

This information is provided to attendees at the Annual Workers' Compensation Educational Conference. These statutes and rules are provided for the convenience of the user and no representation or warranty is made that the information is current or accurate. With the printing of these statutory and, where applicable, regulatory provisions, we attempt to be correct and accurate. We will correct any errors or omissions and we encourage readers to inform us of any errors by emailing stephanie@wci360.com. For the "official text" of each state's law, please refer to the promulgated statutory provisions of each such state.

Wyoming Statutes

TITLE 27 LABOR AND EMPLOYMENT

CHAPTER 14 WORKER'S COMPENSATION

ARTICLE 1 GENERALLY

27-14-101. Short title; statement of intent.

(a) This act may be cited as the "Wyoming Worker's Compensation Act".

(b) It is the intent of the legislature in creating the Wyoming worker's compensation division that the laws administered by it to provide a worker's benefit system be interpreted to assure the quick and efficient delivery of indemnity and medical benefits to injured and disabled workers at a reasonable cost to the employers who are subject to the Worker's Compensation Act. It is the specific intent of the legislature that benefit claims cases be decided on their merits and that the common law rule of "liberal construction" based on the supposed "remedial" basis of workers' benefits legislation shall not apply in these cases. The worker's benefit system in Wyoming is based on a mutual renunciation of common law rights and defenses by employers and employees alike. Accordingly, the legislature declares that the Worker's Compensation Act is not remedial in any sense and is not to be given a broad liberal construction in favor of any party.

27-14-102. Definitions.

(a) As used in this act:

(i) "Artificial replacement" means the addition of an artificial part to the human body which replaces a part lost, damaged or in need of correction, excluding any personal item, artificial heart, automobile or the remodeling of an automobile or other physical structure or any item of furniture except as provided by rule and regulation of the division. If a wheelchair is approved by the division for use during impairment or disability, "artificial replacement" may include necessary cost effective physical structures such as ramps, automobile devices or remodeling, bars and rails, and other necessary equipment or devices aiding the body during impairment or disability, subject to the following criteria:

(A) A physical structure for which artificial replacement is claimed shall be the primary residence of the claimant;

(B) Only one (1) automobile at a time shall be eligible for devices or remodeling under this paragraph.

(ii) "Ascertainable loss" means that point in time in which it is apparent that permanent physical impairment has resulted from a compensable injury, the extent of the physical impairment due to the injury can be determined and the physical impairment will not substantially improve or deteriorate because of the injury;

(iii) "Child" means any unmarried minor or physically or mentally incapacitated individual receiving court ordered support or substantially all of his financial support from the employee at the time of injury or death of the employee and includes an adopted child, stepchild, posthumous child or acknowledged illegitimate child but does not include a parent or spouse of the employee;

(iv) "Delinquent payment" means any payment required of an employer under this act which is not paid within thirty (30) days after the date due as specified by this act;

(v) "Administrator" means the administrator of the division;

(vi) "Division" means the worker's compensation division within the department of workforce services;

(vii) "Employee" means any person engaged in any extrahazardous employment under any appointment, contract of hire or apprenticeship, express or implied, oral or written, and includes legally employed minors, aliens authorized to work by the United States department of justice, office of citizenship and immigration services, and aliens whom the employer reasonably believes, at the date of hire and the date of injury based upon documentation in the employer's possession, to be authorized to work by the United States department of justice, office of citizenship and immigration services. "Employee" does not include:

(A) Any individual whose employment is determined to be casual labor;

(B) A sole proprietor or a partner of a business partnership unless coverage is elected pursuant to W.S. 27-14-108(k);

(C) An officer of a corporation unless coverage is elected pursuant to W.S. 27-14-108(k);

(D) Any individual engaged as an independent contractor;

(E) A spouse or dependent of an employer living in the employer's household;

(F) A professional athlete, except as provided in W.S. 27-14-108(q);

(G) An employee of a private household;

(H) A private duty nurse engaged by a private party;

(J) An employee of the federal government;

(K) Any volunteer unless covered pursuant to W.S. 27-14-108(e);

(M) Any adult or juvenile prisoner or probationer unless covered pursuant to W.S. 27-14-108(d)(ix);

(N) An elected public official or an appointed member of any governmental board or commission, except for a duly elected or appointed county officer;

(O) The owner and operator of a motor vehicle which is leased or contracted with driver to a for-hire common or contract carrier. The owner-operator shall not be an employee for purposes of this act if he performs the service pursuant to a contract which provides that the owner-operator shall not be treated as an employee for purposes of the Federal Insurance Contributions Act, the Social Security Act, the Federal Unemployment Tax Act and income tax withholding at source;

(P) A member of a limited liability company unless coverage is elected pursuant to W.S. 27-14-108(k);

(Q) A foster parent providing foster care services for the department of family services or for a certified child placement agency;

(R) An individual providing child day care or babysitting services, whose wages are subsidized or paid in whole or in part by the Wyoming department of family services. This exclusion from coverage does not exclude from coverage an individual providing child day care or babysitting services as an employee of any individual or entity other than the Wyoming department of family services.

(viii) "Employer" means any person or entity employing an employee engaged in any extrahazardous occupation or electing coverage under W.S. 27-14-108(j) or (k) and at least one (1) of whose employees is described in W.S. 27-14-301. "Employer" includes:

(A) Repealed By Laws 1999, ch. 46, § 2.

(B) The governmental entity for which recipients of public assistance perform work if that work does not otherwise establish a covered employer and employee relationship;

(C) The governmental entity for which volunteers perform the specified volunteer activities under W.S. 27-14-108(e);

(D) The governmental entity for which prisoners and probationers work or perform community service under W.S. 27-14-108(d)(ix) or (xv);

(E) An owner-operator of a mine at which any mine rescue operation or training occurs;

(F) A temporary service contractor for a temporary worker;

(G) Any person, contractor, firm, association or corporation otherwise qualifying under this paragraph as an employer and who utilizes the services of a worker furnished by another contractor, joint employer, firm, association, person or corporation other than a temporary service contractor, joint employer, independent contractor or owner and operator excluded as an employee under subparagraph (a)(vii)(O) of this section;

(H) Any employer otherwise qualifying under this paragraph as an employer and participating in a school-to-work program approved by the department of workforce services, any local school district board of trustees, community college district board of trustees or the department of education, and the employer previously elected coverage in writing pursuant to W.S. 27-14-108(m);

(J) Any corporation, limited liability company, partnership or sole proprietorship electing coverage pursuant to W.S. 27-14-108(k), whether or not the corporation, limited liability company, partnership or sole proprietorship has other employees covered by this act.

(ix) "Gross earnings" means remuneration payable for services from any source including commissions, bonuses and cash and excluding tips and gratuities. The reasonable cash value of remuneration other than cash or check shall be prescribed by rule and regulation of the division. To the extent the following are not considered wages under 26 U.S.C. §§ 3301 through 3311, "gross earnings" does not include:

(A) Any premium paid by an employer under a plan, system or into a fund for insurance or annuities to provide an employee or class of employees retirement, sickness or accident disability, medical and hospitalization expenses for sickness or accident disability or death benefits if the employee cannot receive any part of this payment instead of the death benefit or any part of the premium if the benefit is insured and cannot assign or

receive cash instead of the benefit upon withdrawal from or termination of the plan, system, policy or services with the employer;

(B) A payment by an employer not deducted from an employee's remuneration for the tax imposed under 26 U.S.C. § 3101;

(C) Any dismissal payment which the employer is not obligated to make;

(D) The value of any meals or lodging furnished by and for the convenience of the employer to the employee if the meals are furnished on the business premises of the employer or in the case of lodging, the employee is required to accept lodging on the business premises of his employer as a condition of his employment;

(E) Remuneration received by an employee as sick pay following a six (6) month continuous period of illness;

(F) Any benefit received under a cafeteria plan specified by 26 U.S.C. § 125, excluding cash;

(G) Wages of a deceased worker paid to a beneficiary or estate following the calendar year of the worker's death;

(H) Services received under any dependent care assistance program to the extent excluded from gross income under 26 U.S.C. § 129;

(J) Wages paid to a disabled worker during the year following the year in which he became entitled to disability insurance benefits under the Social Security Act;

(K) Services or benefits received under any educational assistance program;

(M) Any benefit or other value received under an employee achievement award;

(N) The value of any qualified group legal services plan to the extent payments are excludable from gross income under 26 U.S.C. § 120;

(O) Costs of group term-life insurance;

(P) Any loan repayment which is repaid at interest rates below established market rates;

(Q) Any moving expenses;

(R) Employer contributions to any qualified retirement or pension plan or individual retirement account and distributions from qualified retirement and pension plans and annuities under 26 U.S.C. § 403(b);

(S) Benefit payments under any supplemental unemployment compensation plan; and

(T) Any benefits paid under this act or any other worker's compensation law of another state.

(x) "Health care provider" means doctor of medicine, chiropractic or osteopathy, dentist, optometrist, podiatrist, psychologist or advanced practitioner of nursing, acting within the scope of his license, licensed to practice in this state or in good standing in his home state;

(xi) "Injury" means any harmful change in the human organism other than normal aging and includes damage to or loss of any artificial replacement and death, arising out of and in the course of employment while at work in or about the premises occupied, used or controlled by the employer and incurred while at work in places where the employer's business requires an employee's presence and which subjects the employee to extrahazardous duties incident to the business. "Injury" does not include:

(A) Any illness or communicable disease unless the risk of contracting the illness or disease is increased by the nature of the employment;

(B) Injury caused by:

(I) The fact the employee is intoxicated or under the influence of a controlled substance, or both, except any prescribed drug taken as directed by an authorized health care provider. The division shall define "intoxicated" and "under the influence of a controlled substance" for purposes of this subparagraph in its rules and regulations; or

(II) The employee's willful intention to injure or kill himself or another.

(C) Injury due solely to the culpable negligence of the injured employee;

(D) Any injury sustained during travel to or from employment unless the employee is reimbursed for travel expenses or is transported by a vehicle of the employer;

(E) Any injury sustained by the prisoner during or any harm resulting from any illegal activity engaged in by prisoners held under custody;

(F) Any injury or condition preexisting at the time of employment with the employer against whom a claim is made;

(G) Any injury resulting primarily from the natural aging process or from the normal activities of day-to-day living, as established by medical evidence supported by objective findings;

(H) Any injury sustained while engaged in recreational or social events under circumstances where an employee was under no duty to attend and where the injury did not result from the performance of tasks related to the employee's normal job duties or as specifically instructed to be performed by the employer; or

(J) Any mental injury unless it is caused by a compensable physical injury, it occurs subsequent to or simultaneously with, the physical injury and it is established by clear and convincing evidence, which shall include a diagnosis by a licensed psychiatrist or licensed clinical psychologist meeting criteria established in the most recent edition of the diagnostic and statistical manual of mental disorders published by the American Psychiatric Association. In no event shall benefits for a compensable mental injury be paid for more than six (6) months after an injured employee's physical injury has healed to the point that it is not reasonably expected to substantially improve.

(xii) "Medical and hospital care" when provided by a health care provider means any reasonable and necessary first aid, medical, surgical or hospital service, medical and surgical supplies, apparatus, essential and adequate artificial replacement, body aid during impairment, disability or treatment of an employee pursuant to this act including the repair or replacement of any preexisting artificial replacement, hearing aid, prescription eyeglass lens, eyeglass frame, contact lens or dentures if the device is damaged or destroyed in an accident and any other health services or products authorized by rules and regulations of the division. "Medical and hospital care" does not include any personal item, automobile or the remodeling of an automobile or other physical structure, public or private health club, weight loss center or aid, experimental medical or surgical procedure, item of furniture or vitamin and food supplement except as provided under rule and regulation of the division and paragraph (a)(i) of this section for impairments or disabilities requiring the use of wheelchairs;

(xiii) "Nonresident employer" means:

(A) An individual who was not domiciled in Wyoming for at least twelve (12) months prior to commencing operations in the state; or

(B) A partnership or other association if any member does not qualify under subparagraph (A) of this paragraph; or

(C) A corporation in which more than three-fourths (3/4) of the capital stock is owned by individuals who do not qualify under subparagraph (A) of this paragraph; and

(D) A person who uses or employs covered individuals in Wyoming and who has not been a continuous contributor under this act for twelve (12) months preceding the use or employment.

(xiv) "Payroll" means "gross earnings" as defined under paragraph (a)(ix) of this section;

(xv) "Permanent partial disability" means the economic loss to an injured employee, measured as provided under W.S. 27-14-405(j), resulting from a permanent physical impairment;

(xvi) "Permanent total disability" means the loss of use of the body as a whole or any permanent injury certified under W.S. 27-14-406, which permanently incapacitates the employee from performing work at any gainful occupation for which he is reasonably suited by experience or training;

(xvii) "Spouse" means any individual legally married to an employee at the time of injury or death;

(xviii) "Temporary total disability" means that period of time an employee is temporarily and totally incapacitated from performing employment at any gainful employment or occupation for which he is reasonably suited by experience or training. The period of temporary total disability terminates at the time the employee completely recovers or qualifies for benefits under W.S. 27-14-405 or 27-14-406;

(xix) "Joint employer" means any person, firm, corporation or other entity which employs joint employees, is associated by ownership, commonly managed or controlled and contributes to the worker's compensation account as required by this act;

(xx) "Employer making contributions required by this act" means the employee's employer and any joint employer when the employer or any joint employer reports the employee's wages to the division on an account or through a consolidated worker's compensation account and contributions are made to the account as required by this act;

(xxi) "Joint employee" means any person:

(A) Who has an express or implied contract for employment with more than one (1) joint employer at the same time;

(B) Whose work is controlled by more than one (1) joint employer; and

(C) Who is engaged in the performance of work for more than one (1) joint employer.

(xxii) "Consolidated Wyoming worker's compensation account" means an account maintained by the Wyoming workers' compensation division to which an employer reports the wages of its employees and joint employees for its own account and the account of its joint employers, pursuant to which contributions are made to the account as required by this act;

(xxiii) "Independent contractor" means an individual who performs services for another individual or entity and:

(A) Is free from control or direction over the details of the performance of services by contract and by fact;

(B) Repealed By Laws 1998, ch. 117, § 2.

(C) Represents his services to the public as a self-employed individual or an independent contractor; and

(D) May substitute another person to perform his services.

(xxiv) "Casual labor" means service of less than two (2) consecutive weeks and not within the normal course of business;

(xxv) "Temporary service contractor" means any person, firm, association or corporation conducting a business that employs individuals directly for the purpose of furnishing services of the employed individuals on a temporary basis to others;

(xxvi) "Temporary worker" means a worker whose services are furnished to another employer on a temporary basis to substitute for a permanent employee on leave or to meet an emergency or short-term workload;

(xxvii) "This act" means W.S. 27-14-101 through 27-14-806;

(xxviii) "State employee" means any individual entering into service of or working under an employment contract with any agency of the state of Wyoming for which compensation is paid or which qualifies the individual to participate in the state retirement account. Effective on and after July 1, 2002, "state employee" shall include the University of Wyoming;

(xxix) "Professional athlete" means an individual who receives payment from a team owner for competing on a baseball, basketball, football, hockey or soccer team having its principal place of business in Wyoming;

(xxx) For purposes of W.S. 27-14-207 and 27-14-806, "person" means as defined in W.S. 8-1-102.

27-14-103. Repealed by Laws 1991, ch. 190, § 2.

27-14-104. Exclusive remedy as to employer; nonliability of co-employees; no relief from liability; rights as to delinquent or noncontributing employer.

(a) The rights and remedies provided in this act for an employee including any joint employee, and his dependents for injuries incurred in extrahazardous employments are in lieu of all other rights and remedies against any employer and any joint employer making contributions required by this act, or their employees acting within the scope of their employment unless the employees intentionally act to cause physical harm or injury to the injured employee, but do not supersede any rights and remedies available to an employee and his dependents against any other person.

(b) No contract, rule, regulation or device shall operate to relieve an employer from any liability created by this act except as otherwise provided by this act.

(c) This act does not limit or affect any right or action by any employee and his dependents against an employer for injuries received while employed by the employer when the employer at the time of the injuries has not qualified under this act for the coverage of his eligible employees, or having qualified, has not paid the required premium on an injured employee's earnings within thirty (30) days of the date due. When an employee's employment starts within the same month as the injury, the status of delinquency or not contributing shall not apply until after the regular payroll reporting date.

27-14-105. Action against third party; notice; subrogation; legal representation; payment under reservation of rights; actions by department.

(a) If an employee covered by this act receives an injury under circumstances creating a legal liability in some person other than the employer to pay damages, the employee if engaged in work for his employer at the time of the injury is not deprived of any compensation to which he is entitled under this act. He may also pursue his remedy at law against the third party or the coemployee to the extent permitted by W.S. 27-14-104(a). Except as provided by subsections (b), (e) and (f) of this section, if the employee recovers from the third party or the coemployee in any manner including judgment, compromise, settlement or release, the state is entitled to be reimbursed for all payments made, or to be made, to or on behalf of the employee under this act but not to exceed one-third (1/3) of the total proceeds of the recovery without regard to the types of damages alleged in the third-party action. Any recovery by the state shall be reduced pro rata for attorney fees and costs in the same proportion as the employee is liable for fees and costs. All money received by the state under this section shall be credited to the worker's compensation account and considered in computing the employer's experience rating.

(b) The director and the attorney general shall be served by certified mail return receipt requested with a copy of the complaint filed in any suit initiated pursuant to subsection (a) of

this section. Service of the complaint on the director and attorney general is a jurisdictional requirement in order to maintain the suit. The director and the attorney general shall be notified in writing by certified mail return receipt requested of any judgment, compromise, settlement or release entered into by an employee. Before offering settlement to an employee, a third party or its insurer shall notify the state of the proposed settlement and give the state fifteen (15) days after receipt of such notice in which to object. If notice of proposed settlement is not provided, the state is entitled to initiate an independent action against the third party or its insurer for all payments made to and any amount reserved for or on behalf of the employee under this act. If there is a settlement, compromise or release entered into by the parties in claims against a person other than the employer, the attorney general representing the director shall be made a party in all such negotiations for settlement, compromise or release. The attorney general and the director, for purposes of facilitating compromise and settlement, may in a proper case authorize acceptance by the state of less than the state's claim for reimbursement. The proceeds of any judgment, settlement, compromise or release are encumbered by a continuing lien in favor of the state to the extent of the total amount of the state's claim for reimbursement under this section and for all current and future benefits under this act. The lien shall remain in effect until the state is paid the amount authorized under this section. In addition the person paying the settlement remains liable to the state for the state's claim unless the state through the attorney general signs the release prior to payment of an agreed settlement.

(c) If the injury causes the death of the employee, the rights and remedies in this section inure to and the obligations are binding upon the personal representative of the deceased employee for the benefit of his dependents.

(d) Any attorney who fails to notify the director and attorney general of any settlement or fails to ensure the state receives its share of the proceeds of any settlement or judgment under subsection (a) of this section shall be reported to the grievance committee of the Wyoming state bar.

(e) At any time before the statute of limitation bars an employee or his estate from commencing a claim for personal injury or wrongful death, and upon the unsolicited written request of the employee or estate, the department may commence such an action on behalf of the employee or his estate. From any amounts recovered under this subsection, the state is entitled to an amount equal to all sums awarded as benefits to the employee or his estate and all anticipated future medical costs. Any excess recovery shall be paid to the injured employee or his estate.

(f) The department or employer shall have an additional six (6) month limitation period beyond the date on which the employee or his estate is barred under the statute of limitations from commencing a claim for personal injury or wrongful death, in which to commence such an action on behalf of the employee or his estate. From any amounts recovered under this subsection, the state is entitled to an amount equal to all sums awarded as benefits to the

employee or his estate, all anticipated future medical costs and all costs of litigation. Any excess recovery shall be paid to the injured employee or his estate.

(g) For purposes of subsections (e) and (f) of this section, nothing in this section prohibits any third party from reimbursing the worker's compensation account for medical or temporary total disability costs without prejudice prior to any judgment, settlement or release.

27-14-106. Minor employee to be free of any legal disability.

A minor shall be deemed free of any legal disability for the purposes of this act and no other person has any cause of action or right to compensation for his injury except as expressly provided in this act.

27-14-107. Repealed by Laws 1995, ch. 121, § 3.

27-14-108. Extrahazardous industries, employments, occupations; enumeration; definitions; optional coverage.

(a) This act applies to the following, which shall be deemed extrahazardous employment:

(i) Repealed by Laws 2002, Ch. 30, § 2.

(ii) Regardless of individual occupation, all workers employed in the following sectors, subsectors, industry groups and industries, as each is defined in the most recent edition of the North American Industry Classification System (NAICS) manual:

(A) Agriculture, sector 11:

(I) Subsector 113, forestry and logging:

(1) Industry group 1133, logging.

(B) Mining, sector 21;

(C) Utilities, sector 22;

(D) Construction, sector 23;

(E) Manufacturing, sector 31-33;

(F) Wholesale trade, sector 42:

(I) Subsector 422, wholesale trade, nondurable goods:

wholesale;

(1) Industry group 4225, farm product raw materials,

wholesale;

(2) Industry group 4226, chemical and allied products,

products, wholesale;

(3) Industry group 4227, petroleum and petroleum

beverages, wholesale;

(4) Industry group 4228, beer, wine, and distilled alcoholic

wholesale.

(5) Industry group 4229, miscellaneous nondurable goods,

(G) Retail trade, sector 44-45:

(I) Subsector 441, motor vehicle and parts dealer;

(II) Subsector 444, building materials and garden equipment and

supplies:

(1) Industry group 4441, building materials and supplies

dealers:

a. NAICS industry 44419, other building materials.

(III) Subsector 445, food and beverage stores:

(1) Industry group 4452, specialty food stores:

a. NAICS industry 44521, meat markets;

b. NAICS industry 44522, fish and seafood markets;

c. NAICS industry 44529, other specialty stores.

(IV) Subsector 447, gasoline stations;

(V) Subsector 454, nonstore retailers:

(1) Industry group 4543, direct selling establishments:

a. NAICS industry 45431, fuel dealers.

(H) Transportation and warehousing, sector 48-49:

- (I) Subsector 481, air transportation;
- (II) Subsector 484, truck transportation;
- (III) Subsector 485, urban transit systems;
- (IV) Subsector 486, pipeline transportation;
- (V) Subsector 491, postal service;
- (VI) Subsector 492, couriers and messengers;
- (VII) Subsector 493, warehousing and storage.

(J) Information, sector 51:

(I) Subsector 511, publishing industries:

(1) Industry group 5111, newspaper, periodical, book and database publishers.

(K) Real estate and rental and leasing, sector 53:

(I) Subsector 531, real estate:

(1) Industry group 5311, lessors of real estate.

(II) Subsector 532, rental and leasing services:

(1) Industry group 5321, automotive equipment rental and leasing.

(M) Administrative and support and waste management and remediation services, sector 56:

(I) Subsector 561, administrative and support services:

(1) Industry group 5616, investigation, guard and armored car services;

dwelling.
(2) Industry group 5617, services to buildings and

(II) Subsector 562, waste management and remediation services.

(N) Educational services, sector 61:

(I) Subsector 611, educational services:

(1) Industry group 6116, other schools and instruction:

a. NAICS industry 61161, fine arts schools;

b. NAICS industry 61162, sports and recreation

instruction;

c. NAICS industry 61169, all other schools and

instruction:

i. United States NAICS industry 611692,

automobile driving schools.

(O) Health care and social services, sector 62:

(I) Subsector 621, ambulatory health care services;

(II) Subsector 622, hospitals;

(III) Subsector 623, nursing and residential care facilities;

(IV) Subsector 624, social assistance:

(1) Industry group 6241, individual and family services;

(2) Industry group 6242, community food and housing,
and emergency and other relief services;

(3) Industry group 6243, vocational rehabilitation services.

(P) Except as provided under subsection (o) of this section, arts,
entertainment and recreation, sector 71;

(Q) Accommodation and food services, sector 72;

(R) Other services (except public administration), sector 81:

(I) Subsector 811, repair and maintenance;

(II) Subsector 812, personal and laundry services:

(1) Industry group 8123, dry-cleaning and laundry services;

(2) Industry group 8129, other personal services:

a. NAICS industry 81291, pet care (except veterinary services).

(S) Public administration, sector 92:

(I) Subsector 922, justice, public order and safety activities:

(1) Industry group 9221, justice, public order and safety activities:

a. NAICS industry 92212, police protection;

b. NAICS industry 92214, correctional institutions;

c. NAICS industry 92215, fire protection, including firefighters while performing under the direction of a duly authorized officer in charge and engaged in competition at employer sanctioned training events, construction, maintenance or improvement of equipment or facilities utilized in fire protection activities, fundraising, civic affairs or other similar authorized activities.

(II) Subsector 923, administration of human resource programs:

(1) Industry group 9231, administration of human resource programs:

a. NAICS industry 92312, administration of public health programs;

b. NAICS industry 92313, administration of human resource programs (except education, public health and veterans' affairs programs);

c. NAICS industry 92314, administration of veterans' affairs.

(III) Subsector 924, administration of environmental quality programs.

(b) Repealed by Laws 1992, ch. 33, § 2.

(c) Repealed By Laws 1996, ch. 71, § 2, 1995, ch. 121, § 3.

(d) This act applies to governmental entities engaged in an industrial classification listed under subsection (a) of this section and to employees of governmental entities engaged in or employed as the following:

(i) Janitors, groundskeepers and maintenance workers;

(ii) Federal programs which require coverage for their participants;

(iii) State employees and effective until June 30, 2002, employees of the University of Wyoming while traveling in the performance of their duties;

(iv) Repealed By Laws 2001, Ch. 132, § 2.

(v) Repealed By Laws 2001, Ch. 132, § 2.

(vi) Casual employees engaged in fighting forest or grass fires when employed by a governmental entity;

(vii) Applicants or recipients of general welfare or relief who are employed by a governmental entity;

(viii) Repealed By Laws 2001, Ch. 132, § 2.

(ix) All adult and juvenile prisoners and probationers when performing work pursuant to law or court order;

(x) Diagnostic and analytical laboratory employees;

(xi) Hazardous substance workers;

(xii) Power equipment operators;

(xiii) Motor delivery drivers;

(xiv) Workshop employees;

(xv) Persons performing community service pursuant to a criminal sentencing order or a diversion agreement entered into with a prosecuting authority, if the governing body of the jurisdiction for whom the service is performed has made a prior written election of coverage for the community service work;

(xvi) Public school educational assistants who provide services to special education students and certified special education teachers and related services providers as defined by 34 C.F.R. 300.18 and 300.156 and W.S. 21-2-802 and 21-7-303 who provide services to eligible students with behavioral, emotional, cognitive, learning, physical or health disabilities that require educational services to be provided outside of the regular classroom because the use of supplementary aids and services cannot be achieved satisfactorily in the regular classroom;

(xvii) County coroners and deputy county coroners;

(xviii) Fire protection, including firefighters while performing under the direction of a duly authorized officer in charge and engaged in competition at employer sanctioned training events, construction, maintenance or improvement of equipment or facilities utilized in the fire protection activities, fundraising, civic affairs or similar authorized activities.

(e) Specifically enumerated volunteers to whom this act applies are:

(i) Firefighters while:

(A) Firefighting;

(B) Performing rescue work;

(C) Participating in a hazardous material response;

(D) Responding to any other situation where the health or safety of the public is at risk;

(E) Training for the activities enumerated in subparagraphs (A) through (D) and (F) of this paragraph, including while engaged in competition at employer sanctioned training events;

(F) Constructing, maintaining or improving equipment or facilities utilized in the activities enumerated in subparagraphs (A) through (E) of this paragraph; or

(G) Performing under the direction of a duly authorized officer in charge and engaged in fundraising, civic affairs or other similar authorized activities.

(ii) Search and rescue personnel;

- (iii) Law enforcement personnel;
- (iv) Search pilots;
- (v) Mine rescue workers;
- (vi) Ambulance personnel;
- (vii) Hazardous substance workers;
- (viii) Emergency management agency personnel;

(ix) Elected county or local officials volunteering to perform governmental services on behalf of the jurisdiction to which they are elected, where the services are outside of the elected officials' regular duties, if the governing body of the jurisdiction has made a prior written election of coverage for the volunteer work;

(x) Volunteers working on projects approved by the Wyoming game and fish commission or the Wyoming department of state parks and cultural resources;

(xi) Law enforcement aides while:

(A) Conducting patrols, reporting suspicious activities or controlling traffic and crowds on an authorized work schedule agreed to by and within the jurisdiction of the law enforcement agency to which the volunteer service is provided;

(B) Training under the auspices of a law enforcement agency.

(f) As used in this section:

(i) Repealed by Laws 1992, ch. 33, § 2.

(ii) "Diagnostic and analytical laboratory employees" means all laboratory personnel handling or analyzing or otherwise exposed to infections, chemical or biological hazardous materials or employed in a laboratory in which infections, chemical or biological hazardous materials are handled or stored;

(iii) Repealed By Laws 1999, ch. 46, § 2.

(iv) "Workshop" means any location where power driven machinery is used and manual labor is exercised by way of trade or gain or otherwise incidental to the process of making, altering, repairing, printing or ornamenting, finishing or adapting for sale or otherwise any article or part of article, over which location the employer of the person working at the

location has the right of access or control. Workshop includes any location where power machinery is being used and manual labor is exercised for recycling, crushing, incinerating, disposal or otherwise altering any article including but not limited to, paper products, metal, glass, rubber and plastic, over which location the employer of the person working at the location has the right of access or control. A workshop does not include any location on which only office fans, typewriters, adding machines, calculators, computers, dictaphones or other similar equipment driven by electric motors are operated which are sufficiently protected not to constitute a hazard to employees;

(v) Repealed by Laws 1992, ch. 33, § 2.

(vi) "Power equipment operator" means any worker who operates power machinery;

(vii) "Mine rescue team" means mine rescue workers and the employers of the workers performing actual rescue operations or training rescue operations at any underground mine pursuant to the consent of the owner of the mine and the employers of the members of the team. Mine rescue team members while engaged in mine rescue operations and training, shall be considered employees of the employer at whose mine they engage in mine rescue work;

(viii) "Hazardous substance" means those substances designated or enumerated within the notification of hazardous waste activity publication of the federal environmental protection agency;

(ix) "Hazardous substance worker" means a trained employee or volunteer involved with performing emergency response and post emergency response operations for the release or substantial threat of release of hazardous substances.

(g) This act does not apply to the following:

(i) Repealed by Laws 1995, ch. 121, § 3.

(ii) Repealed By Laws 1995, ch. 121, § 3.

(iii) Repealed By Laws 1995, ch. 121, § 3.

(iv) Repealed By Laws 2006, Chapter 2, § 2.

(v) Repealed by Laws 1995, ch. 121, § 3.

(vi) Repealed By Laws 1995, ch. 121, § 3.

(vii) Repealed By Laws 1995, ch. 121, § 3.

(viii) Repealed By Laws 1995, ch. 121, § 3.

(ix) Repealed By Laws 1995, ch. 121, § 3.

(x) Those individuals excluded as an employee under W.S. 27-14-102(a)(vii)(A) through (O).

(h) Repealed by Laws 2002, Ch. 30, § 2.

(j) Any employee not enumerated under subsections (a) through (g) of this section or not employed in an extrahazardous employment enumerated under this section may be covered and subject to the provisions of this act and his employment shall be treated as if extrahazardous for purposes of this act, if his employer elects to obtain coverage under this act and makes payments as required by this act. An employer electing coverage pursuant to this subsection may only elect to cover all his employees. An employer may withdraw coverage elected under this subsection at any time if the elected coverage has been in effect for at least two (2) years and the employer is current on all contributions and payments required under this act.

(k) Any corporation, limited liability company, partnership or sole proprietorship may elect to obtain coverage under this act for any or all of its corporate officers, limited liability company members, partners in a partnership or sole proprietor by notifying the division in writing of its election upon initial registration with the division, or thirty (30) days prior to the beginning of a calendar quarter. Any employer electing coverage pursuant to this subsection shall, if it has other employees, simultaneously elect coverage for its employees, as provided in subsection (j) of this section, if those employees are not already covered under this act. Notwithstanding subsection (j) of this section, an employer shall not withdraw coverage at any time during the subsequent eight (8) calendar quarters. Application for termination of coverage under this subsection shall be filed in writing with the division. Termination of coverage shall be effective the first day of the month following the division's receipt of the notice of termination which shall specify whether the termination is for the officers, members and partners or for the officers, members, partners and all electively covered employees.

(m) Any employer may elect to obtain coverage under this act for school-to-work participants engaging in program activities at his place of business in accordance with rules and regulations of the division.

(n) Repealed by Laws 2002, Ch. 10, § 2.

(o) Notwithstanding subparagraph (a)(ii)(P) of this section and upon request of an employer, the department may exclude employment from coverage under this act if it determines the primary source of revenue of the employer's business is derived from

operations classified under subparagraph (a)(ii)(P) of this section and any of the following industries:

(i) Agriculture, forestry, fishing and hunting, sector 11:

(A) Subsector 111, crop production;

(B) Subsector 112, animal production;

(C) Subsector 113, forestry and logging:

(I) Industry group 1131, timber tract operations;

(II) Industry group 1132, forest nurseries and gathering of forest products.

(D) Subsector 115, support activities for agriculture and forestry.

(p) Any university of the state of Wyoming or any community college, school district or private or parochial school or college may elect to obtain coverage under this act for any person who may at any time be receiving training under any work or job training program for the purpose of training or learning trades or occupations. The bona fide student so placed shall be deemed an employee of the respective university, community college, school district or private or parochial school or college sponsoring the training or rehabilitation program.

(q) A team owner shall obtain coverage under this act for professional athletes as defined in W.S. 27-14-102(a)(xxix). For the purpose of determining employer contributions under this act, all professional athletes for whom coverage is obtained are deemed to be paid, for each month during which competition or team practice is held, the average monthly wage most recently computed pursuant to W.S. 27-14-802(b). Notwithstanding any other provision of law, the division shall classify professional athletes covered under this subsection under NAICS industry code number 711211, sports teams and clubs, and shall keep that classification separate for rate making purposes.

ARTICLE 2 PREMIUMS AND RATES

27-14-201. Rates and classifications; rate surcharge.

(a) The worker's compensation program shall be neither more nor less than self-supporting. Employments affected by this act shall be divided by the division into classes, whose rates may be readjusted annually as the division actuarially determines. Any employer may contest his classification as determined by the division following the contested case provisions of the Wyoming Administrative Procedure Act except that the division shall carry the

burden of proving that the classification is correct. Information shall be kept of the amounts collected and expended in each class for actuarially determining rates, but for payment of compensation, the worker's compensation account shall be one and indivisible.

(b) If it is determined at any time and in any manner that a determination by the division of an industrial or employment classification is incorrect, premiums under any corrected classification shall be charged only from the date of change in classification. This subsection shall not apply to any employer's categorization of an employee's gross earnings to an industrial or employment classification.

(c) Upon compliance with the rate making provisions of the Wyoming Administrative Procedure Act and written approval by the governor, the division shall determine the hazards of the different classes of employments and fix the premiums therefor at the lowest rate consistent with maintenance of an actuarially sound worker's compensation account and the creation of actuarially sound surplus and reserves, and for such purpose shall adopt a system of rating in such a manner as to take account of the peculiar hazard of each risk, mathematically and equally based on actual costs to the program in terms of number and extent of injuries and deaths, and shall use consultants or rating organizations as it determines necessary. The department shall submit an annual report with respect to proposed annual rate adjustments under this section to the joint labor, health and social services interim committee no later than October 1 of the year preceding the implementation of the rate adjustment. The total annual rate adjustment for any employment classification under this section is subject to the following limitations:

(i) Repealed by Laws 1994, ch. 86, § 3.

(ii) Repealed by Laws 1994, ch. 86, § 3.

(iii) Repealed By Laws 1998, ch. 117, § 2.

(iv) Repealed By Laws 1998, ch. 117, § 2.

(v) For the calendar year commencing January 1, 1999 and each calendar year thereafter, any increase in the base rate for each employment classification shall not exceed fifty percent (50%) of the base rate imposed for that employment classification during the immediately preceding year;

(vi) To compensate for the difference between revenues generated under base rate adjustment limitations imposed under paragraph (c)(v) of this section and revenues which would have been generated if base rates had been adjusted without limitations, the division may limit base rate decreases for any employment classification by not more than fifty percent (50%) of the actuarially determined decrease;

(vii) Repealed By Laws 1998, ch. 117, § 2.

(viii) In determining rates under this section for employers specified under W.S. 27-14-108(a)(ii)(G)(I), the division shall base the rates on one (1) rate classification for sales personnel and one (1) rate classification for all other personnel other than clerical;

(ix) Notwithstanding paragraph (v) of this subsection, for the calendar year beginning January 1, 2003, rates shall be adjusted to reflect the reclassification of industry codes in accordance with the North American Industry Classification System (NAICS) manual, but in no case shall the base premium rate for any classification for the calendar year beginning January 1, 2003 exceed one hundred fifty percent (150%) of the lowest base rate assigned to any employer in that classification under the standard industrial classification manual for the preceding year.

(d) In addition, the plan of rating shall use an experience rating system based on three (3) years claim experience, or as much thereof as is available, for employers enrolled under it. This system shall reward employers with a better than average claim experience, penalize employers with a worse than average claim experience and may provide for premium volume discount so long as the account remains actuarially sound. Discounts from or penalties added to base employment classification rates because of claim experience shall not exceed sixty-five percent (65%) for rates through calendar year 2016 and shall not exceed eighty-five percent (85%) for rates beginning with calendar year 2017. An employer who is current on premium payments required by this act may apply to the division for a determination of experience modification rating chargeability for an injury to the employer's employee. The division's determination of chargeability shall be reviewable as provided in W.S. 27-14-601(k)(iii) and (iv). If the division, by a preponderance of the evidence, determines that an employee's injury was primarily caused by a third party, the injury shall not be charged to the employer's account. The employer shall bear the burden of proof in any action brought by the employer for a chargeability determination. If an employer's account is determined to be unchargeable under this subsection, the employer's account shall not be further credited upon recovery from a third party by the division. The division shall by rule and regulation establish necessary procedures for a determination of chargeability. Any determination by the division regarding causation of an injury pursuant to this subsection shall be used only for ratemaking purposes and shall not be admissible in any civil litigation regarding the injury.

(e) The division in fixing rates shall provide for the costs of benefits and the expenses of administering the worker's compensation account allowed by law, subject to the following:

(i) The account shall be one (1) account but shall include provision for all expenses allowed by this act, loss adjustment expenses and unpaid losses, including:

(A) Case reserves;

(B) Future development on known claims;

(C) Reopened claims reserve;

(D) Claims incurred but not reported;

(E) Claims incurred and reported but not yet recorded;

(F) An actuarially reasonable contingency margin to reflect the uncertainty inherent in estimates of unpaid losses and loss adjustment expenses.

(ii) The account shall be fully reserved on or before December 31, 2013;

(iii) The division shall annually obtain a report from a qualified actuary rendering an opinion regarding the reasonableness of the booked loss and loss adjustment expense reserve and carried contingency reserve;

(iv) The division shall provide the opinion required by paragraph (iii) of this subsection to the joint labor, health and social services interim committee, or its successor, by November 1 of each year;

(v) For purposes of calculating reserves, future liabilities shall be discounted to present value using a discount factor selected by the division. The discount factor selected by the division and the reason for its selection shall be included in the annual report to the joint labor, health and social services interim committee or its successor;

(vi) The collection through premiums of any deficiency in reserves and surpluses that exceeds five percent (5%) of the fund balance shall be averaged over a ten (10) year period;

(vii) For purposes of this section:

(A) "Fully reserved" means that the workers' compensation account established by W.S. 27-14-701 has, in the opinion of a qualified actuary, funds sufficient on a discounted basis to provide for all unpaid loss and loss adjustment expenses as well as an actuarially appropriate provision for adverse contingencies;

(B) "Qualified actuary" means a person who is a fellow of the Casualty Actuarial Society or who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries.

(f) The division is given full power and authority to annually determine premium rates and classifications according to the standards set forth under subsections (b), (c) and (d) of this section provided that no change in the classification or rates prescribed shall be effective until thirty (30) days after the date of the order making the change.

(g) Policies or statements of coverage may be issued to each covered employer. The division shall collect all costs in certifying coverage under this act from the person requesting the certification except for one (1) policy or statement of coverage which may be issued to the employer at no charge.

(h) Approximate rates applicable to each employer pursuant to this section shall be annually provided to the employer by October 1.

(j) All data and formulas used by the division, including the employment classification base rate and claim experience rating, to determine rates for an employer shall be made available to the employer upon request of the employer.

(k) Repealed by Laws 1989, ch. 149, § 3, 1994, ch. 86, § 3.

(m) Repealed by Laws 1987, ch. 94, § 2.

(n) Repealed By Laws 1998, ch. 117, § 2.

(o) The division shall in accordance with its rules and regulations, grant a discount to rates established under this section in an amount not to exceed ten percent (10%) of the base rate for the employment classification of any employer if the employer complies with a safety program approved by the division and a discount in an amount not to exceed five percent (5%) of the base rate for the employment classification if the employer complies with a drug and alcohol testing program approved by the division and a discount in an amount not to exceed ten percent (10%) of the base rate for the employment classification if the employer complies with a health and safety consultation program developed by the department of workforce services in consultation with the occupational health and safety commission. In no instance shall the sum total of discounts under this subsection exceed twenty-five percent (25%) of the base rate for the employment classification for the employer. The discount for the health and safety consultation program shall only remain in effect for three (3) years after the employer is certified to be in compliance with the health and safety consultation program recommendations. In determining safety program approval, drug and alcohol program approval, health and safety consultation program approval and the total discount granted under this subsection, the division shall consider:

(i) The probability the program will reduce the number of accidents and the probable savings which may be realized from the reduction;

(ii) Relevant experience, if any, depicting actual reduction in accidents and actual savings which is compared to an industry standard;

(iii) The adequacy and accuracy of determining participation in the program and the eligibility for a discount by individual employers;

(iv) The administrative costs incurred by the division in implementing a rate discount for an applicable employment classification;

(v) Whether the employer adopts and enforces policies establishing a drug-free workplace which may include an employee assistance program to assist employees with alcohol or other drug problems. The division shall follow rules adopted by the department of workforce services in consultation with the department of health for the effective implementation of this paragraph. Rules adopted pursuant to this paragraph shall not impose on any employer the requirement to pay the costs of treatment or any other intervention. Employers enrolled in a safety discount program under this paragraph shall have one (1) year from the effective date of those rules within which to come into compliance.

(p) Repealed By Laws 1998, ch. 117, § 2.

(q) The division may, in accordance with its rules and regulations, grant a premium credit to rates established under this section if it is determined by a qualified actuary retained by the division that the fund will remain fully reserved after the premium credit is granted and implemented. If the division determines to grant a premium credit, the percentage of credit allowed for the rate year shall be the same for all employers qualified pursuant to paragraph (iii) of this subsection. The following provisions shall also apply to the premium credit program:

(i) The premium credit to an employer may be applied only against premiums due in the year in which the credit was issued. The premium credit can only be used to offset premiums, and in no case can the premium be redeemed by an employer for cash;

(ii) Any premium credits unclaimed at the end of the year shall expire;

(iii) The premium credit, if granted, shall only be given to those employers who paid premiums during the preceding year and whose accounts are current on all amounts owed under the act, including premiums, case cost liability and penalties.

(r) In an industrial classification with less than twelve (12) employers in which a single employer contributes greater than fifty percent (50%) of the total premium in that classification, the director of the department of workforce services, with the concurrence of the governor, may adjust the base rate for the employer established pursuant to this section, not to exceed twenty-five percent (25%) subject to the following:

(i) An affected employer submits a written application to the division in the format prescribed by the division after October 1 and before December 31 of the year preceding the year in which the adjustment will be made;

(ii) The affected employer's experience modification rating is lower than the average for the employer's industrial classification;

(iii) The director determines that the employer has been adversely affected due to the distribution of premiums within the industrial classification; and

(iv) The employer is contributing less than twenty-five percent (25%) of the total premium of the industrial classification.

(s) Any loss of premium due to an adjustment pursuant to subsection (r) of this section shall be distributed among all rate classes in the annual base rate adjustment in the year subsequent to the year in which the adjustment was made.

(t) The division may, in accordance with its rules and regulations, create and implement a premium deductible program. The following provisions shall apply to the premium deductible program:

(i) Participating employers shall sign a contract with the division, clearly identifying the terms of the program;

(ii) Participating employers shall be assigned a reduced industry base rate for premium calculation purposes. The industry base rate reduction shall be determined in a manner that reflects the dollar amount of the deductible and is consistent with an actuarially sound workers' compensation account;

(iii) Participating employers shall be financially stable and in good standing with the division;

(iv) Participating employers shall report all work injuries within the timeframes specified in W.S. 27-14-506;

(v) Participating employers failing to meet the requirements of the premium deductible program shall have their premium base rate reinstated at the full industry base rate, retroactive to the reporting period in which the employer first became noncompliant. Employers whose premium base rate is reinstated at the full industry base rate under this paragraph shall not be re-eligible for the premium deductible program for a minimum of eight (8) calendar quarters;

(vi) Participation in the premium deductible program cannot be transferred to a successor employer nor can it be incorporated as part of a merger among employing units.

27-14-202. Premium payments; payroll reports; department authority to establish joint reporting; remedies for incorrect earnings categorizations by employers.

(a) Except as provided under subsection (e) of this section, each employer shall forward to the division on forms provided by the division, a true copy of the payroll of his employees engaged in extrahazardous employment during the current calendar month or quarterly

reporting period, certified and affirmed by himself or a person having knowledge of the payrolls under penalty of perjury. Payroll reports and monthly payments under this act shall be submitted on or before the last day of the month following the month in which the earnings are paid, unless otherwise provided by rule and regulation of the division.

(b) The director may permit an employer to file payroll reports for quarterly payroll periods ending March 31, June 30, September 30 and December 31 if the diligence of prior reporting payment of premium and other factors warrant. The privilege of quarterly reporting may be revoked by the division if an employer is delinquent in reporting or making payments in accordance with this act. Upon notice of revocation, the employer shall file payroll reports on a monthly basis. Quarterly payroll reports shall be filed and payments made on or before the last day of the month following the quarterly periods.

(c) An employer shall notify the director at the time he ceases to employ individuals in covered employment.

(d) Any employer or joint employer contributing as required by this act and employing employees or joint employees covered under this act that would qualify as separate classifications, may elect to report gross earnings of the covered entities under one (1) consolidated Wyoming worker's compensation account. A payroll report submitted pursuant to this subsection shall classify the employer's payroll under separate industrial classifications specified under W.S. 27-14-108. Any employer electing to report under a consolidated account shall provide written notice to the division of its intent. The election shall remain in effect for one (1) year or until withdrawn in writing, whichever occurs later. Any employer or joint employer contributing as required by this act and employing employees or joint employees covered by this act who elects to report the payrolls under one (1) consolidated account pursuant to this subsection shall be treated as a single employer for all purposes of this act with the exception of determining the experience rating pursuant to W.S. 27-14-201(d) and the premium tax credit pursuant to W.S. 27-14-201(q).

(e) Notwithstanding subsections (a) and (b) of this section, an employer may elect to submit payroll reports and make premium payments in advance pursuant to rule and regulation of the division. In its rules and regulations established under this subsection, the division shall provide for adjustment of premium payments for any fiscal year in accordance with overpayments or underpayments made during the preceding fiscal year.

(f) Notwithstanding subsections (a) and (b) of this section and commencing January 1, 1994, governmental entity employers shall make payments for rates established by the division under W.S. 27-14-201 for any calendar year commencing on July 1 of that calendar year and ending June 30 of the immediately succeeding calendar year. For purposes of this subsection "governmental entity employer" includes state, county, municipal, school district, community college, university and special district employers.

(g) The department of workforce services shall by rule and regulation establish a joint payroll reporting system for the purposes of the Wyoming Worker's Compensation Act and Wyoming Employment Security Law. Nothing in this subsection shall require the department to provide a joint payroll reporting system to all qualifying employers.

(h) An employer's categorization in its payroll reports of an employee's gross earnings to the appropriate industrial or employment classification shall be in accordance with division rules and regulations. If the division finds any employee gross earnings to be incorrectly categorized to an industrial or employment classification, the division shall within a one (1) year period beginning with the current rate year and including the previous rate year, credit or debit the employer's account for the overpayment or underpayment as appropriate. The division shall waive any underpayment amount, interest, penalties or claim reimbursements if the incorrect employee gross earnings categorization was caused by reliance on a written determination of the division and the employer provided full and truthful disclosure of all pertinent information in requesting a determination or if the employer makes a good faith error in categorization. The division may waive any interest, penalties or claim reimbursement caused by an underpayment due to an otherwise incorrect employee gross earning categorization of an employee's earnings in any other case if it determines there are sufficient extraordinary circumstances which warrant a waiver. If an employer's account has been debited pursuant to this subsection, the employer shall not be considered contributing as required by this act if he does not pay the underpayment within thirty (30) days of his account being debited or within thirty (30) days of completion of any appeals of the determination of an underpayment, whichever occurs later.

(j) The division, on or about the fifteenth of the month following the due date, shall send a written notice of delinquency to an employer failing to submit a report as required by this section. An employer failing to submit a report required by this section within thirty (30) days of the date due shall, in addition to any delinquent premium penalty pursuant to W.S. 27-14-203, be assessed a penalty of one hundred dollars (\$100.00) for each delinquent report.

27-14-203. Failure of employer to make payments; interest; lien; injunction; nonexclusive remedies.

(a) Any employer not applying for coverage of eligible employees or, after obtaining coverage under this act, any employer failing, neglecting or refusing to make payments required by this act within thirty (30) days of the date due and against whom any injured employee is held entitled to worker's compensation benefits is liable to the state for an amount equal to all awards, both paid and reserved entered for payment to or for the employee under this act. If the employer fails, neglects or refuses to satisfy his liability within the thirty (30) day period, the amount shall be recovered by civil action in the name of the director. The entry of final order by the division or hearing examiner approving and allowing an award of compensation is prima facie proof of the liability of an employer failing to comply with this act.

(b) Repealed by Laws 1993, ch. 176, § 2.

(c) Premiums not paid on or before the date due shall bear interest of two percent (2%) per month or any fractional portion thereof from the due date until payment plus accrued interest is received by the division. The interest is part of the payment due for all purposes if suit is instituted as provided in this act.

(d) If premiums, liabilities pursuant to subsection (a) of this section, interest and penalties provided by this section are not paid within thirty (30) days of the date due and following notice by the division to the employer of the remedies authorized under this section, and the consequences of these remedies the attorney general shall immediately bring suit in the name of the state for the collection of all delinquent payments, liabilities pursuant to subsection (a) of this section, interest and penalties. If a judgment is rendered in favor of the state, the judgment shall be for double the amount of the payroll payment provided by this act together with costs.

(e) If payments under this act are not paid on or before the date due and following notice under subsection (d) of this section, the director may file a lien with the county clerk of the county in which the employer has his principal place of business and a copy with any other county. The amount due is a lien upon all real and personal property of the employer and is in effect from the time of filing and covers all property of the employer in any county in which filed. The director shall file notice of satisfaction of the lien with the county clerk if payments are collected or found erroneous and may release any property from the lien or subordinate the lien if he determines payments are secured by a lien on other property or the collection of payments are not in jeopardy.

(f) Any employer employing any person in any covered employment who, following notice by the division of the remedies authorized under this section, fails to apply for coverage under this act or, after obtaining coverage under this act, fails to make payments within thirty (30) days of the date due, shall be enjoined in an action instituted by the director from engaging or continuing in a business covered by this act. Operations shall be enjoined until required payments are made and the employer complies with this act. The director is not required to give bond in the action.

(g) Remedies provided by this act are cumulative and are not exclusive.

(h) If judgment is rendered in favor of the employer in any action under this section, he shall be entitled to recover all his costs including a reasonable attorney's fee from the division. This recovery shall not affect the employer's experience rating.

27-14-204. Coverage of out-of-state injuries; filing.

(a) Repealed By Laws 1997, ch. 177, § 2.

(b) The payment or award of benefits under the worker's compensation law of another state to an employee or his dependents otherwise entitled on account of the injury or death to the benefits of this act is not a bar to a claim for benefits under this act if a claim under this act is filed within the time limits set forth in W.S. 27-14-503. If compensation is paid or awarded under this act, the total amounts of medical and related income and death benefits paid or awarded under another worker's compensation law shall be credited against the total corresponding medical and related income and death benefits due under this act.

(c) Repealed by Laws 1989, ch. 29, §§ 1, 2.

(d) Any employee injured outside of the state of Wyoming and coming under the provisions of this section shall file his application for compensation with the division.

27-14-205. State contributions; presumed pay of specified employees.

(a) State agencies shall administer this act as an employer with respect to its employees including filing payroll reports and submitting premium payments for those employees engaged in extrahazardous employment and covered under this act. Each state agency having officers or employees subject to this act shall file payroll reports and submit premium payments as required by this act. Premium payments for coverage of any employee employed under a federally funded program administered by an agency may be made from available federal funds.

(b) For the purpose of determining employer contributions under this act, all school-to-work participants for which coverage has been elected under W.S. 27-14-108(m), all persons receiving training under any work or job training program for which coverage has been elected under W.S. 27-14-108(p), all volunteers covered under this act, mine rescue team members, recipients of any welfare program performing work for a governmental entity, federal programs which require coverage for their participants, prisoners and probationers under W.S. 27-14-108(d)(ix) and persons performing community service pursuant to a criminal sentencing order, or a diversion agreement entered into with a prosecuting authority, under W.S. 27-14-108(d)(xv), are deemed to be paid for each month of active service, an amount established by rule and regulation of the division based upon the cost of the specific employment category to the worker's compensation account. This amount shall be established solely as a basis for determining employer contributions and is not binding upon any employer as an actual required salary for any volunteer or other individual enumerated under this subsection. The division shall report any anticipated deficiencies in contributions due to this subsection to the legislature on or before January 15 of each year.

(c) For purposes of determining employer contributions under this act for officers of a corporation or members of a limited liability company electing coverage under W.S. 27-14-108(k), rates shall be applied for each officer or member covered under this act against the statewide average wage for the preceding twelve (12) month period as determined under W.S. 27-14-802(b).

(d) Notwithstanding any other provision of this act, a school district or community college district may make payroll reports and payments on behalf of any employer electing coverage for school-to-work participants under W.S. 27-14-108(m). If a school or community college district elects to make payments under this subsection, the district shall continue to make reports and payments for the duration of participation by the school-to-work participant with that employer.

27-14-206. Public contract work; coverage procedure; responsibility on private contracts.

(a) If the state, county, University of Wyoming, community college district, school district, special district or municipality engages in work in which employees are employed for wages and if the work is being done by contract, the payroll of the prime or general contractor or subcontractor shall be the basis of computation for the payroll assessment. The required payments shall be subject to the provisions of this act and the state, the county, university, community college district, school district, special district or municipality, shall be entitled to collect from the prime or general contractor the full amount payable under this act unless the subcontractor primarily liable for the payment of premiums has paid the premiums as provided for in this act.

(b) The prime or general contractor shall secure certification when a contract is awarded or before permitting a subcontractor to begin work, that the subcontractor has in good standing an account under this act that covers all coverable employees in the employ of the subcontractor.

(c) The state, county, university, community college district, school district, special district or municipality shall secure certification before allowing a prime or general contractor to permit coverable employees to start work on a contract, that the contractor, prime or general, has in good standing an account under this act that covers employees who are subject to this act.

(d) Before final settlement is made by the state, county, university, community college district, school district, special district or municipality, the contractor shall furnish evidence that all obligations for covered employees on the contract have been paid as provided by this act.

(e) In private work a contractor who subcontracts all or any part of a contract is liable for the payment of worker's compensation premiums for the employees of the subcontractor unless the subcontractor primarily liable for the payment of premiums has paid the premiums as provided for in this act. Any contractor or his carrier who becomes liable for the premiums may recover the amount of the premiums paid and necessary expenses from the subcontractor primarily liable therefor. For premiums paid on behalf of the employees of any subcontractor pursuant to this subsection, the contractor shall be afforded all privileges and immunities under this act as if he were the employer of the subcontractor's employees.

(f) The owner or lessee of land shall be deemed a contractor when he contracts with another who shall be deemed a subcontractor to have work performed of a kind which is a regular or recurrent part of the work of the trade, business, occupation or profession of the owner or lessee. This subsection shall not apply to the owner or lessee of land principally used for agriculture.

27-14-207. Employer registration required; person acquiring trade of another employer; transfer of experience and assignment of rates.

(a) Any employer subject to this act shall not commence business or engage in work in this state without applying for coverage under this act and receiving a statement of coverage from the division.

(b) Except as provided in subsection (c) of this section, a person acquiring the trade, organization, business or substantially all of the assets of an employer subject to this act shall assume the previous employer's account, experience rating and premium rate as assigned by the division, provided the previous employer is not participating in the premium deductible program under W.S. 27-14-201(t). If the previous employer is participating in the premium deductible program, the acquiring person shall assume the previous employer's account, experience rating and premium rate as determined without premium deductible program eligibility. The acquiring person shall assume the premium rate which is in effect at the time of the acquisition based on the existing account's classification, experience rating and any surcharge which may apply, as determined without premium deductible program eligibility.

(c) A person acquiring the trade, organization, business or substantially all of the assets of any employer subject to this act whose owners or shareholders have not held an ownership interest in the employer being acquired within one (1) year previous to the date of acquisition shall assume the previous employer's account number, experience rating and premium rate as assigned by the division, provided the previous employer is not participating in the premium deductible program under W.S. 27-14-201(t). If the previous employer is participating in the premium deductible program, the acquiring person shall assume the previous employer's account, experience rating and premium rate as determined without premium deductible program eligibility.

(d) The transfer of some or all of an employer's workforce to another person shall be considered a transfer of trade or business when, as a result of the transfer, the transferring employer no longer performs trade or business with respect to the transferred workforce, and the trade or business is performed by the person to whom the workforce is transferred.

(e) If an employer transfers all or a portion of its trade or business to another employer and, at the time of the transfer, there is substantially common ownership, management or control of the two (2) employers, then the workers' compensation experience attributable to the transferred trade or business shall be transferred to the employer to whom the business is

transferred. The rates of both employers shall be recalculated and made effective the first day of the calendar quarter immediately following the date of the transfer of trade or business.

(f) If, following a transfer of experience under this section, the department determines that a substantial purpose of the transfer of the trade or business was to obtain a reduced premium liability, then the accounts of the employers involved shall be combined into a single account.

(g) If a person is not an employer under this section at the time the person acquires the trade or business of an employer, the workers' compensation experience of the acquired employer shall not be transferred to the person if the department finds that the person acquired the trade or business of the employer solely or primarily for the purpose of obtaining a lower premium rate. Instead, the person shall be assigned the applicable industry base rate in effect at the time of the acquisition. In determining whether the trade or business was acquired solely or primarily for the purpose of obtaining a lower premium rate, the department shall use objective factors which may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long the business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

(h) The division by rule and regulation shall establish procedures to identify the transfer or acquisition of a business for purposes of this section and W.S. 27-14-806.

ARTICLE 3 NONRESIDENT EMPLOYERS

27-14-301. Applicability of provisions.

(a) This act applies to all injuries and deaths occurring in Wyoming in employment described in W.S. 27-14-108(a), (d), (e), (j), (k) or (m) and to all injuries and deaths occurring outside of Wyoming in employment described in W.S. 27-14-108(a), (d), (e), (j), (k) or (m) under the following conditions:

(i) Repealed by Laws 2006, Chapter 2, § 2.

(ii) The employee at the time of the injury is working under a contract for hire made in Wyoming for employment by an employer who has a principal place of business within the state established for legitimate business-related purposes and the employment is within the United States, a United States territory, Canada or Mexico, but which is not principally localized in any other state, United States territory, Canada or Mexico; or

(iii) The employee at the time of the injury is working under a contract for hire made in Wyoming for employment principally localized in another state, United States territory, Canada or Mexico, the workers' compensation law of which jurisdiction does not require that

the employment be covered by a workers' compensation insurance policy issued under the laws of that jurisdiction.

(b) Repealed By Laws 2006, Chapter 2, § 2.

27-14-302. Required reporting; security required for certain nonresident employers.

(a) Nonresident employers before starting work, and from time to time after the work has been commenced, shall report to the director the nature and progress of the work, the location of the work and the number of employees engaged in and upon the work and likely to be so engaged for the next thirty (30) days, giving further and detailed information as the director may reasonably demand.

(b) Before starting business or engaging work in this state, a nonresident employer as defined by W.S. 27-1-106(a) shall register as required by W.S. 27-14-207, and shall either pay an advance premium deposit as provided in the department's rules and regulations or shall file with the director a surety bond or other security approved by the director, as provided in W.S. 27-1-106.

(c) Repealed by Laws 1991, ch. 93, § 2.

(d) Repealed by Laws 1991, ch. 93, § 2.

(e) The requirements of this section shall be waived if the nonresident employer provides a certificate of coverage pursuant to W.S. 27-14-306(b).

27-14-303. Contract with nonresident conditioned upon compliance.

A contract shall not be let to a nonresident employer for work or services within the state until the contributions provided by this act have been paid.

27-14-304. Return of deposit to nonresident employer after cessation of operations.

Money, bonds or other security deposited pursuant to this act shall be returned to the nonresident employer in accordance with W.S. 27-1-106.

27-14-305. Secretary of state designated agent for service of process.

Nonresident employers upon engaging in any covered employment, unless they designate a resident agent for service of process, shall be deemed from the date of the commencement of work to have designated the secretary of state as their agent for service of any process upon them in any action prosecuted pursuant to this act. The secretary of state upon the receipt of any process shall send the process by certified or registered mail return receipt requested to the last known address of the employer.

27-14-306. Extraterritorial applicability of provisions.

(a) Repealed By Laws 1997, ch. 177, § 2.

(b) A certificate from an authorized officer of the worker's compensation department or similar agency of another state certifying that an employer of that state is bound by the worker's compensation or similar law of that state and the law will be applied to employees of the employer while in this state, is prima facie evidence of the application of the worker's compensation or similar law of the certifying state.

(c) The benefits under this act or similar laws of the other state that are received by the employee for an injury sustained while working for the employer in this state are the exclusive remedy against the employer and coemployees acting within the scope of their employment for an injury whether or not that injury resulted in death.

(d) Upon approval of the governor, the division shall enter into an agreement with any worker's compensation division or similar agency of another state to promulgate regulations not inconsistent with this act to carry out the extraterritorial application of the worker's compensation or similar law of the agreeing state.

27-14-307. Penalty for failure to post bond.

The willful failure of any nonresident employer in a covered employment to give bond or other security required by this act constitutes a misdemeanor, punishable by a fine of not more than five thousand dollars (\$5,000.00), imprisonment for not more than one (1) year, or both.

ARTICLE 4
EMPLOYEE BENEFITS

27-14-401. Medical, hospital and ambulance expenses; review of claim; employer and division designated providers; contracts for bill review, case management and related programs.

(a) The expense of medical and hospital care of an injured employee shall be paid from the date of the compensable injury unless under general arrangement the employee is entitled to free medical and hospital care or the employer furnishes adequate and proper medical and hospital care to his employees.

(b) No fee for medical or hospital care under this section shall be allowed by the division without first reviewing the fee for appropriateness and reasonableness in accordance with its adopted fee schedules.

(c) Hospital care includes private nursing or nursing home care if approved by the director.

(d) Medical and hospital care shall be obtained if possible within Wyoming, or in an adjoining state if the hospital or health care provider in the adjoining state is closer to the scene of the accident or to the usual place of employment of the employee than a hospital or health care provider in Wyoming, unless otherwise authorized by the division. Except as otherwise authorized by the division, reimbursements for travel in obtaining medical and hospital care shall not be paid:

(i) For travel of less than ten (10) miles one (1) way except by ambulance travel as set forth in W.S. 27-14-401(e);

(ii) For travel other than that necessary to obtain the closest available medical or hospital care needed by the employee except in those instances where travel within Wyoming is at a greater distance than travel outside of Wyoming;

(iii) In excess of the rates at which state employees are paid per diem and mileage.

(e) If transportation by ambulance is necessary, the division shall allow a reasonable charge for the ambulance service at a rate not in excess of the rate schedule established by the director under the procedure set forth for payment of medical and hospital care.

(f) Subject to subsection (h) of this section, an employer or the division may designate health care providers to provide nonemergency medical attention to his employees or to claimants under this act. Except as provided in subsection (h) of this section, the employee may for any reason, select any other health care provider. If the employee selects a health care provider other than the one (1) selected by the employer or the division, the employer or division may require a second opinion from a health care provider of their choice. The second opinion may include an independent medical evaluation, a functional capacity exam or a review of the diagnosis, prognosis, treatment and fees of the employee's health care provider. The independent medical evaluation, a functional capacity exam or the review by the employer's health care provider shall be paid for by the employer and the evaluation, a functional capacity exam or review by the division's health care provider shall be paid from the worker's compensation account.

(g) The division may engage in and contract for medical bill review programs, medical case management programs and utilization review programs. The division may also negotiate with out-of-state health care providers regarding the payment of fees for necessary medical care to injured workers, not to exceed the usual, customary charges for the comparable treatment in the community where rendered or the amount payable for the same services by the worker's compensation fund or account of the state where rendered, whichever is less.

(h) In the case of an inmate employed in a correctional industries program authorized by W.S. 25-13-101 through 25-13-107 or performing services pursuant to W.S. 7-16-202, the department of corrections shall select the health care provider for the inmate.

27-14-402. Payment for artificial replacement.

In addition to payment of medical and hospital care provided by this act, an injured employee may receive payment for essential and adequate artificial replacement of any part of the body which is amputated. If the injury requires artificial replacement an injured employee may receive payment for any adequate and essential artificial aid to hearing or sight, a spinal brace or other similar brace or for artificial dental replacement. Payment for artificial dental replacement shall be in accordance with the schedule adopted by the division.

27-14-403. Awards generally; method of payment.

(a) In addition to payment of medical and hospital care and artificial replacement, an injured employee and his dependents may be entitled to one (1) or more awards for:

(i) Temporary total disability or temporary light duty;

(ii) Permanent partial impairment;

(iii) Permanent partial disability or vocational rehabilitation as provided under W.S. 27-14-408;

(iv) Permanent total disability; or

(v) Death.

(b) Notwithstanding the date of death or the date of the determination of permanent total disability, in the case of permanent total disability or death, each child of an employee shall be paid two hundred fifty dollars (\$250.00) per month for payments made after July 1, 2009, until the child dies or reaches the age of twenty-one (21) years, whichever first occurs, or if the child is physically or mentally incapacitated until the child dies unless qualified for and receiving benefits under the Medicaid home and community based waiver program. If the child is enrolled or preregistered in a post secondary educational institution including a four-year college, community college or private trade school licensed pursuant to W.S. 21-2-401 through 21-2-407 and providing career, technical or apprenticeship training, the child shall receive the amount provided by this section until the child attains the age of twenty-five (25) years. The amount awarded under this subsection shall be adjusted for inflation annually by the division, using the consumer price index or its successor index of the United States department of labor, bureau of labor statistics, or three percent (3%), whichever is less.

(c) All awards stated in this section except awards under paragraph (a)(i), subsection (b) and paragraphs (e)(ii), (iv) and (v) and (h)(ii) and subsection (k) of this section shall be paid monthly at the rates prescribed by this subsection. For permanent partial impairment under paragraph (a)(ii) of this section, the award shall be calculated at the rate of two-thirds (2/3) of the statewide average monthly wage for the twelve (12) month period immediately preceding the quarterly period in which the benefits are first paid as determined pursuant to W.S. 27-14-802. For temporary total disability under paragraph (a)(i) of this section, the award shall be paid monthly at the rate of thirty percent (30%) of the statewide average monthly wage or two-thirds (2/3) of the injured employee's actual monthly earnings at the time of injury, whichever is greater, but shall not exceed the lesser of one hundred percent (100%) of the injured employee's actual monthly earnings at the time of the injury or the statewide average monthly wage for the twelve (12) month period immediately preceding the quarterly period in which the injury occurred as determined pursuant to W.S. 27-14-802 with one-half (1/2) of the monthly award paid on or about the fifteenth of the month and one-half (1/2) paid on or about the thirtieth of the month. For temporary light duty under paragraph (a)(i) of this section, the award shall be paid monthly at the rate of eighty percent (80%) of the difference between the employee's light duty wage and the employee's actual monthly earnings at the time of injury. For permanent partial and permanent total disability or death under paragraphs (a)(iii), (iv) and (v) of this section, the award shall be paid monthly computed as follows:

(i) For those employees whose actual monthly earnings are less than seventy-three percent (73%) of the statewide average monthly wage, the award shall be ninety-two percent (92%) of the injured employee's actual monthly earnings;

(ii) For those employees whose actual monthly earnings are equal to or greater than seventy-three percent (73%) of the statewide average monthly wage, but less than the statewide average monthly wage, the award shall be two-thirds (2/3) of the statewide average monthly wage;

(iii) For those employees whose actual monthly earnings are greater than or equal to the statewide average monthly wage, the award shall be two-thirds (2/3) of the employee's actual monthly earnings, but the award shall be capped at and shall not exceed the statewide average monthly wage;

(iv) In the case of death due to work related causes, and if the award computed under paragraph (i), (ii) or (iii) of this subsection is less than eighty percent (80%) of the statewide average monthly wage, the award shall be adjusted to an amount not less than eighty percent (80%) of the statewide average monthly wage or seventy-five percent (75%) of the injured employee's actual monthly earnings at the time of injury, whichever is greater. In no event shall the award exceed two (2) times the statewide average monthly wage for the twelve (12) month period immediately preceding the quarterly period in which the injury occurred as determined pursuant to W.S. 27-14-802;

(v) Awards for permanent total disability shall be adjusted for inflation annually by the division, using the consumer price index or its successor index of the United States department of labor, bureau of labor statistics, for the calendar year before the date of adjustment or three percent (3%), whichever is less. The adjustment provided by this paragraph shall apply to all awards for permanent total disability benefits in effect on or after July 1, 2009 using as the base for calculation the award in effect on that date or the first award, whichever is later. The adjustment shall become effective annually on July 1 and shall be applied to all awards for permanent total disability that were first made at least one (1) year before the effective date of the adjustment.

(d) If an injured employee entitled to receive or receiving an award under paragraph (a)(ii), (iii) or (iv) of this section dies due to causes other than the work related injury, the balance of the award shall be paid:

(i) To the surviving spouse;

(ii) If there is no surviving spouse or if the spouse remarries or dies, the balance of the award shall be paid to the surviving dependent children of the employee. Each surviving dependent child shall receive a share of the award in the proportion that the number of months from the death or remarriage until the child attains the age of majority, or if the child is physically or mentally incapacitated until the child attains the age of twenty-one (21) years, bears to the total number of months until all children will attain these ages;

(iii) If there is no surviving spouse or if the spouse remarries or dies and there are no dependent children or the children have attained the age of majority or twenty-one (21) if physically or mentally incapacitated, or die, the balance of the award shall be paid to a surviving parent of the employee if the parent received substantially all of his financial support from the employee at the time of injury. If two (2) remaining parents of the employee who received substantially all of their financial support from the employee at the time of the injury survive the employee, the balance of the award shall be divided equally between the two (2) parents;

(iv) Payment of the award shall cease:

(A) If there is no surviving spouse, dependent children or dependent parents;

(B) Upon remarriage or death of a spouse and there are no dependent children or dependent parents;

(C) Upon the death of a dependent child as to payments to that child;
and

(D) Upon the death of a dependent parent as to payments to that parent.

(e) If an injured employee dies as a result of the work related injury whether or not an award under paragraphs (a)(i) through (iv) of this section has been made:

(i) All awards under paragraphs (a)(i) through (iv) of this section shall cease as of the date of death;

(ii) The burial expenses of the deceased employee shall be paid in an amount not to exceed five thousand dollars (\$5,000.00) together with an additional amount of five thousand dollars (\$5,000.00) to cover other related expenses, unless other arrangements exist between the employer and employee under agreement;

(iii) The surviving spouse shall receive for one hundred (100) months a monthly payment as provided by subsection (c) of this section. If the surviving spouse dies before the award is entirely paid or if there is no surviving spouse, the unpaid balance of the award shall be paid to the surviving dependent children of the employee in the manner prescribed by paragraph (d)(ii) of this section. If there are no dependent children, further payments under this paragraph shall cease as of the date of the spouse's death;

(iv) In addition to any amount paid under paragraph (e)(iii) of this section, surviving children shall receive an award as provided by subsection (b) of this section;

(v) If the employee died with no surviving spouse or dependent children but with one (1) surviving parent or two (2) surviving parents of the employee who received at least one-half (1/2) of his or their financial support from the employee at the time of injury, the surviving parent or parents shall receive a monthly payment as provided by subsection (c) of this section for sixty (60) months thereafter or until the parent or the survivor of them dies.

(f) Awards to an employee or a spouse for permanent partial disability, permanent total disability or death may, upon application to the division with a showing of exceptional necessity and notice to the employer, be paid in whole or in part in a lump sum. In no event shall an award for permanent partial impairment under W.S. 27-14-405 be paid in a lump sum.

(g) Following payment in full of any award, or if a lump sum settlement was made under subsection (f) of this section when the award would have been fully paid but for the lump sum settlement, to an employee for permanent total disability or to a surviving spouse for death of an employee, an additional award for extended benefits may be granted subject to the following requirements and limitations:

(i) In the case of an employee:

(A) A claim for compensation is filed by the employee or someone on his behalf;

(B) The employee establishes a reasonable effort on his behalf has been made to return to part time or full time employment including retraining and educational programs;

(C) The division in determining entitlement under this paragraph shall consider the amount of the monthly award made to an injured worker pursuant to W.S. 27-14-403(a)(iv), all earned income of the injured worker, all employment based retirement income of the injured worker, all income derived by the injured worker as a result of the injury, excluding mortgage or any other loan credit insurance, or any supplemental income insurance purchased by or on behalf of the employee and any periodic payments from any other governmental entity to the injured worker. The division shall not consider any other income received by the injured worker or members of the injured worker's household;

(D) The maximum monthly amount of additional compensation shall not exceed the amount provided in subsection (c) of this section;

(E) The division may attach reasonable conditions to application for or receipt of awards under this subsection including retraining or educational programs and the award may be adjusted in accordance with fulfillment of the conditions;

(F) The division may decrease an award to qualify an employee eligible for maximum benefits under any other state or federal pension plan;

(G) Any award granted under this subsection shall not exceed twelve (12) months unless the division determines an award for a period exceeding twelve (12) months but not greater than four (4) years is appropriate.

(ii) In the case of a surviving spouse, upon application to the division and a showing of necessity, the division may award continued monthly payments to the spouse not to exceed one-third (1/3) of the statewide average monthly wage for the twelve (12) month period immediately preceding the quarter in which the injury occurred. An award granted under this paragraph shall not exceed twelve (12) months but may be renewed and shall cease at the time the spouse dies or remarries.

(h) All awards to a minor or individual with a legal disability shall be paid:

(i) To the legal guardian or conservator if one exists; or

(ii) As the division determines to be in the best interests of the minor or individual if there is no legal guardian or conservator.

(j) As used in this section:

(i) "Actual monthly earnings" means the injured employee's actual monthly earnings at the time of injury excluding any payment for casual or unscheduled overtime and any fringe benefit;

(ii) "Overtime" means payments for work in excess of forty (40) hours per week;

(iii) "Statewide average monthly wage" means the statewide average monthly wage for the twelve (12) month period immediately preceding the quarterly period in which the injury occurred as determined pursuant to W.S. 27-14-802.

(k) Any injured worker who has or is receiving medical services entirely in Wyoming from a Wyoming health care provider shall be eligible if otherwise qualified for temporary total disability payments at the rate of seventy percent (70%) of the injured worker's actual monthly earnings at the time of the injury but not to exceed one hundred and three percent (103%) of the statewide average wage for the twelve (12) month period immediately preceding the quarterly period in which the injury occurred as determined pursuant to W.S. 27-14-802, with the following exceptions:

(i) If an injured worker is injured outside of Wyoming, the injured worker if otherwise qualified shall be eligible to receive temporary total disability payments at the rate provided in this subsection, provided the injured worker receives services entirely in Wyoming from a Wyoming health care provider after initial treatment following the injury;

(ii) An injured worker otherwise qualified for temporary total disability payments shall be eligible to receive temporary total disability payments at the rate provided in this subsection if the services or treatment by an out-of-state health care provider were rendered upon the instruction of the division; or

(iii) An injured worker otherwise qualified for temporary total disability payments shall be eligible to receive temporary total disability payments at the rate provided in this subsection if due to unavailability of medical services in Wyoming, the division provides written authorization, before or after treatment, to the injured worker to obtain the medical services from an out-of-state health care provider and the out-of-state health care provider agreed to accept as full payment the fees paid by the division pursuant to the division's fee schedule. For purposes of this subsection, medical services shall be deemed unavailable in Wyoming if the distance from the injured worker's residence to an in-state health care provider is at least one hundred (100) miles greater than the distance from the injured worker's residence to an out-of-state medical provider;

(iv) An injured worker otherwise qualified for temporary total disability payments shall be eligible to receive temporary total disability payments at the rate provided in

this subsection if the employer has a contractual agreement with an out-of-state health care provider.

27-14-404. Temporary total disability; benefits; determination of eligibility; exceptions for volunteers or prisoners; period of certification limited; temporary light duty employment.

(a) If after a compensable injury is sustained and as a result of the injury the employee is subject to temporary total disability as defined under W.S. 27-14-102(a)(xviii), the injured employee is entitled to receive a temporary total disability award for the period of temporary total disability as provided by W.S. 27-14-403(c). The period for receiving a temporary total disability award under this section for injuries resulting from any one (1) incident or accident shall not exceed a cumulative period of twenty-four (24) months, except that the division pursuant to its rules and regulations and in its discretion may in the event of extraordinary circumstances award additional temporary total disability benefits. The division's decision to grant such additional benefits shall be reviewable by a hearing examiner only for an abuse of discretion by the division.

(b) Any employee awarded benefits under W.S. 27-14-405 or 27-14-406 is not eligible for benefits under subsection (a) of this section unless the employee has returned to gainful employment and following employment, undergoes additional surgery not reasonably contemplated before the award for permanent impairment or disability and then only for a reasonable period of recuperation, confinement for medical care during the actual period of confinement or unless application is made and an award is granted under W.S. 27-14-605.

(c) Payment under subsection (a) of this section shall cease prior to expiration of the twenty-four (24) month maximum period specified under subsection (a) of this section if:

(i) Recovery is complete to the extent that the earning power of the employee at a gainful occupation for which he is reasonably suited by experience or training is substantially restored; or

(ii) The employee has an ascertainable loss, qualifies for benefits under W.S. 27-14-405 or 27-14-406 and the first monthly payment pursuant to either of those sections has been issued to the employee.

(d) Disability payments under this section shall not be allowed for the first three (3) days of disability unless the incapacity extends beyond eight (8) days. If payments cease for a period of eight (8) days or more, the employee may apply for reinstatement under W.S. 27-14-605 and any award granted shall be treated as an initial award. In determining the period of disability, the day the disability occurred shall be included unless the employee received full payment of wages for that day. No employee shall be forced to use sick leave before applying for or instead of benefits under this section. Benefits under subsection (a) of this section shall not be paid if:

(i) An employee or his personal representative fails to file a claim for benefits within thirty (30) days after the first day immediately succeeding the first thirty (30) days of any certified period of temporary total disability;

(ii) A claim is filed without the signature of the claimant and certification by the attending health care provider; or

(iii) An employee is receiving unemployment compensation under W.S. 27-3-101 through 27-3-704.

(e) Notwithstanding subsection (a) of this section, any volunteer or mine rescue team member covered under this act and sustaining a temporary total disability in the line of duty shall receive the maximum benefit allowable under this section.

(f) Any individual serving time in any penal or correctional institution who is an employee under this act or any probationer or parolee not covered by a qualifying employer-employee relationship performing work pursuant to court order is not eligible for benefits under this section for injuries suffered during the period of incarceration, probation or parole. Upon release from the penal or correctional institution or upon completion of probation or parole, any remaining benefits for which the individual would otherwise qualify for under this section shall be paid from and after the date of release or completion. In addition, any individual classified as a school-to-work participant under this act is not eligible for benefits under this section for injuries suffered during the participation in a school-to-work program activity.

(g) Only a health care provider may certify temporary total disability under this act. The length of time of the initial certification or recertification of temporary total disability shall be established by the department after considering the recommendation of the health care provider and current medical literature. Subject to W.S. 27-14-609, the employer, employee or division may request recertification of the period of temporary total disability at intervals of not less than sixty (60) days, provided that in the event of extraordinary circumstances, the division may reconsider recertification at any time. The temporary total disability shall not exceed the period allowed by W.S. 27-14-404(a).

(h) Payment under subsection (a) of this section shall be suspended if the injured employee fails to appear at an appointment with his health care provider. Payment shall be suspended under this subsection until such time as the employee appears at a subsequent rescheduled appointment. Payment shall not be suspended for failing to appear at an appointment if the employee notifies the case manager or the division prior to the appointment or within twenty-four (24) hours after missing the appointment and the division determines, after recommendation by the case manager, that the employee made all reasonable efforts to appear at the appointment. At the time of the first benefit payment under this section, the division shall notify the employee of the requirements and other

provisions of this subsection, including the procedures to be followed in notifying the case manager or the division. For purposes of this subsection, health care provider includes physical and occupational therapists.

(j) An employer may make a written offer of temporary light duty work to an employee receiving temporary total disability under subsection (a) of this section. The offer shall be a bona fide offer on a form supplied by the division, stating with specificity the proposed hours of employment, starting date, wage and physical or other functional capacity requirements of the light duty work. If the employee accepts the offer, the temporary total disability award shall cease and the employee shall receive a temporary light duty award, subject to the following terms and conditions:

(i) After notice to the employer, the health care provider who certified temporary total disability has certified on the light duty work agreement that the employee is released to perform the light duty work described in the agreement;

(ii) All periods of light duty work may not exceed one (1) year cumulatively for any one (1) injury;

(iii) The temporary light duty assignment commences not less than fourteen (14) days following the written offer;

(iv) Payment of the temporary light duty award shall cease as provided for temporary total disability under subsection (c) of this section or if the employee's actual monthly earnings from all sources when combined with the temporary light duty award exceed ninety-five percent (95%) of the employee's actual monthly earnings at the time of injury;

(v) The employer shall provide the division before commencement of the light duty work with a copy of the light duty work agreement signed by the employer and the employee, and shall report to the division by the fifteenth of each month the employee's hours and rate of pay for the previous month;

(vi) The temporary total disability award of any employee refusing a bona fide written offer of temporary light duty work pursuant to this subsection shall be reduced by two-thirds (2/3) unless the employee provides written proof to the employer and the division of enrollment by the employee in any collegiate, vocational retraining, general education development or other program approved by the division which is designed to retrain the employee for employment in an occupation other than that previously offered by the employer; and

(vii) The temporary light duty award under this subsection and the balance of a temporary total disability award under paragraph (vi) of this subsection shall not be charged to the employer's experience rating established under W.S. 27-14-201(d).

(k) If the employer objects to a division determination that an injury is compensable and the employee's health care provider has certified the employee as temporarily totally disabled, an injured worker may request an interim benefit while his case is under appeal. The amount of the benefit will be calculated at the temporary total disability rate as determined under W.S. 27-14-403(c) and shall be paid for up to three (3) months until a final compensability decision by a hearing examiner is issued or until the expiration of the period of certified temporary disability, whichever occurs first. The period during which the interim benefit is received shall be included in the time period allowed under W.S. 27-14-404(a). The experience rating of the employer against whom a claim is made shall not be charged for the interim benefit if the injury is determined after hearing not to be compensable. Only one (1) interim benefit under this subsection may be awarded per injury.

27-14-405. Permanent partial disability; benefits; schedule; permanent disfigurement; disputed ratings.

(a) Repealed by Laws 1994, ch. 86, § 3.

(b) Repealed by Laws 1994, ch. 86, § 3.

(c) Renumbered as (k) by Laws 1994, ch. 86, § 2.

(d) Repealed by Laws 1994, ch. 86, § 3.

(e) Renumbered as (m) by Laws 1994, ch. 86, § 2.

(f) An injured employee suffering an ascertainable loss may apply for a permanent partial impairment award as provided in this section.

(g) An injured employee's impairment shall be rated by a licensed physician using the most recent edition of the American Medical Association's guide to the evaluation of permanent impairment. The award shall be paid as provided by W.S. 27-14-403 for the number of months determined by multiplying the percentage of impairment by sixty (60) months.

(h) An injured employee awarded permanent partial impairment benefits may apply for a permanent disability award subject to the following terms and conditions:

(i) The injured employee is because of the injury, unable to return to employment at a wage that is at least ninety-five percent (95%) of the monthly gross earnings the employee was earning at the time of injury;

(ii) An application for permanent partial disability is filed not before three (3) months after the date of ascertainable loss or three (3) months before the last scheduled impairment payment, whichever occurs later, but in no event later than one (1) year following the later date; and

(iii) The employee has actively sought suitable work, considering the employee's health, education, training and experience.

(j) The disability award under subsection (h) of this section shall be payable monthly in the amount provided by W.S. 27-14-403 for the number of months determined by adding the number of months computed under this subsection as follows:

(i) Fourteen (14) months, multiplied by a fraction in which the numerator is sixty-five (65) minus the employee's age at the date of injury and the denominator is forty-five (45);

(ii) Eight and one-half (8 1/2) months, multiplied by a fraction in which the numerator is four (4) minus the employee's completed years of education beyond the twelfth grade, not to exceed four (4) years, and the denominator is four (4);

(iii) Six (6) months, multiplied by a fraction in which the numerator is four (4) minus the number of different occupations in which the employee has worked at least eighteen (18) months in the eight (8) year period preceding the injury but not to exceed four (4), and the denominator is four (4);

(iv) Up to two (2) months if the employee at the time of injury was engaged in a formal education or training program for an occupation which was reasonably expected to pay more than the employee's employment at the time of injury and the employee, because of the permanent injury, will be unable to enter into the new occupation;

(v) One (1) month if the employee is forty-five (45) to forty-nine (49) years of age at the time of injury, two (2) months if the employee is fifty (50) to fifty-four (54) years of age at the time of injury, and three (3) months if the employee is fifty-five (55) years of age or older at the time of injury.

(k) An employee incurring permanent disfigurement due to an injury to the face or head which affects his earning capacity or ability to secure gainful employment shall receive in proportion to the extent of the disfigurement, an additional physical impairment award not to exceed six (6) months of compensation payable monthly as provided by W.S. 27-14-403(c). Any previous disfigurement to the face or head of the employee shall be considered when authorizing the award.

(m) If the percentage of physical impairment is disputed, the division shall obtain a second opinion and if the ratings conflict, shall determine the physical impairment award upon consideration of the initial and second opinion. Any objection to a final determination pursuant to this subsection shall be referred to the medical commission for hearing by a medical hearing panel acting as hearing examiner pursuant to W.S. 27-14-616.

(n) This section specifies the length of time amounts computed pursuant to W.S. 27-14-403(c) are to be awarded and except for amounts awarded under W.S. 27-14-408, shall not be construed to allow awards in excess of the amounts computed pursuant to W.S. 27-14-403(c).

27-14-406. Permanent total disability; benefits.

(a) Subject to W.S. 27-14-602, upon certification by a physician licensed to practice surgery or medicine that an injury results in permanent total disability as defined under W.S. 27-14-102(a)(xvi), an injured employee shall receive for eighty (80) months a monthly payment as provided by W.S. 27-14-403(c) and dependent children shall receive an award as provided by W.S. 27-14-403(b). The eighty (80) month period shall be reduced by the number of months for which previous awards under W.S. 27-14-405 were made for the injury that resulted in the determination of permanent total disability, with the injured worker receiving the monthly amount calculated pursuant to W.S. 27-14-403(c) for the balance of the eighty (80) month period. The monthly payment amount computed under W.S. 27-14-403(c) and any amount awarded under W.S. 27-14-408 shall constitute the exclusive benefit for both the physical impairment and the economic loss resulting from an injury, including loss of earnings, extra expenses associated with the injury and vocational rehabilitation. An employee shall not receive benefits under this section if receiving benefits under W.S. 27-14-404 or 27-14-405.

(b) This section specifies the length of time amounts computed pursuant to W.S. 27-14-403(c) are to be awarded and except for amounts awarded under W.S. 27-14-408, shall not be construed to allow awards in excess of the amounts computed pursuant to W.S. 27-14-403(c).

(c) Any objection to a final determination pursuant to this section shall be referred to the medical commission for hearing by a medical hearing panel acting as hearing examiner pursuant to W.S. 27-14-616.

27-14-407. Forfeiture of benefits due to unsanitary or injurious practice.

If an injured employee knowingly engages or persists in an unsanitary or injurious practice which tends to imperil or retard his recovery, or if he refuses to submit to medical or surgical treatment reasonably essential to promote his recovery, he forfeits all right to compensation under this act. Forfeiture shall be determined by the hearing examiner upon application by the division or employer.

27-14-408. Vocational rehabilitation; application; eligibility; plan; limitation; modification, suspension or termination.

(a) An injured employee may apply to the division to participate in a vocational rehabilitation program if:

(i) An award has been made under W.S. 27-14-405(f) and (g) or it is reasonably expected, due to the nature and extent of the injury, that an award will be made under W.S. 27-14-405(f) and (g);

(ii) The compensable injury will prevent the employee from returning to any occupation for which the employee has previous training or experience and in which the employee was gainfully employed at any time during the three (3) year period before the injury;

(iii) The employee's injury has not previously resulted in an award for vocational disability, whether denominated loss of earnings, loss of earning capacity or vocational award; and

(iv) The employee elects in writing to accept vocational rehabilitation instead of any permanent partial disability award under W.S. 27-14-405(h) and (j) arising from the same physical injury.

(b) Upon receipt of an application, the division shall determine if the employee is eligible for participation in a rehabilitation program pursuant to this section.

(c) Upon final determination of an injured worker's eligibility for rehabilitation, the division shall immediately send a copy of the application and determination to the local office of the division of vocational rehabilitation of the department of workforce services.

(d) The division of vocational rehabilitation shall upon receipt of the determination of eligibility, immediately provide the injured employee with a written explanation of the rehabilitation services available to injured employees and its procedures for developing and supervising an individualized rehabilitation plan for the employee.

(e) The division of vocational rehabilitation shall in cooperation with the injured employee, develop an individualized rehabilitation plan for the employee agreed to by both the division of vocational rehabilitation and employee, that:

(i) Is reasonably contemplated to restore the employee's ability to return to former employment, a related occupation or other suitable employment which, to the extent reasonably possible, has an earnings level comparable to the employee's pre-injury earnings;

(ii) Shall not exceed five (5) years or a total cost of thirty thousand dollars (\$30,000.00) unless extended or increased for extenuating circumstances as defined by rule and regulation of the division;

(iii) Is the least costly feasible plan consistent with the rehabilitation goal established pursuant to paragraph (e)(i) of this section; and

(iv) Includes provisions for living expenses during the rehabilitation plan if the employee is not receiving payments for living expenses from any other government benefit program including worker's compensation, and other sources of household income are insufficient to pay minimally necessary living expenses, provided the vocational rehabilitation program is pursued as rapidly as possible.

(f) The division may modify, suspend or terminate the participation of an injured worker in the rehabilitation program upon certification by the division of vocational rehabilitation that the injured worker has failed to cooperate or maintain satisfactory progress toward the mutually agreed upon rehabilitation plan goals.

ARTICLE 5 CLAIM PROCEDURE

27-14-501. Report by health care provider accepting cases; report of examination; recertification; bills; filing of claims.

(a) Within thirty (30) days after accepting the case of an injured employee and within thirty (30) days after each examination or treatment, a health care provider or a hospital shall file without charge a written medical report with the division. Upon request, the division shall provide a copy of the report to the employer or employee. The division shall notify the employer and the employee that they shall be provided a copy of the report upon request. The report shall state the nature of the injury, the diagnosis, prognosis and prescribed treatment. Any health care provider or hospital failing or refusing to file the report or transmit copies within the time prescribed by this subsection or presenting a claim for services not reasonably justified or which was not required as a result of the work related injury shall forfeit any remuneration or award under this act for services rendered or facilities furnished the employee. Fees or portions of fees for injury related services or products rendered shall not be billed to or collected from the injured employee. Any tests to be administered or other services proposed to be rendered by a health care provider which are clearly not germane to the injury shall be disclosed to the injured employee, if possible, and the employee shall be advised that the cost of the tests or services will be the responsibility of the employee if he consents to the tests or services. Any other necessary and reasonable test or report including initial and necessary follow-up testing for blood borne pathogens, which may be required by division policy or requested by the division, employer or employee may be paid in accordance with a fee schedule adopted by the division. The division shall by rule and regulation institute an appropriate policy for testing for blood borne pathogens after possible occupational exposure and for immediate prophylactic treatment if medically indicated, and shall inform hospitals and primary health care providers of this policy.

(b) Any health care provider attending an employee injured while engaged in any employment covered under this act and certifying temporary total disability under W.S. 27-14-404 shall examine the employee before certification and shall without charge file a written report with the division. Prior to each period of subsequent recertification of temporary

total disability, the health care provider shall reexamine the employee and file without charge a written report with the division. In addition, the health care provider shall as soon as practical notify the division upon releasing an injured employee from temporary total disability. Upon request, the division, without delay, shall transmit copies to the employer or employee. The report shall specify reasons for temporary total disability or continued temporary total disability and is subject to the time limitations and penalties imposed under subsection (a) of this section. Any health care provider certifying or recertifying temporary total disability without an examination of the employee shall be reported to the state licensing board for the respective health care provider.

(c) Any bill for medical and hospital care which is not properly dated, itemized and certified by the claimant may be disallowed by the division.

(d) Within thirty (30) days after the first of the month succeeding the month in which services were rendered to the injured employee, itemized bills and claims for medical and hospital care shall be filed with the division. The division shall upon request provide copies to the employee or employer. Any bill or claim not filed by the claimant in accordance with this subsection may result in a denial of the bill or claim.

(e) An initial claim for temporary total disability benefits under W.S. 27-14-404 and any subsequent claim for temporary total disability following the initial period of certification shall be filed with the division and the division shall transmit a copy of the initial claim to the employer. Failure to file a claim for temporary total disability in accordance with W.S. 27-14-404(d) shall result in denial of the claim.

(f) A claim for permanent impairment or disability benefits under W.S. 27-14-405 and 27-14-406 and a claim for death benefits under W.S. 27-14-403 shall be filed with the division.

27-14-502. Employee's injury report to employer and division; presumption raised by failure to file report; release of information.

(a) As soon as is practical but not later than seventy-two (72) hours after the general nature of the injury became apparent, an injured employee shall, in writing or by other means approved by the department, report the occurrence and general nature of the accident or injury to the employer. In addition, the injured employee shall within ten (10) days after the injury became apparent, file an injury report with the employer and the division in a manner and containing information prescribed by division rule and regulation. If the injured employee is physically unable to comply, a personal representative of the employee, his dependents or a personal representative of the dependents in case of death shall, following notification by the employer or department of reporting requirements, make and file the report for the injured employee.

(b) If an injured employee, any dependent or personal representative makes a written report of the injury to the employer or his representative, the employer shall acknowledge receipt of the report in writing either upon the report or a copy of the report.

(c) Failure of the injured employee, any dependent or personal representative to report the accident or injury to the employer and to file the injury report in accordance with subsection (a) of this section is a presumption that the claim shall be denied. The presumption may be rebutted if the employee establishes by clear and convincing evidence a lack of prejudice to the employer or division in investigating the injury and in monitoring medical treatment.

(d) The filing of an employee's injury report under this section is a release of information for the duration of the benefit period and upon request and upon notice to the employee, any medical care provider, physician or hospital treating the employee for the injury shall release medical records pertaining to the injury to the division or the employer.

27-14-503. Statute of limitations.

(a) A payment for benefits involving an injury which is the result of a single brief occurrence rather than occurring over a substantial period of time shall not be made unless in addition to the proper and timely filing of the injury reports, an application or claim for benefits is filed within one (1) year after the date the injury occurred or for injuries not readily apparent, within one (1) year after discovery of the injury by the employee. The injury report is not a claim for benefits.

(b) The right of compensation for an injury which occurs over a substantial period of time is barred unless a claim for benefits is filed within one (1) year after a diagnosis of injury is first communicated to the employee, or within three (3) years from the date of last injurious workplace exposure to the condition causing the injury, whichever occurs last, excluding injury caused by ionizing radiation to which the three (3) year limitation does not apply. If death results from ionizing radiation within one (1) year after a diagnosis of the medical condition is first communicated to the employee or if death occurs without the communication of a diagnosis to the employee, a claim shall be filed within one (1) year after the date of death.

(c) Repealed by Laws 1996, ch. 82, § 2.

27-14-504. Amendment of employee's injury report.

An employee's injury report may be amended at any time before an initial award is made in order that the employee may correctly set out the nature of his injury. Any amendment may be approved, disapproved or contested as if an original injury report.

27-14-505. Tolling of statute of limitations while persons under disability.

If an injured employee is mentally incompetent or a minor, or where death results from the injury and any of his dependents are mentally incompetent or minors, at the time when any right or privilege accrues under this act, no limitation of time provided for in this act shall run so long as the mentally incompetent or minor has no guardian.

27-14-506. Employer's injury report; penalty for failure to report.

(a) When an injury is reported by any employee, the employer shall file an employer's injury report with the division within ten (10) days after the date on which the employer is notified of the injury and he shall mail or deliver a copy of the report to the employee. The employer's injury report shall be certified and shall contain any information provided by rules and regulations adopted by the director. The employer shall state on the injury report that either the injury is:

- (i) Compensable and under the jurisdiction of this act; or
- (ii) Not compensable under this act and the reasons therefor.

(b) Repealed by Laws 1996, ch. 82, § 2.

(c) Willful failure or gross negligence to report occurrences causing injury to any of his employees by an employer is a misdemeanor, punishable by a fine of not more than seven hundred fifty dollars (\$750.00), imprisonment for not more than six (6) months, or both.

27-14-507. Employer required to post notice.

Each employer shall keep posted in a conspicuous place for employees a notice which shall be furnished by the division and which shall contain a brief summary of this act and procedures for filing claims. Each employer shall also keep a copy of this act and have it available for all employees.

27-14-508. Blank form supplied by director; instructions to employees, employers and health care providers; training programs for clerks of court.

(a) The director shall:

(i) Prepare, print and supply free of charge any blank forms necessary in administering this act to be used insofar as possible in all procedures under this act;

(ii) Prepare and print instructions for making correct claims for the information and use of employees;

(iii) Repealed by Laws 1996, ch. 82, § 2.

(iv) Prepare and print instructions for proper claim procedures for the information and use of health care providers and providers of medical and hospital care;

(v) Prepare and print instructions for proper claim procedures including approving or objecting to claims for the information and use of employers.

(b) Repealed by Laws 1996, ch. 82, § 2.

27-14-509. Autopsy may be required; procedure.

Upon the filing of a claim for compensation for death for which an autopsy is necessary to accurately and scientifically ascertain and determine the cause of death, a hearing examiner may order an autopsy. The hearing examiner may designate a licensed physician who is a specialist in autopsies to perform or attend the autopsy and to certify his findings. The autopsy findings are a public record and shall be filed with the division. The hearing examiner may exercise the authority on his own motion or on an application made to him at any time by any party in interest upon the presentation of facts showing that a controversy may exist in regard to the cause of death or the existence of any compensable injury. All proceedings for compensation shall be suspended upon refusal of a claimant or his representative to permit an autopsy when ordered and no compensation shall be payable during the continuance of the refusal.

27-14-510. Misrepresentations or false statements; failure of employer to establish account or furnish payroll report.

(a) Any person who knowingly makes, authorizes or permits any misrepresentation or false statement to be made for the purpose of him or another person receiving payment of any kind under this act is guilty of:

(i) A misdemeanor punishable by a fine of not more than seven hundred fifty dollars (\$750.00), imprisonment for not more than six (6) months, or both, if the value of the payment is less than five hundred dollars (\$500.00);

(ii) A felony punishable by a fine of not more than ten thousand dollars (\$10,000.00), imprisonment for not more than ten (10) years, or both, if the value of the payment is five hundred dollars (\$500.00) or more.

(b) Any employer who knowingly makes a false statement in a payroll report or reports resulting in the avoidance of or reduction in the employer's premium obligation within a one (1) year period is guilty of:

(i) A misdemeanor punishable by a fine of not more than seven hundred fifty dollars (\$750.00), imprisonment for not more than six (6) months, or both, if the avoided premium or reduction in premium is less than five hundred dollars (\$500.00); or

(ii) A felony punishable by a fine of not more than ten thousand dollars (\$10,000.00), imprisonment for not more than ten (10) years, or both, if the avoided premium or reduction in premium is five hundred dollars (\$500.00) or more.

(c) Any employer who knowingly makes a false statement in an injury report with the intention of denying a worker benefits due under this act is guilty of:

(i) A misdemeanor punishable by a fine of not more than seven hundred fifty dollars (\$750.00), imprisonment for not more than six (6) months, or both, if the value of the benefits is less than five hundred dollars (\$500.00);

(ii) A felony punishable by a fine of not more than ten thousand dollars (\$10,000.00), imprisonment for not more than ten (10) years, or both, if the value of the benefits is five hundred dollars (\$500.00) or more.

(d) Any employer who knowingly fails to establish an account or knowingly fails to furnish a payroll report as required by this act is guilty of:

(i) A misdemeanor punishable by a fine of not more than seven hundred fifty dollars (\$750.00), imprisonment for not more than six (6) months, or both, for a first conviction; or

(ii) A felony punishable by a fine of not more than ten thousand dollars (\$10,000.00), imprisonment for not more than ten (10) years, or both, for a second or subsequent conviction.

27-14-511. Recovery of benefits paid by mistake or fraud.

The attorney general may bring a civil action to recover the value of any benefits or other monies paid under this act due to mistake, misrepresentation or fraud. The attorney general shall be entitled to recover the costs of suit and reasonable attorney fees in cases of misrepresentation or fraud. Nothing in this section shall prohibit a criminal prosecution where appropriate. Any civil action for recovery of overpayment resulting from a mistake by the division shall be commenced within one (1) year after the alleged overpayment and shall be limited to recovery of those mistaken payments made within twelve (12) months before the commencement of the action.

ARTICLE 6
CONTESTED CASES

27-14-601. Payment or denial of claim by division; notice; objections; review and settlement of claims; filing fee; preauthorization of hospitalization or surgery.

(a) Upon receipt, the division shall review the initial injury reports to determine if the injury or death resulting from injury is compensable and within the jurisdiction of this act. No subsequent claim for compensation under this act shall be approved if the division determines the injury or death is not compensable and under the jurisdiction of this act or if the employer states on his injury report that the injury is not compensable, until a determination is rendered by the division. The division shall provide notice of its determination to the employee, employer and the claimant.

(b) Following review of each bill and claim for medical and hospital care pursuant to W.S. 27-14-401(b), the division may approve or deny payment of all or portions of the entire amount claimed and shall:

(i) Notify the employee and the health care provider in writing of any portion of a claim for which the employee may be liable for payment;

(ii) Provide the health care provider with a detailed monthly statement of respective claims and bills for services rendered and the amount approved for payment;

(iii) Provide the employer with a detailed monthly statement of all medical and hospital claims affecting his experience rating.

(c) Repealed by Laws 1994, ch. 86, § 3.

(d) Upon receipt of a claim for impairment, disability or death benefits filed under W.S. 27-14-403(g) or 27-14-501(e) and (f) and if the initial injury or death resulting from injury is determined compensable and within the jurisdiction of this act, the division shall determine if the injured employee or his dependents are eligible for benefits and shall approve or deny the claim in accordance with this act. If a claim is approved, the division shall determine the amount of the award for compensation in accordance with W.S. 27-14-403 through 27-14-406 and 27-14-408, if applicable. The division shall provide notice of any determination under this subsection to the employer, employee and the claimant.

(e) In accordance with this act, the division shall by rule and regulation establish necessary procedures for the review and settlement of the compensability of an injury or death resulting from injury and of claims filed under this act through interviews with employees, employers and health care personnel or through review of written reports. Nothing in this act shall prohibit the employer or division from reaching a settlement of up to two thousand five hundred dollars (\$2,500.00) under this subsection in any one (1) case without an admission of compensability or that the injury was work related.

(f) A health care provider receiving payment erroneously under this act pursuant to a determination by the division following review and settlement under subsection (e) of this section or a decision by a hearing examiner is liable for repayment to the worker's compensation account. Except in contested cases, the division may deduct the amount liable

from future payments under this act limited to deduction of those mistaken payments made for services provided within twelve (12) months before the deduction. If necessary, the division may recover repayment by civil action as provided in W.S. 27-14-511.

(g) No claim for benefits under this act shall be denied based solely on the failure of the employer to have complied with the requirements of this act.

(h) If any claim under W.S. 27-14-404 through 27-14-406 which has been approved and for which an employee is receiving benefits is objected to by an employer, the employee shall be notified by the division within one (1) working day of the objection.

(j) Notice to any employee or his dependents under this section of a final determination by the division denying the compensability of an initial injury, a claim for medical or hospital care for which the employee or his dependents may be liable for payment or denying any impairment, disability or death benefit, shall include reasons for denial and a statement of the employee's or his dependents' rights to a hearing before a hearing examiner as provided by this act and to legal representation.

(k) Determinations by the division pursuant to this section and W.S. 27-14-605 shall be in accordance with the following:

(i) The initial review of entitlement to benefits pursuant to subsections (a) and (e) of this section shall be made by the division within fifteen (15) days after the date the injury report or claim is filed. Following initial review, the division shall issue a final determination or if a final determination cannot be made based upon available information at that time, the division may issue a request for additional information as necessary;

(ii) Following issuance of a request for additional information under paragraph (k)(i) of this section, the division shall investigate the matter and issue its final determination within forty-five (45) days after issuing the request;

(iii) Notice of a final determination issued by the division under this subsection shall include a statement of reasons and notice of the right to a hearing;

(iv) Any interested party may request a hearing before a hearing examiner on the final determination of the division by filing a written request for hearing with the division within fifteen (15) days after the date the notice of the final determination was mailed by the division. If the division has not rendered a final determination within sixty (60) days following the date the claim was filed, any interested party may request a hearing before a hearing examiner in the manner prescribed by this paragraph. If the written request for hearing is sent to the division by certified or registered mail, postage prepaid, return receipt requested, proof of such mailing within the time provided by this subsection with a receipt signed by an agent of the state of Wyoming shall be presumed to be timely filing of the request with the division;

(v) Upon receipt of a request for hearing, the division shall immediately provide notice of the request to the appropriate hearing authority as determined pursuant to W.S. 27-14-616;

(vi) If timely written request for hearing is not filed, the final determination by the division pursuant to this subsection shall not be subject to further administrative or judicial review, provided however that, in its own discretion, the division may, whenever benefits have been denied to a worker, make a redetermination within one (1) year after the date of an original determination regardless of whether or not a party has filed a timely appeal pursuant to paragraph (iv) of this subsection.

(m) Repealed by Laws 1996, ch. 82, § 2.

(n) The division shall maintain a complete and current file for every worker's compensation case filed with the division in accordance with this act.

(o) The division pursuant to its rules and regulations may issue a determination of preauthorization for an injured worker's nonemergency hospitalization, surgery or other specific medical care, subject to the following:

(i) The division's determination that the worker suffered a compensable injury is final and not currently subject to contested case or judicial review;

(ii) A claim for preauthorization is filed by a health care provider on behalf of the injured worker;

(iii) The division's determination pursuant to this subsection is issued in accordance with the procedures provided in subsection (k) of this section;

(iv) Following a final determination to preauthorize, the necessity of the hospitalization, surgery or specific medical care shall not be subject to further review and providers' bills shall be reviewed only for relatedness to the preauthorized care and reasonableness in accord with the division's fee schedules.

27-14-602. Contested cases generally.

(a) A hearing examiner designated by the office of administrative hearings created by W.S. 9-2-2201 shall conduct contested cases under this act in accordance with this section.

(b) Upon receipt of a request for hearing from the division as provided in W.S. 27-14-601(k)(v), the case shall be determined by a hearing examiner in accordance with the law in effect at the time of the injury as a small claims hearing or as a contested case hearing subject to the following:

(i) A request for hearing shall be conducted as a small claims hearing if the amount at issue is less than two thousand dollars (\$2,000.00), is not an issue of the compensability of the injury pursuant to W.S. 27-14-601(a) and the division requests the hearing be held as a small claims hearing. The division shall provide notice that it seeks a small claims hearing under this paragraph in the notice of request for hearing filed pursuant to W.S. 27-14-601(k)(v). If the division provides such notice, the hearing shall be a small claims hearing unless a party to the hearing objects within fifteen (15) days from the date of the notice of request, in which case the hearing officer shall review the file and determine if a small claims hearing is appropriate or if a contested case hearing is necessary or appropriate. Each party to the hearing may within thirty (30) days from the date of notice of request, submit to the hearing examiner any written evidence and argument on the issue. The hearing officer may require either party to provide such documents, filings and evidence as the hearing officer deems relevant to the issue. Copies of the material submitted to the hearing examiner shall be mailed or delivered to all opposing parties. In addition, each party may submit rebuttal evidence and argument to the hearing examiner within forty-five (45) days following the date of notice of request for hearing. Upon request of any party to the hearing and at the discretion of the hearing officer, any proceeding under this paragraph may be conducted in person or by telephone. The hearing examiner shall review the case and written submissions and render a written decision not more than seventy-five (75) days following referral of the request for hearing. No attorney fees or other costs shall be allowed by the hearing examiner on behalf of or for any party to a hearing under this paragraph. In addition, the attorney general's office shall not represent or directly assist the division in the preparation for a hearing under this paragraph;

(ii) All other requests for hearing not specified under paragraph (b)(i) of this section shall be conducted as a contested case in accordance with procedures of the Wyoming Administrative Procedure Act and the Wyoming Rules of Civil Procedure as applicable under rules of the office of administrative hearings. The hearing examiner designated by the office of administrative hearings shall render a decision in a contested case within thirty (30) days after the close of the record. If the contested case is heard by the hearing panel created pursuant to W.S. 27-14-616(b)(iv), the panel shall render a decision within forty-five (45) days after the close of the record;

(iii) Appeals may be taken from the decision rendered in any small claims hearing or contested case hearing by any affected party to the district court as provided by the Wyoming Administrative Procedure Act;

(iv) Hearings under this section shall be held at a location mutually convenient to the parties, as determined by the hearing officer. If the injury occurs at a location outside Wyoming, the hearing shall be held in the county in which the employer's principal place of business is located, unless the hearing officer determines a different location is more convenient to the parties;

(v) Any hearing conducted pursuant to this section involving multiple sites may be conducted through audio or video conferencing at the discretion of the hearing officer or hearing panel.

(c) All written reports, claims and other documents filed with the division shall be considered as pleadings in the case. The attorney general's office shall represent the division in all contested cases. The hearing examiner has exclusive jurisdiction to make the final administrative determination of the validity and amount of compensation payable under this act. Except as otherwise specified in this subsection, all court costs shall be paid from the worker's compensation account if the judgment is in favor of the employer or the division. If judgment is against the employer and the employer contested the claim without being joined in the contest by the division, the court costs shall be paid by the employer. When the employer or division prevails, the court costs shall not affect the employer's experience rating. If judgment is against a health care provider, the court costs shall be paid by the health care provider.

(d) Upon request, the hearing examiner may appoint an attorney to represent the employee or claimants and may allow the appointed attorney a reasonable fee for his services at the conclusion of the proceeding. An appointed attorney shall be paid according to the order of the hearing examiner either from the worker's compensation account, from amounts awarded to the employee or claimants or from the employer. In any contested case where the issue is the compensability of an injury, a prevailing employer's attorney fees shall also be paid according to the order of the hearing examiner from the worker's compensation account, not to affect the employer's experience rating. An award of attorney's fees shall be for a reasonable number of hours and shall not exceed the benefits at issue in the contested case hearing. In all other cases if the employer or division prevails, the attorney's fees allowed an employee's attorney shall not affect the employer's experience rating. Attorney fees allowed shall be at an hourly rate established by the director of the office of administrative hearings and any application for attorney's fees shall be supported by a verified itemization of all services provided. No fee shall be awarded in any case in which the hearing examiner determines the claim or objection to be frivolous and without legal or factual justification. If the division or a hearing examiner determines that an injured worker's failure to meet any procedural deadline in this act is through the fault of the worker's attorney, the division shall reconsider its determination or a hearing examiner shall order the contested case returned to the division for redetermination of the contested issues as provided in W.S. 27-14-601(k).

(e) Except as otherwise provided within this subsection, all documents filed with the division under subsection (c) of this section may be maintained by the division on computer and the hearing examiner or court may admit into evidence any documents resident in the computer imaging file. If a genuine issue as to the authenticity of the document is raised by a party, by a hearing examiner or by the court, the hearing examiner or court may, before admitting the document into evidence, require the division to certify that the record is a true and correct copy or transcript of records on file in the division.

27-14-603. Burden of proof; required proof of circumstances; coronary conditions; hernia.

(a) The burden of proof in contested cases involving injuries which occur over a substantial period of time is on the employee to prove by competent medical authority that his claim arose out of and in the course of his employment and to prove by a preponderance of evidence that:

(i) There is a direct causal connection between the condition or circumstances under which the work is performed and the injury;

(ii) The injury can be seen to have followed as a natural incident of the work as a result of the employment;

(iii) The injury can fairly be traced to the employment as a proximate cause;

(iv) The injury does not come from a hazard to which employees would have been equally exposed outside of the employment; and

(v) The injury is incidental to the character of the business and not independent of the relation of employer and employee.

(b) Benefits for employment-related coronary conditions except those directly and solely caused by an injury, are not payable unless the employee establishes by competent medical authority that:

(i) There is a direct causal connection between the condition under which the work was performed and the cardiac condition; and

(ii) The causative exertion occurs during the actual period of employment stress clearly unusual to or abnormal for employees in that particular employment, irrespective of whether the employment stress is unusual to or abnormal for the individual employee; and

(iii) The acute symptoms of the cardiac condition are clearly manifested not later than four (4) hours after the alleged causative exertion.

(c) If an employee suffers a hernia, he is entitled to compensation if he clearly proves that:

(i) The hernia is of recent origin;

(ii) Its appearance was accompanied by pain;

(iii) It was immediately preceded by some accidental strain suffered in the course of the employment; and

(iv) It did not exist prior to the date of the alleged injury.

(d) If an employee establishes his right to compensation for a hernia as provided and elects not to be operated on, he shall not be compensated for the results of future strangulation of the hernia.

(e) In those proceedings in which the entitlement of an employee to benefits for successive compensable injuries is established but no single employer can be determined to be chargeable for the injuries, the division shall apportion the benefit charge in accordance with W.S. 27-14-201(d).

27-14-604. Examination by impartial health care provider; costs; report by nonresident provider.

(a) In any contested proceeding, the hearing examiner may appoint a duly qualified impartial health care provider to examine the employee and give testimony. The fee for the service shall be as ordered by the hearing examiner, with mileage allowance as is allowed to other witnesses to be assessed as costs and paid as other witness fees are paid. The employer or employee may, at his own expense, also designate a qualified health care provider who may be present at the examination of the employee and give testimony at later hearings.

(b) If the employer and employee stipulate to an examination of the employee by a nonresident, qualified health care provider designated by the hearing examiner, and that the report of the health care provider as to his examination shall be admitted in evidence, the hearing examiner may order payment of the reasonable cost and expense of the employee's attendance upon the health care provider, the provider's fee for examination of the employee and his report thereon. The fees and costs shall be charged in the same manner as other costs and witness fees. The nonresident health care provider shall report in writing to the hearing examiner and include answers to questions asked by the hearing examiner relative to the employee's condition.

27-14-605. Application for modification of benefits; time limitation; grounds; termination of case; exceptions.

(a) If a determination is made in favor of or on behalf of an employee for any benefits under this act, an application may be made to the division by any party within four (4) years from the date of the last payment for additional benefits or for a modification of the amount of benefits on the ground of increase or decrease of incapacity due solely to the injury, or upon grounds of mistake or fraud. The division may, upon the same grounds and within the same time period, apply for modification of medical and disability benefits to a hearing examiner or the medical commission, as appropriate.

(b) Any right to benefits shall be terminated and is no longer under the jurisdiction of this act if a claim for any benefit is not filed with the division within the four (4) year limitation prescribed under subsection (a) of this section.

(c) A claim for medical benefits which would otherwise be terminated under subsection (b) of this section and barred under W.S. 27-14-503(a) and (b) may be paid by the division if the claimant:

(i) Submits medical reports to the division substantiating his claim;

(ii) Proves by competent medical authority and to a reasonable degree of medical certainty that the condition is directly related to the original injury; and

(iii) Submits to an examination by a health care provider selected by the division and results of the examination validate his claim.

27-14-606. Determination and awards are administrative determination as to all parties; notice and hearing requirements.

Each determination or award within the meaning of this act is an administrative determination of the rights of the employer, the employee and the disposition of money within the worker's compensation account as to all matters involved. No determination shall be final without notice and opportunity for hearing as required by this act.

27-14-607. Rights of director to defend against claim; no waiver.

The director or his designee may for any reason appear before the hearing examiner or in the district court and defend against any claim and shall in all respects have the same rights of defense as the employer. Failure to contest a claim does not constitute waiver by the director of his right to participate in further proceedings concerning the award where he does not appear and defend at the original hearing or trial.

27-14-608. Attorney fees; penalty for violation.

(a) If the hearing examiner under W.S. 27-14-602(d) or the district court or supreme court under W.S. 27-14-615 set a fee for any person for representing a claimant under this act excluding a health care provider, the person shall not receive any additional fee from the claimant.

(b) Any person violating this section is guilty of a misdemeanor and upon conviction shall be fined not more than seven hundred fifty dollars (\$750.00), imprisonment in the county jail for a term not to exceed six (6) months, or both.

27-14-609. Periodic review of temporary total award; physical examination after temporary total award; purpose; report to division.

(a) The division shall review every award for temporary total disability under W.S. 27-14-404 at least once every six (6) months. Upon request by the employer or division, an employee awarded compensation for temporary total disability shall submit to medical examination by a health care provider at a place designated by the employer or division which is reasonably convenient for the employee. The employee may have a licensed health care provider present of his own selection at his own expense.

(b) The results of the examination shall be reported to the division. The division, without delay, shall forward copies to the employer and employee. If after consideration of all medical reports in the case the division determines that the employee has recovered to the extent that temporary total disability no longer applies and his earning ability is substantially restored, compensation shall be discontinued in accordance with W.S. 27-14-404 unless written objection is filed by the employer or employee with the division within ten (10) days from the date of notice.

(c) If an employee refuses to submit to or obstructs the examination, his right to monthly payments shall be suspended until the examination has taken place. No compensation shall be paid during the period of refusal.

27-14-610. Health care providers required to testify; refusal; privilege inapplicable.

If directed under this act, any health care provider providing professional attention to an employee may be required to testify before the hearing examiner or any court, provide written reports and attend depositions in a professional capacity. Any health care provider refusing to comply with this section shall forfeit any remuneration or award under this act for services rendered or facilities provided the injured employee. The law of privileged communication between health care provider and patient shall not apply.

27-14-611. Administrative determination for compensation; copies to employer and auditor; warrants for payment.

Any administrative determination for compensation to an injured employee or his dependents shall be transmitted by the division to the employer. The division shall transmit a certified copy to the state auditor for filing. The certified copy is direction to the state auditor to issue warrants for payment in accordance with this act.

27-14-612. Appeal by employee; costs.

If an appeal to the district court is prosecuted on behalf of the employee, the employee or attorney representing the employee shall order a record of the proceedings at the hearing to be supplied by the hearing examiner without cost to the employee. An electronic recording of

the proceedings may serve as the official transcript but upon appeal, the district court may request a written transcript of the proceedings or any portion of the proceedings. The employee or attorney shall also order the papers on file with the division to be prepared, transcribed, certified and forwarded to the district court without cost to the employee. Docket fees in the district court shall be paid for directly out of the worker's compensation account.

27-14-613. Appeal by employer; stay of award.

If an appeal is prosecuted on behalf of the employer, the record of the proceedings at the original hearing shall be supplied without cost to the employer. An electronic recording of the proceedings may serve as the official transcript but upon appeal, the district court may request a written transcript of the proceedings or any portion of the proceedings. The employer may employ counsel to conduct the appeal on his behalf. Upon request and on appeal by an employer or the division from an order of award, the hearing examiner may stay the payment of the award or that portion appealed from upon any terms as the hearing examiner deems proper.

27-14-614. Direct appeal by director from any order; stay of execution; costs.

The director may appeal to the district court from any order or judgment of the hearing examiner awarding compensation or declining to award compensation although he was not a party to the proceedings before the hearing examiner, without the necessity of presenting any petition for reopening of a case to the hearing examiner. After the appeal is perfected, the hearing examiner may stay the execution of the order or judgment appealed from without requiring any bond. The attorney general or his assistant shall represent the director in all cases. All the costs of the new hearings granted upon petition of the director and all costs of appeals conducted by the director shall be paid by the worker's compensation account except such costs as the court in its discretion shall assess against any of the other parties to the cause.

27-14-615. Appointment of attorneys for court proceedings; fees.

The district court may appoint an attorney to represent the employee during proceedings in the district court and appeal to the supreme court. The district court may allow the attorney a reasonable fee for his services at the conclusion of the proceedings in district court and the supreme court may allow for reasonable fees for services at the conclusion of the proceedings in the supreme court. In any appeal where the issue is the compensability of an injury, a prevailing employer's attorney fees shall also be paid according to the order of the district court or supreme court from the worker's compensation account, not to affect the employer's experience rating. An award of attorney's fees shall be for a reasonable number of hours and shall not exceed the benefits at issue in the appeal. In all other cases, if the employer or division prevails in the district court or supreme court, as the case may be, the fees allowed an employee's attorney shall not affect the employer's experience rating.

27-14-616. Medical commission; hearing panels; creation; membership; duties; rulemaking.

(a) The medical commission is created to consist of eleven (11) health care providers appointed by the governor as follows:

(i) Seven (7) licensed physicians appointed from a list of not less than fourteen (14) nominees submitted by the Wyoming Medical Society;

(ii) Four (4) health care providers appointed from a list of not less than eight (8) nominees developed and submitted by appropriate health care provider groups selected by the director.

(b) One (1) member shall be elected by commission members as chairman and one (1) as vice-chairman. The division shall designate an employee to serve as executive secretary of the commission or contract with an individual to provide executive secretary services to the commission. The governor may appoint no more than eleven (11) additional health care providers as associate members of the commission whose function is limited to serving as members of individual medical hearing panels. Except for initial members, the terms of commission members and associate members shall be three (3) years. Three (3) members of the initial commission and three (3) initial associate members shall be appointed to a one (1) year term and four (4) initial commission members and four (4) initial associate members shall be appointed to a two (2) year term. The duties of the commission shall be:

(i) To promulgate rules and regulations, with the approval of the director of the department, declaring particular medical, hospital or other health care procedures either acceptable or not necessary in the treatment of injuries or particular classes of injuries and therefore either compensable or not compensable under this act or expanding or limiting the compensability of such procedures under this act;

(ii) To promulgate rules and regulations, with the approval of the director of the department, establishing criteria for certification of temporary total disability by health care providers and setting forth the types of injuries for which particular health care providers may certify temporary total disability pursuant to W.S. 27-14-404(g);

(iii) To advise the division, upon request, on the usefulness of medical cost containment measures;

(iv) To furnish three (3) members of the commission to serve as a medical hearing panel to hear cases referred for hearing. The division shall refer medically contested cases to the commission for hearing by a medical hearing panel. The decision to refer a contested case to the office of administrative hearings or a medical hearing panel established under this section shall not be subject to further administrative review. Following referral by the division, the hearing examiner or medical hearing panel shall have jurisdiction to hear and

decide all issues related to the written notice of objection filed pursuant to W.S. 27-14-601(k). Different medical hearing panels with different membership may be selected to hear different cases, but a panel may hear more than one (1) case. Individual medical hearing panels shall be selected by the executive secretary under the supervision and guidance of the chairman of the medical commission. At least one (1) member of each panel shall be a physician. One (1) member shall be designated by the executive secretary to serve as chairman of the panel. When hearing a medically contested case, the panel shall serve as the hearing examiner and shall have exclusive jurisdiction to make the final administrative determination of the validity and amount of compensation payable under this act. For cases referred to the medical commission as small claims hearings under W.S. 27-14-602(b), the medical hearing panel may consist of one (1) physician who shall serve as the hearing examiner and shall have exclusive jurisdiction to make the final administrative determination of the validity and amount of compensation payable under this act; and

(v) To advise the division regarding any suspected substandard or inappropriate medical or health care provided to an injured worker by a health care provider or health care facility.

(c) The members of the commission and of medical hearing panels and any health care provider providing peer reviews or independent medical evaluations, reviews or opinions, when serving shall be deemed public employees for purposes of the Wyoming Governmental Claims Act, and shall be immune from liability pursuant to W.S. 1-39-104.

(d) The division shall establish a fee schedule for the compensation of members of the medical commission and medical hearing panels for their professional services to be paid from the worker's compensation account.

(e) Upon agreement of all parties to a case, the hearing examiner in a contested case under this chapter may transfer a medically contested case to a medical hearing panel or may seek the advice of the medical commission on specified medical issues in the contested case. The advice shall be in writing and shall become part of the record of the case.

(f) Any member of the commission who knows or has reasonable cause to believe or suspect that a health care provider or health care facility has provided substandard or inappropriate medical or health care shall immediately report it to the appropriate professional or facility licensing authority and to the division.

ARTICLE 7 FISCAL PROVISIONS

27-14-701. Worker's compensation account established; investments; administrative expenses; rehabilitation expenses; worker's compensation claims payment account established for worker's compensation revenue bond proceeds.

(a) Except as provided under subsection (f) of this section, all money received, earned or collected pursuant to this act shall be credited to the worker's compensation account. In addition to other expenditures authorized under this act, amounts deposited within this account shall be used to pay debt service on revenue bonds issued in accordance with W.S. 27-14-704. As used in this act, "account" means the worker's compensation account established under this subsection.

(b) All awards and claim determinations shall be paid from the account provided by subsection (a) of this section.

(c) All money collected and accounted for pursuant to this act not immediately necessary for the purposes of this act shall be invested by the state treasurer in the manner provided by law for investment of permanent state funds. The director, in consultation with a qualified independent investment manager, may establish a percent not to exceed forty-five percent (45%) of the total amount collected and accounted for under this subsection to be invested in common stock by the state treasurer.

(d) Following a general fund appropriation by the legislature for administrative expenses of the division and for administrative expenses of the office of administrative hearings which are attributable to hearing services provided pursuant to this act, amounts expended pursuant to the appropriations shall be transferred monthly from the account provided by subsection (a) of this section to the general fund as provided by the Wyoming Funds Consolidation Act.

(e) The division shall from the worker's compensation account, periodically advance or reimburse the division of vocational rehabilitation of the department of workforce services, for administrative and program costs associated with the rehabilitation of injured workers pursuant to W.S. 27-14-408. Administrative or program costs reasonably available or legally allowable under the federal Rehabilitation Act of 1973, as amended, shall not be advanced or reimbursed pursuant to this subsection.

(f) Proceeds from the sale of revenue bonds issued under W.S. 27-14-704, together with any earnings from the investment of bond proceeds, shall be deposited into the worker's compensation claims payment account until such bonds are paid or provision for their payment has otherwise been made. Account proceeds may be invested or reinvested by the state treasurer at the direction of the state loan and investment board and may in addition to payment of claims and awards, program and administrative expenses, program reserves and debt service, be used to pay any ongoing and issuance costs of revenue bonds under W.S. 27-14-704.

27-14-702. No garnishment, attachment or execution on unpaid award.

Except as provided under W.S. 27-14-703, no money paid or payable under this act prior to issuance and delivery of the warrant therefor shall be assigned, charged or taken in execution or by garnishment. Any such assignment, attachment, garnishment or charge is void.

27-14-703. Disclosure of child support obligations required; notification; amount withheld; payment; applicability of provisions.

(a) An injured employee filing a claim for benefits payable under this act shall disclose if he owes child support obligations enforced pursuant to a plan described in 42 U.S.C. § 654 and approved under 42 U.S.C. § 651 et seq. If the employee owes child support obligations and is awarded benefits, the division shall notify the state or local child support enforcement agency operating pursuant to a plan described in 42 U.S.C. § 654 and enforcing the obligation that the employee is eligible for benefits.

(b) The division shall withhold from benefits payable to an employee owing child support obligations:

(i) The amount specified by the employee to the division to be withheld under this subsection;

(ii) The amount determined pursuant to an agreement under 42 U.S.C. § 654(19)(B)(i) and submitted to the division by the state or local child support enforcement agency; or

(iii) Any amount otherwise required to be withheld from benefits payable under this act pursuant to legal process defined under 42 U.S.C. § 662(e) and properly served upon the division.

(c) Any amount withheld under subsection (b) of this section shall be paid by the division to the appropriate state or local child support enforcement agency, treated as if paid to the employee as benefits under this act and as if paid by the employee to the state or local child support enforcement agency in satisfaction of his child support obligations.

(d) This section applies only if arrangements are made for reimbursement by the state or local child support enforcement agency for administrative costs incurred by the division attributable to child support obligations enforced by the agency.

27-14-704. Worker's compensation revenue bonds; department determination; issuance by state loan and investment board; bonding procedure, terms and conditions.

(a) The department may upon determining that the issuance of revenue bonds would be financially beneficial to the worker's compensation account and that bond issuance would not negatively impact employer contribution rates to the account, request the state loan and investment board to issue worker's compensation revenue bonds to fund awards and claims,

program and administrative expenses and program reserves. Upon receipt of a request under this subsection, the state loan and investment board shall review the department's determination and if it concurs with the determination, the board may issue worker's compensation revenue bonds in one (1) or more series not to exceed an aggregate amount of two hundred million dollars (\$200,000,000.00). The net proceeds from the sale of the bonds shall after payment of issuance costs, be deposited into the worker's compensation claims payment account established under W.S. 27-14-701(f).

(b) Revenue bonds issued pursuant to this section are limited obligations payable solely from and secured by funds deposited within the worker's compensation account as created under W.S. 27-14-701(a) and the worker's compensation claims payment account. The bondholders may not look to any general or other fund for payment of the bonds except for revenues pledged therefor. The revenue bonds shall not constitute an indebtedness or a debt within the meaning of any constitutional or statutory provision or limitation. The bonds shall not be considered or held to be general obligations of the state but shall constitute limited obligations of the state and the board shall not pledge the state's full faith and credit for payment of the bonds. Each series of bonds may be issued by the board at public or private sale, in denominations and registered form, with such provision for conversion or exchange, for establishing interest rates or methods of determining rates on a variable or fixed rate basis, for establishing maturities and redemption provisions, as determined by the board. The bonds shall be payable at the office of a fiscal agent designated by the board. The state loan and investment board shall not issue any revenue bonds under this section unless the sale results in an economic benefit to the worker's compensation program as determined by the board. In all other respects, the board may prescribe the form and terms of the revenue bonds and shall do whatever is lawful and necessary for their issuance and payment. Action taken by the board under this section shall be approved by a majority of its members.

ARTICLE 8 ADMINISTRATIVE PROVISIONS

27-14-801. Duties of director.

(a) Repealed by Laws 1990, ch. 63, § 3.

(b) Repealed by Laws 1990, ch. 63, § 3.

(c) Repealed by Laws 1990, ch. 63, § 3.

(d) The director may provide for the investigation of facts and circumstances regarding any claim filed under this act. To carry out investigations, he may acquire the services of one (1) or more physicians licensed to practice medicine in this state to serve as medical consultants in investigating any injury or death resulting from injury, the treatment of any injury or death or the recovery of any employee which is reported to the division. The physician shall be paid on a

fee for service basis from the worker's compensation account. The director may also employ consultants to review medical and hospital bills submitted to the division.

(e) The director shall:

(i) Repealed by Laws 1996, ch. 82, § 2.

(ii) Periodically provide for educational programs for and consult with employee groups, employers, hospital administrators and health care providers;

(iii) Report to the appropriate professional or facility licensing authority any suspected substandard or inappropriate medical or health care provided to an injured worker by the provider or health care facility.

(f) Any duties designated by statute upon the director may be performed by his designee.

27-14-802. Rulemaking power; fees; state's average wages; vocational rehabilitation; contracts with clerks of district court.

(a) The director may adopt rules and regulations for administration of this act. The director shall by rule and regulation establish criteria for qualification of resident and nonresident employers, provide for advance payments of employer premiums under W.S. 27-14-202(e), provide fee schedules for all medical and hospital care rendered injured employees and for the establishment of the state's average monthly wage. In addition, the division may by rule and regulation establish a separate fee schedule for surgical procedures and hospital admissions preauthorized by the division. Changes in any rule or regulation adopted under this subsection shall be considered only at quarterly intervals.

(b) Before the last day of each quarter in each year, the department shall estimate the average monthly and weekly wage for the twelve (12) months preceding the quarter, based on unemployment insurance commission information and other available statistics.

(c) The division, together with the division of vocational rehabilitation within the department of workforce services, shall jointly establish consistent rules and regulations for the implementation of W.S. 27-14-408.

(d) The division may contract with the clerks of district court on a county by county basis, for compensation mutually agreed upon, to perform the following functions:

(i) Technical assistance to employers, employees, health care providers and other interested parties in complying with the requirements of this act and interacting with the worker's compensation system;

(ii) Providing necessary forms to employers, employees health care providers and other interested parties;

(iii) Responding to inquiries on the status of particular cases;

(iv) Obtaining documents including confidential documents, concerning individual cases and transmitting these documents to authorized persons;

(v) Retention and storage of records prior to January 1, 1997; and

(vi) Any other administrative function useful in the management of the worker's compensation program.

(e) Compensation negotiated pursuant to subsection (d) of this section shall be paid from the worker's compensation account and the agreement may be modified at any time by mutual consent of the parties or may be terminated by either party following notice specified in the agreement.

27-14-803. Investigatory powers; examination of employer's records; subpoenas.

(a) In addition to W.S. 27-14-801(d) and if the administrator has reason to believe that an employee, employer, health care provider or any representative thereof has engaged in any activity in violation of this act, he shall make an investigation to determine if this act has been violated and, to the extent necessary for this purpose, may conduct discovery pursuant to the Wyoming Rules of Civil Procedure.

(b) The administrator may examine the books, accounts, payrolls or business operation of any employer to secure any information necessary for any investigation conducted under this section and for the administration of this act at any reasonable time on twenty-four (24) hours notice but excluding Sundays and holidays unless waived by the employer, either in person or through any authorized inspector, agent or deputy.

(c) If records necessary for an investigation under this section are located outside this state, the person being investigated shall:

(i) Make them available to the administrator at a convenient location within this state;

(ii) Pay the reasonable and necessary expenses for the administrator or his representative to examine them at the location at which maintained; or

(iii) Provide access to comparable officials of the state in which the records are located for inspection as the administrator may require.

(d) If the employer, employee, health care provider or any representative thereof refuses to cooperate and assist discovery by the administrator pursuant to this section, the attorney general may, at the request of the administrator and upon reasonable notice to all parties, apply to the district court for a subpoena or for an order compelling compliance.

27-14-804. Statistical compilation; annual report and projection; additional reporting requirements.

(a) The director shall:

(i) Secure and compile statistical information concerning injuries occurring in employment, showing the number of injuries or fatalities occurring in the employment and any other information relevant to the proper operation or administration of this law;

(ii) Report to the governor as provided by W.S. 9-2-1014;

(iii) Annually prepare and present to the governor and the legislature projections of income, expenditures and account balances for the succeeding twelve (12) month period;

(iv) Annually report to the legislature on recommendations for improvement to the initial claims processing and determination process and the effectiveness of the process.

(v) Repealed by Laws 1990, ch. 63, § 3.

27-14-805. Confidentiality of information; unlawful disclosure; exception.

(a) Except as otherwise provided by this act, information obtained from any employer or covered employee pursuant to reporting requirements under this act or investigations conducted under W.S. 27-14-803 shall not be disclosed in a manner which reveals the identity of the employer or employee except to the employer, the employee, legal counsel for an employer, legal counsel for an employee or in situations necessary for the division to enforce any of the provisions of this act. The confidentiality limitations of this section do not apply to transfers of information between the divisions of the department of workforce services so long as the transfer of information is not restricted by federal law, rule or contract. In addition, nothing in this section shall prohibit the division from:

(i) Disclosing information obtained from employers and employees under this act and any determination of benefit rights to any state or federal agency as required under regulation of the United States department of health and human services and the state department of health, the United States internal revenue service in administering federal tax laws and to the office of the United States bankruptcy trustee;

(ii) Allowing access to information obtained pursuant to the administration of this act to a law enforcement authority of the federal government or this state, upon a written request from that authority stating the information is necessary in connection with a criminal investigation;

(iii) Allowing access by the state auditor to certain information obtained under this act limited to name, address, social security identification number and other general information pertaining to benefit entitlements and employers;

(iv) Reporting to the appropriate professional or facility licensing authority any suspected substandard or inappropriate medical or health care provided to an injured worker by a health care provider or health care facility.

(b) Any employee who discloses information outside of the department in violation of federal or state law may be terminated without progressive discipline.

(c) Notwithstanding subsection (a) of this section and any other provision of law to the contrary, and for purposes of ensuring any medical or disability benefit payment under this act does not duplicate any benefit payment made by another state agency, insurer, group health plan, third party administrator, health maintenance organization or similar entity, the department may upon request of the state agency, insurer or similar entity, disclose information limited to a recipient's name, social security number, amount of benefit payment, charge for services, date of services and services rendered relating to the benefit payment made under this act. A state agency, insurer, group health plan, third party administrator, health maintenance organization or similar entity shall, upon request of the department, disclose the same limited information to the department. Information received under this subsection shall be used only for the purpose authorized by this subsection and shall otherwise be confidential and the recipient entity shall be subject to the confidentiality restrictions imposed by law upon information received to the extent required of the department. Any violation of this subsection is a misdemeanor punishable by imprisonment for not more than six (6) months, a fine of not more than seven hundred fifty dollars (\$750.00), or both.

(d) Prior to receipt of any benefit under this act, the department shall require an injured employee covered under this act to sign a waiver authorizing the release of information limited to benefit payment information to state agencies, insurers, group health plans, third party administrators, health maintenance organizations or similar entities for purposes specified by subsection (c) of this section.

27-14-806. Experience rating manipulation; penalties.

(a) A person who knowingly, or with deliberate ignorance or reckless disregard of the true facts or the requirements of this act, violates or attempts to violate the requirements of W.S. 27-14-207 or any other provision of this act related to determining the assignment of a premium rate, or who advises another to violate the requirements of W.S. 27-14-207 or any

other provision of this act related to determining the assignment of a premium rate, shall be subject to the following penalties:

(i) A person who is an employer shall be assigned, for the rate year during which the noncompliance or misrepresentation occurred and for the following three (3) rate years, the highest base rate within the industry classification assigned during that year under the division's rate filing. If the person's business is already at the highest rate for any year, or if the amount of increase in the person's rate would be less than two percent (2%) for that year, then a penalty rate of two percent (2%) shall be imposed for that year. This penalty may exceed the maximum assignable rate;

(ii) In addition to the penalty imposed pursuant to paragraph (i) of this subsection, any violation or attempted violation of W.S. 27-14-207 or any other provision of this act related to determining the assignment of a premium rate may be prosecuted as a felony punishable by a fine of not more than fifty thousand dollars (\$50,000.00), imprisonment for not more than five (5) years, or both.