendant or codefendant.

§ 42-1-450. Workman may recover from subcontractor.

Nothing in Sections 42-1-400 to 42-1-450 shall be construed as preventing a workman from recovering compensation under this title from a subcontractor instead of from the principal contractor but he shall not collect from both.

§ 42-1-460. Contracts subject to title.

Every contract of service between any employer and employee covered by this title, written or implied, in operation or made or implied prior to July 17, 1936, shall be presumed to continue, subject to the provisions of this title; and every such contract made subsequent to said date shall be presumed to have been made subject to the provisions of this title. A like presumption shall exist equally in the case of all minors, unless notice of the same character be given by or to the parent or guardian of the minor.

§ 42-1-470. Coverage of prisoners and convicts generally.

Except as otherwise specifically provided in this article, this title shall not apply to state, county or municipal prisoners and convicts.

§ 42-1-480. Coverage for inmates of the State Department of Corrections.

Any inmate of the State Department of Corrections, as defined in this section, in the performance of his work in connection with the maintenance of the institution, any department vocational training program, or with any industry maintained therein, or with any highway or public works activity outside the institution, who suffers an injury for which compensation is specifically prescribed in this title, may, upon being released from such institution either upon parole or upon final discharge, be awarded and paid compensation under the provisions of this title. If death results from such injury, death benefits shall be awarded and paid to the dependents of the inmate. The time limit for filing a claim under this section shall be one year from the date of death of the inmate or the date of his release either by parole or final discharge, and no inmate shall be eligible for benefits unless his injury is reported prior to his release from custody of the department. If any person who has been awarded compensation under the provisions of this section shall be recommitted to an institution covered by this section, such compensation shall immediately cease, but may be resumed upon subsequent parole or discharge.

For purposes of this section, the term “inmate” includes any person sentenced to the South Carolina Department of Corrections and who is then in the jurisdiction of the department, or any person sentenced to the county public works who has been transferred to the Department of Corrections for confinement. An inmate who has been sentenced to the Department of Corrections and who is temporarily transferred to the county public works, or to any other South Carolina law-enforcement authority, or to out-of-state authorities, is not considered to be in the “jurisdiction” of the South Carolina Department of Corrections for purposes of this section.

This section shall not apply to patients of the South Carolina Department of Mental Health or those persons who are confined within the jurisdiction of the county prisons, county jails, city jails or overnight lockups or to any inmate injured in a fight, riot, recreational activity or other incidents not directly related to his work assignment.

§ 42-1-490. Payments to claimant-inmates of State Department of Corrections.

Payments for injuries as authorized in Section 42-1-480 shall be paid from the State Accident Fund from appropriations thereto in the manner claims are paid to state employees.

Notwithstanding any other provision of this title, no inmate shall be paid a lump-sum settlement for an injury, disfigurement or death benefit. Any such lump-sum benefit which might normally be paid to an inmate or another eligible person who is not an inmate shall be paid on a monthly basis not to exceed ten percent of the total amount in any month, in addition to any weekly benefits awarded.

§ 42-1-500. County or municipal prisoners.

A county or municipality, by resolution of its governing body, may elect to cover prisoners in the custody of the county or municipality with workers' compensation benefits in accordance with the provisions of Sections 42-1-480 and 42-1-490. As used in this section, prisoners in the custody of the county include prisoners in the custody of the county sheriff. The appropriate officials shall make arrangements and necessary adjustments in their contributions or premiums to the State Accident Fund or other insurers as the fund or insurers determine necessary to provide compensation for county or municipal prisoners in appropriate cases. The provisions of this section permit workers' compensation coverage only to county or municipal prisoners performing work assigned by officials of the county or municipality or engaged in a vocational training program and, further, apply to these prisoners regardless of the length of the sentence to be served.

For the purposes of this section, when a county or municipality elects to cover its prisoners with workers' compensation benefits, the coverage also includes:

(a) those prisoners who have been sentenced to the Department of Corrections and who are assigned to a county or municipality; and

(b) those prisoners who have been sentenced to the Department of Corrections and who are being used for public service work or related activities while being supervised by the county or municipality.

§ 42-1-505. Coverage of convicted persons under custody or supervision of Department of Probation, Parole and Pardon Services.

The Department of Probation, Parole and Pardon Services may elect to cover convicted persons under its custody or supervision with workers' compensation benefits in accordance with the provisions of this title. For purposes of this section, the department is considered the employer for those persons under its custody or supervision performing public service employment.

§ 42-1-520. Defenses available to employer operating under title when employee is not so operating.

An officer of a corporation who elects not to operate under this title, shall, in any action to recover damages for personal injury or death brought against an employer accepting the compensation provisions of this title, proceed at common law and the employer may

avail himself of the defenses of contributory negligence, negligence of a fellow servant, and assumption of risk, as such defenses exist at common law.

§ 42-1-540. Employee's rights and remedies under title exclude all others against employer.

The rights and remedies granted by this title to an employee when he and his employer have accepted the provisions of this title, respectively, to pay and accept compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents or next of kin as against his employer, at common law or otherwise, on account of such injury, loss of service or death. Provided, however, this limitation of actions shall not apply to injuries resulting from acts of a subcontractor of the employer or his employees or bar actions by an employee of one subcontractor against another subcontractor or his employees when both subcontractors are hired by a common employer.

§ 42-1-550. Rights against third persons prior to award.

When an employee, his personal representative or other person may have a right to recover damages for injury, loss of service or death from any person other than the employer, he may institute an action at law against such third person before an award is made under this title and prosecute it to its final determination.

§ 42-1-560. Right to compensation not affected by liability of third party; rights and remedies against third party.

(a) The right to compensation and other benefits under this title shall not be affected by the fact that the injury or death is caused under circumstances creating a legal liability in some person, other than the employer or another person exempt from liability under Section 42-1-540 to pay damages therefor, the person so liable being hereinafter referred to as the third party. The respective rights and interests of the injured employee, or, in the case of his death, his dependents and any person entitled to sue therefor, and of the employer or person, association, corporation or carrier liable for the payment of compensation and other benefits under this title, hereinafter called the "carrier," in respect to the cause of action and the damages recovered shall be as provided by this section.

(b) The injured employee or, in the event of his death, his dependents, shall be entitled to receive the compensation and other benefits provided by this title and to enforce by appropriate proceedings his or their rights against the third party; provided, that action against the third party must be commenced not later than one year after the carrier accepts liability for the payment of compensation or makes payment pursuant to an award under this title, except as hereinafter provided. In such case the carrier shall have a lien on the proceeds of any recovery from the third party whether by judgment, settlement or otherwise, to the extent of the total amount of compensation, including medical and other expenses, paid, or to be paid by such carrier, less the reasonable and necessary expenses, including attorney fees, incurred in effecting the recovery, and to the extent the recovery shall be deemed to be for the benefit of the carrier. Attorney fees owed and payable by the carrier to the attorneys effecting the recovery shall be set by the commission but shall not exceed one third of the

total claim amount paid by the carrier to the injured employee. Such fees shall be paid from the funds recovered by the carrier. Any balance remaining after payment of necessary expenses and satisfaction of the carrier's lien shall be applied as a credit against future compensation benefits for the same injury or death and shall be distributed as provided in subsection (g). Notice of the commencement of the action shall be given within thirty days thereafter to the Workers' Compensation Commission, the employer and carrier upon a form prescribed by the Workers' Compensation Commission.

(c) If, prior to the expiration of the one-year period referred to in subsection (b), or within thirty days prior to the expiration of the time in which such action may be brought, the injured employee, or, in event of his death, the person entitled to sue therefor shall not have commenced action against or settled with the third party, the right of action of the injured employee, or, in event of his death, the person entitled to sue therefor shall pass by assignment to the carrier; provided, that the assignment shall not occur less than twenty days after the carrier has notified the injured employee or, in the event of his death, his personal representative or other person entitled to sue therefor in writing, by personal service or by registered or certified mail that failure to commence such action will operate as an assignment of the cause of action to the carrier. Prior to the expiration of ninety days after the assignment, the carrier shall give the Workers' Compensation Commission, the injured employee, or, in event of his death, his dependents and any other person entitled to sue therefor notice, upon a form prescribed by the Workers' Compensation Commission, that action has been or will be commenced against the third party. Failure to give this notice, or to commence the action at least thirty days prior to the expiration of the time within which such action may be brought, shall operate as a reassignment of the right of action to the injured employee, or, in event of his death, his personal representative or other person entitled to sue therefor, and the rights and obligations of the parties shall be as provided by subsection (b) of this section.

If the carrier as assignee recovers in an action:

(1) for injury, an amount in excess of the sum of the total of benefits paid or provided the injured employee and the reasonable expenses, including attorneys' fees, incurred in making such recovery; or

(2) for death, an amount on behalf of the dependents of the employee in excess of the benefits paid the dependents, and the reasonable expenses, including attorneys' fees, incurred in making the recovery, the excess shall be applied as a credit against future compensation and other benefits for the same injury or death and shall be distributed in accordance with subsection (g).

(d) If the persons entitled to share in the proceeds of an action brought under subsections (b) or (c) for death of the employee include any person who was not a dependent of the deceased employee, such person's share of any recovery made in the action, less a rateable share of the reasonable expenses incurred in making the recovery, shall be paid to the person or to the personal representative of the deceased.

(e) The injured employee, or, in event of his death, his dependents, and the carrier may, by agreement approved by the Workers' Compensation Commission, or in event of a settlement made during actual trial of the action against the third party, approved by the presiding judge at the trial, provide for distribution of the proceeds of any recovery in the action different from that prescribed by subsection (b) or (c).

(f) If the third party, with notice or knowledge of the carrier's lien, and the employee, or, in the event of his death his personal representative or person entitled to sue therefor make a compromise settlement without the written consent of the carrier for an amount less than the total of the compensation to which he or they are entitled under this title because of such injury or death, the settlement shall be invalid as against the carrier, which shall be entitled to maintain an action against the third party to recover the amount of compensation for which the carrier is liable under this title, less the amount actually inuring to the benefit of the carrier from the proceeds of the settlement.

At the trial the fact of settlement shall be prima facie evidence that the injury was proximately caused by a breach of duty owed to the employee or a warranty given by the third party.

The carrier shall not unreasonably refuse to approve a proposed compromise settlement with the third party. The injured employee or his dependents may make written application to the Workers' Compensation Commission for a finding that a proposed compromise settlement with the third party is reasonable and fair to all parties. If the Workers' Compensation Commission, after such inquiry as it deems necessary, and after hearing if demanded by either the carrier, the injured employee or his dependents, finds the proposed settlement reasonable and fair, it shall be deemed to have been approved by the carrier.

Notwithstanding other provisions of this item, where an employee or his representative enters into a settlement with or obtains a judgment upon trial from a third party in an amount less than the amount of the employee's estimated total damages, the commission may reduce the amount of the carrier's lien on the proceeds of such settlement in the proportion that such settlement or judgment bears to the commission's evaluation of the employee's total cognizable damages at law. Any such reduction shall be based on a determination by the commission that such reduction would be equitable to all parties concerned and serve the interests of justice.

(g) When there remains a balance of five thousand dollars or more of the amount recovered from a third party by the beneficiary or carrier after payment of necessary expenses, and satisfaction of the carrier's lien and payment of the share of any person not a beneficiary under this title, which is applicable as a credit against future compensation benefits for the same injury or death under either subsection (b) or subsection (c), the entire balance shall in the first instance be paid to the carrier by the third party. The present value of all amounts estimated by the Workers' Compensation Commission to be thereafter payable as compensation, with the present value to be computed in accordance with a schedule prepared by the Workers' Compensation Commission, shall be held by the carrier as a fund to pay future compensation as it becomes due, and to pay any sum finally remaining in excess thereof to the beneficiaries.

As soon as the Workers' Compensation Commission has fixed the amount to be held by the carrier in this fund, or determined that no future compensation will be due, the excess of the third party recovery over the total amount necessary for payment of necessary expenses, satisfaction of the carrier's lien, and payment of the share of any person not a beneficiary under this title and creation of such fund, if any, shall be paid forthwith to the beneficiary but shall continue to constitute a credit against

future compensation benefits for the same injury or death as to any compensation liability that may exist after the fund has been exhausted.

(h) If death results from the injury and if the employee leaves no dependents entitled to benefits under this title, the carrier shall have a right of action against the third party for any amounts paid into the second-injury fund established by Section 42-1-380 and for reasonable funeral expenses and medical benefits actually paid by the carrier. The cause of action shall be in addition to any cause of action of the legal representative of the deceased. This right may be enforced in any action of law brought against the third party within two years after the death of the employee.

§ 42-1-570. Amount of compensation not admissible in suits against third parties.

The amount of compensation paid by the employer or the amount of compensation to which the injured employee or his dependents are entitled shall not be admissible as evidence in any action brought to recover damages.

§ 42-1-580. Effect of rights of third party against employer on employee's recovery.

When the facts are such at the time of the injury that a third person would have the right, upon payment of any recovery against him, to enforce contribution or indemnity from the employer, any recovery by the employee against the third person shall be reduced by the amount of such contribution of indemnity and the third person's right to enforce such contribution against the employer shall thereupon be satisfied.

§ 42-1-590. Compensability of injuries to illegally employed minor.

When an employer and employee have accepted the provisions of this title, any injury to a minor while employed contrary to the laws of this State shall be compensable under this title the same, and to the same extent, as if such minor employee was an adult.

§ 42-1-600. Suits by public employees.

Any employee of the State or any political subdivision or of any department thereof shall be entitled to bring suit against his employer for the recovery of the benefits to which he may be entitled under the terms and provisions of this title and consent to such suit or suits is expressly given.

§ 42-1-610. Agreement or regulation does not limit liability of employer.

No contract or agreement, written or implied, and no rule, regulation or other device shall in any manner operate to relieve any employer, in whole or in part, of any obligation created by this title except as otherwise expressly provided in this title.

§ 42-1-620. Agreements of employee to waive rights invalid.

No agreement by an employee to waive his rights to compensation under this title shall be valid.

§ 42-1-630. Situation in which provisions of title are not admissible in trial.

Upon the trial of any action in tort for injuries not coming under the provisions of this title no provisions of this title shall be placed in evidence or be permitted to be argued to the jury.

§ 42-1-640. Performance of statutory duty not excused.

Nothing in this title shall be construed to relieve any employer or employee from penalty for failure or neglect to perform any statutory duty.

§ 42-1-650. Limitation of actions after claim erroneously made.

If any claim for compensation is made upon the theory that such claim, or the injury upon which the claim is based, is within the jurisdiction of the commission under the provisions of this title and if the commission, or the Supreme Court or court of appeals on appeal, shall adjudge that the claim is not within this title, the claimant, or if he dies his personal representative, shall have one year after the rendition of a final judgment in the case within which to commence an action at law.

§ 42-1-660. Immunity from liability on construction projects; exceptions.

No architect, engineer, land surveyor, landscape architect, or their employees or a corporation, partnership, or firm offering architectural services, engineering services, land surveyor services, or landscape architectural services who is retained to perform professional services on a construction project is liable in any action brought pursuant to Section 42-1-560 for any injury resulting from the employer's failure to comply with safety standards on a construction project for which compensation is recoverable under this title, unless responsibility for safety practices is specifically assumed by contract or by direct supervision or continual direction of the injured employee relative to the segment of the job which results in the injury.

The immunity provided by this section does not apply to the negligent preparation of design plans or specifications.

§ 42-1-700. Specificity of description of injured or affected body parts; Employee's Notice of Claim and Request for Hearing (Form 50).

Effective: July 1, 2007

(A) Injured or affected body parts and conditions shall be set forth with as much specificity as possible on the commission's Employee's Notice of Claim and/or Request for Hearing form, hereinafter referred to as Form 50. A Form 50 shall not describe the injured body part(s) or condition(s) as "whole person", "whole body", "all body parts", or other similar language unless the injured employee died as a result of the accident. No hearing shall be held on a Form 50 which does not conform to the requirements of this subsection.

(B) Nothing in this section prohibits a commissioner from determining the compensability of a body part or condition not listed or described on a Form 50 if:

(1) the body part or condition is proved by a preponderance of the evidence to have arisen from the injury or injuries out of and in the course of employment as set forth on the Form 50;

(2) it is proven to the satisfaction of the commissioner that the employee had no knowledge of the injury or condition on the date of the completion of the Form 50. However, the employee is required to amend the Form 50 upon discovery of the injury or condition within a reasonable time period pursuant to regulation; or

(3) in the case of a represented employee, the body part or condition is set forth on the commission's Prehearing Brief form, and such prehearing brief is timely filed with the commission and timely served upon the parties.

(C) A Form 50 must be signed by an attorney if the employee is represented, verifying that the contents of the form are accurate and true to the best of the attorney's knowledge. If the employee is not represented, the employee who signs a Form 50 must verify that the contents of the form are accurate and true to the best of the employee's knowledge.

§ 42-1-705. Employer's Answer to Request for Hearing (Form 51); specificity as to possible defenses.

Effective: July 1, 2007

(A) The commission's Employer's Answer to Request for Hearing form, hereinafter referred to as Form 51, must describe with as much specificity as possible the defenses to be relied upon by the defendants. A Form 51 shall not state that "all defenses apply" or other similar language, unless such is actually the case. A Form 51 which does not conform to the requirements of this subsection shall not be considered at a hearing.

(B) Nothing in this section prohibits a commissioner from considering a defense not listed on a Form 51 if:

(1) it is proven to the satisfaction of the commissioner that the defendants had no knowledge of the facts supporting the defense on the date of the completion of the Form 51; and

(2) in the case of represented defendants, the defense omitted on the Form 51 is set forth on the commission's Prehearing Brief form, and such brief is timely filed with the commission and timely served upon the parties.

(C) A Form 51 must be signed by an attorney, verifying that the contents of the form are accurate and true to the best of the attorney's knowledge. If the employer is unrepresented and completes a Form 51, the employer must sign the form, verifying that the contents are accurate and true to the best of the employer's knowledge.

§ 42-3-10. Creation and departments of South Carolina Workers' Compensation Commission.

There is created the South Carolina Workers' Compensation Commission, hereinafter referred to as the commission, composed of a judicial and administrative department and constituted and administered as provided for in this title.

§ 42-3-20. Membership, terms of office, vacancies and duties of commission, chairman.

Effective: July 1, 2007

(A) The commission shall consist of seven members appointed by the Governor with the advice and consent of the Senate for terms of six years and until their successors are appointed and qualify. In the event the Governor does not fill a vacancy within sixty days after the vacancy occurs, the commission by majority vote shall deputize a person with suitable experience, training, and knowledge to serve as a deputy commissioner to serve until such time as the Governor fills the vacancy. As soon as the Governor appoints a replacement who is confirmed by the Senate, the deputy commissioner shall immediately cease to serve in that office. While serving as a deputy commissioner, the deputy commissioner has the power and authority to swear or cause the witnesses to be sworn and shall transmit all testimony and shall make a recommendation to the commission for an award. The commission must determine the award based upon testimony received by the deputy commissioner and may consider the deputy commissioner's recommendation.

(B) The Governor, with the advice and consent of the Senate, shall designate one commissioner as chairman for a term of two years, and the chairman may serve two terms during his six-year term but not consecutively. At the conclusion of a commissioner's two-year term as chairman, the Governor shall appoint another chairman. If the Governor does not appoint another chairman at the expiration of the two-year term, a majority of the commission shall elect from among their members an interim chairman who shall serve until the Governor appoints another chairman other than the one last appointed. A deputy commissioner is not eligible to serve as chairman.

(C) The commissioners shall hear and determine all contested cases, conduct informal conferences when necessary, approve settlements, hear applications for full commission reviews, and handle such other matters as may come before the department for judicial disposition. Full commission reviews shall be conducted by all commissioners, excluding the original hearing commissioner, or by three-member panels, excluding the original hearing commissioner, appointed by the chairman. The chairman, with approval of a majority of the other commissioners, shall determine which full commission reviews shall be assigned to panels. The decisions of three-member panels have the same force and effect as full commission reviews.

§ 42-3-25. Chairman; executive director.

The chairman is the chief executive officer of the commission and shall execute the policies established by the commission in its capacity as the governing body of the judicial and administrative departments.

The executive director of the commission shall report to the chairman and be responsible to the commission.

§ 42-3-30. Promulgation of rules and regulations by commission.

The commission shall promulgate all regulations relating to the administration of the workers' compensation laws of this State necessary to implement the provisions of this title and consistent therewith.

§ 42-3-40. Salaries of commissioners.

The annual salary for the commissioners shall be eighty-five percent of the salary paid to the circuit judges of the State. The commissioners shall receive a subsistence allowance of thirty-five dollars a day while in the performance of their duties outside the Columbia office.

§ 42-3-60. Administrative assistant to commissioner.

Effective: July 1, 2007

Each commissioner shall be authorized to employ an administrative assistant to serve at the commissioner's pleasure.

§ 42-3-80. Executive director of administrative department.

The administrative department of the commission shall be under the direction of the executive director. The director must be appointed by the commission, shall serve at its pleasure, and shall receive an annual salary not to exceed eighty-five percent of the salary paid to the commissioners.

The administrative director shall receive and be responsible for all files and records of the Workers' Compensation Commission and shall refer all claims to the judicial department for disposition and receive from that department reports, information and statistics as to the disposition of claims. He also shall be responsible for the referral to the South Carolina Vocational Rehabilitation Department of all industrially injured persons that need vocational counseling or vocational evaluation, personal adjustment, training and placement.

In the performance of his duties, the director is authorized to:

(a) with the approval of the chairman of the commission, appoint and discharge, if necessary, all support personnel within the administrative department except division directors;

(b) compile all statistics and reports concerning the administration of workers' compensation laws and the disposition of claims related thereto;

(c) conduct administrative operations of the commission in accordance with the provisions of this title and regulations promulgated thereunder.

§ 42-3-90. Divisions of administrative department.

There shall be established within the administrative department the following divisions, each headed by a division director recommended by the administrative director with the concurrence of the chairman and subject to the approval of the commission.

(1) The Division of Coverage and Compliance;

(2) The Division of Claims and Statistics;

(3) The Division of Medical Services.

Each division shall perform such functions and duties as may be assigned to it by the director of the administrative department subject to the provisions of Section 42-3-25.

§ 42-3-100. Annual budget.

The commissioners shall annually prepare and the chairman shall annually submit to the Governor and the General Assembly a budget for the Workers' Compensation Commission.

§ 42-3-105. Commission's authority to double fines and penalties; penalties for noncompliance by uninsured employers.

The Worker's Compensation Commission is authorized to double the amount of fines and penalties assessed for each violation of the workers' compensation law, except that for employers found to be uninsured in violation of the workers' compensation law, the minimum amount of the penalty assessed shall be seven hundred fifty dollars a year of noncompliance and the maximum amount of the penalty shall be one thousand dollars a year of noncompliance. The commission is further authorized to retain and expend all revenues received as a result of these collections.

§ 42-3-110. Approval of expense and travel vouchers.

The commissioners of the judicial department and the director of the administrative department shall approve all expense and travel vouchers for their respective departments.

§ 42-3-120. Advisory committee.

There is hereby created the advisory committee for improvement of the workers' compensation laws of South Carolina, consisting of five members appointed by the Governor for terms of five years and until successors are appointed and qualify. One member shall be an attorney experienced in practice representing claimants, one member shall be an attorney experienced in practice representing defendants, one member shall be a representative of industry, one member shall be a representative of labor and one member shall be a representative of the general public. A chairman shall be elected by the committee. The committee shall meet at least quarterly to consider improvements in workers' compensation laws and monitor the effectiveness of existing law. Recommendations for changes in the law shall be recommended annually to the General Assembly. Committee members shall serve without compensation but shall receive mileage, subsistence and per diem as provided by law for boards, committees and commissions payable from an annual appropriation from the general fund of the State.

§ 42-3-130. Service of subpoenas; witness fees.

The county sheriffs and their respective deputies shall serve all subpoenas of the commission or its deputies and shall receive the same fees as are provided by law for like services. Provided, however, if the witness is in another county, the subpoena may be served by any person authorized to serve subpoenas in the county where the action originated. Each witness who appears in obedience to such subpoena of the commission shall receive for attendance the fees and mileage for witnesses in civil cases in courts of the county in which the hearing is held.

§ 42-3-140. Power of commission to subpoena witnesses, administer oaths and examine books and records.

The commission or any member thereof, or any person deputized by it, may, for the purpose of this title, subpoena witnesses, administer or cause to be administered oaths and examine or cause to be examined such parts of the books and records of the parties to proceedings as relate to questions in dispute.

§ 42-3-150. Manner in which attendance of witnesses and production of books and records may be compelled.

The commission in the discharge of its duties may administer oaths and affirmations, take depositions and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary in connection with any proceeding under this title.

No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda or other records before the commission on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying or from civil prosecution, penalties or forfeitures pursuant to the provisions of this title.

In case of contumacy by any person or refusal to obey a subpoena issued to any person, the commission may issue to such person an order requiring him to appear before the commission to produce evidence if so ordered or to give testimony touching the matter under investigation. Any failure to obey an order of the commission may be punished as a contempt thereof.

Any person who shall without just cause fail or refuse to attend and testify, to answer any lawful inquiry or to produce books, papers, correspondence, memoranda and other records, if it is in his power to do so in accordance with a subpoena of the commission, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty nor more than two hundred dollars or by a term of imprisonment for not more than thirty days. Each failure to obey a subpoena shall constitute a separate offense. Subpoenas shall be issued in the name of the commission and shall be signed by a commissioner. Subpoenas shall be issued to such persons as the commission may designate.

In addition, the commission may punish for contempt in the manner authorized by this section any person whose disorderly conduct in any commission proceeding interferes with the orderly process of such proceeding.

§ 42-3-160. Manner in which depositions of witnesses shall be taken.

Any party to a proceeding pending under this title or his attorney may cause the depositions of witnesses, either within or without the State, to be taken either by commission or de bene esse. Such depositions shall be taken in accordance with and subject to

the same provisions, conditions and restrictions as apply to the taking of like depositions in civil actions at law in the courts of common pleas and the same rules with respect to the giving of notice to the opposite party, the taking and transcribing of testimony and the transmission and certification thereof and matters of practice relating thereto shall apply. In any case in which testimony shall be taken by commission, such commission shall be issued, upon request of the party or his attorney, by some member of the commission. The provisions of this section shall not be so construed as to prevent the commission or any deputy commissioner from issuing commissions for the taking of testimony, even in the absence of any application therefor, when in its or his judgment it is deemed necessary or appropriate.

§ 42-3-170. Manner in which hearings shall be conducted.

Hearings before the commission shall be open to the public and shall be stenographically reported and the commission may contract for the reporting of such hearings. The commission shall by regulation provide for the preparation of a record of the hearings and other proceedings.

§ 42-3-175. Failure to pay claims; sanctions; notice to Department of Insurance.

Effective: July 1, 2007

(A) (1) If a claimant brings an action before the commission to enforce an order authorizing medical treatment or payment of benefits and the commission determines that an insurer, a self-insured employer, a self-insured fund, or an adjuster, without good cause, failed to authorize medical treatment and/or pay benefits when ordered to do so by the commission, the insurer, the self-insured employer, the self-insured fund, or the adjuster must pay the claimant's attorneys' fees and costs of enforcing the order. The commission may impose sanctions for wilful disobedience of an order, including, but not limited to, a fine of up to five hundred dollars for each day of the violation.

(2) The commission must notify the Department of Insurance of an insurer's or an adjuster's failure to authorize and pay benefits for medical treatment. If the Director of the Department of Insurance or his or her designee determines that there has been a violation of any provision of Title 38, he may impose penalties for each violation, including, but not limited to, administrative penalties pursuant to Section 38-2-10.

(B) (1) If the commission discovers a pattern of an insurer failing to pay benefits pursuant to an award, as defined in item (2), the chairman must notify the Director of the Department of Insurance. The director or his or her designee must hold a hearing to determine if the insurer had good cause for nonpayment. If the director or his or her designee determines that nonpayment was intentional three or more times within a two-year period, the director may revoke the license of the insurer to do business in this State. If the director or his or her designee revokes the license of the insurer, he must take any steps he considers necessary for the protection of the insurer's policyholders in this State.

(2) For purposes of this section, a pattern is established upon an insurer's failure to pay an award at least three times within a two-year period by failing to pay:

(a) for individual claims;

(b) for a claim in which the claimant had to request enforcement of an award; or

(c) any combination of subitems (a) and (b).

(3) All fines collected pursuant to this section must be submitted to the general fund.

§ 42-3-180. Commission to decide questions arising under title.

All questions arising under this title, if not settled by agreement of the parties interested therein with the approval of the commission, shall be determined by the commission, except as otherwise provided in this title.

§ 42-3-185. Promulgation of policies or procedures implementing Section 42-15-90.

Any policies or procedures implementing the provisions of Section 42-15-90 shall become effective only when such implementation is accomplished by regulations promulgated in accordance with the Administrative Procedures Act, which proposed regulations shall have before promulgation received approval of the Judiciary Committees of the Senate and House of Representatives and also by concurrent Resolution of the General Assembly.

§ 42-3-190. Preparation and furnishing of forms and literature.

The commission shall prepare, cause to be printed and upon request furnish, free of charge to any employee, such blank forms and literature as it shall deem requisite to facilitate or prompt the efficient administration of this title.

§ 42-3-195. Commission to provide information and statistics; confidentiality.

The commission shall cooperate with and provide information and statistics to the South Carolina Commissioner of Labor, which the Commissioner of Labor and his designees may use solely for the following limited purposes:

(1) scheduling inspections pursuant to Section 41-15-260 for compliance with occupational safety and health rules and regulations;

(2) statistical evaluation of hazards.

The information and statistics provided pursuant to this section are confidential and exempt from disclosure pursuant to the Freedom of Information Act, except that the Commissioner of Labor may reveal to the federal Occupational Safety and Health Administration, on a confidential basis, the results of statistical evaluations of hazards as long as no identifying information is revealed.

Upon trial of any action other than a workers' compensation claim, such information shall not be placed in evidence or be permitted to be argued to any court, jury, or other adjudicatory body.

§ 42-3-210. Tabulation and publication of accident reports.

The commission shall tabulate the accident reports received from employers in accordance with Sections 42-19-10 and 42-19-20 and shall publish them in the annual report of the commission and as often as it may deem advisable, in such detailed or aggregated form as it may deem best. The name of the employer or employee shall not appear in such publications and the employers' reports shall be private records of the commission and shall not be open for public inspection except for the inspection of the parties directly involved, and then only to the extent of such interest, including third party interests. These reports shall not be used as evidence by or against any employer in any suit at law brought by any employee for the recovery of damages, except by order of the court for good cause shown.

§ 42-3-220. Collection of fines and penalties; use of proceeds.

The commission may, by civil action brought in its own name, enforce the collection of any fines or penalties provided by this title and such fines and penalties shall be used for the purpose of paying salaries and expenses of the commission.

§ 42-3-230. Destruction of inactive files.

Effective: July 1, 2007

The commission may from time to time, as it may consider advisable, destroy any of its inactive files that are at least fifteen years old. The commission may maintain these files in either paper or electronic form. No files of the commission shall be considered inactive until the commission is satisfied that the files will be of no further use.

§ 42-3-240. Annual reports.

The commission shall publish annually for free distribution a report of the administration of this title, together with such recommendations as the commission deems advisable, and shall submit annually to the Governor and the General Assembly a report showing receipts, expenditures and disbursements of the commission for the fiscal year terminating on June thirtieth preceding the time of such report.

§ 42-3-250. Commissioners bound by Code of Judicial Conduct; continuing education requirement.

(A) The commissioners are bound by the Code of Judicial Conduct, as contained in Rule 501 of the South Carolina Appellate Court Rules, and the State Ethics Commission is responsible for enforcement and administration of Rule 501 pursuant to Section 8-13-320. Commissioners must also comply with the applicable requirements of Chapter 13, Title 8.

(B) Each year, the commissioners and their administrative assistants must attend a workshop of at least three continuing education hours concerning ethics and the Administrative Procedures Act.

§ 42-5-10. Employer shall secure payment of compensation; extent of liability.

Every employer who accepts the compensation provisions of this title shall secure the payment of compensation to his employees in the manner provided in this chapter. While such security remains in force he or those conducting his business shall only be liable to any employee who elects to come under this title for personal injury or death by accident to the extent and in the manner specified in this title.

§ 42-5-20. Insurance or proof of financial ability to pay required.

Every employer who accepts the provisions of this title relative to the payment of compensation shall insure and keep insured his liability thereunder in any authorized corporation, association, organization, or mutual insurance association formed by a group of employers so authorized or shall furnish to the commission satisfactory proof of his financial ability to pay directly the compensation in the amount and manner and when due as provided for in this title. The commission may, under such rules and regulations as it may prescribe, permit two or more employers in businesses of a similar nature to enter into agreements to pool their liabilities under the Workers' Compensation Law for the purpose of qualifying as self-insurers. In the case of self-insurers the commission shall require the deposit of an acceptable security, indemnity, or bond to secure the payment of the compensation liabilities as they are incurred. The Workers' Compensation Commission shall have exclusive jurisdiction of group self-insurers under this section, and such group self-insurers shall not be deemed to be insurance companies and shall not be regulated by the Department of Insurance. Provided, further, that if any provision is made for the recognition of reinsurance of the self-insured fund, such provision shall expressly provide that the reinsurance agreement or treaty must recognize the right of the claimant to recover directly from the reinsurer and that such agreement shall provide for privity between the reinsurer and the workers' compensation claimant.

In lieu of submitting audited financial statements when an employer makes an application to self-insure with the commission, the commission shall accept the sworn statement or affidavit of an independent auditor verifying the financial condition of the employer according to the required financial ratios and guidelines established by regulation of the commission. The independent auditor must be a certified public accountant using generally acceptable accounting principles in the preparation of the financial statements of the employer.

§ 42-5-25. Temporary workers' compensation coverage for applicant to approved self-insurance fund.

(A) An approved self-insurance fund may provide temporary coverage for an applicant if he:

- (1) submits to the self-insurance division the required completed and signed forms, including, but not limited to, an application form with the same fee required for permanent membership in a self-insurance fund;
- (2) qualifies for membership in the fund;
- (3) qualifies under the by-laws of the fund;
- (4) operates a business similar in nature to the businesses in the fund;

(5) is financially sound and meets or exceeds the minimum net worth requirements established for permanent membership in a self-insurance fund;

(6) notifies the division in writing on or before the coverage date.

(B) Upon receipt and review of the documents described in subsection (A), the division shall notify the fund within two business days whether temporary membership is granted. If the division does not notify the fund of its decision within two business days, temporary membership is deemed granted.

(C) Temporary coverage expires when the full commission approves the applicant or thirty days after the full commission rejects the applicant. The effective date on the certificate for self-insurance must show the original, temporary, coverage date.

§ 42-5-30. Employer shall file evidence of compliance with Title.

Every employer accepting the compensation provisions of this title shall file with the commission, in form prescribed by it, annually or as often as may be necessary evidence of his compliance with the provisions of Section 42-5-20 and all others relating thereto. In the event an employer shall insure his liability under this title with an insurance carrier, the insurance carrier shall be required to make the necessary filings.

§ 42-5-40. Penalty for failure to secure payment of compensation.

Effective: July 1, 2007

Any employer required to secure the payment of compensation under this title who refuses or neglects to secure such compensation shall be punished by a fine of one dollar for each employee at the time of the insurance becoming due, but not less than ten dollars nor more than one hundred dollars for each day of such refusal or neglect, and until the same ceases, and he shall be liable during continuance of such refusal or neglect to an employee either for compensation under this title or at law in an action instituted by the employee or his personal representative against such employer to recover damages for personal injury or death by accident and in any such action such employer shall not be permitted to defend upon any of the grounds mentioned in Section 42-1-510.

The fine provided in this section may be assessed by the commission in an open hearing with the right of review and appeal as in other cases. All fines collected pursuant to this section must be submitted to the general fund.

§ 42-5-45. Penalty for failure of employer to secure payment of compensation.

Any employer required to secure payment of compensation under this title who wilfully refuses to secure such compensation shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars or by imprisonment for not less than thirty days nor more than six months, or both, in the discretion of the court.

§ 42-5-50. Certificate of compliance.

Whenever an employer has complied with the provisions of § 42-5-20 relating to self-insurance, the commission shall issue to such employer a certificate, which shall remain in force for a period fixed by the commission. But the commission may, upon at least

sixty days' notice and a hearing to the employer, revoke the certificate upon satisfactory evidence for such revocation having been presented. At any time after such revocation the commission may grant a new certificate to the employer upon his petition.

§ 42-5-60. Insurance deemed subject to title; approval of forms.

Every policy for the insurance of the compensation provided in this title or against liability therefor shall be deemed to be made subject to provisions of this title. No corporation, association or organization shall enter into any such policy of insurance unless its form shall have been approved by the Director of the Department of Insurance.

§ 42-5-70. Clauses required in insurance contracts.

All policies insuring the payment of compensation under this title must contain a clause to the effect that, as between the employer and the insurer, the notice to or acknowledgment of the occurrence of the injury on the part of the insured employer shall be deemed notice or knowledge, as the case may be, on the part of the insurer, that jurisdiction of the insured for the purpose of this title shall be jurisdiction of the insurer, that the insurer shall in all things be bound by and subject to the awards, judgments or decrees rendered against such insured employer and that insolvency or bankruptcy of the employer or discharge therein shall not relieve the insurer from the payment of compensation for disability or death sustained by an employee during the life of such policy or contract.

§ 42-5-80. Liability of insurer.

(A) No policy of insurance against liability arising under this title may be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled thereto all benefits conferred by this title, and all installments of the compensation that may be awarded or agreed upon, and that the obligation shall not be affected by any default of the insured or by any default in giving notice required by such policy or otherwise.

(B) Such agreement must be construed to be a direct promise by the insurer to the person entitled to compensation enforceable in his name.

(C) Any insurer who issues a policy of compensation insurance to an employer not subject to this title may not plead as a defense that the employer is not subject to this title and is estopped to deny coverage.

§ 42-5-130. Procedure upon withdrawal of carrier from State.

Upon the withdrawal of any insurance carrier that has any outstanding liability under this title from doing business in this State the Director of the Department of Insurance shall immediately notify the commission and thereupon the commission shall issue an award against such insurance carrier and commute the installments due any injured employee and immediately have such award docketed in the court of common pleas of the county in which the claimant resides and the commission shall then cause suit to be brought on such judgment in the state of the residence of any such insurance carrier and the proceeds from such judgment, after deducting costs, if any, of the proceeding, shall be turned over to the injured employee, taking from such employee a proper receipt in satisfaction of his claim.

§ 42-5-190. Tax on self-insurers.

Effective: July 1, 2013

Every employer carrying his own risk under the provisions of Section 42-5-20 shall report under oath to the commission the employer's actual cost incurred under the provisions of this title. The report must be made in the form prescribed by the commission by the fifteenth day of the third month following the close of the self-insurer's fiscal year. The commission shall assess against the actual cost incurred a maintenance tax computed by taking two and one-half percent of the actual cost of operating under the provisions of this title as determined by the commission. The assessments must be paid to the commission which shall retain in every fiscal year the greater of fifty percent or two million two hundred thousand dollars of the maintenance tax revenues and use these funds to pay the salaries and expenses of the commission. The balance of the maintenance tax revenues must be remitted to the State Treasurer for the credit of the general fund of the State. In the event of failure to pay the tax within fifteen days of the date set forth in this section, the commission may assess against the self-insurer a penalty of five percent of the unpaid tax. If the self-insurer fails to pay the tax and penalty within fifteen days of notice by the commission, interest must be added to the amount of the deficiency at the rate of five percent for each month or fraction of a month from the date the tax was due originally until the date the deficiency is paid and the commission may initiate proceedings to withdraw the privilege of self-insuring in this State. The total maximum interest to be charged may not exceed twenty-five percent. The penalty under this section is payable to the commission. Fifty percent of the interest must be retained by the commission and used by it as retained maintenance tax revenues are used and the balance of the interest must be remitted to the State Treasurer for the credit of the general fund of the State.

§ 42-5-200. Employee shall not pay any portion of insurance, self-insurance fund, or other things required by title.

No agreement by an employee to pay any portion of any premium paid by his employer to a carrier 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 title shall be valid, and any employer who makes a deduction for such purpose from the pay of any employee entitled to the benefits of this title shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars.

§ 42-5-210. Insurance carrier subrogated to rights of employer.

When any employer is insured against liability for compensation with any insurance carrier and such insurance carrier shall have paid any compensation for which the employer is liable or shall have assumed the liability of the employer therefor, it shall be subrogated to all the rights and duties of the employer and may enforce any such rights in its own name or in the name of the injured employee or his personal representative; provided, however, that nothing in this section shall be construed as conferring upon insurance carriers any other or further rights than those existing in the employer at the time of the injury to his employee, anything in the policy of insurance to the contrary notwithstanding.

§ 42-5-220. Compromises by carrier must be approved.

No compromise settlement shall be made by the insurance carrier in the exercise of its right of subrogation without the approval of the commission being first had and obtained.

§ 42-5-230. Manner in which notice to insurance carrier given.

Whenever by this chapter or the terms of any policy contract any officer is required to give any notice to an insurance carrier, such notice may be given by delivery or by mailing, by registered letter properly addressed and stamped, to the principal office or general agent of such insurance carrier within this State or to its home office or to the secretary, general agent or chief officer thereof in the United States or the Director of the Department of Insurance.

§ 42-5-240. Penalties.

Any person who shall act or assume to act as agent for any such insurance carrier whose authority to do business in this State has been suspended, while such suspension remains in force, or shall neglect or refuse to comply with any of the provisions of Sections 42-5-110, 42-5-120, 42-5-140 and 42-5-150 obligatory upon such person or who shall wilfully make a false or fraudulent statement of the business or conditions of any such insurance carrier or a false or fraudulent return shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars or by imprisonment for not less than ten nor more than ninety days, or both such fine and imprisonment in the discretion of the court.

§ 42-5-250. Title not applicable to insurance for single catastrophe hazards.

This title shall not apply to policies of insurance against loss from explosion of boilers or flywheels or other similar single catastrophe hazards. But nothing contained in this section shall be construed to relieve the employer from liability for injury or death of an employee as a result of such explosion or catastrophe.

§ 42-7-10. Establishment of State Accident Fund; contents.

(A) There is established as a separate agency of state government a separate fund to be known as the State Accident Fund, hereinafter referred to as the “fund” or “state fund” in this article. This fund consists of annual premium charges, recoveries from the Second Injury Fund, recoveries by subrogation and, subject to subsection (B), of all income or revenue derived from investing these funds. Receipts for the credit of the fund and expenditures from the fund must be handled in the manner provided by law governing all state funds.

(B) One-third of the investment income generated in Fiscal Year 1990-91 and two-thirds of the income generated in Fiscal Year 1991-92 must be credited to the state fund in those years respectively. Thereafter all such income must be credited to the state fund except that the State Treasurer may charge the state fund, and credit to the general fund, the customary investment management fee.

§ 42-7-20. Administration of fund; director.

The State Accident Fund shall be administered by a director appointed by the Governor for a term of six years with the advice and consent of the Senate. The administration shall provide for employment of office and field personnel necessary for the proper conduct of the business of the fund, to the extent of appropriations therefor, including the determination of the amount of and the collection of annual charges, the issuance of certificates of compliance with this article, the investigation of claims, the adjustment and payment of claims and awards, the inspection of risks, study and investigation with respect to safety provisions with recommendations to employers as to means of preventing injuries, medical examination of employees, and the prosecution of subrogation rights against any third party. The director may inspect and audit records of employers for the purpose of determining or verifying the amount of annual charges against such employers.

§ 42-7-30. Legal representation for fund; extra legal services; fees and expenses.

Legal representation for the State Accident Fund shall be provided by a chief counsel and such staff attorneys as are necessary appointed by the director of the fund with the approval of the Attorney General. Any extra legal services that may be required must be performed by attorneys selected by the director also with the approval of the Attorney General. Fees and expenses for nonstaff attorneys must be approved by the director.

§ 42-7-40. Application to State.

This article shall apply to the State including the State Guard and the National Guard.

§ 42-7-50. Subdivisions of State; optimal participation.

Any county or municipality in the State or any agency or institution thereof shall have the option of participating under the provisions of this article but no county, municipality, agency or institution thereof shall be covered by the workers' compensation insurance provided in this article until payment of the annual charge provided in this title shall have been made to the fund, nor shall any county, municipality, agency or institution thereof be covered by this insurance after the lapse of the period for which the annual charge has been paid. The director shall notify each county, municipality, agency or institution thereof at least thirty days before the expiration date of its coverage in order that the county, municipality, agency, or institution may keep its insurance in force continuously.

§ 42-7-60. Officers and employees covered by article.

Notwithstanding anything to the contrary contained in Section 42-1-130, the provisions of this article apply to all officers and employees of the State and of any county, municipality, or other political subdivision thereof or any agency or institution of the State which has elected to participate under this article under the provisions of Section 42-7-50.

In cases of officers or employees who are on a partial or total fee basis or whose official duties require only part time the director may fix, for the purpose of this article, the average weekly wage of this officer or employee, not in excess of forty dollars and collect charges from the employer of this officer or employee on the basis of the average weekly wage so fixed.

Any client of the state agency of Vocational Rehabilitation Department, while involved in a program of assessment or work adjustment as defined in this section, who suffers an injury for which compensation is specifically prescribed in this title, may be awarded and paid compensation under the provisions of this title. For purposes of this section, "a client involved in a program of assessment or work adjustment" is defined as any client performing work tasks which are part of the program of Vocational Rehabilitation services for the individual and who in turn receives wage payments from the agency for the work performed.

Students of high schools, state technical schools, and state-supported colleges and universities while engaged in work study, distributive education, or apprentice programs on the premises of private companies are also covered by the provisions of this title.

§ 42-7-65. Average weekly wage designated for certain categories of employees.

Effective: June 7, 2010

Notwithstanding the provisions of Section 42-1-40, for the purpose of this title and while serving in this capacity, the total average weekly wage of the following categories of employees is the following:

(1) for all members of the State and National Guard, regardless of rank, seventy-five percent of the average weekly wage in the State for the preceding fiscal year, or the average weekly wage the service member would be entitled to, if any, if injured while performing his civilian employment, if the average weekly wage in his civilian employment is greater;

(2) for all voluntary firemen of organized voluntary rural fire units and voluntary municipal firemen, thirty-seven and one-half percent of the average weekly wage in the State for the preceding fiscal year;

(3) for all members of organized volunteer rescue squads, thirty-seven and one-half percent of the average weekly wage in the State for the preceding fiscal year;

(4) for all volunteer deputy sheriffs, thirty-seven and one-half percent of the average weekly wage in the State for the preceding fiscal year; and

(5) for all volunteer state constables appointed pursuant to Section 23-1-60, while performing duties in connection with their appointments and authorized by the State Law Enforcement Division, thirty-seven and one-half percent of the average weekly wage in the State for the preceding fiscal year.

The wages provided in items (2), (3), (4), and (5) of this section may not be increased as a basis for any computation of benefits because of employment other than as a volunteer. Persons in the categories provided by items (2), (3), (4), and (5) must be notified of the limitation on average weekly wages prescribed in this section by the authority responsible for obtaining coverage under this title.

"Volunteer firemen" and "rescue squad members" mean members of organized units whose membership is certified to the municipal clerk or chairman of the council of the municipality or county in which their unit is based by the chief officer of the unit concerned. A "volunteer deputy sheriff" is a volunteer whose membership is certified by the sheriff to the governing body of the county. No volunteer deputy sheriff may be included under the provisions of this title unless approved by the governing body of the county or municipality. A voluntary constable appointed pursuant to Section 23-1-60 must be included under

the provisions of this title only while performing duties in connection with his appointment and as authorized by the State Law Enforcement Division. The workers' compensation premiums for these constables must be paid from the state general fund upon warrant of the Chief of the State Law Enforcement Division. Notwithstanding any other provision of law, voluntary firemen of organized volunteer fire units and members of organized volunteer rescue squads are covered under this title by the county governing body unless the governing body of the county opts out of the coverage.

The average weekly wage for inmates of the State Department of Corrections as defined in Section 42-1-480 is forty dollars a week. However, the average weekly wage for an inmate who works in a federally approved Prison Industries Enhancement Certification Program must be based upon the inmate's actual net earnings after any statutory reductions. The average weekly wage for county and municipal prisoners is forty dollars a week. The average weekly wage for students of high schools, state technical schools, and state-supported colleges and universities while engaged in work study, marketing education, or apprentice programs on the premises of private companies or while engaged in the Tech Prep or other structured school-to-work programs on the premises of a sponsoring employer is fifty percent of the average weekly wage in the State for the preceding fiscal year.

§ 42-7-67. Benefits for State and National Guard members.

For members of the South Carolina State and National Guard injured while so employed, the extent, duration, and termination of disability and medical benefits under this title must be determined by reference to the member's civilian employment, if any, without considering the member's military position. If the member does not have civilian employment, reference may be made to the member's military position.

§ 42-7-70. Rates and premiums.

The rates and premiums paid by employers insured in the fund must not be excessive, inadequate, or unfairly discriminatory. Employers may be grouped by classifications for the establishment of rates and minimum premiums, and classification rates may be modified to produce rates for individual employers in accordance with rating laws which establish standards for measuring any variations in hazards or expense provisions, or both, that can be demonstrated to have a probable effect upon losses or expenses. All premiums collected by the fund must be deposited by it in the State Treasurer to the credit of the State Accident Fund.

§ 42-7-75. State agencies required to pay workers' compensation premiums; State Treasurer's duties as to state accident fund.

All state agencies shall pay workers' compensation premiums according to Section 42-7-70, as determined by the State Accident Fund. Calculation of premiums for the Adjutant General's Office must exclude losses arising out of service as a member of the South Carolina State and National Guard. In lieu of premiums for those losses the Adjutant General shall pay, at the beginning of each premium year, the amount estimated by the fund to be required to cover actual workers' compensation benefits to guard members during the premium year. If the amount actually paid as benefits differs from the estimated pay out advanced under this paragraph, the difference must be debited or credited to the Adjutant General's account in the same manner that an actual adjusted premium is handled.

The State Treasurer and the Comptroller General shall pay from the general fund of the State to the State Accident Fund any necessary funds to cover actual benefit claims paid during any fiscal year, which exceed the amounts paid in for this purpose by the various agencies, departments, and institutions. The State Accident Fund shall certify quarterly to the Budget and Control Board the state's liability for the benefit claims actually paid to claimants who are employees of any agency or political subdivision of this State and who are entitled to such payment under state law. The amount certified must be remitted to the State Accident Fund.

If there are not sufficient funds in the State Accident Fund Trust Account to pay operating expenses and claims as they arise, the State Treasurer shall, from the general fund of the State, deposit in the account monthly sufficient funds to pay expenses and claims required by law to be paid, but the amount deposited may not exceed the amount of investment income which the account would have earned from its inception if all such earnings had been credited to the fund.

§ 42-7-80. Payment of awards; notice of intention to contest award.

When awards under this article are made by the commission, the commission shall transmit to the director of the fund an official copy of such award, which shall contain the name of the claimant or beneficiary, an itemized statement of the payments to be made and such other information as may be necessary to constitute a full record of the case. Upon receipt of such official award the director of the fund, if he approves the award, shall forward an official copy thereof to the Comptroller General who shall issue his warrant upon the State Treasurer in payment of the claim and retain the award as his voucher therefor. If the director intends to litigate or otherwise contest the award, he shall notify the commission of such intention.

§ 42-7-90. Expenditures from fund.

From the State Accident Fund the following expenditures are authorized:

(1) for the payment of any award under this article made by the commission in connection with accidental injury or death of any official or employee of the State, any county or municipality therein, any political subdivision thereof or any agency or institution of the State or a county, municipality, or political subdivision thereof participating hereunder; or

(2) any other expenses authorized by law or approved by the Budget and Control Board.

§ 42-7-100. Fund director may insure liability.

The fund director may, with the approval of the State Budget and Control Board, carry in a reliable insurance company or companies, such portion of the insurance liability as may be deemed advantageous.

§ 42-7-200. Workers' Compensation Uninsured Employers' Fund; claims; collection powers; reimbursement agreements; funding.

Effective: July 1, 2007

(A) (1) There is hereby established, within the office of the Second Injury Fund, the South Carolina Workers' Compensation Uninsured Employers' Fund. This fund is created to ensure payment of workers' compensation benefits to injured employees whose employers have failed to acquire necessary coverage for employees in accordance with provisions of this section. The fund must be administered by the Director of the Second Injury Fund, who shall establish procedures to implement this section, until June 30, 2013. Effective July 1, 2013, all functions within the Second Injury Fund related to the Uninsured Employers' Fund, including all allied, advisory, affiliated, or related entities, as well as the employees, funds, property, and all contractual rights and obligations associated with the Uninsured Employers' Fund, is transferred to the South Carolina Workers' Compensation Uninsured Employers' Fund, and all powers, duties, obligations, and responsibilities of the Second Injury Fund that relate to the Uninsured Employers' Fund are devolved upon the South Carolina Workers' Compensation Uninsured Employers' Fund in accordance with the State Budget and Control Board's plan for the closure of the Second Injury Fund. This item is effective until July 1, 2013.

(2) There is hereby established, within the office of the State Accident Fund, the South Carolina Workers' Compensation Uninsured Employers' Fund. This fund is created to ensure payment of workers' compensation benefits to injured employees whose employers have failed to acquire necessary coverage for employees in accordance with provisions of this section. The fund must be administered by the Director of the State Accident Fund, who shall establish procedures to implement this section. This item is effective as of July 1, 2013.

(B) When an employee makes a claim for benefits pursuant to Title 42 and the State Workers' Compensation Commission determines that the employer is subject to Title 42 and is operating without insurance or as an unqualified self-insurer, the commission shall notify the fund of the claim. The fund shall pay or defend the claim as it considers necessary in accordance with the provisions of Title 42.

(C) When the fund is notified of a claim, the fund may place a lien on the assets of the employer by way of lis pendens or otherwise so as to protect the fund from payments of costs and benefits. If the fund is required to incur costs or expenses or to pay benefits, the fund has a lien against the assets of the employer to the full extent of all costs, expenses, and benefits paid and may file notice of the lien with the clerk of court or register of deeds of any county in which the employer has assets in the same manner as the filing of South Carolina tax liens and with the Secretary of State in the same manner as utilized under Title 36 (Uniform Commercial Code). Any of the employer's assets sold or conveyed during the litigation of the claim must be sold or conveyed subject to the lien.

(D) The fund has all rights of attachment set forth in Section 15-19-10 and has the right to proceed otherwise in the collection of its lien in the same manner as the Department of Revenue is allowed to enforce a collection of taxes generally pursuant to Section 12-49-10, et seq. When all benefits due the claimant, as well as all expenses and

costs of litigation, have been paid, the fund shall file notice of the total of all monies paid with the clerk of court in any county in which the employer has assets and with the Secretary of State. This notice constitutes a judgment against the employer and has priority as a first lien in the same manner as liens of the Department of Revenue, subject only to the lien of the Department of Revenue pursuant to Section 12-49-10, et seq. If the employer files for bankruptcy or otherwise is placed into receivership, the fund becomes a secured creditor to the assets of the employer in the same manner as the Department of Revenue has priority for unpaid taxes, subject only to the lien of the Department of Revenue. The fund otherwise has all rights and remedies afforded the Department of Revenue as set forth in Section 12-54-10, et seq.

(E) Nothing in this section precludes the South Carolina Workers' Compensation Uninsured Employers' Fund from entering into an agreement for the reimbursement of expenses, costs, or benefits paid by the fund. If an agreement is entered into subsequent to the filing of a lien, the lien may be canceled by the fund. Provided, however, an agreement between the fund and an employer under this section may provide that in the event the employer breaches the terms or conditions of the agreement, the fund may file or reinstate a lien, as the case may be. For purposes of this section, the term "costs" includes reasonable administrative costs which must be set by the director of the fund, subject to the approval of the Workers' Compensation Commission.

(F) To establish and maintain the South Carolina Workers' Compensation Uninsured Employers' Fund, there must be earmarked from the collections of the tax on insurance carriers and self-insured persons provided for in Sections 38-7-50 and 42-5-190 an amount sufficient to establish and annually maintain the fund at a level of not less than two hundred thousand dollars. In addition, the State Treasurer may deposit to the account of the fund monies authorized to be paid to the Workers' Compensation Commission under Section 42-9-140 upon determination additional funds are needed for the operation of the fund.

(G) When an employee makes a claim for benefits pursuant to Title 42 and the records of the South Carolina Workers' Compensation Commission indicate that the employer is operating without insurance, the South Carolina Workers' Compensation Uninsured Employers' Fund or any person designated by the director may subpoena the employer or its agents and require the production of any documents or records which the fund considers relevant to its investigation of the claim. The subpoena shall be returnable at the office of the fund or any place designated by it. In the case of refusal to obey a subpoena issued to any person or agent of any employer, a court of common pleas upon application of the fund may issue an order requiring the person or agent of an employer to appear at the fund and produce documentary evidence or give other evidence concerning the matter under inquiry.

§ 42-7-210. Transfers from general fund to State Accident Fund authorized.

Notwithstanding the amounts annually appropriated as Workers' Compensation Insurance to cover Workers' Compensation benefit claims paid to employees of the state government who are entitled under state law, the State Treasurer and the Comptroller General are hereby authorized and directed to pay from the general fund of the State to the State Accident Fund such funds as are necessary to cover actual benefit claims paid

and expenses relating to the operations of the agency during the current fiscal year which exceed the amounts paid in for this purpose by the various agencies, departments, and institutions. The State Accident Fund must certify quarterly to the Budget and Control Board the state's liability for such benefit claims actually paid to claimants who are employees of the State of South Carolina and entitled under state law. The amount so certified must be remitted to the State Accident Fund.

§ 42-7-310. Establishment, purpose, administration, funding and staff of Second Injury Fund.

Effective: July 1, 2007

(a) There is hereby established, under the Budget and Control Board, the Second Injury Fund for the purpose of making payments in accordance with the provisions of Section 42-9-400, Section 42-9-410, and this section. The fund shall be administered by a director appointed by the State Budget and Control Board. The State Treasurer shall be the custodian of the fund, and all monies and securities in the fund shall be held in a separate and distinct trust account by the State Treasurer.

(b) Disbursements from the fund shall be made with the approval of the director by forwarding a disbursement voucher, along with an itemized statement of payments and such other information as may be necessary to justify payment, to the Comptroller General who shall issue his warrant upon the State Treasurer in payment of the disbursement request.

Agreements to reimburse an employer or his carrier for compensation or medical benefits as provided in Section 42-9-400 or 42-9-410 shall be forwarded to the commission for approval. If approved and unappealed, such agreements shall be binding in the same manner as other orders, decisions, or awards of the commission.

When awards are made under Section 42-9-400 or 42-9-410 by the commission, it shall transmit to the director of the fund an official copy of such awards which shall contain the name of the employer, carrier, and employee to whom benefits were originally paid, an itemized statement of payments, and such other information as may be necessary to constitute a full record of the case. Upon the receipt of such official award, the director of the fund, if he approves the award, shall forward a disbursement voucher, along with an official copy, to the Comptroller General who shall issue his warrant upon the State Treasurer in payment of the claim. If the director intends to litigate or otherwise contest the award, he shall notify the commission of such intention. Any questions or controversies arising under this subsection shall be decided by the commission in the procedural manner now provided under this title.

(c) The original funding of the Second Injury Fund shall be in a manner as follows:

(1) From the State Accident Fund, the State Treasurer is hereby authorized and directed to transfer one hundred thousand dollars to be deposited in the Second Injury Fund.

(2) The State Treasurer is hereby authorized and directed to deposit in the Second Injury Fund one third of the workers' compensation premium tax.

(3) The State Treasurer shall deposit to the account of the Second Injury Fund the money authorized paid to the Workers' Compensation Commission under Section 42-9-140.

(d) The funding of the Division of the Second Injury Fund on a continuing basis is by:

(1) deposits to the account of the fund by the State Treasurer of those monies authorized to be paid to the Workers' Compensation Commission under Section 42-9-140;

(2) equitable assessments upon each carrier which, as used in this section, includes all insurance carriers, self-insurers, and the State Accident Fund. Each carrier shall make payments to the fund in an amount equal to that proportion of one hundred thirty-five percent of the total disbursement made from the fund during the preceding fiscal year less the amount of net assets in the fund as of June thirtieth of the preceding fiscal year which the normalized premium of each carrier bore to the normalized premium of all carriers during the preceding calendar year. Each insurance carrier, self-insurer, and the State Accident Fund shall make payment based upon workers' compensation normalized premiums during the preceding calendar year. The charge to each insurance carrier is a charge based upon normalized premiums. An employer who has ceased to be a self-insurer shall continue to be liable for any assessments into the fund on account of any benefits paid by him during such calendar year. Any assessment levied or established in accordance with this section constitutes a personal debt of every employer or insurance carrier so assessed and is due and payable to the Second Injury Fund when payment is called for by the fund. In the event of failure to pay any assessment upon the date determined by the fund, the employer or insurance carrier immediately may be assessed a penalty in an amount not exceeding ten percent of the unpaid assessment. If the employer or insurance carrier fails to pay the assessment and penalty, they shall be barred from any recovery from the fund on all claims without exception until the assessment and penalty are paid in full. The director may file a complaint for collection against the employer or insurance carrier in a court of competent jurisdiction for the assessment, penalty, and interest at the legal rate, and the employer/carrier is responsible for attorney's fees and costs. The penalty and interest under this subsection are payable to the Second Injury Fund. At the time of the filing of the complaint, the fund also shall notify the South Carolina Department of Insurance and the South Carolina Workers' Compensation Commission, and these government agencies shall take the appropriate legal and administrative action immediately; and

(3) "Normalized premium" is defined as gross paid losses before salvage and subrogation times a factor representing normalized expenses. Normalized expenses include taxes, licenses, fees, general expenses, profit, contingencies, and other expenses as reported on the Insurance Expense Exhibit of the NAIC Annual Statement blank. This normalized expense factor shall be computed annually by the Workers' Compensation Commission by August first of each year and must be based upon aggregate expense information obtained from the Department of Insurance derived from insurers' most recently filed annual statements.

(e) The director shall be authorized to employ necessary staff for administering the fund, and the monies necessary for administration of the fund shall be paid out of the fund. In furtherance of this purpose, the Attorney General shall appoint a member of his staff to represent the fund in all proceedings brought to enforce claims against the fund.

§ 42-7-320. Termination of Second Injury Fund; schedule.

Effective: July 1, 2007

(A) Except as otherwise provided in this section, on and after July 1, 2013, the programs and appropriations of the Second Injury Fund are terminated. The State Budget and Control Board must provide for the efficient and expeditious closure of the fund with the orderly winding down of the affairs of the fund so that the remaining liabilities of the fund are paid utilizing assessments, accelerated assessments, annuities, loss portfolio transfers, or such other mechanisms as are reasonably determined necessary to fund any remaining liabilities of the fund. The Department of Insurance and the Workers' Compensation Commission may submit comments and suggestions to be considered by the State Budget and Control Board in planning for the closure of the fund. The State Budget and Control Board shall cause all necessary actions to be taken to provide appropriate staffing of the fund until such time as the staff services are no longer required to administer the obligations of the fund. The fund's administrative costs, including employee salaries and benefits, shall be paid from the Second Injury Fund Trust if the interest from the trust becomes insufficient to pay these obligations.

(B) After December 31, 2011, the Second Injury Fund shall not accept a claim for reimbursement from any employer, self-insurer, or insurance carrier. The fund shall not consider a claim for reimbursement for an injury that occurs on or after July 1, 2008.

(1) An employer, self-insurer, or insurance carrier must notify the Second Injury Fund of a potential claim by December 31, 2010. Failure to submit notice by December 31, 2010, shall bar an employer, self-insurer, or insurance carrier from recovery from the fund.

(2) An employer, self-insurer, or insurance carrier must submit all required information for consideration of accepting a claim to the Second Injury Fund by June 30, 2011. Failure to submit all required information to the fund by June 30, 2011, so that the claim can be accepted, compromised, or denied shall bar an employer, self-insurer, or insurance carrier from recovery from the fund.

(3) Insurance carriers, self-insurers, and the State Accident Fund remain liable for Second Injury Fund assessments, as determined by the State Budget and Control Board, in order to pay accepted claims. The fund shall continue reimbursing employers and insurance carriers for claims accepted by the fund on or before December 31, 2011.

§ 42-9-5. Basis for award.

Effective: July 1, 2007

Any award made pursuant to this title must be based upon specific and written detailed findings of fact substantiating the award.

§ 42-9-10. Amount of compensation for total disability; what constitutes total disability.

Effective: July 1, 2007

(A) When the incapacity for work resulting from an injury is total, the employer shall pay, or cause to be paid, as provided in this chapter, to the injured employee during the total disability a weekly compensation equal to sixty-six and two-thirds percent of his average weekly wages, but not less than seventy-five dollars a week so long as this amount does not exceed his average weekly salary; if this amount does exceed his average weekly salary, the injured employee may not be paid, each week, less than his average weekly salary. The injured employee may not be paid more each week than the average weekly wage in this State for the preceding fiscal year. In no case may the period covered by the compensation exceed five hundred weeks except as provided in subsection (C).

(B) The loss of both hands, arms, shoulders, feet, legs, hips, or vision in both eyes, or any two thereof, constitutes total and permanent disability to be compensated according to the provisions of this section.

(C) Notwithstanding the five-hundred-week limitation prescribed in this section or elsewhere in this title, any person determined to be totally and permanently disabled who as a result of a compensable injury is a paraplegic, a quadriplegic, or who has suffered physical brain damage is not subject to the five-hundred-week limitation and shall receive the benefits for life.

(D) Notwithstanding the provisions of Section 42-9-301, no total lump sum payment may be ordered by the commission in any case under this section where the injured person is entitled to lifetime benefits.

§ 42-9-20. Amount of compensation for partial disability.

Except as otherwise provided in Section 42-9-30, when the incapacity for work resulting from the injury is partial, the employer shall pay, or cause to be paid, as provided in this chapter, to the injured employee during such disability a weekly compensation equal to sixty-six and two-thirds percent of the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter, but not more than the average weekly wage in this State for the preceding fiscal year. In no case shall the period covered by such compensation be greater than three hundred forty weeks from the date of injury. In case the partial disability begins after a period of total disability, the latter period shall not be deducted from a maximum period allowed in this section for partial disability.

§ 42-9-30. Schedule of period of disability and compensation.

Effective: July 1, 2007

In cases included in the following schedule, the disability in each case is considered to continue for the period specified and the compensation paid for the injury is as specified:

(1) for the loss of a thumb sixty-six and two-thirds percent of the average weekly wages during sixty-five weeks;

(2) for the loss of a first finger, commonly called the index finger, sixty-six and two-thirds percent of the average weekly wages during forty weeks;

(3) for the loss of a second finger, sixty-six and two-thirds percent of the average weekly wages during thirty-five weeks;

(4) for the loss of a third finger, sixty-six and two-thirds percent of the average weekly wages during twenty-five weeks;

(5) for the loss of a fourth finger, commonly called the little finger, sixty-six and two-thirds percent of the average weekly wages during twenty weeks;

(6) the loss of the first phalange of the thumb or any finger is considered to be equal to the loss of one half of such thumb or finger and the compensation must be for one half of the periods of time above specified;

(7) the loss of more than one phalange is considered the loss of the entire finger or thumb; provided, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand;

(8) for the loss of a great toe, sixty-six and two-thirds percent of the average weekly wages during thirty-five weeks;

(9) for the loss of one of the toes other than a great toe, sixty-six and two-thirds percent of the average weekly wages during ten weeks;

(10) the loss of the first phalange of any toe is considered to be equal to the loss of one half of such toe and the compensation must be for one half the periods of time above specified;

(11) the loss of more than one phalange is considered as the loss of the entire toe;

(12) for the loss of a hand, sixty-six and two-thirds percent of the average weekly wages during one hundred and eighty-five weeks;

(13) for the loss of an arm, sixty-six and two-thirds percent of the average weekly wages during two hundred twenty weeks;

(14) for the loss of a shoulder, sixty-six and two-thirds percent of the average weekly wages during three hundred weeks;

(15) for the loss of a foot, sixty-six and two-thirds percent of the average weekly wages during one hundred forty weeks;

(16) for the loss of a leg, sixty-six and two-thirds percent of the average weekly wages during one hundred ninety-five weeks;

(17) for the loss of a hip, sixty-six and two-thirds percent of the average weekly wages during two hundred eighty weeks;

(18) for the loss of an eye, sixty-six and two-thirds percent of the average weekly wages during one hundred forty weeks;

(19) for the complete loss of hearing in one ear, sixty-six and two-thirds percent of the average weekly wages during eighty weeks; and for the complete loss of hearing in both ears, sixty-six and two-thirds percent of the average weekly wages during one hundred sixty-five weeks, and the commission, by regulation, shall provide for the determination of proportional benefits for total or partial loss of hearing based on accepted national medical standards;

(20) total loss of use of a member or loss of vision of an eye is considered as equivalent to the loss of the member or eye. The compensation for partial loss of or for partial loss of use of a member or for partial loss of vision of an eye is the proportion of the payments provided in this section for total loss as such partial loss bears to total loss;

(21) for the loss of use of the back in cases where the loss of use is forty-nine percent or less, sixty-six and two-thirds percent of the average weekly wages during three hundred weeks. In cases where there is fifty percent or more loss of use of the back, sixty-six and two-thirds percent the average weekly wages during five hundred weeks. The compensation for partial loss of use of the back shall be such proportions of the periods of payment herein provided for total loss as such partial loss bears to total loss, except that in cases where there is fifty percent or more loss of use of the back the injured employee shall be presumed to have suffered total and permanent disability and compensated under Section 42-9-10(B). The presumption set forth in this item is rebuttable;

(22) for the total or partial loss of, or loss of use of, a member, organ, or part of the body not covered in this section and not covered under Section 42-9-10 or 42-9-20, sixty-six and two-thirds of the average weekly wages not to exceed five hundred weeks. The commission, by regulation, shall prescribe the ratio which the partial loss or loss or partial loss of use of a particular member, organ, or body part bears to the whole man, basing these ratios on accepted medical standards and these ratios determine the benefits payable under this subsection;

(23) proper and equitable benefits must be paid for serious permanent disfigurement of the face, head, neck, or other area normally exposed in employment, not to exceed fifty weeks. Where benefits are paid or payable for injury to or loss of a particular member or organ under other provisions of this title, additional benefits must not be paid under this item, except that disfigurement also includes compensation for serious burn scars or keloid scars on the body resulting from injuries, in addition to any other compensation.

The weekly compensation payments referred to in this section all are subject to the same limitations as to maximum and minimum as set out in Section 42-9-10.

§ 42-9-35. Evidence of preexisting injury or condition.

Effective: July 1, 2007

(A) The employee shall establish by a preponderance of the evidence, including medical evidence, that:

(1) the subsequent injury aggravated the preexisting condition or permanent physical impairment; or

(2) the preexisting condition or the permanent physical impairment aggravates the subsequent injury.

(B) The commission may award compensation benefits to an employee who has a permanent physical impairment or preexisting condition and who incurs a subsequent disability from an injury arising out of and in the course of his employment for the resulting disability of the permanent physical impairment or preexisting condition and the subsequent injury. However, if the subsequent injury is limited to a single body part or member scheduled in Section 42-9-30, except for total disability to the

back as provided in Section 42-9-30(21), the subsequent injury must impair or affect another body part or system in order to obtain benefits in addition to those provided for in Section 42-9-30.

(C) As used in this section, "medical evidence" means expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed health care provider.

(D) The provisions of this section apply whether or not the employer knows of the preexisting permanent disability.

(E) On and after the effective date of this section, an employee who suffers a subsequent injury which affects a single body part or member injury set forth in Section 42-9-30 is limited to the recovery set forth in that section.

§ 42-9-40. Compensation for hernia.

In all claims for compensation for hernia or rupture, resulting from injury by accident arising out of and in the course of the employee's employment, it must be definitely proven to the satisfaction of the commission that:

(1) there was an injury resulting in hernia or rupture;

(2) the hernia or rupture appeared suddenly;

(3) it was accompanied by pain;

(4) the hernia or rupture immediately followed an accident; and

(5) the hernia or rupture did not exist prior to the accident for which compensation is claimed.

All hernia or rupture, inguinal, femoral or otherwise, so proven to be the result of an injury by accident arising out of and in the course of the employment shall be treated in a surgical manner by a radical operation. If death results from such operation, the death shall be considered as a result of the injury and compensation paid in accordance with the provisions of Section 42-9-290. In nonfatal cases if it is shown by special examination, as provided in Section 42-15-80, that the injured employee has a disability resulting after the operation, compensation for such disability shall be paid in accordance with the provisions of this title.

In case the injured employee refuses to undergo the radical operation for the cure of the hernia or rupture, no compensation will be allowed during the time such refusal continues. If, however, it is shown that the employee has some chronic disease or is otherwise in such physical condition that the commission considers it unsafe for the employee to undergo such operation, the employee shall be paid compensation in accordance with the provisions of this title.

§ 42-9-60. Injury or death occasioned by intoxication or wilful intention of employee; burden of proof.

Effective: July 1, 2007

No compensation shall be payable if the injury or death was occasioned by the intoxication of the employee or by the wilful intention of the employee to injure or kill himself or another. In the event that any person claims that the provisions of this section are applicable in any case, the burden of proof shall be upon such person.

§ 42-9-90. Increase in compensation which is not paid when due.

If any installment of compensation payable in accordance with the terms of an agreement approved by the commission without an award is not paid within fourteen days after it becomes due, as provided in Section 42-9-230, or if any installment of compensation payable in accordance with the terms of an award by the commission is not paid within fourteen days after it becomes due, as provided in Section 42-9-240, there shall be added to such unpaid installment an amount equal to ten per cent thereof, which shall be paid at the same time as, but in addition to, such installment, 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.

§ 42-9-110. Persons conclusively presumed to be wholly dependent.

A surviving spouse or a child shall be conclusively presumed to be wholly dependent for support on a deceased employee.

§ 42-9-120. Determination and requirements of other cases of dependency.

In all other cases questions of dependency, in whole or in part, shall be determined in accordance with the facts as the facts may be at the time of the accident; but no allowance shall be made for any payment in lieu of board and lodging or services and no compensation shall be allowed unless dependency existed for a period of three months or more prior to the accident.

§ 42-9-130. Division of death benefit when there is more than one dependent.

If there is more than one person wholly dependent, the death benefit shall be divided among them and the persons partly dependent, if any, shall receive no part thereof. If there is no one wholly dependent and more than one person partially dependent, the death benefit shall be divided among them according to the relative extent of their dependency.

§ 42-9-140. Payment when deceased employee leaves no dependents or partial dependents.

(A) If the deceased employee leaves no dependents, the employer shall pay the commuted amounts provided for in Section 42-9-290 for whole dependents, less burial expenses which must be deducted from those commuted amounts, to his surviving nondependent children.

(B) If the deceased employee leaves no dependents or nondependent children, the employer shall pay the commuted amounts provided for in Section 42-9-290 for whole dependents, less burial expenses which must be deducted from those commuted amounts, to his father and mother, irrespective of age or dependency.

(C) If the deceased employee leaves a partial dependent or dependents as defined in Section 42-9-120, the employer shall pay compensation to those dependents, in accordance with Section 42-9-290, and the remainder of the commuted amounts provided for in Section 42-9-290, less burial expenses, which must be deducted

from the commuted amounts, to his nondependent children. If no children survive the deceased employee, then the remainder must be paid to his father and mother, irrespective of age or dependency.

(D) If the deceased employee leaves no dependents or nondependent children or mother or father, then his employer shall pay to the deceased's personal representative the actual costs for burial expenses and the administration of the deceased's estate, and to the commission the commuted amounts provided for dependents under Section 42-9-290, to be expended in accordance with Section 42-9-400.

(E) If the deceased employee leaves partial dependents as defined in Section 42-9-120 and no children or mother or father, then his employer shall pay to that partial dependent in accordance with provisions found in Section 42-9-290 and shall pay to the deceased's personal representative the actual cost of burial expenses and the administration of the deceased's estate, and to the commission the remaining compensation, commuted as provided under Section 42-9-290, to be expended in accordance with Section 42-9-400.

(F) If amounts are payable to the mother and father of the deceased employee pursuant to subsections (B) and (C), upon the motion of either parent or any other potential party of interest based upon the decedent having died intestate, the commission may deny or limit either or both parent's entitlement for a share of the benefits if the commission determines, by a preponderance of the evidence, that the parent or parents failed to reasonably provide support for the decedent as defined in Section 63-5-20 and did not otherwise provide for the needs of the decedent during his or her minority.

(G) Payment as prescribed in this section releases the employer from all death benefit liability.

§ 42-9-150. Employees with permanent disability or injury from service in Armed Forces or previous employment; entitlement to compensation; additional benefits.

Effective: July 1, 2007

If an employee has a permanent disability or has sustained a permanent injury that resulted from serving in the United States Armed Forces or in another employment other than that in which he receives a subsequent permanent injury by accident, such as specified in Section 42-9-30 or the second paragraph of Section 42-9-10, he shall be entitled to compensation only for the degree of disability which would have resulted from the later accident if the earlier disability or injury had not existed, except that such employee may receive further benefits if his subsequent injury qualifies for additional benefits under Section 42-9-35.

§ 42-9-160. Amount of compensation for employee injured while drawing compensation for previous disability in same employment.

If an employee receives an injury for which compensation is payable while he is still receiving or entitled to compensation for a previous injury in the same employment, he shall not at the same time be entitled to compensation for both injuries, unless the later injury be a permanent injury such as specified in Section 42-9-30 or the second paragraph of Section 42-9-10, but he shall be entitled to compensation for that injury and from the

time of that injury which will cover the longest period and the largest amount payable under this title.

§ 42-9-170. Permanent injury after sustaining another permanent injury in same employment; entitlement to compensation; extension of period of payment.

Effective: July 1, 2007

(A) If an employee receives a permanent injury as specified in Section 42-9-30 or Section 42-9-10(B) after having sustained another permanent injury in the same employment, he is entitled to compensation for both injuries, but the total compensation must be paid by extending the period and not by increasing the amount of weekly compensation, and in no case exceeding five hundred weeks. If an employee previously has incurred permanent partial disability through the loss of a hand, arm, shoulder, foot, leg, hip, or eye and by subsequent accident incurs total permanent disability through the loss of another member, the employer's liability is for the subsequent injury only, except that the employee may receive further benefits as provided by Sections 42-7-310, 42-9-400, and 42-9-410 if his subsequent injury qualifies for additional benefits provided in those sections. This subsection is effective until June 30, 2008.

(B) If an employee receives a permanent injury as specified in Section 42-9-30 or Section 42-9-10(B)after having sustained another permanent injury in the same employment, he is entitled to compensation for both injuries, but the total compensation must be paid by extending the period and not by increasing the amount of weekly compensation, and in no case exceeding five hundred weeks. If an employee previously has incurred permanent partial disability through the loss of a hand, arm, shoulder, foot, leg, hip, or eye and by subsequent accident incurs total permanent disability through the loss of another member, the employer's liability is for the subsequent injury only, except that the employee may receive further benefits as provided under the provisions of Section 42-9-35. This subsection is effective on July 1, 2008.

§ 42-9-190. No compensation to injured employee refusing suitable employment.

If an injured employee refuses employment procured for him suitable to his capacity and approved by the commission he shall not be entitled to any compensation at any time during the continuance of such refusal.

§ 42-9-200. Dates on which compensation commences.

No compensation shall be allowed for the first seven calendar days of disability resulting from an injury, except the benefits provided for in Section 42-15-60; but, if the injury results in disability of more than fourteen days, compensation shall be allowed from the date of the disability.

§ 42-9-210. Deduction from compensation of payments made by employer when not due and payable.

Any payments made by an employer to an injured employee during the period of his disability, or to his dependents, which by the terms of this title were not due and payable

when made may, subject to the approval of the commission, be deducted from the amount to be paid as compensation; provided, that in the case of disability such deductions shall be made by shortening the period during which compensation must be paid and not by reducing the amount of the weekly payment.

§ 42-9-220. Manner in which compensation paid.

Compensation under this title shall be paid periodically, promptly and directly to the person entitled thereto, unless otherwise specifically provided.

§ 42-9-230. Date on which compensation payable under agreement becomes due.

The first installment of compensation payable under the terms of an agreement is due on the fourteenth day after the employer has knowledge of the injury or death, on which date all compensation due must be paid. Thereafter, compensation must be paid in installments weekly, except when the commission determines that payment in installments should be made monthly or at some other period.

Installments paid weekly must be paid on the same day of the week, installments paid monthly must be paid on the same day of the month, and installments paid on some period other than weekly or monthly must be paid on the same day of each period.

§ 42-9-240. Date on which compensation payable under award becomes due.

The first installment of compensation payable under the terms of an award by the commission or under the terms of a judgment of a court upon an appeal from such an award shall become due seven days from the date of such an award or from the date of such a judgment of the court, on which date all compensation then due shall be paid, including interest from the original date of the award at the maximum legal rate. Thereafter compensation shall be paid in installments weekly, except when the commission determines that payment in installments shall be made monthly or in some other manner.

§ 42-9-250. Payment of compensation monthly or quarterly authorized.

The commission, upon application of either party, may in its discretion, having regard to the welfare of the employee and the convenience of the employer, authorize compensation to be paid monthly or quarterly instead of weekly.

§ 42-9-260. Notice to commission when payments have begun; suspension or termination of payments.

(A) When an employee has been out of work due to a reported work-related injury or occupational disease for eight days, an employer may start temporary disability payments immediately and may continue these payments for up to one hundred fifty days from the date the injury or disease is reported without waiver of any grounds for good faith denial. Upon making the first payment, the employer immediately shall notify the commission, in accordance with a form prescribed by the commission, that payment of compensation has begun.

(B) Once temporary disability payments are commenced, the payments may be terminated or suspended immediately at any time within the one hundred fifty days if:

  (1) the employee has returned to work; however, if the employee does not remain at work for a minimum of fifteen days, temporary disability payments must be resumed immediately; or

  (2) the employee agrees that he is able to return to work and executes the proper commission form indicating that he is able to return to work; or

  (3) a good faith investigation by the employer reveals grounds for denial of the claim; or

  (4) the employee has been released by the treating physician to work without restriction and the employer offers comparable employment; or

  (5) the employee has been released by the treating physician to limited duty work and the employer provides limited duty work consistent with the terms upon which the employee has been released; or

  (6) the employee refuses medical treatment, as provided in Section 42-15-60, or refuses an examination or evaluation, as provided in Section 42-15-80, and the termination or suspension of benefits continues until the refusal ceases or the commission determines the refusal is justified pursuant to either Section 42-15-60 or 42-15-80.

(C) An employee whose disability payments have been terminated or suspended pursuant to this section may request a hearing to have the payments reinstituted. The hearing must be held within sixty days of the date of the employee's request for a hearing.

(D) If an employee has been declared as having reached maximum medical improvement, the employer may request a hearing to address the termination of temporary disability payments. The hearing must be held within sixty days of the date of the employer's request for a hearing.

(E) An employer may request a hearing at any time to address termination or reduction of temporary disability payments.

(F) After the one-hundred-fifty-day period has expired, the commission shall provide by regulation the method and procedure by which benefits may be suspended or terminated for any cause, but the regulation must provide for an evidentiary hearing and commission approval prior to termination or suspension unless such prior hearing is expressly waived in writing by the recipient or the circumstances identified in Section 42-9-260(B)(1) or (B)(2) are present. Further, the commission may not entertain any application to terminate or suspend benefits unless and until the employer or carrier is current with all payments due.

(G) Failure to comply with this section shall result in a twenty-five percent penalty imposed upon the carrier or employer computed on the amount of benefits withheld in violation of this section, and the amount of the penalty must be paid to the employee in addition to the amount of benefits withheld. However, the penalty does not apply if the employer or carrier has terminated or suspended benefits when the employee has returned to any employment at the same or similar wage.

§ 42-9-270. Notice of final payment; penalty for failure to give notice.

Within sixteen days after 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 to so notify the commission within such time, the commission shall assess against such employer a civil penalty in the amount of twenty-five dollars.

§ 42-9-280. Payment of unpaid balance of compensation when employee dies.

When an employee receives or is entitled to compensation under this title for an injury covered by the second paragraph of Section 42-9-10 or 42-9-30 and dies from any other cause than the injury for which he was entitled to compensation, payment of the unpaid balance of compensation shall be made to his next of kin dependent upon him for support, in lieu of the compensation the employee would have been entitled to had he lived. But if the death is due to a cause that is compensable under this title and the dependents of such employee are awarded compensation therefor, all right to unpaid compensation provided by this section shall cease and determine.

§ 42-9-290. Amount of compensation for death of employee due to accident.

If death results proximately from an accident and within two years of the accident or while total disability still continues and within six years after the accident, the employer shall pay or cause to be paid, subject, however, to the provisions of the other sections of this title, in one of the methods provided in this chapter, to the dependents of the employee wholly dependent upon his earnings for support at the time of the accident, a weekly payment equal to sixty-six and two-thirds percent of his average weekly wages, but not less than seventy-five dollars a week so long as this amount does not exceed his average weekly wages; if this amount does exceed his average weekly wages, the amount payable may not be less than his average weekly wages nor more than the average weekly wage in this State for the preceding fiscal year, for a period of five hundred weeks from the date of the injury, and burial expenses up to but not exceeding twenty-five hundred dollars. If the employee leaves dependents, only partly dependent upon his earnings for support at the time of the injury, the weekly compensation to be paid must equal the same proportion of the weekly payments for the benefit of persons wholly dependent as the amount contributed by the employee to such partial dependence bears to the annual earnings of the deceased at the time of his injury. When weekly payments have been made to an injured employee before his death, the compensation to dependents begins from the date of the last of such payments but does not continue more than five hundred weeks from the date of the injury. Compensation under this title to aliens not residents (or about to become nonresidents) of the United States or Canada is the same in amount as provided for residents, except that dependents in any foreign country are limited to a surviving spouse and child or children or, if there be no surviving spouse or child, to a surviving father or mother whom the employee has supported, either wholly or in part, for a period of three years before 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 install-

ments of compensation to be paid to such aliens by paying or causing to be paid to them one-half of the commuted amount of future installments of compensation as determined by the commission.

The provisions of this section may not be construed to prohibit lump-sum payments to surviving spouses. Provisions for lump-sum settlement may be retroactive.

Any death benefits to which a child through the age of eighteen years of an employee is entitled under this section vest with the child at the date of death of the employee and continue to be paid to the beneficiary subject to the five-hundred-week limitation regardless of his age.

If at the date of death of the employee, the employee has a child nineteen years of age or older enrolled as a full-time student in an accredited educational institution, the child is entitled to death benefits in the same manner as though he were under nineteen and shall receive benefits, subject to the five-hundred-week limitation, until the age of twenty-three. However, if a student's enrollment ends, except for normal breaks and vacations in accordance with schedules of the school, the child no longer is considered a dependent. When all the deceased employee's children are no longer dependent, the remainder of that portion of the award must be paid to a surviving spouse or other full dependent, or if there be none, the remainder of that portion of the award must be paid in the same manner as provided in this section for cases where the employee is survived by no full dependents.

Any dependent child mentally or physically incapable of self-support must be paid benefits for the full five-hundred-week period regardless of age.

In cases where benefits are payable to a surviving spouse and dependent children, the surviving spouse shall receive not less than one-half of the benefits paid if there are two or more children.

§ 42-9-301. Lump-sum payments.

Whenever any weekly payment has been continued for not less than six weeks, the liability therefor may, when the employee so requests and the commission deems it not to be contrary to the best interest of the employee or his dependents, or when it will prevent undue hardship on the employer or his insurance carrier, without prejudicing the interest of the employee or his dependents, be redeemed, in whole or in part, by the payment by the employer of a lump sum which shall be fixed by the commission, but in no case to be less than ninety percent of, nor to exceed, the commutable value of the future installments commuted so as not to exceed six percent nor to be less than two percent. The commission, however, in its discretion, may at any time in the case of a minor who has received permanently disabling injuries, either partial or total, provide that he be compensated, in whole or in part, by the payment of a lump sum, the amount of which shall be fixed by the commission but in no case to be less than ninety percent of, nor to exceed, the commutable value of the future installments which may be due under this title. Upon a finding by the commission that a lump sum payment should be made, the burden of proof as to the abuse of discretion in such finding shall be upon the employer or carrier in any appeal proceedings.

§ 42-9-310. Trustees may administer lump-sum settlements.

Whenever the commission considers it expedient, any lump sum subject to the provisions of Section 42-9-301 must be paid by the employer to some suitable person or corporation appointed by a court of competent jurisdiction in the county wherein the accident occurred, as trustee, to administer it for the benefit of the person entitled thereto, in the manner provided by the commission. When the amount to be paid under this section is in excess of one hundred dollars, the trustee is required to give sufficient bond approved by the probate court or clerk of the court of common pleas. The receipt of the trustee for the amount as paid discharges the employer or anyone else who is liable therefor.

§ 42-9-320. Persons who may receive and receipt for payments; discharge of liability of employer on receipt.

Whenever payment of compensation is made to a surviving spouse for her or his use or, for her or his use and the use of a child or children, the written receipt of the surviving spouse shall acquit the employer.

Whenever payment is made to any person eighteen years of age or over, the written receipt of the person shall acquit the employer. When an infant or minor under the age of eighteen is entitled to receive not more than ten thousand dollars as compensation for injuries, or as a distributive share by virtue of this title, the father, mother, or natural guardian upon whom the infant or minor is dependent for support may receive and receipt for the monies to the same extent as a guardian of the person and property of the infant or minor duly appointed by the court and the release or discharge of the father, mother, or natural guardian is a full and complete discharge of all claims or demands of the infant or minor.

Whenever any payment of over ten thousand dollars is made to a minor under eighteen years of age, it must be made to some person or corporation appointed by the probate court as a guardian and the receipt of the guardian shall acquit the employer.

§ 42-9-330. Exercise of rights for incompetent or infant employees.

If an injured employee is mentally incompetent or is under eighteen years of age at the time when any right or privilege accrues to him under this title, his guardian, trustee or committee may in his behalf claim and exercise such right or privilege.

§ 42-9-340. Effect of payment in good faith to junior dependents.

Payment of death benefits by an employer in good faith to a dependent subsequent in right to another dependent shall protect and discharge the employer, unless and until such dependent prior in right shall have given notice of his claim. In case the employer is in doubt as to the respective rights of rival claimants, he may apply to the commission to decide between them.

§ 42-9-350. Payment of compensation of employee working for several employers at time of injury.

Whenever an employee for whose injury or death compensation is payable under this title shall, at the time of the injury, be in joint service of two or more employers subject to this title, such employers shall contribute to the payment of such compensation in propor-

tion to their wages liability to such employee. But nothing in this section shall prohibit any reasonable arrangement between such employers for a different distribution as between themselves of the ultimate burden of compensation.

§ 42-9-360. Assignments of compensation; exemptions from claims of creditors and taxes.

(A) No claim for compensation under this title shall be assignable and all compensation and claims therefor shall be exempt from all claims of creditors and from taxes.

(B) It shall be unlawful for an authorized health care provider to actively pursue collection procedures against a workers' compensation claimant prior to the final adjudication of the claimant's claim. Nothing in this section shall be construed to prohibit the collection from and demand for collection from a workers' compensation insurance carrier or self-insured employer. Violation of this section, after written notice to the provider from the claimant or his representative that adjudication is ongoing, shall result in a penalty of five hundred dollars payable to the workers' compensation claimant.

(C) Any person who receives any fee or other consideration or any gratuity on account of services so rendered, unless the consideration or gratuity is approved by the commission or the court, or who makes it a business to solicit employment for a lawyer or for himself in respect of any claim or award for compensation is guilty of a misdemeanor and, upon conviction, must, for each offense, be fined not more than five hundred dollars or imprisoned not more than one year, or both.

(D) Payment to an authorized health care provider for services shall be made in a timely manner but no later than thirty days from the date the authorized health care provider tenders request for payment to the employer's representative, unless the commission has received a request to review the medical bill.

§ 42-9-370. Preferences or priorities of rights of compensation.

All rights of compensation granted by this title shall have the same preference or priority for the whole thereof against the assets of the employer as is allowed by law for any unpaid wages for labor.

§ 42-9-390. Voluntary settlements.

Effective: July 1, 2007

Nothing contained in this chapter may be construed so as to prevent settlements made by and between an employee and employer as long as the amount of compensation and the time and manner of payment are in accordance with the provisions of this title. The employer must file a copy of the settlement agreement with the commission if each party is represented by an attorney. If the employee is not represented by an attorney, a copy of the settlement agreement must be filed by the employer with the commission and approved by one member of the commission.

§ 42-9-400. Reimbursement from Second Injury Fund when disability substantially greater or caused by aggravation of preexisting impairment.

Effective: July 1, 2007

(a) If an employee who has a permanent physical impairment from any cause or origin incurs a subsequent disability from injury by accident arising out of and in the course of his employment, resulting in compensation and medical payments liability or either, for disability that is substantially greater and is caused by aggravation of the preexisting impairment than that which would have resulted from the subsequent injury alone, the employer or his insurance carrier shall pay all awards of compensation and medical benefits provided by this title; but such employer or his insurance carrier shall be reimbursed from the Second Injury Fund as created by Section 42-7-310 for compensation and medical benefits in the following manner:

(1) reimbursement of all compensation benefit payments payable subsequent to those payable for the first seventy-eight weeks following the injury;

(2) reimbursement of fifty percent of medical payments in excess of three thousand dollars during the first seventy-eight weeks following the injury and then reimbursement of all medical benefit payments payable subsequent to the first seventy-eight weeks following the injury; provided, however, in order to obtain reimbursement for medical expense during the first seventy-eight weeks following the subsequent injury, an employer or carrier must establish that his liability for medical payments is substantially greater by reason of the aggravation of the preexisting impairment than that which would have resulted from the subsequent injury alone.

(b) If the subsequent injury of such an employee shall result in the death of the employee, and it shall be determined that the death would not have occurred except for such preexisting permanent physical impairment, the employer or his insurance carrier shall in the first instance pay the compensation prescribed by this title; but he or his insurance carrier shall be reimbursed from the Second Injury Fund created by Section 42-7-310, for all compensation payable in excess of seventy-eight weeks.

(c) In order to qualify under this section for reimbursement from the Second Injury Fund, the employer must establish when claim is made for reimbursement thereunder, that the employer had knowledge of the permanent physical impairment at the time that the employee was hired, or at the time the employee was retained in employment after the employer acquired such knowledge. However, the employer may qualify for reimbursement hereunder upon proof that he did not have prior knowledge of the employee's preexisting physical impairment because the existence of the condition was concealed by the employee.

(d) As used in this section, "permanent physical impairment" means any permanent condition, whether congenital or due to injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed.

When an employer establishes his prior knowledge of the permanent impairment, then there shall be a presumption that the condition is permanent and that a hindrance or obstacle to employment or reemployment exists when the condition is one of the following impairments:

(1) Epilepsy;
(2) Diabetes;
(3) Cardiac disease;
(4) Amputated foot, leg, arm, or hand;
(5) Loss of sight of one or both eyes or partial loss of uncorrected vision of more than seventy-five percent bilateral;
(6) Residual disability from Poliomyelitis;
(7) Cerebral Palsy;
(8) Multiple Sclerosis;
(9) Parkinson's disease;
(10) Cerebral vascular accident;
(11) Tuberculosis;
(12) Silicosis;
(13) Psychoneurotic disability following treatment in a recognized medical or mental institution;
(14) Hemophilia;
(15) Chronic Ostemyelitis;
(16) Ankylosis of joints;
(17) Hyperinsulinism;
(18) Muscular Dystrophy;
(19) Arteriosclerosis;
(20) Thrombophlebitis;
(21) Varicose veins;
(22) Heavy metal poisoning;
(23) Ionizing radiation injury;
(24) Compressed air sequelae;
(25) Ruptured intervertebral disc;
(26) Hodgkins disease;
(27) Brain damage;
(28) Deafness;
(29) Cancer;
(30) Sickle-Cell Anemia;
(31) Pulmonary disease;
(32) Intellectual disability provided the employee's intelligence quotient is such that he falls within the lowest percentile of the general population. However, it shall not be necessary for the employer to know the employee's actual intelligence quotient or actual relative ranking in relation to the intelligence quotient of the general population.

(e) The Second Injury Fund shall not be bound as to any question of law or fact by reason of any compensation agreement, settlement, award, and adjudication to which it was

not a party, or in relation to which it was not notified at least twenty days prior to a hearing on liability that it might be subject to liability for the injury or death.

(f) An employer or his carrier must notify the Workers' Compensation Commission and the Director of the Second Injury Fund in writing of any possible claim against the fund as soon as practicable but in no event later than after the payment of the first seventy-eight weeks of compensation. This written notice must provide the:

(1) date of accident;

(2) employee's name;

(3) employer's name and address;

(4) insurance carrier's name, address, and the National Council on Compensation Insurance code; and

(5) insurance carrier's claim number, policy number, and policy effective date. The carrier claim number is the unique identifier a carrier uses throughout the life of a claim to report that claim to the National Council on Compensation Insurance. Failure to comply with the provisions of this subsection shall bar an employer or his carrier from recovery from the fund.

(g) If the employee has a permanent physical impairment, as defined in this section and the prerequisites for reimbursement have been met, and if it can be shown that the subsequent injury most probably would not have occurred "but for" the presence of the prior impairment, then reimbursement will be granted as provided in this section even if the subsequent injury does not cause the employer's liability for compensation and medical benefits to be substantially greater than that which would have resulted from the subsequent injury alone.

(h) When a third party is deemed to be an employer for the purposes of paying workers' compensation benefits, that third party will be entitled to reimbursement from the Second Injury Fund if either he or the employer of record have met the knowledge requirements outlined in this section, as well as all other requirements.

(i) The Second Injury Fund is entitled to a credit for sums recovered by the employer or his workers' compensation carrier from third parties, after the employer or his workers' compensation carrier have been reimbursed for the monies paid out by them and not reimbursed by the fund.

(j) The Second Injury Fund can enter into compromise settlements at the discretion of the director with approval of a majority of the Workers' Compensation Commission, provided a bona fide dispute exists.

(k) Any employer operating in violation of Section 42-5-20 is not eligible for reimbursement from the South Carolina Second Injury Fund.

(l) As a prerequisite to reimbursement from the fund, the insurer shall be required to certify that the medical and indemnity reserves have been reduced to the threshold limits of reimbursement and report in accordance with the National Council on Compensation Insurance Workers' Compensation Statistical Plan.

(m) The Second Injury Fund Director must quarterly submit to the National Council on Compensation Insurance information regarding Second Injury Fund accepted claims.

(n) The National Council on Compensation Insurance must submit a report of any discrepancies pursuant to regulations established by the Department of Insurance.

The Department of Insurance is directed to establish regulations concerning Second Injury Fund discrepancies.

§ 42-9-410. Reimbursement from Second Injury Fund for employee who becomes totally and permanently disabled in a subsequent injury; notice of preexisting permanent impairment.

(a) When an employee shall become totally and permanently disabled under § 42-9-10, because of the loss of a hand, arm, foot, leg or the vision of an eye in a subsequent injury under § 42-9-150 or 42-9-170, he may receive from the employer compensation and medical care provided by this title for total and permanent disability, and the employer shall be reimbursed a portion of the cost thereof from the Second Injury Fund as herein provided.

(b) If the loss of the member or eyesight is not caused or contributed to by any of the conditions defined as "permanent physical impairment" in § 42-9-400, the employer shall be responsible to pay such compensation and provide such medical care as is required by §§ 42-9-150 or 42-9-170 and 42-15-60, and the employer shall thereafter be reimbursed by the Second Injury Fund for the cost of such further compensation and medical care as the injured employee shall receive under this chapter.

(c) If the loss of the member or eyesight is caused or contributed to by any of the conditions defined in § 42-9-400 as "permanent physical impairment," the employer shall pay the compensation and medical expense for seventy-eight weeks as required by subsection (a) of § 42-9-400 and thereafter the employer shall be reimbursed from the Second Injury Fund for such further compensation or medical expense as the employer shall provide for the employee under this chapter.

(d) In order to receive additional benefits from the Second Injury Fund as permitted by Sections 42-9-150 and 42-9-170, the employer shall establish that he had knowledge of the employee's preexisting permanent physical impairment prior to the time of the subsequent injury by accident, unless the employer can establish that he did not have prior knowledge of the employee's preexisting physical impairment because the existence of the condition was concealed by the employee.

§ 42-9-430. Workers' compensation benefits.

Whenever a dispute arises between two or more parties as to which party is liable for the payment of workers' compensation benefits to an injured employee pursuant to the provisions of this title 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 hearing commissioner may, in his discretion, 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 of interest provided in § 34-31-20(A).

§ 42-9-440. Suspected false statements or misrepresentations to be reported to Insurance Fraud Division of Office of Attorney General.

The commission shall report all cases of suspected false statement or misrepresentation, as defined in Section 38-55-530(D), to the Insurance Fraud Division of the Office of the Attorney General for investigation and prosecution, if warranted, pursuant to the Omnibus Insurance Fraud and Reporting Immunity Act.

§ 42-11-10. "Occupational disease" defined.

Effective: July 1, 2007

(A) "Occupational disease" means a disease arising out of and in the course of employment that is due to hazards in excess of those ordinarily incident to employment and is peculiar to the occupation in which the employee is engaged. A disease is considered an occupational disease only if caused by a hazard recognized as peculiar to a particular trade, process, occupation, or employment as a direct result of continuous exposure to the normal working conditions of that particular trade, process, occupation, or employment. In a claim for an occupational disease, the employee shall establish that the occupational disease arose directly and naturally from exposure in this State to the hazards peculiar to the particular employment by a preponderance of the evidence.

(B) No disease shall be considered an occupational disease when it:

(1) does not result directly and naturally from exposure in this State to the hazards peculiar to the particular employment;

(2) results from exposure to outside climatic conditions;

(3) is a contagious disease resulting from exposure to fellow employees or from a hazard to which the workman would have been equally exposed outside of his employment;

(4) is one of the ordinary diseases of life to which the general public is equally exposed, unless such disease follows as a complication and a natural incident of an occupational disease or unless there is continuous exposure peculiar to the occupation itself which makes such disease a hazard inherent in such occupation;

(5) is any disease of the cardiac, pulmonary, or circulatory system not resulting directly from abnormal external gaseous pressure exerted upon the body or the natural entrance into the body through the skin or natural orifices thereof of foreign organic or inorganic matter under circumstances peculiar to the employment and the processes utilized therein; or

(6) is any chronic disease of the skeletal joints.

(C) As used in this section, "medical evidence" means expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed health care provider.

(D) No compensation shall be payable for any occupational disease unless the employee suffers a disability as described in Section 42-9-10, 42-9-20, or 42-9-30.

§ 42-11-20. "Disablement" and "disability" defined.

As used in this chapter, "disablement" means the event of an employee's becoming actually incapacitated, partially or totally, because of an occupational disease, from performing his work in the last occupation in which injuriously exposed to the hazards of such disease, "partial disability" means the physical inability to continue work in such occupation only and "total disability" means the physical inability to perform work in any occupation. The disablement and disability of an employee from an occupational disease shall be determined as provided in this chapter.

§ 42-11-30. Presumptions; heart or respiratory disease as to firefighters; cardiac-related incident as to law enforcement officers; report of physical examination required.

Effective: February 25, 2010

(A) Notwithstanding the provisions of this chapter, for purposes of the South Carolina Workers' Compensation Law, any impairment or injury to the health of a firefighter caused by heart disease or respiratory disease resulting in total or partial disability or death is presumed to have arisen out of and in the course of employment, unless the contrary is shown by competent evidence, if the firefighter is at the time of such impairment or injury a bona fide member of a municipal, county, state, port authority, or fire control district fire department in this State. In order to be entitled to the presumption provided for in this section, any person becoming a member of a fire department after May 29, 1968, must be under the age of thirty-seven years and must have successfully passed a physical examination by a competent physician upon entering into such service or by July 1, 2012, a written report of which must have been made and filed before any alleged injury with the fire department, which examination failed to reveal any evidence of such condition or conditions, and the condition or conditions developed while actively engaged in fighting a fire or within twenty-four hours from the date of last service in the activity.

(B) (1) Notwithstanding the provisions of this chapter, for purposes of the South Carolina Workers' Compensation Law, a cardiac-related incident resulting in impairment or injury to a law enforcement officer resulting in total or partial disability, or death, is presumed to have arisen out of and in the course of employment if this impairment or injury developed while actively engaged in, or within twenty-four hours from the date of, a law enforcement incident involving unusual or extraordinary physical exertion, unless the contrary is shown by competent evidence. At the time of the incident, the law enforcement officer must be employed as a law enforcement officer of a municipal, county, state, port authority, or other law enforcement agency in this State. In order to be entitled to the presumption provided by this section, a person becoming a law enforcement officer, must be under thirty-seven years of age and upon entering into the service, must have successfully passed a physical examination which includes a risk factor assessment for coronary artery disease conducted by a competent physician who should counsel on risk factor reduction and consider current medical literature on evaluation and prevention of coronary artery disease in conducting the risk factor assessment. A written report of the examination must have been made and filed with the law enforcement agency, which examination must not have revealed evidence of cardiac impairment or

injury. If the law enforcement officer is identified as being a high risk for coronary artery disease during the risk factor assessment and the law enforcement officer fails to undergo, at his own expense, additional medical tests related to discovery of coronary artery disease, he is not entitled to the presumption provided by this section.

(2) If a law enforcement agency cannot produce the report described in subitem (B)(1), the law enforcement officer may submit a written report of a physical examination conducted before July 1, 2012, which includes a risk factor assessment for coronary artery disease conducted by a competent physician who also shall counsel on risk factor reduction and consider current medical literature on evaluation and prevention of coronary artery disease in conducting the risk factor.

§ 42-11-40. Occupational diseases treated as injuries by accident.

When employer and employee are subject to the provisions of this title, the disablement or death of an employee resulting from an occupational disease shall be treated as an injury by accident and the employee, or in case of death his dependents, shall be entitled to compensation as for an injury under this title, except as otherwise provided in this chapter, and the practice and procedure prescribed in this title shall apply to all proceedings under this chapter, except as otherwise provided in this chapter. In no case shall an employer be liable for compensation for an occupational disease unless such disease was contracted by the employee while in the employ of the employer as a direct result of the employment.

§ 42-11-50. Limitation on compensation payable to employee disabled by both injury and occupational disease.

When an employee suffers disability from an occupational disease and also from an injury which is otherwise compensable under this title, he shall not be entitled to receive compensation for both and benefits payable shall be limited to the cause which results in the longest period of disability, either as provided under this chapter or as provided for an injury by accident arising out of and in the course of employment. In no event shall compensation payable for disability or death exceed the maximum benefits provided under this title.

§ 42-11-60. Requirements for compensation for pulmonary diseases.

No compensation shall be payable for any pulmonary disease arising out of the inhalation of organic or inorganic dust or fumes unless the claimant suffers disability as described in Section 42-9-10 or Section 42-9-20 and shall not be compensable under Section 42-9-30; provided, however, in claims based on byssinosis the claimant must have been exposed to dust in his employment for a period of at least seven years.

§ 42-11-70. Time in which disease must have been contracted.

Neither an employee nor his dependents shall be entitled to compensation for disability or death from an occupational disease, except that due to exposure to ionizing radiation, unless such disease was contracted within one year after the last exposure to

the hazard peculiar to his employment which caused the disease, save that in the case of a pulmonary disease arising out of the inhalation of organic or inorganic dusts the period shall be two years.

§ 42-11-80. Wilful misrepresentation by employee as to absence of disease; waivers.

If an employee, at the time of his employment, wilfully and falsely represents in writing that he has not previously suffered from the disease which is the cause of disability or death, no compensation shall be payable. If an employee who has previously suffered from an occupational disease desires to continue in an employment to which such a disease is a hazard, he may waive his right to receive further benefits for disablement or disability from such disease by written agreement approved by the commission in accordance with such rules as it may promulgate.

§ 42-11-90. Amount of compensation when noncompensable cause or disease affects occupational disease.

When an occupational disease prolongs, accelerates or aggravates or is prolonged, accelerated or aggravated by any other cause or infirmity not otherwise compensable, the compensation payable for disability or death shall be limited to the disability which would have resulted solely from the occupational disease if there were no other such cause or infirmity and shall be computed by the proportion which the disability from occupational disease bears to the entire disability.

§ 42-11-100. Amount of compensation payable for disability; exceptions.

Compensation payable for disability from an occupational disease must be the same as that provided for an injury under this title. No compensation is payable:

(1) for the degree of disability resulting from noncompensable causes or the employee’s refusal to use a safety appliance provided by and regularly required to be used by the employer or to obey a safety rule or regulation adopted and regularly enforced by the employer;

(2) for any disability resulting from the employee’s intoxication or wilful intent to injure himself;

(3) for the time the employee refuses to accept suitable employment when ordered to do so by the commission;

(4) after the disability terminates.

§ 42-11-110. No presumptions; misconception of remedy.

There shall be no presumption that disablement from any cause or infirmity is the result of a occupational disease, nor that an occupational disease will result in disablement or disability. But when disability results from a disease which is compensable under other provisions of this title, although not an occupational disease, the employee shall not be deprived of any benefits to which he may be entitled because he may have misconceived his remedy to be for an occupational disease.

§ 42-11-120. Procedure for determining claims; reference of medical question to medical board.

The procedure for determining claims for benefits from an occupational disease shall be the same as that followed in determining other claims under this title, save that if any medical question shall be in controversy the commission may, upon its own motion, and shall, upon motion of either party to the proceeding, refer the question to the medical board as provided in this chapter for investigation and report. A medical question shall be deemed to include any issue concerning the existence, cause and duration of a disease or disability, the date of disablement, the degree of disability and the proportion thereof attributable to a noncompensable cause and any other matter necessarily pertinent thereto requiring the opinion of experts.

§ 42-11-130. Membership of medical board.

The medical board employed to determine controverted medical questions shall consist of three members appointed by the commission or hearing commissioner and selected from the medical advisory panel as follows: one to be named by the claimant and one to be named by the employer or his insurer as the case may be, and the third to be chosen by the commission or hearing commissioner. But if within ten days after the hearing in which a controverted medical question is raised one or more of the parties have failed to nominate a member, the commission or commissioner hearing the case shall nominate a member or members to complete the board to three members.

§ 42-11-140. Fees and expenses of medical board.

The fees and expenses of the medical board shall be charged in accordance with a schedule adopted by the commission upon the advice and recommendations of the medical advisory panel and such fees and expenses, along with such clinical and X-ray expenses as the medical board may require in order to properly complete its investigation in a particular case, shall be chargeable as cost to the losing party in the controversy, save that when the claimant is the losing party such fees, costs and expenses shall be borne by the commission.

§ 42-11-150. Procedure before medical board.

The medical board, upon referral to it of a medical question, shall notify the claimant and the employer or its insurer, as the case may be, to appear before the board at a time and place stated in the notice and shall examine the employee, if living, and may examine the body of the employee, if deceased. The medical board shall consider any testimony given before the commission pertaining to the medical question and necessary to a proper determination thereof. The medical board shall, as soon as practical after it has completed its consideration of the case, report in writing its findings and conclusions on every medical question in controversy. Such report shall be a part of the record in the case and shall include a statement indicating the physician or physicians, if any, who appeared before it, the medical board, what, if any, medical reports and X-rays were considered by it and any other matters which it deems necessary to explain or substantiate its conclusions. The commission upon receipt of the report shall send a copy thereof to the claimant and to the employer and his insurance carrier, if any.

§ 42-11-160. Decisions on questions by medical board.

The decisions and award in the case shall conform to the findings and conclusions in such report insofar as it is restricted to medical questions, except that either party may, within ten days after receipt of a copy of the report, file written objection thereto with the commission; provided, the report shall not be binding on the commission if it be proven that the conclusion of the board upon a medical question be erroneous, due to fraud, undue influence, or mistake of law or material fact.

§ 42-11-170. Membership of medical advisory panel.

The medical board shall be chosen from the medical advisory panel, composed of medical experts appointed by the Governor who shall be chosen from a list submitted by the executive committee of the South Carolina Medical Association, which list shall be approved by the Workers' Compensation Commission. The medical advisory panel shall include at least three doctors of medicine with no less than five years' specialization in the field of X-ray diagnosis and treatment, at least three doctors of medicine with no less than five years' specialization in pathology, at least three doctors of medicine with no less than five years' experience in the treatment and diagnosis of occupational diseases or who are specially qualified by training and experience as experts in the diagnosis and treatment of diseases in general and two doctors who are qualified for the treatment of pulmonary diseases. Members of the medical advisory panel shall serve for a term of two years and the Governor may from time to time fill vacancies in the membership thereof from its lists submitted to him as provided in this section.

§ 42-11-180. Compensation of members of medical advisory panel.

Members of the medical advisory panel shall receive no compensation save that provided when they serve on a medical board. But when the panel is convened to give its advice and recommendations to the commission, the members participating therein shall receive per diem allowances plus their reasonable maintenance and travel expenses to be paid by the commission.

§ 42-11-185. Medical examination in lieu of medical panel for occupationally related disease claims.

Notwithstanding the provisions of Section 42-11-120, in lieu of a medical panel in claims involving occupationally related diseases, at the election of either party or the hearing commissioner, the claimant shall be referred to a medical doctor or doctors who diagnose or treat occupational diseases and who are employed by or associated with one of the medical universities in South Carolina. The findings and testimony of such doctors shall be deemed advisory to, but not binding upon the hearing commissioner. Fees and expenses of such medical examinations shall be paid by the commission unless the claimant prevails in the controversy in which case such fees and expenses will be charged to the losing party.

§ 42-11-190. Promulgation of rules, regulations, and schedules.

The commission may, upon the advice and recommendations of the medical advisory panel:

(1) Make reasonable regulations regarding the conduct of hearings and investigations by medical boards and the fees and expenses to be allowed members of the panel for serving on such boards from time to time.

(2) Adopt a schedule of occupational diseases which shall include also a schedule of the processes or occupations giving rise to such diseases under the definitions given in Section 42-11-10.

§ 42-11-200. Rejection of chapter.

Either employer or employee may reject the provisions of this chapter under the same terms and conditions as he may reject the other provisions of this title.

§ 42-13-10. Definitions.

As used in this chapter:

(1) "Ionizing radiation" means any particulate or electromagnetic radiation capable of producing ions directly or indirectly in its passage through matter.

(2) "Ionizing radiation injury" means any harmful change in the human organism, including damage to or loss of a prosthetic appliance, arising out of and in the course of employment and caused by exposure to ionizing radiation.

(3) "Ionizing radiation disability" means any temporary or permanent, partial or total impairment of natural capability or a decrease in wage-earning capacity arising out of and in the course of employment and caused by exposure to ionizing radiation.

(4) "Permanent physical impairment" means any permanent condition, whether congenital or due to injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed.

(5) "Death" means death resulting from an ionizing radiation injury.

§ 42-13-20. Employers and employees subject to chapter.

(a) The following shall constitute employers who shall be subject to the provisions of this chapter:

(1) Every person, partnership firm, association, trust, profit or nonprofit organization, corporation or legal representatives thereof, that has one or more employees in this State and is engaged in activities which involve the use or presence of ionizing radiation. Provided, however, that any employer who employs less than three employees may, at his option, elect not to be subject to the provisions of this chapter.

(2) The State, or any agency thereof, and each political subdivision of the State, or any agency thereof, or public or quasipublic corporation that has one or more employees and is engaged in activities which involve the use or presence of ionizing radiation.

(b) The following shall constitute employees who shall be subject to the provisions of this chapter:

(1) Every person, including a minor, whether lawfully or unlawfully employed, in the service of an employer subject to this chapter under any contract of hire or

apprenticeship, express or implied, and all helpers and assistants of employees whether paid by the employer or employee, if employed with the knowledge, actual or constructive, of the employer.

(2) Every person performing service in the course of the trade, business, profession or occupation of an employer at the time of injury or disability, provided such person in relation to this service does not maintain a separate business, does not hold himself out to and render service to the public and is not himself an employer subject to this chapter.

§ 42-13-30. Effect of injury suffered outside State; effect of injury to employee of nonresident employer; effect of award under law of another state.

(a) If an employee of an employer subject to this chapter, while working outside the territorial limits of this State, suffers an ionizing radiation injury or disability, he, or in the event of his death, his dependents, shall be entitled to the same benefits under this chapter as if the injury or disability had occurred within this State.

(b) If an employee of an employer domiciled or residing outside of this State suffers an ionizing radiation injury or disability while working within the territorial limits of this State, he, or in the event of his death, his dependents, shall be entitled to the same benefits under this chapter as if his employer were domiciled or residing within this State.

(c) The payment or award of benefits under the workers' compensation provisions of another state to an employee or his dependents otherwise entitled to the benefits of this chapter, on account of an ionizing radiation injury or disability, or death, shall not be a bar to a claim for benefits under this chapter; provided, that such payment or award shall be credited against the benefits to which the employee or his dependents would have been entitled had claim been made solely under this chapter.

§ 42-13-40. Waiver by employee shall be invalid.

No agreement by an employee to waive his right to compensation shall be valid with regard to ionizing radiation injury or disability.

§ 42-13-50. Employer who is liable for awards; apportionment of liability.

The employer, in whose employment an employee was last exposed to ionizing radiation, shall be liable for all awards of compensation should such employee suffer an ionizing radiation injury, disability or death. If, however, such ionizing radiation injury, disability or death is attributable in part to exposure to ionizing radiation which such employee received in any previous employment, the employer who is made liable for all awards of compensation as provided by this section may appeal to the Workers' Compensation Commission which shall apportion such liability among the several employers in whose employ the employee was exposed to ionizing radiation. The method of apportionment shall be determined by the commission.

§ 42-13-60. Time for filing claims.

(a) In cases involving radiation injury or disability the time for filing claims shall not begin to run until:

  (1) the employee sustains such injury or disability; and

  (2) the employee knows, or by the exercise of reasonable diligence should know, of the existence of the injury or disability and its possible relationship to his employment.

(b) The time for filing claims for benefits in the event of death shall not begin to run until the person entitled to file such claims knows, or by the exercise of reasonable diligence should know, the possible relationship of the death to the employment.

§ 42-13-70. Compensability of all forms of injury, disability or death.

All forms of ionizing radiation injury, disability or death shall be compensable under this chapter.

§ 42-13-80. Employee's right to medical services, appliances and supplies.

(a) For any ionizing radiation injury or disability, the employee shall be entitled to all medical services, appliances and supplies which are required by the nature of his injury or disability and which will relieve pain and promote and hasten his restoration to health and employment. The employer shall furnish such services, appliances and supplies and necessary replacements or repairs of such appliances unless the need for such replacements or repairs is due to lack of proper care by the employee.

(b) The Workers' Compensation Commission, on competent medical advice, shall have authority to determine the necessity, character and sufficiency of any medical services or medical rehabilitation furnished or to be furnished, and shall have authority to order a change of physician, hospital or rehabilitation facility when, in its judgment, such change is desirable or necessary.

§ 42-13-90. Employee's right to vocational rehabilitation services.

(a) An employee covered by this chapter who, for reasons of injury or medically determined restrictions on radiation exposure, and whose skills are not transferable to equivalent work not involving radiation exposure, shall be entitled to such vocational rehabilitation services, including retraining and job replacement, as may be reasonably necessary to restore him to suitable employment. If such services are not voluntarily offered and accepted, the Workers' Compensation Commission, on its own motion or upon application of the employee, after affording the parties an opportunity to be heard, may refer the employee to one or more qualified physicians or facilities for evaluation of the practicability of, the need for, and the kind of service, treatment or training necessary for and appropriate to render him fit for a remunerative occupation. Upon receipt and evaluation of such report, the Workers' Compensation Commission may order that the services and treatment recommended in the report, or such other rehabilitation treatment or service it may deem necessary, be provided at the expense of the employer. Vocational rehabilitation training, treatment or service required pursuant to this section shall not extend for a period of more than fifty-two weeks, except in unusual cases when by special order of the Workers' Compensation

Commission, after affording the parties an opportunity to be heard, the period may be extended for an additional twenty-six weeks.

(b) Where rehabilitation services require residence at or near the facility or institution away from the employee's customary residence, reasonable cost of his board, lodging and travel shall be paid for by the employer.

(c) Refusal to accept rehabilitation services pursuant to order of the Workers' Compensation Commission shall result in loss of compensation for each week of the period of refusal.

§ 42-13-100. Certain settlements shall be invalid unless approved by commission.

Any settlement which waives liability for possible subsequently appearing consequences of ionizing radiation injury or disability is invalid unless approved by the Workers' Compensation Commission.

§ 42-13-110. Powers of commission.

The Workers' Compensation Commission is hereby authorized to:

(1) accept and administer loans, grants or other funds or gifts, conditional or otherwise, in furtherance of its function, from the federal government and other sources, public or private; and

(2) require the keeping of radiation exposure records by employers covered under Section 42-13-20 of this chapter and the furnishing of such exposure records to the Workers' Compensation Commission or its successor organizations upon request.

§ 42-13-120. Application of other provisions.

All the provisions of the Workers' Compensation Act, Title 42, shall be applicable to this chapter except where they are specifically contrary thereto.

§ 42-13-130. Rejection of chapter.

Either employer or employee may reject the provisions of this chapter under the same terms and conditions as he may reject other provisions of this title.

§ 42-15-10. State law under which claim is authorized to be filed.

Any employee covered by the provisions of this title is authorized to file his claim under the laws of the state where he is hired, the state where he is injured, or the state where his employment is located. If an employee shall receive compensation or damages under the laws of any other state, nothing contained in this section shall be construed to permit a total compensation for the same injury greater than that provided in this title.

§ 42-15-20. Notice to employer of accident or repetitive trauma.

Effective: July 1, 2007

(A) Every injured employee or his representative immediately shall on the occurrence of an accident, or as soon thereafter as practicable, give or cause to be given to the

employer a notice of the accident and the employee shall not be entitled to physician's fees nor to any compensation which may have accrued under the terms of this title prior to the giving of such notice, unless it can be shown that the employer, his agent, or representative, had knowledge of the accident or that the party required to give such notice had been prevented from doing so by reason of physical or mental incapacity or the fraud or deceit of some third person.

(B) Except as provided in subsection (C), no compensation shall be payable unless such notice is given within ninety days after the occurrence of the accident or death, unless reasonable excuse is made to the satisfaction of the commission for not giving timely notice, and the commission is satisfied that the employer has not been prejudiced thereby.

(C) In the case of repetitive trauma, notice must be given by the employee within ninety days of the date the employee discovered, or could have discovered by exercising reasonable diligence, that his condition is compensable, unless reasonable excuse is made to the satisfaction of the commission for not giving timely notice, and the commission is satisfied that the employer has not been unduly prejudiced thereby.

§ 42-15-40. Time for filing claim; filing by registered mail.

Effective: July 1, 2007

The right to compensation under this title is barred unless a claim is filed with the commission within two years after an accident, or if death resulted from the accident, within two years of the date of death. However, for occupational disease claims the two-year period does not begin to run until the employee concerned has been diagnosed definitively as having an occupational disease and has been notified of the diagnosis. For the death or injury of a member of the South Carolina National Guard, as provided for in Section 42-7-67, the time for filing a claim is two years after the accident or one year after the federal claim is finalized, whichever is later. The filing required by this section may be made by registered mail, and the service within the time periods set forth in this section constitutes timely filing. For a "repetitive trauma injury" as defined in Section 42-1-172, the right to compensation is barred unless a claim is filed with the commission within two years after the employee knew or should have known that his injury is compensable but no more than seven years after the last date of injurious exposure. This section applies regardless of whether the employee was aware that his repetitive trauma injury was the result of his employment.

§ 42-15-50. Limitation of time on notice or claim of mentally incompetent person or minor.

No limitation of time provided in this title for the giving of notice or making claim under this title shall run against any person who is mentally incompetent or a minor dependent as long as he has no guardian, trustee or committee.

§ 42-15-55. Appointment of guardian ad litem for minors or mentally incompetent persons.

When a minor or mentally incompetent person is a party in a proceeding before the Workers' Compensation Commission of this State a guardian ad litem for the minor or mentally incompetent person may be appointed by a judge of probate, clerk of court, or master,

if there is a master, of the county where the minor or mentally incompetent person resides or by any circuit judge or a member of the Workers' Compensation Commission.

§ 42-15-60. Time period medical treatment and supplies furnished; refusal to accept treatment; settled claims; total and permanent disability.

Effective: July 1, 2007

(A) The employer shall provide medical, surgical, hospital, and other treatment, including medical and surgical supplies as reasonably may be required, for a period not exceeding ten weeks from the date of an injury, to effect a cure or give relief and for an additional time as in the judgment of the commission will tend to lessen the period of disability as evidenced by expert medical evidence stated to a reasonable degree of medical certainty. In addition to it, the original artificial members as reasonably may be necessary must be provided by the employer. During any period of disability resulting from the injury, the employer, at his own option, may continue to furnish or cause to be furnished, free of charge to the employee, and the employee shall accept, an attending physician and any medical care or treatment that is considered necessary by the attending physician, unless otherwise ordered by the commission for good cause shown. The refusal of an employee to accept any medical, hospital, surgical, or other treatment or evaluation when provided by the employer or ordered by the commission bars the employee from further compensation until the refusal ceases and compensation is not paid for the period of refusal unless in the opinion of the commission the circumstances justified the refusal, in which case the commission may order a change in the medical or hospital service. If in an emergency, on account of the employer's failure to provide the medical care as specified in this section, a physician other than provided by the employer is called to treat the employee, the reasonable cost of the service must be paid by the employer, if ordered by the commission.

(B) (1) When a claim is settled on the commission's Agreement for Permanent Disability/Disfigurement Compensation form, the employer is not required to provide further medical treatment or medical modalities after one year from the date of full payment of the settlement unless the form specifically provides otherwise.

(2) Each award of permanency as ordered by the single commissioner or by the commission must contain a finding as to whether or not further medical treatment or modalities must be provided to the employee. If the employee is entitled to receive such benefits, the medical treatment or modalities to be provided must be set forth with as much specificity as possible in the single commissioner's order or the commission's order.

(3) In no case shall an employer be required to provide medical treatment or modalities in any case where there is a lapse in treatment of the employee by an authorized physician in excess of one year unless:

(a) the settlement agreement or commission order provides otherwise; or

(b) the employee has made reasonable attempts to obtain further treatment or modality from an authorized physician, but through no fault of the employee's own, is unable to obtain such treatment or modalities.

(C) In cases in which total and permanent disability results, reasonable and necessary nursing services, medicines, prosthetic devices, sick travel, medical, hospital, and other treatment or care shall be paid during the life of the injured employee, without regard to any limitation in this title including the maximum compensation limit. In cases of permanent partial disability, prosthetic devices shall be furnished during the life of the injured employee or for as long as such devices are necessary.

§ 42-15-65. Compensation for damage to prosthetic device, eyeglasses, or hearing aid.

Damage to a prosthetic device of an injured employee as the result of an injury by accident arising out of and in the course of the employment entitles the employee to compensation ensuring that the prosthetic device is repaired or replaced.

Damage to eye glasses or a hearing aid used by an injured employee as the result of an injury by accident arising out of and in the course of the employment entitles the employee to compensation ensuring that the eye glasses or the hearing aid is repaired or replaced.

§ 42-15-70. Liability of employer for medical treatment; effect of malpractice.

The pecuniary liability of the employer for medical, surgical and hospital service or other treatment required, when ordered by the commission, shall be limited to such charges as prevail in the community for similar treatment of injured persons of a like standard of living when such treatment is paid for by the injured person and the employer shall not be liable in damages for malpractice by a physician or surgeon furnished by him pursuant to the provisions of this section, but the consequences of any such malpractice shall be deemed part of the injury resulting from the accident and shall be compensated for as such.

§ 42-15-80. Submission to physical examinations; admissibility of communications to physician; autopsy; role of rehabilitation professionals.

Effective: July 1, 2007

(A) After an injury and so long as he claims compensation, the employee, if so requested by his employer or ordered by the commission, shall submit himself to examination, at reasonable times and places, by a qualified physician or surgeon designated and paid by the employer or the commission. The employee has the right to have present at the examination any qualified physician or surgeon provided and paid by him. A fact communicated to or otherwise learned by any physician or surgeon who may have attended or examined the employee, or who may have been present at any examination, is not privileged, either in hearings provided for by this title or any action at law brought to recover damages against an employer who may have accepted the compensation provisions of this title. If the employee refuses to submit himself to or in any way obstructs the examination requested by and provided for by the employer, his right to compensation and his right to take or prosecute a proceeding under this title must be suspended until the refusal or objection ceases and compensation is not payable at any time for the period of suspension unless in the opinion of the

commission the circumstances justify the refusal or obstruction. The employer or the commission may require in any case of death an autopsy at the expense of the person requesting it.

(B) The commission shall promulgate regulations establishing the role of rehabilitation professionals and other similarly situated professionals in workers' compensation cases with consideration given to these persons' duties to both the employer and the employee and the standards of care applicable to the rehabilitation professional or other similarly situated professional as the case may be.

§ 42-15-90. Fees of attorneys and physicians and hospital charges approved by commission.

Effective: June 7, 2012

(A) Attorney fees, physician fees, and hospital charges for services under this title are subject to the approval of the commission, but a physician or hospital may not collect a fee from an employer or insurance carrier until the physician or hospital has made the reports required by the commission in connection with the case.

(B) (1) A person may not:

(a) receive a fee, gratuity, or other consideration for a service rendered pursuant to this title unless the fee, gratuity, or other consideration is approved by the commission or a court of competent jurisdiction; or

(b) make it a business to solicit employment for an attorney or himself with respect to a claim or award for compensation under this title.

(2) A violation of this section constitutes a misdemeanor and, upon conviction, each offense is subject to a fine of not more than five hundred dollars, imprisonment for not more than one year, or both.

(C) (1) The commission may adopt criteria to establish a new fee schedule or adjust an existing fee schedule to establish maximum allowable payments for medical services provided by medical practitioners exclusive of hospital inpatient services and hospital outpatient services and ambulatory surgery centers based in whole or in part on the requirements of a federally funded program, but if it adopts adjustments to an existing fee schedule, it must adopt these adjustments on an annual basis and the adjustments may not exceed the percentage change indicated by the federally funded program. The commission shall conduct an evidentiary hearing to review a proposed adjustment to increase or reduce these fees by more than ten percent annually to determine whether to:

(a) increase or reduce the proposed adjustment as the commission considers appropriate; or

(b) accept the proposed adjustment.

(2) (a) A decision of the commission to increase or reduce a fee schedule to establish maximum allowable payments for medical services provided by medical practitioners exclusive of hospital inpatient services and hospital outpatient services and ambulatory surgery centers by more than ten percent is reviewable by expedited appeal to the Administrative Law Court pursuant to the Administrative Procedures Act.

(b) On appeal, the court may:

(i) accept the increase or decrease;

(ii) impose a lesser increase or decrease;

(iii) revert the fee schedule as it was immediately prior to the annual adjustment;

(iv) adjust the appropriate conversion factors as necessary; or

(v) make other adjustments the court considers reasonable.

(c) The court shall issue a decision within ninety days after it receives the appeal.

(d) During the pendency of this appeal, the portion of the fee schedule under review must remain the same as it was immediately prior to the proposed changes, but all other portions of the fee schedule or conversion factors are effective and remain unchanged.

§ 42-15-95. Release of medical records; communication of medical history by health care provider.

Effective: July 1, 2007

(A) Any employee who seeks treatment for any injury, disease, or condition for which compensation is sought under the provisions of this title shall be considered to have given his consent for the release of medical records relating to such examination or treatment under any applicable law or regulation. All information compiled by a health care facility, as defined in Section 44-7-130, or a health care provider licensed pursuant to Title 40 pertaining directly to a workers' compensation claim must be provided to the insurance carrier, the employer, the employee, their respective attorneys or certified rehabilitation professionals, or the South Carolina Workers' Compensation Commission, within fourteen days after receipt of written request. A health care facility and a health care provider may charge a fee for the search and duplication of a medical record in accordance with regulations promulgated by the Workers' Compensation Commission. Fee schedules established through regulations of the Workers' Compensation Commission shall apply only to claims under Title 42. If a health care provider fails to send the requested information within thirty days after receipt of the request, the person or entity making the request may apply to the commission for an appropriate penalty payable to the commission, not to exceed two hundred dollars.

(B) A health care provider who provides examination or treatment for any injury, disease, or condition for which compensation is sought under the provisions of this title may discuss or communicate an employee's medical history, diagnosis, causation, course of treatment, prognosis, work restrictions, and impairments with the insurance carrier, employer, their respective attorneys or certified rehabilitation professionals, or the commission without the employee's consent. The employee must be:

(1) notified by the employer, carrier, or its representative requesting the discussion or communication with the health care provider in a timely fashion, in writing or orally, of the discussion or communication and may attend and participate. This notification must occur prior to the actual discussion or communication if the health care provider knows the discussion or communication will occur in the near future;

(2) advised by the employer, carrier, or its representative requesting the discussion or communication with the health care provider of the nature of the discussion or communication prior to the discussion or communication; and

(3) provided with a copy of the written questions at the same time the questions are submitted to the health care provider. The employee also must be provided with a copy of the response by the health care provider.

Any discussion or communication must not conflict with or interfere with the employee's examination or treatment.

Any discussions, communications, medical reports, or opinions obtained in accordance with this section will not constitute a breach of the physician's duty of confidentiality.

(C) Any discussions, communications, medical reports, or opinions obtained in violation of this section must be excluded from any proceedings under the provisions of this title.

§ 42-17-10. Agreement as to compensation.

If more than seven days after the date of an injury or at any time in case of death, the employer and the injured employee or his dependents reach an agreement in regard to compensation under this title, a memorandum of the agreement in the form prescribed by the commission, accompanied by a full and complete medical report shall be filed with the commission within fifteen days after agreement has been reached by the parties for approval of the commission; otherwise, such agreement shall be voidable by the employee or his dependents. All such agreements shall be subject to adjustment and correction as to the compensable rate if subsequent to filing with the commission it is determined that such rate does not reflect the correct average weekly wage of the claimant. If approved by the commission, the memorandum shall for all purposes be enforceable by a court's decree as specified in this title.

§ 42-17-20. Hearing before commission on compensation payable.

If the employer and the injured employee or his dependents fail to reach an agreement in regard to compensation under this title within fourteen days after the employer has knowledge of the injury or after a death or if they have reached such an agreement which has been signed and filed with the commission and compensation has been paid or is due in accordance therewith and the parties thereto then disagree as to the continuance of any weekly payment under such agreement, either party may make application to the commission for a hearing in regard to the matters at issue and for a ruling thereon. Immediately after such application has been received the commission shall set a date for a hearing, which shall be held as soon as practicable, and shall notify the parties at issue of the time and place of such hearing. The hearing shall be held in the city or county in which the injury occurred, unless otherwise agreed to by the parties and authorized by the commission.

§ 42-17-30. Commission may appoint doctor to examine injured employee; compensation.

The commission or any member thereof may, upon the application of either party or upon its own motion, appoint a disinterested and duly qualified physician or surgeon

to make any necessary medical examination of any employee and to testify in respect thereto. The physician or surgeon must be allowed traveling expenses and a reasonable fee in accordance with a fee schedule set by the commission. The commission may allow additional reasonable amounts in extraordinary cases. The commission or any member thereof has the discretion to order either party to pay the fees and expenses of the physician or surgeon, or the commission or any member thereof may order the parties to share responsibility for payment of the fees and expenses.

§ 42-17-40. Conduct of hearing; award.

(A) The commission or any of its members shall hear the parties at issue and their representatives and witnesses and shall determine the dispute in a summary manner. The award, together with a statement of the findings of fact, rulings of law, and other matters pertinent to the questions at issue, must be filed with the record of the proceedings and a copy of the award must immediately be sent to the parties in dispute. The parties may be heard by a deputy, in which event he shall swear or cause the witnesses to be sworn and shall transmit all testimony to the commission for its determination and award.

(B) In the event any commissioner or any member of his family residing in the commissioner's household or any employee of the Workers' Compensation Commission receives an injury in the course of employment, the case must be heard and determined by the circuit court judge in the county in which the injury occurred. The clerk of court shall docket these cases in the file book for the court of common pleas and these cases must be heard in that court. These cases may be called up for trial out of their order by either party. An appeal from an order of the circuit court judge, pursuant to this subsection, shall be taken in the manner provided by the South Carolina Appellate Court Rules. If the order is not appealed, payment must be made as provided in Section 42-17-60. However, this subsection does not apply with respect to claims involving medical benefits only; for claims solely involving medical benefits, subsection (A) applies.

§ 42-17-50. Review and rehearing by commission.

If an application for review is made to the commission within fourteen days from the date when notice of the award shall have been given, the commission shall review the award and, if good grounds be shown therefor, reconsider the evidence, receive further evidence, rehear the parties or their representatives and, if proper, amend the award.

Each application for commission review must be accompanied by a fee equal to that charged in circuit court for filing a summons and complaint in order to defray the costs of the review. If the commission determines at the conclusion of the review that the appeal was without merit, it may charge, in its sole discretion, the appellant an additional fee not to exceed two hundred fifty dollars.

§ 42-17-60. Conclusiveness of award; appeals; payment of compensation during appeal; accrual of interest.

Effective: July 1, 2007

The award of the commission, as provided in Section 42-17-40, if not reviewed in due time, or an award of the commission upon the review, as provided in Section 42-

17-50, is conclusive and binding as to all questions of fact. However, either party to the dispute, within thirty days from the date of the award or within thirty days after receipt of notice to be sent by registered mail of the award, but not after, whichever is the longest, may appeal from the decision of the commission to the court of appeals. Notice of appeal must state the grounds of the appeal or the alleged errors of law. In case of an appeal from the decision of the commission on questions of law, the appeal does not operate as a supersedeas and, after that time, the employer is required to make weekly payments of compensation and to provide medical treatment ordered by the commission involved in the appeal or certification until the questions at issue have been fully determined in accordance with the provisions of this title. Interest accrues on an unpaid portion of the award at the legal rate of interest as established in Section 34-31-20(B) during the pendency of an appeal.

§ 42-17-70. Judgment on agreement or award.

Any party in interest may file in the court of common pleas of the county in which the injury occurred a certified copy of a memorandum of agreement approved by the commission, an order or decision of the commission, an award of the commission unappealed from or an award of the commission affirmed upon appeal, whereupon such court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though such judgment had been rendered in a suit duly heard and determined by such court. But if the judgment debtor shall file a certificate duly issued by the commission, showing compliance with § 42-5-20, with the clerk of the court in the county in which such judgment is docketed, such clerk shall make upon the judgment roll an entry showing the filing of such certificate which shall operate as a discharge of the lien of such judgment and no execution shall be issued thereon. But if at any time there is default in the payment of any installment due under the award set forth in such judgment the court may, upon application for cause and after ten days' notice to the judgment debtor, order the lien of such judgment restored and execution or other proper process may be immediately issued thereon for past-due installments and for future installments as they may become due.

§ 42-17-80. Costs.

If the commission or any court before whom any proceedings are brought under this title shall determine that such proceedings have been brought, prosecuted or defended without reasonable grounds, it may assess the whole cost of the proceedings upon the party who has brought or defended them.

§ 42-17-90. Review of award on change of condition.

Effective: July 1, 2007

(A) On its own motion or on the application of a party in interest on the ground of a change in condition, the commission may review an award and on that review may make an award ending, diminishing, or increasing the compensation previously awarded, on proof by a preponderance of the evidence that there has been a change of condition caused by the original injury, after the last payment of compensation. An award is subject to the maximum or minimum provided in this title, and the commission immediately shall send to the parties a copy of the order changing the award. The review does not affect the award as regards any monies paid and the review must

not be made after twelve months from the date of the last payment of compensation pursuant to an award provided by this title.

(B) A motion or application for change in condition involving a repetitive trauma injury must be made within one year from the date of the last compensation payment for the repetitive trauma injury. Any filing not made within this one-year period shall be considered untimely and shall not be reviewed.

(C) A motion or application for change in condition involving an occupational disease must be made within one year from the date of the last compensation payment for the occupational disease. Any filing not made within this one-year period shall be considered untimely and shall not be reviewed.

§ 42-19-10. Employers' records and reports of injuries.

Every employer shall keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment on forms approved by the commission.

If the injury requires minimal medical attention at a cost not to exceed an amount specified by regulation of the Workers' Compensation Commission, and does not cause more than one lost workday or permanency, the employer is not required to make a written report to the commission or the employer's insurance carrier, provided the employer maintains a record as prescribed by the commission and pays directly the incurred cost of the resulting medical attention.

All other injuries must be reported in writing to the commission according to the following guidelines:

(1) An injury for which there is no compensable lost time or permanency and the medical treatment does not exceed an amount specified by regulation of the Workers' Compensation Commission must be reported annually on a form and at a time prescribed by the commission.

(2) An injury involving compensable lost time, medical attention in excess of the limit established by commission regulation in item (1), or the possibility of permanency must be reported within ten business days after the occurrence and knowledge of it, as provided in Section 42-15-20, on a form or in an electronic format prescribed by the commission.

However, for the injury of a South Carolina National Guard member as provided for in Section 42-7-67, the reporting periods must be counted from the date the employer, the South Carolina National Guard, has knowledge that the federal government has denied benefits to the injured guard member or that benefits or additional benefits may be due under the provisions of Title 42.

§ 42-19-20. Employers' reports of termination or extension beyond sixty days of disability.

Upon the termination of the disability of an injured employee, or if the disability extends beyond a period of sixty days then also at the expiration of such period, the employer shall make a supplementary report to the commission on blanks approved by the commission for this purpose.

§ 42-19-30. Penalty for failure to make required reports.

Any employer or insurance carrier who refuses or neglects to submit required forms, records, and reports as may be necessary for the proper handling or adjudication of a claim is liable for a penalty of not less than ten dollars nor more than one hundred dollars for each refusal or neglect. The fine provided in this section may be assessed by the commission with the right of review and appeal as in other cases.

§ 42-19-40. Records shall not be public.

The records of the commission, in so far as they refer to accidents, injuries and settlements, shall not be open to the public, but only to parties satisfying the commission of their interest in such records and of the right to inspect them.

§ 42-19-50. Penalty for failing to file report of insurance coverage.

Every insurance carrier providing coverage under the Workers' Compensation law shall file a report of coverage with the Workers' Compensation Commission within thirty days from the inception date of the policy on forms prescribed by the commission.

Any insurance company who refuses or neglects to properly submit the required forms is liable for a penalty of not less than one hundred dollars and not more than two hundred fifty dollars for each day's refusal to so file. The fine provided for in this section may be assessed by the commission with the right to review and appeal as in other cases.