

CHAPTER 1
General Provisions

ARTICLE 1
Short title; Definitions

SECTION 42-1-10. Short title.

This title shall be known and cited as "The South Carolina Workers' Compensation Law". All references in this title to "workmen's compensation" shall mean "workers' compensation"; provided, however, all state agencies and departments and all political subdivisions of the State must exhaust the use of all current forms, stationery, and any other printed material before using, printing, or preparing any new forms, stationery, or printed material reflecting the change effected by this section.

HISTORY: 1962 Code Section 72-1; 1952 Code Section 72-1; 1942 Code Section 7035-1; 1936 (39) 1231; 1982 Act No. 303.

SECTION 42-1-20. Application of definitions.

When used in this title, unless the context otherwise requires, the terms dealt with in Sections 42-1-30 to 42-1-190 shall include the categories or shall have the meanings severally ascribed to them in said sections.

HISTORY: 1962 Code Section 72-2; 1952 Code Section 72-2; 1942 Code Section 7035-2; 1936 (39) 1231.

SECTION 42-1-30. "Adoption" and "adopted" defined.

The term "adoption" or "adopted" means legal adoption prior to the time of the injury.

HISTORY: 1962 Code Section 72-3; 1952 Code Section 72-3; 1942 Code Section 7035-2; 1936 (39) 1231.

SECTION 42-1-40. "Average weekly wages" defined.

"Average weekly wages" means the earnings of the injured employee in the employment in which he was working at the time of the injury during the period of fifty-two weeks immediately preceding the date of the injury, including the subsistence allowance paid to veteran trainees by the United States Government if the amount of the allowance is reported monthly by the trainee to his employer. "Average weekly wage" must be calculated by taking the total wages paid for the last four quarters immediately preceding the quarter in which the injury occurred as reported on the Department of Employment and Workforce's Employer Contribution Reports divided by fifty-two or by the actual number of weeks for which wages were paid, whichever is less. When the employment, prior to the injury, extended over a period of less than fifty-two weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed, as long as results fair and just to both parties will be obtained. Where, by reason of a shortness of time during which the employee has been in the employment of his employer or the casual nature or terms of his employment, it is impracticable to compute the average weekly wages as defined in this section, regard is to be had to the average weekly amount which during the fifty-two weeks previous to the injury was being earned by a person of the same grade and character employed in the same class of employment in the same locality or community.

When for exceptional reasons the foregoing would be unfair, either to the employer or employee, such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury. Whenever allowances of any character made to an employee in lieu of wages are a specified part of a wage contract they are deemed a part of his earnings.

HISTORY: 1962 Code Section 72-4; 1952 Code Section 72-4; 1942 Code Section 7035-2; 1936 (39) 1231; 1943 (43) 91; 1944 (43) 1329; 1946 (44) 1390; 1949 (46) 247; 1964 (53) 1828; 1969 (56) 297; 1971 (57) 788; 1977 Act No. 121; 1983 Act No. 33 Section 1; 1996 Act No. 424, Section 1, eff June 18, 1996.

Editor's Note

1996 Act No. 424, Section 13, provides, in part, as follows:

"Section 13. Employers who have filed with the Workers' Compensation Commission a notice to reject the provisions of Title 42 before the effective date of the 1996 amendment will have until July 1, 1997, to comply with the provisions of the 1996 amendment relating to insuring their workers' compensation liabilities. Any employer who has rejected the terms of this title prior to approval of the 1996 amendment and has procured another form of employee benefits insurance shall comply, not later than July 1, 1997, with the provisions of the 1996 amendment relating to the insuring of its workers' compensation liabilities. Furthermore, nothing in the 1996 amendment shall affect or alter any cause of action, right, or claim accruing before the effective date of the 1996 amendment; however, any such cause of action, remedy, or claim accruing before the effective date of the 1996 amendment shall be governed by the law prior to the effective date of the 1996 amendment".

SECTION 42-1-50. "Average weekly wage in this State for the preceding fiscal year" defined.

As used in this title, the term "average weekly wage in this State for the preceding fiscal year" shall mean the average weekly wage for that period determined by the Department of Employment and Workforce for employment covered by the employment security compensation law.

HISTORY: 1962 Code Section 72-8.1; 1974 (58) 2265; 1976 Act No. 532 Section 1.

SECTION 42-1-60. "Carrier" and "insurer" defined.

The term "carrier" or "insurer" means any person or fund authorized under Section 42-5-20 to insure under this title and includes self-insurers.

HISTORY: 1962 Code Section 72-5; 1952 Code Section 72-5; 1942 Code Section 7035-2; 1936 (39) 1231.

SECTION 42-1-70. "Child", "grandchild", "brother" and "sister" defined.

The term "child" shall include a posthumous child, a child legally adopted prior to the injury of the employee and a stepchild or acknowledged illegitimate child dependent upon the deceased, but does not include married children unless wholly dependent upon him. "Grandchild" means a child of a child. "Brother" and "sister" include stepbrothers and stepsisters, half-brothers and half-sisters and brothers and sisters by adoption, but do not include married brothers nor married sisters unless wholly dependent upon the employee. "Child," "grandchild," "brother" and "sister" include only persons under eighteen years of age or wholly dependent upon the employee.

HISTORY: 1962 Code Section 72-6; 1952 Code Section 72-6; 1942 Code Section 7035-2; 1936 (39) 1231; 1955 (49) 459.

SECTION 42-1-80. "Commission" defined.

The term "commission" means the South Carolina Workers' Compensation Commission created under the provisions of this title.

HISTORY: 1962 Code Section 72-7; 1952 Code Section 72-7; 1942 Code Section 7035-2; 1936 (39) 1231; 1986 Act No. 399, Section 1, eff May 6, 1986.

SECTION 42-1-90. "Commission" defined; reference to administrative or judicial department.

Whenever the word "commission" is used in this title, it shall refer to the administrative department in matters relating to administration and the judicial department in matters relating to the judicial function of the commission.

HISTORY: 1962 Code Section 72-50.12; 1974 (58) 2251.

SECTION 42-1-100. "Compensation" defined.

The term "compensation" means the money allowance payable to an employee or to his dependents as provided for in this title and includes funeral benefits provided in this title.

HISTORY: 1962 Code Section 72-8; 1952 Code Section 72-8; 1942 Code Section 7035-2; 1936 (39) 1231.

SECTION 42-1-110. "Death" defined.

The term "death" as a basis for right to compensation means only death resulting from an injury.

HISTORY: 1962 Code Section 72-9; 1952 Code Section 72-9; 1942 Code Section 7035-2; 1936 (39) 1231.

SECTION 42-1-120. "Disability" defined.

The term "disability" means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment.

HISTORY: 1962 Code Section 72-10; 1952 Code Section 72-10; 1942 Code Section 7035-2; 1936 (39) 1231.

SECTION 42-1-130. "Employee" defined.

The term "employee" means every person engaged in an employment under any appointment, contract of hire, or apprenticeship, expressed or implied, oral or written, including aliens and also including minors, whether lawfully or unlawfully employed, but excludes a person whose employment is both casual and not in the course of the trade, business, profession, or occupation of his employer; and as relating to those employed by the State, the term "employee" includes all members of the South Carolina State and National Guard while performing duties in connection with the membership except duty performed pursuant to Title 10 and Title 32 of the United States Code; all volunteer state constables appointed pursuant to Section 23-1-60, while performing duties in connection with their appointments and authorized by the State Law Enforcement Division; and all officers and employees of the State, except those elected by the people, or by the General Assembly, or appointed by the Governor, either with or without the confirmation of the Senate; and as relating to municipal corporations and political subdivisions of the State, the term "employee" includes all officers and employees of municipal corporations and political subdivisions, except those elected by the people or elected by the council or other governing body of any municipal corporation or political subdivision, who act in purely administrative capacities and are to serve for a definite term of office. Any reference to an employee who has been injured or when the employee is dead, includes also his legal representative, dependents, and other persons to whom compensation may be payable.

Any sole proprietor or partner of a business whose employees are eligible for benefits under this title may elect to be included as employees under the workers' compensation coverage of the business if they are actively engaged in the operation of the business and if the insurer is notified of their election to be included. Any sole proprietor or partner, upon this election, is entitled to employee benefits and is subject to employee responsibilities prescribed in this title.

HISTORY: 1962 Code Section 72-11; 1952 Code Section 72-11; 1942 Code Section 7035-2; 1936 (39) 1231; 1943 (43) 91; 1969 (56) 297; 1974 (58) 2210, 2785; 1976 Act No. 547; 1985 Act No. 174, Section 1, eff June 24, 1985; 1996 Act No. 451, Section 2, eff June 18, 1996; 2002 Act No. 339, Section 37, eff July 2, 2002.

SECTION 42-1-140. "Employer" defined.

The term "employer" means the State and all political subdivisions thereof, all public and quasi-public corporations therein, every person carrying on any employment and the legal representative of a deceased person or the receiver or trustee of any person.

HISTORY: 1962 Code Section 72-12; 1952 Code Section 72-12; 1942 Code Section 7035-2; 1936 (39) 1231.

SECTION 42-1-150. "Employment" defined.

The term "employment" includes employment by the State, all political subdivisions thereof, all public and quasi-public corporations therein and all private employments in which four or more employees are regularly employed in the same business or establishment.

HISTORY: 1962 Code Section 72-13; 1952 Code Section 72-13; 1942 Code Section 7035-2; 1963 (39) 1231; 1972 (57) 2339; 1974 (58) 2265.

SECTION 42-1-160. "Injury" and "personal injury" defined.

(A) "Injury" and "personal injury" mean only injury by accident arising out of and in the course of employment and shall not include a disease in any form, except when it results naturally and unavoidably from the accident and except such diseases as are compensable under the provisions of Chapter 11 of this title. In construing this section, an accident arising out of and in the course of employment includes employment of an employee of a municipality outside the corporate limits of the municipality when the employment was ordered by a duly authorized employee of the municipality.

(B) Stress, mental injuries, and mental illness arising out of and in the course of employment unaccompanied by physical injury and resulting in mental illness or injury are not considered a personal injury unless the employee establishes, by a preponderance of the evidence:

(1) that the employee's employment conditions causing the stress, mental injury, or mental illness were extraordinary and unusual in comparison to the normal conditions of the particular employment; and

(2) the medical causation between the stress, mental injury, or mental illness, and the stressful employment conditions by medical evidence.

(C) Stress, mental injuries, heart attacks, strokes, embolisms, or aneurisms arising out of and in the course of employment unaccompanied by physical injury are not considered compensable if they result from any event or series of events which are incidental to normal employer/employee relations including, but not limited to, personnel actions by the employer such as disciplinary actions, work evaluations, transfers, promotions, demotions, salary reviews, or terminations, except when these actions are taken in an extraordinary and unusual manner.

(D) Stress, mental injuries, and mental illness alleged to have been aggravated by a work-related physical injury may not be found compensable unless the aggravation is:

(1) admitted by the employer/carrier;

(2) noted in a medical record of an authorized physician that, in the physician's opinion, the condition is at least in part causally related or connected to the injury or accident, whether or not the physician refers the employee for treatment of the condition;

(3) found to be causally related or connected to the accident or injury after evaluation by an authorized psychologist or psychiatrist; or

(4) noted in a medical record or report of the employee's physician as causally related or connected to the injury or accident.

(E) In medically complex cases, an employee shall establish by medical evidence that the injury arose in the course of employment. For purposes of this subsection, "medically complex cases" means sophisticated cases requiring highly scientific procedures or techniques for diagnosis or treatment excluding MRIs, CAT scans, x-rays, or other similar diagnostic techniques.

(F) The word "accident" as used in this title must not be construed to mean a series of events in employment, of a similar or like nature, occurring regularly, continuously, or at frequent intervals in the course of such employment, over extended periods of time. Any injury or disease attributable to such causes must be compensable only if culminating in a compensable repetitive trauma injury pursuant to Section 42-1-172 or an occupational disease pursuant to the provisions of Chapter 11 of this title.

(G) As used in this section, "medical evidence" means expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed health care provider.

HISTORY: 1962 Code Section 72-14; 1952 Code Section 72-14; 1942 Code Section 7035-2; 1936 (39) 1231; 1957 (50) 262; 1996 Act No. 424, Section 2, eff June 18, 1996; 2007 Act No. 111, Pt I, Section 6, eff July 1, 2007, applicable to injuries that occur on or after that date.

Editor's Note

1996 Act No. 424, Section 13, provides, in part, as follows:

"Section 13. Employers who have filed with the Workers' Compensation Commission a notice to reject the provisions of Title 42 before the effective date of the 1996 amendment will have until July 1, 1997, to comply with the provisions of the 1996 amendment relating to insuring their workers' compensation liabilities. Any employer who has rejected the terms of this title prior to approval of the 1996 amendment and has procured another form of employee benefits insurance shall comply, not later than July 1, 1997, with the provisions of the 1996 amendment relating to the insuring of its workers' compensation liabilities. Furthermore, nothing in the 1996 amendment shall affect or alter any cause of action, right, or claim accruing before the effective date of the 1996 amendment; however, any such cause of action, remedy, or claim accruing before the effective date of the 1996 amendment shall be governed by the law prior to the effective date of the 1996 amendment."

SECTION 42-1-170. "Parent" defined.

The term "parent" includes stepparents and parents by adoption, parents-in-law and any person who for more than three years prior to the death of the deceased employee stood in the place of a parent to him, if dependent on the injured employee.

HISTORY: 1962 Code Section 72-16; 1952 Code Section 72-16; 1942 Code Section 7035-2; 1936 (39) 1231.

SECTION 42-1-172. Definitions.

(A) "Repetitive trauma injury" means an injury which is gradual in onset and caused by the cumulative effects of repetitive traumatic events. Compensability of a repetitive trauma injury must be determined only under the provisions of this statute.

(B) An injury is not considered a compensable repetitive trauma injury unless a commissioner makes a specific finding of fact by a preponderance of the evidence of a causal connection that is established by medical evidence between the repetitive activities that occurred while the employee was engaged in the regular duties of his employment and the injury.

(C) As used in this section, "medical evidence" means expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed and qualified medical physician.

(D) A "repetitive trauma injury" is considered to arise out of employment only if it is established by medical evidence that there is a direct causal relationship between the condition under which the work is performed and the injury.

(E) Upon reaching maximum medical improvement, the employee may be entitled to benefits pursuant to Section 42-9-10, 42-9-20, or 42-9-30. Medical benefits for compensable repetitive trauma injuries shall be as provided elsewhere in this title.

HISTORY: 2007 Act No. 111, Pt I, Section 7, eff July 1, 2007, applicable to injuries that occur on or after that date.

SECTION 42-1-175. "Surviving spouse" defined.

The term "surviving spouse" includes only the decedent's wife or husband living with or dependent for support upon the decedent at the time of the decedent's death or living apart from the decedent for justifiable cause or by reason of desertion by the decedent at such time.

HISTORY: 1983 Act No. 92 Section 1.

ARTICLE 3
Application and Effect of title

SECTION 42-1-310. Presumption of acceptance of provisions of title.

Every employer and employee, except as stated in this chapter, shall be presumed to have accepted the provisions of this title respectively to pay and accept compensation for personal injury or death by accident arising out of and in the course of the employment and shall be bound thereby.

HISTORY: 1962 Code Section 72-101; 1952 Code Section 72-101; 1942 Code Section 7035-4; 1936 (39) 1231; 1996 Act No. 424, Section 3, eff June 18, 1996.

Editor's Note

1996 Act No. 424, Section 13 provides, in part, as follows:

"Section 13. Employers who have filed with the Workers' Compensation Commission a notice to reject the provisions of Title 42 before the effective date of the 1996 amendment will have until July 1, 1997, to comply with the provisions of the 1996 amendment relating to insuring their workers' compensation liabilities. Any employer who has rejected the terms of this title prior to approval of the 1996 amendment and has procured another form of employee benefits insurance shall comply, not later than July 1, 1997, with the provisions of the 1996 amendment relating to the insuring of its workers' compensation liabilities. Furthermore, nothing in the 1996 amendment shall affect or alter any cause of action, right, or claim accruing before the effective date of the 1996 amendment; however, any such cause of action, remedy, or claim accruing before the effective date of the 1996 amendment shall be governed by the law prior to the effective date of the 1996 amendment."

SECTION 42-1-315. Applicability of title respecting work-related injuries to program participants.

The provisions of this title apply to and include all participants in the Tech Prep or other structured school to work programs, whether compensated or not, for injuries by accident arising out of and in the course of their employment with a sponsoring employer.

HISTORY: 1996 Act No. 259, Section 1, eff April 1, 1996.

SECTION 42-1-320. Applicability to public entities and their employees.

The State, its municipal corporations and political subdivisions thereof, and the employees of the State or its municipal corporations and political subdivisions are subject to this title.

HISTORY: 1962 Code Section 72-102; 1952 Code Section 72-102; 1942 Code Section 7035-8; 1936 (39) 1231; 1937 (40) 613; 1996 Act No. 424, Section 4, eff June 18, 1996.

Editor's Note

1996 Act No. 424, Section 13, provides, in part, as follows: "Employers who have filed with the Workers' Compensation Commission a notice to reject the provisions of Title 42 before the effective date of the 1996 amendment will have until July 1, 1997, to comply with the provisions of the 1996 amendment relating to insuring their workers' compensation liabilities. Any employer who has rejected the terms of this title prior

to approval of the 1996 amendment and has procured another form of employee benefits insurance shall comply, not later than July 1, 1997, with the provisions of the 1996 amendment relating to the insuring of its workers' compensation liabilities. Furthermore, nothing in the 1996 amendment shall affect or alter any cause of action, right, or claim accruing before the effective date of the 1996 amendment; however, any such cause of action, remedy, or claim accruing before the effective date of the 1996 amendment shall be governed by the law prior to the effective date of the 1996 amendment."

SECTION 42-1-360. Exemption of casual employees and certain other employments.

This title does not apply to:

- (1) a casual employee, as defined in Section 42-1-130;
- (2) any person who has regularly employed in service less than four employees in the same business within the State or who had a total annual payroll during the previous calendar year of less than three thousand dollars regardless of the number of persons employed during that period;
- (3) a state and county fair association, unless the employer voluntarily elects to be bound by this title, as provided by Section 42-1-380;
- (4) an agricultural employee, unless the agricultural employer voluntarily elects to be bound by this title, as provided by Section 42-1-380;
- (5) a railroad, railroad employee, railway express company, or railway express company employee; nor may this title be construed to repeal, amend, alter, or affect in any way the laws of this State relating to the liability of a railroad or railway express company for an injury to a respective employee;
- (6) a person engaged in selling any agricultural product for a producer of them on commission or for other compensation, paid by a producer, when the product is prepared for sale by the producer;
- (7) a licensed real estate sales person engaged in the sale, leasing, or rental of real estate for a licensed real estate broker on a straight commission basis and who has signed a valid independent contractor agreement with the broker;
- (8) a federal employee in this State;
- (9) an individual who owns or holds under a bona fide lease-purchase or installment-purchase agreement a tractor trailer, tractor, or other vehicle, referred to as "vehicle", and who, under a valid independent contractor contract provides that vehicle and the individual's services as a driver to a motor carrier. For purposes of this item, any lease-purchase or installment-purchase of the vehicle may not be between the individual and the motor carrier referenced in this title, but it may be between the individual and an affiliate, subsidiary, or related entity or person of the motor carrier, or any other lessor or seller. Where the lease-purchase or installment-purchase is between the individual and an affiliate, subsidiary, or related entity or person of the motor carrier, or any other lessor or seller, the vehicle acquisition or financing transaction must be on terms equal to terms available in customary and usual retail transactions generally available in the State. This individual is considered an independent contractor and not an employee of the motor carrier under this title. The individual and the motor carrier to whom the individual contracts or leases the vehicle mutually may agree that the individual or workers, or both, is covered under the motor carrier's workers' compensation policy or authorized self-insurance if the individual agrees to pay the contract amounts requested by the motor carrier. Under any such agreement, the independent contractor or workers, or both, must be considered an employee of the motor carrier only for the purposes of this title and for no other purposes.

HISTORY: 1962 Code Section 72-107; 1952 Code Section 72-107; 1942 Code Section 7035-16; 1936 (39) 1231; 1937 (40) 153, 613; 1939 (41) 323; 1961 (52) 412; 1972 (57) 2339, 3073; 1974 (58) 2265; 2007 Act No. 111, Pt I, Section 8, eff July 1, 2007, applicable to injuries that occur on or after that date.

SECTION 42-1-380. Waiver of exemption by employer.

Any person employing employees in the State and exempted from the mandatory provisions of this title may come in under the terms of this title and receive the benefits and be subject to the liabilities of this title by filing with the commission a written notice of his desire to be subject to the terms and provisions of this

title. Any such person shall come under the provisions of this title and be affected thereby thirty days after the date of such notice.

HISTORY: 1962 Code Section 72-109; 1952 Code Section 72-109; 1942 Code Section 7035-5; 1936 (39) 1231.

SECTION 42-1-390. Withdrawal of waiver of exemption by employer.

Any employer who, having elected to come under this title, being at that time exempt from this title, and subsequently desiring to withdraw from under its terms, may give notice in writing either to the commission that he no longer is under the terms of this title or to his insurer who shall give notice in writing to the commission that the employer is no longer under the terms of this title. If the insurer does not give the notice to the commission as required by this section, the insurer shall pay a penalty of one thousand dollars to the commission which shall be used by the commission to offset the costs of administering the provisions of Title 42. In the case where the employer gives the notice to the commission that he no longer is under the terms of this title, the commission shall, in turn, within thirty days of receipt of the employer's notice, inform the employer, in writing, that he must provide written notification by a date certain to his employees of his withdrawal from the terms of this title; however, no employer is required to so notify his employees unless the commission informs him he must do so, as required by this section. At the expiration of sixty days from the date of written notice to the commission the employer no longer is liable under the terms of this title and may be permitted to set up any defense as he may be advised to any action brought against him for personal injury or death by accident to any employee.

HISTORY: 1962 Code Section 72-110; 1952 Code Section 72-110; 1947 (45) 548; 1988 Act No. 411, Section 1, eff March 28, 1988.

SECTION 42-1-400. Liability of owner to workmen of subcontractor.

When any person, in this section and Sections 42-1-420 and 42-1-430 referred to as "owner," undertakes to perform or execute any work which is a part of his trade, business or occupation and contracts with any other person (in this section and Sections 42-1-420 to 42-1-450 referred to as "subcontractor") for the execution or performance by or under such subcontractor of the whole or any part of the work undertaken by such owner, the owner shall be liable to pay to any workman employed in the work any compensation under this title which he would have been liable to pay if the workman had been immediately employed by him.

HISTORY: 1962 Code Section 72-111; 1952 Code Section 72-111; 1942 Code Section 7035-22; 1936 (39) 1231.

SECTION 42-1-410. Liability of contractor to workmen of subcontractor.

When any person, in this section and Sections 42-1-420 to 42-1-450 referred to as "contractor," contracts to perform or execute any work for another person which is not a part of the trade, business or occupation of such other person and contracts with any other person (in this section and Sections 42-1-420 to 42-1-450 referred to as "subcontractor") for the execution or performance by or under the subcontractor of the whole or any of the work undertaken by such contractor, the contractor shall be liable to pay to any workman employed in the work any compensation under this title which he would have been liable to pay if that workman had been immediately employed by him.

HISTORY: 1962 Code Section 72-112; 1952 Code Section 72-112; 1942 Code Section 7035-22; 1936 (39) 1231.

SECTION 42-1-415. Representation of coverage; reimbursement from Uninsured Employers' Fund.

(A) Notwithstanding any other provision of law, upon the submission of documentation to the commission that a contractor or subcontractor has represented himself to a higher tier subcontractor, contractor, or project owner as having workers' compensation insurance at the time the contractor or subcontractor was engaged to perform work, the higher tier subcontractor, contractor, or project owner must be relieved of any and all liability under this title except as specifically provided in this section. In the event that employer is uninsured, regardless of the number of employees that employer has, the higher tier subcontractor, contractor, project owner, or his insurance carrier shall in the first instance pay all benefits due under this title. The higher tier subcontractor, contractor, project owner, or his insurance carrier may petition the commission to transfer responsibility for continuing compensation and benefits to the Uninsured Employers' Fund. The Uninsured Employers' Fund shall assume responsibility for claims within thirty days of a determination of responsibility made by the commission. The higher tier subcontractor, contractor, or project owner must be reimbursed from the Uninsured Employers' Fund as created by Section 42-7-200 for compensation and medical benefits as may be determined by the commission. Any disputes arising as a result of claims filed under this section must be determined by the commission.

(B) To qualify for reimbursement under this section, the higher tier subcontractor, contractor, or project owner must collect documentation of insurance as provided in subsection (A) on a standard form acceptable to the commission. The documentation must be collected at the time the contractor or subcontractor is engaged to perform work and must be turned over to the commission at the time a claim is filed by the injured employee.

(C) The knowing and wilful falsifying of information contained in standard forms submitted pursuant to this section must be considered fraud and subjects the person responsible for filing the false documentation to the penalties for fraud as provided by law. Knowing and wilful failure to notify, by certified mail, the higher tier subcontractor, contractor, or project owner who originally was provided documentation of workers' compensation coverage of a lapse in coverage within five days after the lapse is considered fraud and subjects the contractor or subcontractor who represented himself as having workers' compensation insurance to the penalties for fraud provided by law. Additionally, a contractor or subcontractor who knowingly and wilfully falsely documents workers' compensation insurance or knowingly and wilfully fails to provide notice of lapse in workers' compensation coverage as specified in this section, or any contractor or subcontractor who refuses to reimburse the Uninsured Employers' Fund for a claim paid on its behalf shall suffer the revocation of his license or certificate as a contractor or residential home builder under applicable provisions of Title 40; provided, however, notwithstanding any other provision of law, the license or certificate of a contractor or residential home builder shall be revoked for a period of two years when the contractor or subcontractor knowingly and wilfully falsely documents workers' compensation insurance or knowingly or wilfully fails to provide notice of lapse in workers' compensation coverage as specified in this section. Upon expiration of the two-year revocation period, or when the license or certificate of any contractor or subcontractor is revoked for refusal to reimburse the Uninsured Employers' Fund for a claim paid on its behalf, the licensing entity of the contractor or subcontractor may reissue the license or certificate of the contractor or residential home builder in the same manner as any other revoked license.

(D) However, nothing in this section shall be construed to abrogate the immunity to tort liability of any subcontractor under this title or any higher tier subcontractor, contractor, or project owner who may be considered a statutory employer as provided by Sections 42-1-400, 42-1-410, 42-1-420, 42-1-430, and 42-1-450.

HISTORY: 1996 Act No. 442, Section 1, eff June 18, 1996; 1997 Act No. 65, Section 1, eff June 10, 1997.

SECTION 42-1-420. Liability of subcontractor to workmen of sub-subcontractor.

When a subcontractor in turn contracts with still another person, in this section and Sections 42-1-430 to 42-1-450 also referred to as a "subcontractor," for the performance or execution by or under such last subcontractor of the whole or any part of the work undertaken by the first subcontractor, the liability of the owner or contractor shall be the same as the liability imposed by Sections 42-1-400 and 42-1-410.

HISTORY: 1962 Code Section 72-113; 1952 Code Section 72-113; 1942 Code Section 7035-22; 1936 (39) 1231.

SECTION 42-1-430. Construction of title when proceedings are against owner or contractor.

When compensation is claimed from or proceedings are taken against an owner or contractor then, in the application of this title, reference to the owner or contractor shall be substituted for reference to the subcontractor, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the subcontractor by whom he is immediately employed.

HISTORY: 1962 Code Section 72-114; 1952 Code Section 72-114; 1942 Code Section 7035-22; 1936 (39) 1231.

SECTION 42-1-440. Indemnity of principal contractor.

When the principal contractor is liable to pay compensation under any of Sections 42-1-400 to 42-1-450, he shall be entitled to indemnity from any person who would have been liable to pay compensation to the workmen independently of such sections or from an intermediate contractor, and have a cause of action therefor.

A principal contractor when sued by a workman of a subcontractor shall have the right to call in that subcontractor or any intermediate contractor or contractors as defendant or codefendant.

HISTORY: 1962 Code Section 72-115; 1952 Code Section 72-115; 1942 Code Section 7035-22; 1936 (39) 1231.

SECTION 42-1-450. Workman may recover from subcontractor.

Nothing in Sections 42-1-400 to 42-1-450 shall be construed as preventing a workman from recovering compensation under this title from a subcontractor instead of from the principal contractor but he shall not collect from both.

HISTORY: 1962 Code Section 72-116; 1952 Code Section 72-116; 1942 Code Section 7035-22; 1936 (39) 1231.

SECTION 42-1-460. Contracts subject to title.

Every contract of service between any employer and employee covered by this title, written or implied, in operation or made or implied prior to July 17, 1936, shall be presumed to continue, subject to the provisions of this title; and every such contract made subsequent to said date shall be presumed to have been made subject to the provisions of this title. A like presumption shall exist equally in the case of all minors, unless notice of the same character be given by or to the parent or guardian of the minor.

HISTORY: 1962 Code Section 72-117; 1952 Code Section 72-117; 1942 Code Section 7035-6; 1936 (39) 1231; 1996 Act No. 424, Section 5, eff June 18, 1996.

Editor's Note

1996 Act. No. 424, Section 13, provides, in part, as follows: "Employers who have filed with the Workers' Compensation Commission a notice to reject the provisions of Title 42 before the effective date of the 1996 amendment will have until July 1, 1997, to comply with the provisions of the 1996 amendment relating to insuring their workers' compensation liabilities. Any employer who has rejected the terms of this title prior to approval of the 1996 amendment and has procured another form of employee benefits insurance shall comply, not later than July 1, 1997, with the provisions of the 1996 amendment relating to the insuring of its workers' compensation liabilities. Furthermore, nothing in the 1996 amendment shall affect or alter any cause of action, right, or claim accruing before the effective date of the 1996 amendment; however, any

such cause of action, remedy, or claim accruing before the effective date of the 1996 amendment shall be governed by the law prior to the effective date of the 1996 amendment."

SECTION 42-1-470. Coverage of prisoners and convicts generally.

Except as otherwise specifically provided in this article, this title shall not apply to state, county or municipal prisoners and convicts.

HISTORY: 1962 Code Section 72-108.1; 1952 Code Section 72-108.1; 1942 Code Section 7035-16; 1936 (39) 1231; 1937 (40) 153, 613; 1939 (41) 323.

SECTION 42-1-480. Coverage for inmates of the State Department of Corrections.

Any inmate of the State Department of Corrections, as defined in this section, in the performance of his work in connection with the maintenance of the institution, any department vocational training program, or with any industry maintained therein, or with any highway or public works activity outside the institution, who suffers an injury for which compensation is specifically prescribed in this title, may, upon being released from such institution either upon parole or upon final discharge, be awarded and paid compensation under the provisions of this title. If death results from such injury, death benefits shall be awarded and paid to the dependents of the inmate. The time limit for filing a claim under this section shall be one year from the date of death of the inmate or the date of his release either by parole or final discharge, and no inmate shall be eligible for benefits unless his injury is reported prior to his release from custody of the department. If any person who has been awarded compensation under the provisions of this section shall be recommitted to an institution covered by this section, such compensation shall immediately cease, but may be resumed upon subsequent parole or discharge.

For purposes of this section, the term "inmate" includes any person sentenced to the South Carolina Department of Corrections and who is then in the jurisdiction of the department, or any person sentenced to the county public works who has been transferred to the Department of Corrections for confinement. An inmate who has been sentenced to the Department of Corrections and who is temporarily transferred to the county public works, or to any other South Carolina law-enforcement authority, or to out-of-state authorities, is not considered to be in the "jurisdiction" of the South Carolina Department of Corrections for purposes of this section.

This section shall not apply to patients of the South Carolina Department of Mental Health or those persons who are confined within the jurisdiction of the county prisons, county jails, city jails or overnight lockups or to any inmate injured in a fight, riot, recreational activity or other incidents not directly related to his work assignment.

HISTORY: 1962 Code Section 72-11.1; 1971 (57) 788; 1972 (57) 2559.

SECTION 42-1-490. Payments to claimant-inmates of State Department of Corrections.

Payments for injuries as authorized in Section 42-1-480 shall be paid from the State Accident Fund from appropriations thereto in the manner claims are paid to state employees.

Notwithstanding any other provision of this title, no inmate shall be paid a lump-sum settlement for an injury, disfigurement or death benefit. Any such lump-sum benefit which might normally be paid to an inmate or another eligible person who is not an inmate shall be paid on a monthly basis not to exceed ten percent of the total amount in any month, in addition to any weekly benefits awarded.

HISTORY: 1962 Code Section 72-11.2; 1971 (57) 788; 1972 (57) 2559; 1993 Act No. 181, Section 985, eff July 1, 1993.

SECTION 42-1-500. County or municipal prisoners.

A county or municipality, by resolution of its governing body, may elect to cover prisoners in the custody of the county or municipality with workers' compensation benefits in accordance with the provisions of

Sections 42-1-480 and 42-1-490. As used in this section, prisoners in the custody of the county include prisoners in the custody of the county sheriff. The appropriate officials shall make arrangements and necessary adjustments in their contributions or premiums to the State Accident Fund or other insurers as the fund or insurers determine necessary to provide compensation for county or municipal prisoners in appropriate cases. The provisions of this section permit workers' compensation coverage only to county or municipal prisoners performing work assigned by officials of the county or municipality or engaged in a vocational training program and, further, apply to these prisoners regardless of the length of the sentence to be served.

For the purposes of this section, when a county or municipality elects to cover its prisoners with workers' compensation benefits, the coverage also includes:

(a) those prisoners who have been sentenced to the Department of Corrections and who are assigned to a county or municipality; and

(b) those prisoners who have been sentenced to the Department of Corrections and who are being used for public service work or related activities while being supervised by the county or municipality.

HISTORY: 1962 Code Section 72-11.3; 1971 (57) 788; 1972 (57) 2559; 1991 Act No. 16, Section 1, eff April 9, 1991; 1993 Act No. 181, Section 986, eff July 1, 1993; 2005 Act No. 98, Section 1, eff June 1, 2005.

SECTION 42-1-505. Coverage of convicted persons under custody or supervision of Department of Probation, Parole and Pardon Services.

The Department of Probation, Parole and Pardon Services may elect to cover convicted persons under its custody or supervision with workers' compensation benefits in accordance with the provisions of this title. For purposes of this section, the department is considered the employer for those persons under its custody or supervision performing public service employment.

HISTORY: 1986 Act No. 462, Section 8, eff June 3, 1986.

SECTION 42-1-520. Defenses available to employer operating under title when employee is not so operating.

An officer of a corporation who elects not to operate under this title, shall, in any action to recover damages for personal injury or death brought against an employer accepting the compensation provisions of this title, proceed at common law and the employer may avail himself of the defenses of contributory negligence, negligence of a fellow servant, and assumption of risk, as such defenses exist at common law.

HISTORY: 1962 Code Section 72-119; 1952 Code Section 72-119; 1942 Code Section 7035-18; 1936 (39) 1231; 1996 Act No. 424, Section 12, eff June 18, 1996.

Editor's Note

1996 Act No. 424, Section 13, provides, in part, as follows:

"Section 13. Employers who have filed with the Workers' Compensation Commission a notice to reject the provisions of Title 42 before the effective date of the 1996 amendment will have until July 1, 1997, to comply with the provisions of the 1996 amendment relating to insuring their workers' compensation liabilities. Any employer who has rejected the terms of this title prior to approval of the 1996 amendment and has procured another form of employee benefits insurance shall comply, not later than July 1, 1997, with the provisions of the 1996 amendment relating to the insuring of its workers' compensation liabilities. Furthermore, nothing in the 1996 amendment shall affect or alter any cause of action, right, or claim accruing before the effective date of the 1996 amendment; however, any such cause of action, remedy, or claim accruing before the effective date of the 1996 amendment shall be governed by the law prior to the effective date of the 1996 amendment."

SECTION 42-1-540. Employee's rights and remedies under title exclude all others against employer.

The rights and remedies granted by this title to an employee when he and his employer have accepted the provisions of this title, respectively, to pay and accept compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents or next of kin as against his employer, at common law or otherwise, on account of such injury, loss of service or death. Provided, however, this limitation of actions shall not apply to injuries resulting from acts of a subcontractor of the employer or his employees or bar actions by an employee of one subcontractor against another subcontractor or his employees when both subcontractors are hired by a common employer.

HISTORY: 1962 Code Section 72-121; 1952 Code Section 72-121; 1942 Code Section 7035-11; 1936 (39) 1231; 1974 (58) 2258.

SECTION 42-1-550. Rights against third persons prior to award.

When an employee, his personal representative or other person may have a right to recover damages for injury, loss of service or death from any person other than the employer, he may institute an action at law against such third person before an award is made under this title and prosecute it to its final determination.

HISTORY: 1962 Code Section 72-122; 1952 Code Section 72-122; 1942 Code Section 7035-11; 1936 (39) 1231.

SECTION 42-1-560. Right to compensation not affected by liability of third party; rights and remedies against third party.

(a) The right to compensation and other benefits under this title shall not be affected by the fact that the injury or death is caused under circumstances creating a legal liability in some person, other than the employer or another person exempt from liability under Section 42-1-540 to pay damages therefor, the person so liable being hereinafter referred to as the third party. The respective rights and interests of the injured employee, or, in the case of his death, his dependents and any person entitled to sue therefor, and of the employer or person, association, corporation or carrier liable for the payment of compensation and other benefits under this title, hereinafter called the "carrier," in respect to the cause of action and the damages recovered shall be as provided by this section.

(b) The injured employee or, in the event of his death, his dependents, shall be entitled to receive the compensation and other benefits provided by this title and to enforce by appropriate proceedings his or their rights against the third party; provided, that action against the third party must be commenced not later than one year after the carrier accepts liability for the payment of compensation or makes payment pursuant to an award under this title, except as hereinafter provided. In such case the carrier shall have a lien on the proceeds of any recovery from the third party whether by judgment, settlement or otherwise, to the extent of the total amount of compensation, including medical and other expenses, paid, or to be paid by such carrier, less the reasonable and necessary expenses, including attorney fees, incurred in effecting the recovery, and to the extent the recovery shall be deemed to be for the benefit of the carrier. Attorney fees owed and payable by the carrier to the attorneys effecting the recovery shall be set by the commission but shall not exceed one third of the total claim amount paid by the carrier to the injured employee. Such fees shall be paid from the funds recovered by the carrier. Any balance remaining after payment of necessary expenses and satisfaction of the carrier's lien shall be applied as a credit against future compensation benefits for the same injury or death and shall be distributed as provided in subsection (g). Notice of the commencement of the action shall be given within thirty days thereafter to the Workers' Compensation Commission, the employer and carrier upon a form prescribed by the Workers' Compensation Commission.

(c) If, prior to the expiration of the one-year period referred to in subsection (b), or within thirty days prior to the expiration of the time in which such action may be brought, the injured employee, or, in event of his death, the person entitled to sue therefor shall not have commenced action against or settled with the third party, the right of action of the injured employee, or, in event of his death, the person entitled to sue therefor shall pass by assignment to the carrier; provided, that the assignment shall not occur less than

twenty days after the carrier has notified the injured employee or, in the event of his death, his personal representative or other person entitled to sue therefor in writing, by personal service or by registered or certified mail that failure to commence such action will operate as an assignment of the cause of action to the carrier. Prior to the expiration of ninety days after the assignment, the carrier shall give the Workers' Compensation Commission, the injured employee, or, in event of his death, his dependents and any other person entitled to sue therefor notice, upon a form prescribed by the Workers' Compensation Commission, that action has been or will be commenced against the third party. Failure to give this notice, or to commence the action at least thirty days prior to the expiration of the time within which such action may be brought, shall operate as a reassignment of the right of action to the injured employee, or, in event of his death, his personal representative or other person entitled to sue therefor, and the rights and obligations of the parties shall be as provided by subsection (b) of this section.

If the carrier as assignee recovers in an action:

(1) for injury, an amount in excess of the sum of the total of benefits paid or provided the injured employee and the reasonable expenses, including attorneys' fees, incurred in making such recovery; or

(2) for death, an amount on behalf of the dependents of the employee in excess of the benefits paid the dependents, and the reasonable expenses, including attorneys' fees, incurred in making the recovery, the excess shall be applied as a credit against future compensation and other benefits for the same injury or death and shall be distributed in accordance with subsection (g).

(d) If the persons entitled to share in the proceeds of an action brought under subsections (b) or (c) for death of the employee include any person who was not a dependent of the deceased employee, such person's share of any recovery made in the action, less a rateable share of the reasonable expenses incurred in making the recovery, shall be paid to the person or to the personal representative of the deceased.

(e) The injured employee, or, in event of his death, his dependents, and the carrier may, by agreement approved by the Workers' Compensation Commission, or in event of a settlement made during actual trial of the action against the third party, approved by the presiding judge at the trial, provide for distribution of the proceeds of any recovery in the action different from that prescribed by subsection (b) or (c).

(f) If the third party, with notice or knowledge of the carrier's lien, and the employee, or, in the event of his death his personal representative or person entitled to sue therefor make a compromise settlement without the written consent of the carrier for an amount less than the total of the compensation to which he or they are entitled under this title because of such injury or death, the settlement shall be invalid as against the carrier, which shall be entitled to maintain an action against the third party to recover the amount of compensation for which the carrier is liable under this title, less the amount actually inuring to the benefit of the carrier from the proceeds of the settlement.

At the trial the fact of settlement shall be prima facie evidence that the injury was proximately caused by a breach of duty owed to the employee or a warranty given by the third party.

The carrier shall not unreasonably refuse to approve a proposed compromise settlement with the third party. The injured employee or his dependents may make written application to the Workers' Compensation Commission for a finding that a proposed compromise settlement with the third party is reasonable and fair to all parties. If the Workers' Compensation Commission, after such inquiry as it deems necessary, and after hearing if demanded by either the carrier, the injured employee or his dependents, finds the proposed settlement reasonable and fair, it shall be deemed to have been approved by the carrier.

Notwithstanding other provisions of this item, where an employee or his representative enters into a settlement with or obtains a judgment upon trial from a third party in an amount less than the amount of the employee's estimated total damages, the commission may reduce the amount of the carrier's lien on the proceeds of such settlement in the proportion that such settlement or judgment bears to the commission's evaluation of the employee's total cognizable damages at law. Any such reduction shall be based on a determination by the commission that such reduction would be equitable to all parties concerned and serve the interests of justice.

(g) When there remains a balance of five thousand dollars or more of the amount recovered from a third party by the beneficiary or carrier after payment of necessary expenses, and satisfaction of the carrier's lien and payment of the share of any person not a beneficiary under this title, which is applicable as a credit

against future compensation benefits for the same injury or death under either subsection (b) or subsection (c), the entire balance shall in the first instance be paid to the carrier by the third party. The present value of all amounts estimated by the Workers' Compensation Commission to be thereafter payable as compensation, with the present value to be computed in accordance with a schedule prepared by the Workers' Compensation Commission, shall be held by the carrier as a fund to pay future compensation as it becomes due, and to pay any sum finally remaining in excess thereof to the beneficiaries.

As soon as the Workers' Compensation Commission has fixed the amount to be held by the carrier in this fund, or determined that no future compensation will be due, the excess of the third party recovery over the total amount necessary for payment of necessary expenses, satisfaction of the carrier's lien, and payment of the share of any person not a beneficiary under this title and creation of such fund, if any, shall be paid forthwith to the beneficiary but shall continue to constitute a credit against future compensation benefits for the same injury or death as to any compensation liability that may exist after the fund has been exhausted.

(h) If death results from the injury and if the employee leaves no dependents entitled to benefits under this title, the carrier shall have a right of action against the third party for any amounts paid into the second-injury fund established by Section 42-1-380 and for reasonable funeral expenses and medical benefits actually paid by the carrier. The cause of action shall be in addition to any cause of action of the legal representative of the deceased. This right may be enforced in any action of law brought against the third party within two years after the death of the employee.

HISTORY: 1962 Code Section 72-126.1; 1969 (56) 622; 1974 (58) 2236; 1978 Act No. 522 Section 5.

SECTION 42-1-570. Amount of compensation not admissible in suits against third parties.

The amount of compensation paid by the employer or the amount of compensation to which the injured employee or his dependents are entitled shall not be admissible as evidence in any action brought to recover damages.

HISTORY: 1962 Code Section 72-127; 1952 Code Section 72-127; 1942 Code Section 7035-11; 1936 (39) 1231.

SECTION 42-1-580. Effect of rights of third party against employer on employee's recovery.

When the facts are such at the time of the injury that a third person would have the right, upon payment of any recovery against him, to enforce contribution or indemnity from the employer, any recovery by the employee against the third person shall be reduced by the amount of such contribution of indemnity and the third person's right to enforce such contribution against the employer shall thereupon be satisfied.

HISTORY: 1962 Code Section 72-128; 1952 Code Section 72-128; 1942 Code Section 7035-13; 1941 (42) 1314.

SECTION 42-1-590. Compensability of injuries to illegally employed minor.

When an employer and employee have accepted the provisions of this title, any injury to a minor while employed contrary to the laws of this State shall be compensable under this title the same, and to the same extent, as if such minor employee was an adult.

HISTORY: 1962 Code Section 72-129; 1952 Code Section 72-129; 1942 Code Section 7035-11; 1936 (39) 1231.

SECTION 42-1-600. Suits by public employees.

Any employee of the State or any political subdivision or of any department thereof shall be entitled to bring suit against his employer for the recovery of the benefits to which he may be entitled under the terms and provisions of this title and consent to such suit or suits is expressly given.

HISTORY: 1962 Code Section 72-130; 1952 Code Section 72-130; 1942 Code Section 7035-8; 1936 (39) 1231; 1937 (40) 613.

SECTION 42-1-610. Agreement or regulation does not limit liability of employer.

No contract or agreement, written or implied, and no rule, regulation or other device shall in any manner operate to relieve any employer, in whole or in part, of any obligation created by this title except as otherwise expressly provided in this title.

HISTORY: 1962 Code Section 72-131; 1952 Code Section 72-131; 1942 Code Section 7035-7; 1936 (39) 1231.

SECTION 42-1-620. Agreements of employee to waive rights invalid.

No agreement by an employee to waive his rights to compensation under this title shall be valid.

HISTORY: 1962 Code Section 72-132; 1952 Code Section 72-132; 1942 Code Section 7035-24; 1936 (39) 1231.

SECTION 42-1-630. Situation in which provisions of title are not admissible in trial.

Upon the trial of any action in tort for injuries not coming under the provisions of this title no provisions of this title shall be placed in evidence or be permitted to be argued to the jury.

HISTORY: 1962 Code Section 72-20; 1952 Code Section 72-20; 1942 Code Section 7035-16; 1936 (39) 1231; 1937 (40) 153, 613; 1939 (41) 323.

SECTION 42-1-640. Performance of statutory duty not excused.

Nothing in this title shall be construed to relieve any employer or employee from penalty for failure or neglect to perform any statutory duty.

HISTORY: 1962 Code Section 72-21; 1952 Code Section 72-21; 1942 Code Section 7035-14; 1936 (39) 1231.

SECTION 42-1-650. Limitation of actions after claim erroneously made.

If any claim for compensation is made upon the theory that such claim, or the injury upon which the claim is based, is within the jurisdiction of the commission under the provisions of this title and if the commission, or the Supreme Court or court of appeals on appeal, shall adjudge that the claim is not within this title, the claimant, or if he dies his personal representative, shall have one year after the rendition of a final judgment in the case within which to commence an action at law.

HISTORY: 1962 Code Section 72-22; 1952 Code Section 72-22; 1942 Code Section 7035-27; 1936 (39) 1231; 1999 Act No. 55, Section 44, eff June 1, 1999.

SECTION 42-1-660. Immunity from liability on construction projects; exceptions.

No architect, engineer, land surveyor, landscape architect, or their employees or a corporation, partnership, or firm offering architectural services, engineering services, land surveyor services, or landscape architectural services who is retained to perform professional services on a construction project is liable in any action brought pursuant to Section 42-1-560 for any injury resulting from the employer's failure to comply with safety standards on a construction project for which compensation is recoverable under this title, unless responsibility for safety practices is specifically assumed by contract or by direct supervision or continual direction of the injured employee relative to the segment of the job which results in the injury.

The immunity provided by this section does not apply to the negligent preparation of design plans or specifications.

HISTORY: 1996 Act No. 320, Section 1, eff May 20, 1996.

SECTION 42-1-700. Specificity of description of injured or affected body parts; Employee's Notice of Claim and Request for Hearing (Form 50).

(A) Injured or affected body parts and conditions shall be set forth with as much specificity as possible on the commission's Employee's Notice of Claim and/or Request for Hearing form, hereinafter referred to as Form 50. A Form 50 shall not describe the injured body part(s) or condition(s) as "whole person", "whole body", "all body parts", or other similar language unless the injured employee died as a result of the accident. No hearing shall be held on a Form 50 which does not conform to the requirements of this subsection.

(B) Nothing in this section prohibits a commissioner from determining the compensability of a body part or condition not listed or described on a Form 50 if:

(1) the body part or condition is proved by a preponderance of the evidence to have arisen from the injury or injuries out of and in the course of employment as set forth on the Form 50;

(2) it is proven to the satisfaction of the commissioner that the employee had no knowledge of the injury or condition on the date of the completion of the Form 50. However, the employee is required to amend the Form 50 upon discovery of the injury or condition within a reasonable time period pursuant to regulation; or

(3) in the case of a represented employee, the body part or condition is set forth on the commission's Prehearing Brief form, and such prehearing brief is timely filed with the commission and timely served upon the parties.

(C) A Form 50 must be signed by an attorney if the employee is represented, verifying that the contents of the form are accurate and true to the best of the attorney's knowledge. If the employee is not represented, the employee who signs a Form 50 must verify that the contents of the form are accurate and true to the best of the employee's knowledge.

HISTORY: 2007 Act No. 111, Pt I, Section 9, eff July 1, 2007, applicable to injuries that occur on or after that date.

SECTION 42-1-705. Employer's Answer to Request for Hearing (Form 51); specificity as to possible defenses.

(A) The commission's Employer's Answer to Request for Hearing form, hereinafter referred to as Form 51, must describe with as much specificity as possible the defenses to be relied upon by the defendants. A Form 51 shall not state that "all defenses apply" or other similar language, unless such is actually the case. A Form 51 which does not conform to the requirements of this subsection shall not be considered at a hearing.

(B) Nothing in this section prohibits a commissioner from considering a defense not listed on a Form 51 if:

(1) it is proven to the satisfaction of the commissioner that the defendants had no knowledge of the facts supporting the defense on the date of the completion of the Form 51; and

(2) in the case of represented defendants, the defense omitted on the Form 51 is set forth on the commission's Prehearing Brief form, and such brief is timely filed with the commission and timely served upon the parties.

(C) A Form 51 must be signed by an attorney, verifying that the contents of the form are accurate and true to the best of the attorney's knowledge. If the employer is unrepresented and completes a Form 51, the employer must sign the form, verifying that the contents are accurate and true to the best of the employer's knowledge.

HISTORY: 2007 Act No. 111, Pt I, Section 10, eff July 1, 2007, applicable to injuries that occur on or after that date.

CHAPTER 3
Workers' Compensation Commission

SECTION 42-3-10. Creation and departments of South Carolina Workers' Compensation Commission.

There is created the South Carolina Workers' Compensation Commission, hereinafter referred to as the commission, composed of a judicial and administrative department and constituted and administered as provided for in this title.

HISTORY: 1962 Code Section 72-50; 1952 Code Section 72-51; 1942 Code Section 7035-54; 1936 (39) 1231; 1952 (47) 1925; 1964 (53) 1918; 1974 (58) 2251; 1980 Act No. 481; 1986 Act No. 399, Section 2, eff May 6, 1986.

SECTION 42-3-20. Membership, terms of office, vacancies and duties of commission, chairman.

(A) The commission shall consist of seven members appointed by the Governor with the advice and consent of the Senate for terms of six years and until their successors are appointed and qualify. In the event the Governor does not fill a vacancy within sixty days after the vacancy occurs, the commission by majority vote shall deputize a person with suitable experience, training, and knowledge to serve as a deputy commissioner to serve until such time as the Governor fills the vacancy. As soon as the Governor appoints a replacement who is confirmed by the Senate, the deputy commissioner shall immediately cease to serve in that office. While serving as a deputy commissioner, the deputy commissioner has the power and authority to swear or cause the witnesses to be sworn and shall transmit all testimony and shall make a recommendation to the commission for an award. The commission must determine the award based upon testimony received by the deputy commissioner and may consider the deputy commissioner's recommendation.

(B) The Governor, with the advice and consent of the Senate, shall designate one of the seven commissioners as chairman for a term of two years. At the conclusion of a commissioner's two-year term as chairman, the Governor shall appoint or reappoint a commissioner to serve as chairman. If the Governor does not appoint or reappoint a chairman at the expiration of the two-year term, a majority of the commission shall elect from among their members an interim chairman who shall serve until the Governor appoints another chairman. A deputy commissioner is not eligible to serve as chairman. Any person appointed to the commission is subject to removal as provided in Section 1-3-240(C).

(C) The commissioners shall hear and determine all contested cases, conduct informal conferences when necessary, approve settlements, hear applications for full commission reviews, and handle such other matters as may come before the department for judicial disposition. Full commission reviews shall be conducted by all commissioners, excluding the original hearing commissioner, or by three-member panels, excluding the original hearing commissioner, appointed by the chairman. The chairman, with approval of a majority of the other commissioners, shall determine which full commission reviews shall be assigned to panels. The decisions of three-member panels have the same force and effect as full commission reviews.

HISTORY: 1962 Code Section 72-50.1; 1952 Code Section 72-51; 1943 Code Section 7035-54; 1936 (39) 1231; 1952 (47) 1925; 1964 (53) 1918; 1974 (58) 2251; 1978 Act No. 522 Section 1; 1980 Act No. 481; 1981 Act No. 163; 1981 Act No. 178 Part II Section 15; 2007 Act No. 111, Pt I, Section 11, eff July 1, 2007, applicable to injuries that occur on or after that date; 2016 Act No. 140 (S.975), Section 1, eff March 14, 2016.

Effect of Amendment

2016 Act No. 140, Section 1, rewrote (B).

SECTION 42-3-25. Chairman; executive director.

The chairman is the chief executive officer of the commission and shall execute the policies established by the commission in its capacity as the governing body of the judicial and administrative departments.

The executive director of the commission shall report to the chairman and be responsible to the commission.

HISTORY: 1980 Act No. 481; 2006 Act No. 327, Section 1, eff June 2, 2006.

SECTION 42-3-30. Promulgation of rules and regulations by commission.

The commission shall promulgate all regulations relating to the administration of the workers' compensation laws of this State necessary to implement the provisions of this title and consistent therewith.

HISTORY: 1962 Code Section 72-50.2; 1952 Code Section 72-59; 1942 Code Section 7035-57; 1936 (39) 1231; 1937 (40) 613; 1974 (58) 2251; 1980 Act No. 481.

SECTION 42-3-40. Salaries of commissioners.

The annual salary for the commissioners shall be eighty-five percent of the salary paid to the circuit judges of the State. The commissioners shall receive a subsistence allowance of thirty-five dollars a day while in the performance of their duties outside the Columbia office.

HISTORY: 1962 Code Section 72-50.3; 1952 Code Sections 72-51, 72-52; 1942 Code Sections 7035-54, 7035-55; 1936 (39) 1231; 1951 (47) 506; 1952 (47) 1925; 1964 (53) 1918; 1974 (58) 2251; 1978 Act No. 644 Part II Section 40; 1978 Act No. 522 Section 2; 1980 Act No. 481.

SECTION 42-3-60. Administrative assistant to commissioner.

Each commissioner shall be authorized to employ an administrative assistant to serve at the commissioner's pleasure.

HISTORY: 1962 Code Section 72-50.5; 1952 Code Section 72-54; 1942 Code Section 7035-55; 1936 (39) 1231; 1974 (58) 2251; 1980 Act No. 481; 2007 Act No. 111, Pt I, Section 12, eff July 1, 2007, applicable to injuries that occur on or after that date.

SECTION 42-3-80. Executive director of administrative department.

The administrative department of the commission shall be under the direction of the executive director. The director must be appointed by the commission, shall serve at its pleasure, and shall receive an annual salary not to exceed eighty-five percent of the salary paid to the commissioners.

The administrative director shall receive and be responsible for all files and records of the Workers' Compensation Commission and shall refer all claims to the judicial department for disposition and receive from that department reports, information and statistics as to the disposition of claims. He also shall be responsible for the referral to the South Carolina Vocational Rehabilitation Department of all industrially injured persons that need vocational counseling or vocational evaluation, personal adjustment, training and placement.

In the performance of his duties, the director is authorized to:

- (a) with the approval of the chairman of the commission, appoint and discharge, if necessary, all support personnel within the administrative department except division directors;
- (b) compile all statistics and reports concerning the administration of workers' compensation laws and the disposition of claims related thereto;
- (c) conduct administrative operations of the commission in accordance with the provisions of this title and regulations promulgated thereunder.

HISTORY: 1962 Code Section 72-50.7; 1974 (58) 2251; 1980 Act No. 481; 2005 Act No. 85, Section 1, eff May 26, 2005; 2006 Act No. 327, Section 2, eff June 2, 2006.

SECTION 42-3-90. Divisions of administrative department.

There shall be established within the administrative department the following divisions, each headed by a division director recommended by the administrative director with the concurrence of the chairman and subject to the approval of the commission.

- (1) The Division of Coverage and Compliance;
- (2) The Division of Claims and Statistics;
- (3) The Division of Medical Services.

Each division shall perform such functions and duties as may be assigned to it by the director of the administrative department subject to the provisions of Section 42-3-25.

HISTORY: 1962 Code Section 72-50.8; 1974 (58) 2251; 1980 Act No. 481.

SECTION 42-3-100. Annual budget.

The commissioners shall annually prepare and the chairman shall annually submit to the Governor and the General Assembly a budget for the Workers' Compensation Commission.

HISTORY: 1962 Code Section 72-50.9; 1974 (58) 2251; 1980 Act No. 481.

Code Commissioner's Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

SECTION 42-3-105. Commission's authority to double fines and penalties; penalties for noncompliance by uninsured employers.

The Worker's Compensation Commission is authorized to double the amount of fines and penalties assessed for each violation of the workers' compensation law, except that for employers found to be uninsured in violation of the workers' compensation law, the minimum amount of the penalty assessed shall be seven hundred fifty dollars a year of noncompliance and the maximum amount of the penalty shall be one thousand dollars a year of noncompliance. The commission is further authorized to retain and expend all revenues received as a result of these collections.

HISTORY: 2003 Act No. 61, Section 2, eff Aug. 19, 2003.

Editor's Note

2003 Act No. 61, Section 19, provides as follows:

"This act takes effect at 12:00 p.m. on the first Tuesday following sixty days after the signature of the Governor [June 19, 2003], or August 19, 2003, whichever is later."

SECTION 42-3-110. Approval of expense and travel vouchers.

The commissioners of the judicial department and the director of the administrative department shall approve all expense and travel vouchers for their respective departments.

HISTORY: 1962 Code Section 72-50.10; 1952 Code Section 72-53; 1942 Code Section 7035-55; 1936 (39) 1231; 1974 (58) 2251; 1980 Act No. 481.

SECTION 42-3-120. Advisory committee.

There is hereby created the advisory committee for improvement of the workers' compensation laws of South Carolina, consisting of five members appointed by the Governor for terms of five years and until successors are appointed and qualify. One member shall be an attorney experienced in practice representing claimants, one member shall be an attorney experienced in practice representing defendants, one member shall be a representative of industry, one member shall be a representative of labor and one member shall be a representative of the general public. A chairman shall be elected by the committee. The committee

shall meet at least quarterly to consider improvements in workers' compensation laws and monitor the effectiveness of existing law. Recommendations for changes in the law shall be recommended annually to the General Assembly. Committee members shall serve without compensation but shall receive mileage, subsistence and per diem as provided by law for boards, committees and commissions payable from an annual appropriation from the general fund of the State.

HISTORY: 1962 Code Section 72-50.11; 1974 (58) 2251; 1980 Act No. 481.

SECTION 42-3-130. Service of subpoenas; witness fees.

The county sheriffs and their respective deputies shall serve all subpoenas of the commission or its deputies and shall receive the same fees as are provided by law for like services. Provided, however, if the witness is in another county, the subpoena may be served by any person authorized to serve subpoenas in the county where the action originated. Each witness who appears in obedience to such subpoena of the commission shall receive for attendance the fees and mileage for witnesses in civil cases in courts of the county in which the hearing is held.

HISTORY: 1962 Code Section 72-50.13; 1952 Code Section 72-61; 1942 Code Section 7035-57; 1936 (39) 1231; 1937 (40) 613; 1974 (58) 2025, 2251; 1980 Act No. 481.

SECTION 42-3-140. Power of commission to subpoena witnesses, administer oaths and examine books and records.

The commission or any member thereof, or any person deputized by it, may, for the purpose of this title, subpoena witnesses, administer or cause to be administered oaths and examine or cause to be examined such parts of the books and records of the parties to proceedings as relate to questions in dispute.

HISTORY: 1962 Code Section 72-50.14; 1952 Code Section 72-62; 1942 Code Section 7035-57; 1936 (39) 1231; 1937 (40) 613; 1974 (58) 2251; 1980 Act No. 481.

SECTION 42-3-150. Manner in which attendance of witnesses and production of books and records may be compelled.

The commission in the discharge of its duties may administer oaths and affirmations, take depositions and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary in connection with any proceeding under this title.

No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda or other records before the commission on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying or from civil prosecution, penalties or forfeitures pursuant to the provisions of this title.

In case of contumacy by any person or refusal to obey a subpoena issued to any person, the commission may issue to such person an order requiring him to appear before the commission to produce evidence if so ordered or to give testimony touching the matter under investigation. Any failure to obey an order of the commission may be punished as a contempt thereof.

Any person who shall without just cause fail or refuse to attend and testify, to answer any lawful inquiry or to produce books, papers, correspondence, memoranda and other records, if it is in his power to do so in accordance with a subpoena of the commission, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty nor more than two hundred dollars or by a term of imprisonment for not more than thirty days. Each failure to obey a subpoena shall constitute a

separate offense. Subpoenas shall be issued in the name of the commission and shall be signed by a commissioner. Subpoenas shall be issued to such persons as the commission may designate.

In addition, the commission may punish for contempt in the manner authorized by this section any person whose disorderly conduct in any commission proceeding interferes with the orderly process of such proceeding.

HISTORY: 1962 Code Section 72-50.15; 1952 Code Section 72-63; 1942 Code Section 7035-57; 1936 (39) 1231; 1937 (40) 613; 1974 (58) 2251; 1978 Act No. 469 Section 1; 1978 Act No. 522, Section 4; 1980 Act No. 481.

SECTION 42-3-160. Manner in which depositions of witnesses shall be taken.

Any party to a proceeding pending under this title or his attorney may cause the depositions of witnesses, either within or without the State, to be taken either by commission or de bene esse. Such depositions shall be taken in accordance with and subject to the same provisions, conditions and restrictions as apply to the taking of like depositions in civil actions at law in the courts of common pleas and the same rules with respect to the giving of notice to the opposite party, the taking and transcribing of testimony and the transmission and certification thereof and matters of practice relating thereto shall apply. In any case in which testimony shall be taken by commission, such commission shall be issued, upon request of the party or his attorney, by some member of the commission. The provisions of this section shall not be so construed as to prevent the commission or any deputy commissioner from issuing commissions for the taking of testimony, even in the absence of any application therefor, when in its or his judgment it is deemed necessary or appropriate.

HISTORY: 1962 Code Section 72-50.16; 1952 Code Section 72-64; 1942 Code Section 7035-57; 1936 (39) 1231; 1937 (40) 613; 1974 (58) 2251; 1980 Act No. 481.

SECTION 42-3-170. Manner in which hearings shall be conducted.

Hearings before the commission shall be open to the public and shall be stenographically reported and the commission may contract for the reporting of such hearings. The commission shall by regulation provide for the preparation of a record of the hearings and other proceedings.

HISTORY: 1962 Code Section 72-50.17; 1952 Code Section 72-65; 1942 Code Section 7035-56; 1936 (39) 1231; 1974 (58) 2251; 1980 Act No. 481.

SECTION 42-3-175. Failure to pay claims; sanctions; notice to Department of Insurance.

(A)(1) If a claimant brings an action before the commission to enforce an order authorizing medical treatment or payment of benefits and the commission determines that an insurer, a self-insured employer, a self-insured fund, or an adjuster, without good cause, failed to authorize medical treatment and/or pay benefits when ordered to do so by the commission, the insurer, the self-insured employer, the self-insured fund, or the adjuster must pay the claimant's attorneys' fees and costs of enforcing the order. The commission may impose sanctions for wilful disobedience of an order, including, but not limited to, a fine of up to five hundred dollars for each day of the violation.

(2) The commission must notify the Department of Insurance of an insurer's or an adjuster's failure to authorize and pay benefits for medical treatment. If the Director of the Department of Insurance or his or her designee determines that there has been a violation of any provision of Title 38, he may impose penalties for each violation, including, but not limited to, administrative penalties pursuant to Section 38-2-10.

(B)(1) If the commission discovers a pattern of an insurer failing to pay benefits pursuant to an award, as defined in item (2), the chairman must notify the Director of the Department of Insurance. The director or his or her designee must hold a hearing to determine if the insurer had good cause for nonpayment. If the director or his or her designee determines that nonpayment was intentional three or more times within a two-year period, the director may revoke the license of the insurer to do business in this State. If the

director or his or her designee revokes the license of the insurer, he must take any steps he considers necessary for the protection of the insurer's policyholders in this State.

(2) For purposes of this section, a pattern is established upon an insurer's failure to pay an award at least three times within a two-year period by failing to pay:

- (a) for individual claims;
- (b) for a claim in which the claimant had to request enforcement of an award; or
- (c) any combination of subitems (a) and (b).

(3) All fines collected pursuant to this section must be submitted to the general fund.

HISTORY: 2007 Act No. 111, Pt I, Section 13, eff July 1, 2007, applicable to injuries that occur on or after that date.

SECTION 42-3-180. Commission to decide questions arising under title.

All questions arising under this title, if not settled by agreement of the parties interested therein with the approval of the commission, shall be determined by the commission, except as otherwise provided in this title.

HISTORY: 1962 Code Section 72-50.18; 1952 Code Section 72-66; 1942 Code Section 7035-68; 1936 (39) 1231; 1974 (58) 2251; 1980 Act No. 481.

SECTION 42-3-185. Promulgation of policies or procedures implementing Section 42-15-90.

Any policies or procedures implementing the provisions of Section 42-15-90 shall become effective only when such implementation is accomplished by regulations promulgated in accordance with the Administrative Procedures Act, which proposed regulations shall have before promulgation received approval of the Judiciary Committees of the Senate and House of Representatives and also by concurrent Resolution of the General Assembly.

HISTORY: 1980 Act No. 481.

SECTION 42-3-190. Preparation and furnishing of forms and literature.

The commission shall prepare, cause to be printed and upon request furnish, free of charge to any employee, such blank forms and literature as it shall deem requisite to facilitate or prompt the efficient administration of this title.

HISTORY: 1962 Code Section 72-50.19; 1952 Code Section 72-67; 1942 Code Section 7035-58; 1936 (39) 1231; 1974 (58) 2251; 1980 Act No. 318, Section 4; 1980 Act No. 481.

SECTION 42-3-195. Commission to provide information and statistics; confidentiality.

The commission shall cooperate with and provide information and statistics to the South Carolina Commissioner of Labor, which the Commissioner of Labor and his designees may use solely for the following limited purposes:

- (1) scheduling inspections pursuant to Section 41-15-260 for compliance with occupational safety and health rules and regulations;
- (2) statistical evaluation of hazards.

The information and statistics provided pursuant to this section are confidential and exempt from disclosure pursuant to the Freedom of Information Act, except that the Commissioner of Labor may reveal to the federal Occupational Safety and Health Administration, on a confidential basis, the results of statistical evaluations of hazards as long as no identifying information is revealed.

Upon trial of any action other than a workers' compensation claim, such information shall not be placed in evidence or be permitted to be argued to any court, jury, or other adjudicatory body.

HISTORY: 1993 Act No. 121, Section 1, eff June 14, 1993.

SECTION 42-3-210. Tabulation and publication of accident reports.

The commission shall tabulate the accident reports received from employers in accordance with Sections 42-19-10 and 42-19-20 and shall publish them in the annual report of the commission and as often as it may deem advisable, in such detailed or aggregated form as it may deem best. The name of the employer or employee shall not appear in such publications and the employers' reports shall be private records of the commission and shall not be open for public inspection except for the inspection of the parties directly involved, and then only to the extent of such interest, including third party interests. These reports shall not be used as evidence by or against any employer in any suit at law brought by any employee for the recovery of damages, except by order of the court for good cause shown.

HISTORY: 1962 Code Section 72-50.21; 1952 Code Section 72-69; 1942 Code Section 7035-58; 1936 (39) 1231; 1974 (58) 2251; 1980 Act No. 481.

SECTION 42-3-220. Collection of fines and penalties; use of proceeds.

The commission may, by civil action brought in its own name, enforce the collection of any fines or penalties provided by this title and such fines and penalties shall be used for the purpose of paying salaries and expenses of the commission.

HISTORY: 1962 Code Section 72-50.22; 1952 Code Section 72-70; 1942 Code Sections 7035-78, 7035-79; 1936 (39) 1231; 1974 (58) 2251; 1980 Act No. 481.

SECTION 42-3-230. Destruction of inactive files.

The commission may from time to time, as it may consider advisable, destroy any of its inactive files that are at least fifteen years old. The commission may maintain these files in either paper or electronic form. No files of the commission shall be considered inactive until the commission is satisfied that the files will be of no further use.

HISTORY: 1962 Code Section 72-50.23; 1952 Code Section 72-71; 1944 (43) 1207; 1974 (58) 2251; 1980 Act No. 481; 2007 Act No. 111, Pt I, Section 14, eff July 1, 2007, applicable to injuries that occur on or after that date.

SECTION 42-3-240. Annual reports.

The commission shall publish annually for free distribution a report of the administration of this title, together with such recommendations as the commission deems advisable, and shall submit annually to the Governor and the General Assembly a report showing receipts, expenditures and disbursements of the commission for the fiscal year terminating on June thirtieth preceding the time of such report.

HISTORY: 1962 Code Section 72-50.24; 1952 Code Section 72-73; 1942 Code Section 7035-55; 1936 (39) 1231; 1947 (45) 147; 1974 (58) 2251; 1980 Act No. 481.

SECTION 42-3-250. Commissioners bound by Code of Judicial Conduct; continuing education requirement.

(A) The commissioners are bound by the Code of Judicial Conduct, as contained in Rule 501 of the South Carolina Appellate Court Rules, and the State Ethics Commission is responsible for enforcement and administration of Rule 501 pursuant to Section 8-13-320. Commissioners must also comply with the applicable requirements of Chapter 13, Title 8.

(B) Each year, the commissioners and their administrative assistants must attend a workshop of at least three continuing education hours concerning ethics and the Administrative Procedures Act.

HISTORY: 2005 Act No. 36, Section 1, eff April 15, 2005.

CHAPTER 5

Insurance and Self-Insurance

SECTION 42-5-10. Employer shall secure payment of compensation; extent of liability.

Every employer who accepts the compensation provisions of this title shall secure the payment of compensation to his employees in the manner provided in this chapter. While such security remains in force he or those conducting his business shall only be liable to any employee who elects to come under this title for personal injury or death by accident to the extent and in the manner specified in this title.

HISTORY: 1962 Code Section 72-401; 1952 Code Section 72-401; 1942 Code Section 7035-10; 1936 (39) 1231.

SECTION 42-5-20. Insurance or proof of financial ability to pay required; self-insurer prohibited.

(A)(1) Every employer who accepts the provisions of this title relative to the payment of compensation shall insure and keep insured his liability thereunder in any authorized corporation, association, organization, or mutual insurance association formed by a group of employers so authorized or shall furnish to the commission satisfactory proof of his financial ability to pay directly the compensation in the amount and manner and when due as provided for in this title. The commission may, under such rules and regulations as it may prescribe, permit two or more employers in businesses of a similar nature to enter into agreements to pool their liabilities under the Workers' Compensation Law for the purpose of qualifying as self-insurers. In the case of self-insurers the commission shall require the deposit of an acceptable security, indemnity, or bond to secure the payment of the compensation liabilities as they are incurred. The Workers' Compensation Commission shall have exclusive jurisdiction of group self-insurers under this section, and such group self-insurers shall not be deemed to be insurance companies and shall not be regulated by the Department of Insurance. Provided, further, that if any provision is made for the recognition of reinsurance of the self-insured fund, such provision shall expressly provide that the reinsurance agreement or treaty must recognize the right of the claimant to recover directly from the reinsurer and that such agreement shall provide for privity between the reinsurer and the workers' compensation claimant.

(2) In lieu of submitting audited financial statements when an employer makes an application to self-insure with the commission, the commission shall accept the sworn statement or affidavit of an independent auditor verifying the financial condition of the employer according to the required financial ratios and guidelines established by regulation of the commission. The independent auditor must be a certified public accountant using generally acceptable accounting principles in the preparation of the financial statements of the employer.

(B) A corporation, association, organization, or mutual insurance association formed pursuant to Section 42-5-50 may not be considered a licensed insurer pursuant to Chapter 31, Title 38 and may not participate in or receive benefits or protection from the South Carolina Property and Casualty Insurance Guaranty Association.

(C) An assumption, transfer, merger, or other acquisition of a block of business by a licensed insurer from a self-insurer may not be approved until the commission has obtained an opinion from a qualified actuary as to the adequacy of assets and other funding to adjudicate and pay any known claims as of the effective date of the assumption, transfer, merger, or other acquisition of the self-insured block.

HISTORY: 1962 Code Section 72-402; 1952 Code Section 72-402; 1942 Code Section 7035-70; 1936 (39) 1231; 1974 (58) 2214; 1994 Act No. 459, Section 2, eff June 16, 1994; 2019 Act No. 5 (S.358), Section 2, eff July 1, 2019.

Effect of Amendment

2019 Act No. 5, Section 2, inserted the paragraph identifiers, and added (B) and (C), prohibiting a self-insurer from participating in or obtaining benefits from the South Carolina Property and Casualty Insurance Guaranty Association and requiring the South Carolina Workers' Compensation Commission to secure an actuarial opinion before approving the transfer of a self-insurer to a licensed insurer.

SECTION 42-5-25. Temporary workers' compensation coverage for applicant to approved self-insurance fund.

(A) An approved self-insurance fund may provide temporary coverage for an applicant if he:

(1) submits to the self-insurance division the required completed and signed forms, including, but not limited to, an application form with the same fee required for permanent membership in a self-insurance fund;

(2) qualifies for membership in the fund;

(3) qualifies under the by-laws of the fund;

(4) operates a business similar in nature to the businesses in the fund;

(5) is financially sound and meets or exceeds the minimum net worth requirements established for permanent membership in a self-insurance fund;

(6) notifies the division in writing on or before the coverage date.

(B) Upon receipt and review of the documents described in subsection (A), the division shall notify the fund within two business days whether temporary membership is granted. If the division does not notify the fund of its decision within two business days, temporary membership is deemed granted.

(C) Temporary coverage expires when the full commission approves the applicant or thirty days after the full commission rejects the applicant. The effective date on the certificate for self-insurance must show the original, temporary, coverage date.

HISTORY: 1992 Act No. 460, Section 1, eff June 15, 1992.

SECTION 42-5-30. Employer shall file evidence of compliance with Title.

Every employer accepting the compensation provisions of this title shall file with the commission, in form prescribed by it, annually or as often as may be necessary evidence of his compliance with the provisions of Section 42-5-20 and all others relating thereto. In the event an employer shall insure his liability under this title with an insurance carrier, the insurance carrier shall be required to make the necessary filings.

HISTORY: 1962 Code Section 72-403; 1952 Code Section 72-403; 1942 Code Section 7035-71; 1936 (39) 1231; 1980 Act No. 318, Section 6.

SECTION 42-5-40. Penalty for failure to secure payment of compensation.

Any employer required to secure the payment of compensation under this title who refuses or neglects to secure such compensation shall be punished by a fine of one dollar for each employee at the time of the insurance becoming due, but not less than ten dollars nor more than one hundred dollars for each day of such refusal or neglect, and until the same ceases, and he shall be liable during continuance of such refusal or neglect to an employee either for compensation under this title or at law in an action instituted by the employee or his personal representative against such employer to recover damages for personal injury or death by accident and in any such action such employer shall not be permitted to defend upon any of the grounds mentioned in Section 42-1-510.

The fine provided in this section may be assessed by the commission in an open hearing with the right of review and appeal as in other cases. All fines collected pursuant to this section must be submitted to the general fund.

HISTORY: 1962 Code Section 72-404; 1952 Code Section 72-404; 1942 Code Section 7035-71; 1936 (39) 1231; 2007 Act No. 111, Pt I, Section 15, eff July 1, 2007, applicable to injuries that occur on or after that date.

SECTION 42-5-45. Penalty for failure of employer to secure payment of compensation.

Any employer required to secure payment of compensation under this title who wilfully refuses to secure such compensation shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars or by imprisonment for not less than thirty days nor more than six months, or both, in the discretion of the court.

HISTORY: 1980 Act No. 318, Section 2.

SECTION 42-5-50. Certificate of compliance.

Whenever an employer has complied with the provisions of Section 42-5-20 relating to self-insurance, the commission shall issue to such employer a certificate, which shall remain in force for a period fixed by the commission. But the commission may, upon at least sixty days' notice and a hearing to the employer, revoke the certificate upon satisfactory evidence for such revocation having been presented. At any time after such revocation the commission may grant a new certificate to the employer upon his petition.

HISTORY: 1962 Code Section 72-405; 1952 Code Section 72-405; 1942 Code Section 7035-72; 1936 (39) 1231.

SECTION 42-5-60. Insurance deemed subject to title; approval of forms.

Every policy for the insurance of the compensation provided in this title or against liability therefor shall be deemed to be made subject to provisions of this title. No corporation, association or organization shall enter into any such policy of insurance unless its form shall have been approved by the Director of the Department of Insurance.

HISTORY: 1962 Code Section 72-406; 1952 Code Section 72-406; 1942 Code Section 7035-75; 1936 (39) 1231; 1960 (51) 1646.

SECTION 42-5-70. Clauses required in insurance contracts.

All policies insuring the payment of compensation under this title must contain a clause to the effect that, as between the employer and the insurer, the notice to or acknowledgment of the occurrence of the injury on the part of the insured employer shall be deemed notice or knowledge, as the case may be, on the part of the insurer, that jurisdiction of the insured for the purpose of this title shall be jurisdiction of the insurer, that the insurer shall in all things be bound by and subject to the awards, judgments or decrees rendered against such insured employer and that insolvency or bankruptcy of the employer or discharge therein shall not relieve the insurer from the payment of compensation for disability or death sustained by an employee during the life of such policy or contract.

HISTORY: 1962 Code Section 72-407; 1952 Code Section 72-407; 1942 Code Section 7035-73; 1936 (39) 1231.

SECTION 42-5-80. Liability of insurer.

(A) No policy of insurance against liability arising under this title may be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled thereto all benefits conferred by this title, and all installments of the compensation that may be awarded or agreed upon, and that the obligation shall not be affected by any default of the insured or by any default in giving notice required by such policy or otherwise.

(B) Such agreement must be construed to be a direct promise by the insurer to the person entitled to compensation enforceable in his name.

(C) Any insurer who issues a policy of compensation insurance to an employer not subject to this title may not plead as a defense that the employer is not subject to this title and is estopped to deny coverage.

HISTORY: 1962 Code Section 72-408; 1952 Code Section 72-408; 1942 Code Section 7035-74; 1936 (39) 1231; 1988 Act No. 411, Section 2, eff March 28, 1988.

SECTION 42-5-130. Procedure upon withdrawal of carrier from State.

Upon the withdrawal of any insurance carrier that has any outstanding liability under this title from doing business in this State the Director of the Department of Insurance shall immediately notify the commission and thereupon the commission shall issue an award against such insurance carrier and commute the installments due any injured employee and immediately have such award docketed in the court of common pleas of the county in which the claimant resides and the commission shall then cause suit to be brought on such judgment in the state of the residence of any such insurance carrier and the proceeds from such judgment, after deducting costs, if any, of the proceeding, shall be turned over to the injured employee, taking from such employee a proper receipt in satisfaction of his claim.

HISTORY: 1962 Code Section 72-413; 1952 Code Section 72-413; 1942 Code Section 7035-76; 1936 (39) 1231; 1937 (40) 613; 1960 (51) 1646.

SECTION 42-5-190. Tax on self-insurers.

Every employer carrying his own risk under the provisions of Section 42-5-20 shall report under oath to the commission the employer's actual cost incurred under the provisions of this title. The report must be made in the form prescribed by the commission by the fifteenth day of the third month following the close of the self-insurer's fiscal year. The commission shall assess against the actual cost incurred a maintenance tax computed by taking two and one-half percent of the actual cost of operating under the provisions of this title as determined by the commission. The assessments must be paid to the commission which shall retain in every fiscal year the greater of fifty percent or two million two hundred thousand dollars of the maintenance tax revenues and use these funds to pay the salaries and expenses of the commission. The balance of the maintenance tax revenues must be remitted to the State Treasurer for the credit of the general fund of the State. In the event of failure to pay the tax within fifteen days of the date set forth in this section, the commission may assess against the self-insurer a penalty of five percent of the unpaid tax. If the self-insurer fails to pay the tax and penalty within fifteen days of notice by the commission, interest must be added to the amount of the deficiency at the rate of five percent for each month or fraction of a month from the date the tax was due originally until the date the deficiency is paid and the commission may initiate proceedings to withdraw the privilege of self-insuring in this State. The total maximum interest to be charged may not exceed twenty-five percent. The penalty under this section is payable to the commission. Fifty percent of the interest must be retained by the commission and used by it as retained maintenance tax revenues are used and the balance of the interest must be remitted to the State Treasurer for the credit of the general fund of the State.

HISTORY: 1962 Code Section 72-419; 1952 Code Section 72-419; 1942 Code Section 7035-76; 1936 (39) 1231; 1937 (40) 613; 1953 (48) 112; 1960 (51) 1646; 1977 Act No. 16; 1989 Act No. 100, Section 2, eff May 22, 1989; 1989 Act No. 153, Section 1, eff June 8, 1989; 2013 Act No. 95, Section 1, eff July 1, 2013.
Editor's Note

2013 Act No. 95, Section 2, as amended by 2017 Act No. 68, Section 1, provides as follows:

"SECTION 2. This act takes effect July 1, 2017, and must be terminated five years after the effective date of the act unless otherwise authorized by the General Assembly. Beginning on July 1, 2014, and on each July first thereafter, the South Carolina Workers' Compensation Commission must report to the Chairman of House Ways and Means Committee, the Chairman of Senate Finance Committee, and the Governor the amount of money the agency has received in the previous fiscal year pursuant to this act."

SECTION 42-5-200. Employee shall not pay any portion of insurance, self-insurance fund, or other things required by title.

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

HISTORY: 1962 Code Section 72-421; 1952 Code Section 72-421; 1942 Code Section 7035-24; 1936 (39) 1231.

SECTION 42-5-210. Insurance carrier subrogated to rights of employer.

When any employer is insured against liability for compensation with any insurance carrier and such insurance carrier shall have paid any compensation for which the employer is liable or shall have assumed the liability of the employer therefor, it shall be subrogated to all the rights and duties of the employer and may enforce any such rights in its own name or in the name of the injured employee or his personal representative; provided, however, that nothing in this section shall be construed as conferring upon insurance carriers any other or further rights than those existing in the employer at the time of the injury to his employee, anything in the policy of insurance to the contrary notwithstanding.

HISTORY: 1962 Code Section 72-422; 1952 Code Section 72-422; 1942 Code Section 7035-11; 1936 (39) 1231.

SECTION 42-5-220. Compromises by carrier must be approved.

No compromise settlement shall be made by the insurance carrier in the exercise of its right of subrogation without the approval of the commission being first had and obtained.

HISTORY: 1962 Code Section 72-423; 1952 Code Section 72-423; 1942 Code Section 7035-11; 1936 (39) 1231.

SECTION 42-5-230. Manner in which notice to insurance carrier given.

Whenever by this chapter or the terms of any policy contract any officer is required to give any notice to an insurance carrier, such notice may be given by delivery or by mailing, by registered letter properly addressed and stamped, to the principal office or general agent of such insurance carrier within this State or to its home office or to the secretary, general agent or chief officer thereof in the United States or the Director of the Department of Insurance.

HISTORY: 1962 Code Section 72-424; 1952 Code Section 72-424; 1942 Code Section 7035-76; 1936 (39) 1231; 1937 (40) 613; 1960 (51) 1646.

SECTION 42-5-240. Penalties.

Any person who shall act or assume to act as agent for any such insurance carrier whose authority to do business in this State has been suspended, while such suspension remains in force, or shall neglect or refuse to comply with any of the provisions of Sections 42-5-110, 42-5-120, 42-5-140 and 42-5-150 obligatory upon such person or who shall wilfully make a false or fraudulent statement of the business or conditions of any such insurance carrier or a false or fraudulent return shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars or by imprisonment for not less than ten nor more than ninety days, or both such fine and imprisonment in the discretion of the court.

HISTORY: 1962 Code Section 72-425; 1952 Code Section 72-425; 1942 Code Section 7035-76; 1936 (39) 1231; 1937 (40) 613.

SECTION 42-5-250. Title not applicable to insurance for single catastrophe hazards.

This title shall not apply to policies of insurance against loss from explosion of boilers or flywheels or other similar single catastrophe hazards. But nothing contained in this section shall be construed to relieve the employer from liability for injury or death of an employee as a result of such explosion or catastrophe.

HISTORY: 1962 Code Section 72-426; 1952 Code Section 72-426; 1942 Code Section 7035-75; 1936 (39) 1231.

CHAPTER 7
Funds

ARTICLE 1
State Accident Fund

SECTION 42-7-10. Establishment of State Accident Fund; contents.

(A) There is established as a separate agency of state government a separate fund to be known as the State Accident Fund, hereinafter referred to as the "fund" or "state fund" in this article. This fund consists of annual premium charges, recoveries from the Second Injury Fund, recoveries by subrogation and, subject to subsection (B), of all income or revenue derived from investing these funds. Receipts for the credit of the fund and expenditures from the fund must be handled in the manner provided by law governing all state funds.

(B) One-third of the investment income generated in Fiscal Year 1990-91 and two-thirds of the income generated in Fiscal Year 1991-92 must be credited to the state fund in those years respectively. Thereafter all such income must be credited to the state fund except that the State Treasurer may charge the state fund, and credit to the general fund, the customary investment management fee.

HISTORY: 1962 Code Section 72-451; 1952 Code Section 72-451; 1947 (45) 147; 1974 (58) 2237; 1989 Act No. 189, Part II, Section 22A, eff June 8, 1989 (became law without the Governor's signature); 1993 Act No. 181, Section 987, eff July 1, 1993.

Editor's Note

1993 Act No. 181, Section 996, eff July 1, 1993, provides as follows:

"SECTION 996. Upon the effective date of this act, the State Workers' Compensation Fund shall be known as the State Accident Fund, and, other than as provided in Article 1, Chapter 7, Title 42 of the 1976 Code, Section 42-7-10 through Section 42-7-100 of this act, any other reference which may be contained in the 1976 Code of Laws or other statutes to the 'State Workers' Compensation Fund' shall be deemed to mean, and shall be changed to, the 'State Accident Fund'."

SECTION 42-7-20. Administration of fund; director.

The State Accident Fund shall be administered by a director appointed by the Governor for a term of six years with the advice and consent of the Senate. The administration shall provide for employment of office and field personnel necessary for the proper conduct of the business of the fund, to the extent of appropriations therefor, including the determination of the amount of and the collection of annual charges, the issuance of certificates of compliance with this article, the investigation of claims, the adjustment and payment of claims and awards, the inspection of risks, study and investigation with respect to safety provisions with recommendations to employers as to means of preventing injuries, medical examination of employees, and the prosecution of subrogation rights against any third party. The director may inspect and audit records of employers for the purpose of determining or verifying the amount of annual charges against such employers.

HISTORY: 1962 Code Section 72-452; 1952 Code Section 72-452; 1947 (45) 147; 1974 (58) 2237; 1980 Act No. 509, Section 1; 1993 Act No. 181, Section 988, eff July 1, 1993.

SECTION 42-7-30. Legal representation for fund; extra legal services; fees and expenses.

Legal representation for the State Accident Fund shall be provided by a chief counsel and such staff attorneys as are necessary appointed by the director of the fund with the approval of the Attorney General. Any extra legal services that may be required must be performed by attorneys selected by the director also with the approval of the Attorney General. Fees and expenses for nonstaff attorneys must be approved by the director.

HISTORY: 1962 Code Section 72-453; 1952 Code Section 72-453; 1947 (45) 147; 1980 Act No. 509, Section 2; 1993 Act No. 181, Section 989, eff July 1, 1993.

SECTION 42-7-40. Application to State.

This article shall apply to the State including the State Guard and the National Guard.

HISTORY: 1962 Code Section 72-454; 1952 Code Section 72-454; 1947 (45) 147; 1993 Act No. 181, Section 990, eff July 1, 1993.

SECTION 42-7-50. Subdivisions of State; optimal participation.

Any county or municipality in the State or any agency or institution thereof shall have the option of participating under the provisions of this article but no county, municipality, agency or institution thereof shall be covered by the workers' compensation insurance provided in this article until payment of the annual charge provided in this title shall have been made to the fund, nor shall any county, municipality, agency or institution thereof be covered by this insurance after the lapse of the period for which the annual charge has been paid. The director shall notify each county, municipality, agency or institution thereof at least thirty days before the expiration date of its coverage in order that the county, municipality, agency, or institution may keep its insurance in force continuously.

HISTORY: 1962 Code Section 72-455; 1952 Code Section 72-455; 1947 (45) 147; 1974 (58) 2237.

SECTION 42-7-60. Officers and employees covered by article.

Notwithstanding anything to the contrary contained in Section 42-1-130, the provisions of this article apply to all officers and employees of the State and of any county, municipality, or other political subdivision thereof or any agency or institution of the State which has elected to participate under this article under the provisions of Section 42-7-50.

In cases of officers or employees who are on a partial or total fee basis or whose official duties require only part time the director may fix, for the purpose of this article, the average weekly wage of this officer or employee, not in excess of forty dollars and collect charges from the employer of this officer or employee on the basis of the average weekly wage so fixed.

Any client of the state agency of Vocational Rehabilitation Department, while involved in a program of assessment or work adjustment as defined in this section, who suffers an injury for which compensation is specifically prescribed in this title, may be awarded and paid compensation under the provisions of this title. For purposes of this section, "a client involved in a program of assessment or work adjustment" is defined as any client performing work tasks which are part of the program of Vocational Rehabilitation services for the individual and who in turn receives wage payments from the agency for the work performed.

Students of high schools, state technical schools, and state-supported colleges and universities while engaged in work study, distributive education, or apprentice programs on the premises of private companies are also covered by the provisions of this title.

HISTORY: 1962 Code Section 72-456; 1952 Code Section 72-456; 1947 (45) 147; 1974 (58) 2237; 1982 Act No. 275; 1984 Act No. 424, Section 2.

SECTION 42-7-65. Average weekly wage designated for certain categories of employees.

Notwithstanding the provisions of Section 42-1-40, for the purpose of this title and while serving in this capacity, the total average weekly wage of the following categories of employees is the following:

(1) for all members of the State and National Guard, regardless of rank, seventy-five percent of the average weekly wage in the State for the preceding fiscal year, or the average weekly wage the service member would be entitled to, if any, if injured while performing his civilian employment, if the average weekly wage in his civilian employment is greater;

(2) for all voluntary firemen of organized voluntary rural fire units and voluntary municipal firemen, thirty-seven and one-half percent of the average weekly wage in the State for the preceding fiscal year;

(3) for all members of organized volunteer rescue squads, thirty-seven and one-half percent of the average weekly wage in the State for the preceding fiscal year;

(4) for all volunteer deputy sheriffs, thirty-seven and one-half percent of the average weekly wage in the State for the preceding fiscal year; and

(5) for all volunteer state constables appointed pursuant to Section 23-1-60, while performing duties in connection with their appointments and authorized by the State Law Enforcement Division, thirty-seven and one-half percent of the average weekly wage in the State for the preceding fiscal year.

The wages provided in items (2), (3), (4), and (5) of this section may not be increased as a basis for any computation of benefits because of employment other than as a volunteer. Persons in the categories provided by items (2), (3), (4), and (5) must be notified of the limitation on average weekly wages prescribed in this section by the authority responsible for obtaining coverage under this title.

"Volunteer firemen" and "rescue squad members" mean members of organized units whose membership is certified to the municipal clerk or chairman of the council of the municipality or county in which their unit is based by the chief officer of the unit concerned. A "volunteer deputy sheriff" is a volunteer whose membership is certified by the sheriff to the governing body of the county. No volunteer deputy sheriff may be included under the provisions of this title unless approved by the governing body of the county or municipality. A voluntary constable appointed pursuant to Section 23-1-60 must be included under the provisions of this title only while performing duties in connection with his appointment and as authorized by the State Law Enforcement Division. The workers' compensation premiums for these constables must be paid from the state general fund upon warrant of the Chief of the State Law Enforcement Division. Notwithstanding any other provision of law, voluntary firemen of organized volunteer fire units and members of organized volunteer rescue squads are covered under this title by the county governing body unless the governing body of the county opts out of the coverage.

The average weekly wage for inmates of the State Department of Corrections as defined in Section 42-1-480 is forty dollars a week. However, the average weekly wage for an inmate who works in a federally approved Prison Industries Enhancement Certification Program must be based upon the inmate's actual net earnings after any statutory reductions. The average weekly wage for county and municipal prisoners is forty dollars a week. The average weekly wage for students of high schools, state technical schools, and state-supported colleges and universities while engaged in work study, marketing education, or apprentice programs on the premises of private companies or while engaged in the Tech Prep or other structured school-to-work programs on the premises of a sponsoring employer is fifty percent of the average weekly wage in the State for the preceding fiscal year.

HISTORY: 1983 Act No. 33 Section 2; 1983 Act No. 92 Section 4; 1984 Act No. 424, Section 3; 1985 Act No. 174, Section 2, eff June 24, 1985; 1991 Act No. 16, Section 2, eff April 9, 1991; 1996 Act No. 259, Section 2, eff April 1, 1996; 1998 Act No. 419, Part II, Section 24A, eff July 1, 1998; 2002 Act No. 339, Section 38, eff July 2, 2002; 2005 Act No. 80, Section 1, eff upon approval (became law without the Governor's signature on May 31, 2005); 2005 Act No. 98, Section 2, eff June 1, 2005; 2010 Act No. 219, Section 1, eff June 7, 2010.

SECTION 42-7-67. Benefits for State and National Guard members.

For members of the South Carolina State and National Guard injured while so employed, the extent, duration, and termination of disability and medical benefits under this title must be determined by reference to the member's civilian employment, if any, without considering the member's military position. If the member does not have civilian employment, reference may be made to the member's military position.

HISTORY: 1985 Act No. 174, Section 3, eff June 24, 1985; 1990 Act No. 612, Part II, Section 15A, eff June 13, 1990 (became law without the Governor's signature); 1996 Act No. 451, Section 3, eff June 18, 1996.

SECTION 42-7-70. Rates and premiums.

The rates and premiums paid by employers insured in the fund must not be excessive, inadequate, or unfairly discriminatory. Employers may be grouped by classifications for the establishment of rates and minimum premiums, and classification rates may be modified to produce rates for individual employers in accordance with rating laws which establish standards for measuring any variations in hazards or expense provisions, or both, that can be demonstrated to have a probable effect upon losses or expenses. All premiums collected by the fund must be deposited by it in the State Treasurer to the credit of the State Accident Fund.

HISTORY: 1962 Code Section 72-457; 1952 Code Section 72-457; 1947 (45) 147; 1974 (58) 2237; 1993 Act No. 181, Section 991, eff July 1, 1993.

SECTION 42-7-75. State agencies required to pay workers' compensation premiums; State Treasurer's duties as to state accident fund.

All state agencies shall pay workers' compensation premiums according to Section 42-7-70, as determined by the State Accident Fund. Calculation of premiums for the Adjutant General's Office must exclude losses arising out of service as a member of the South Carolina State and National Guard. In lieu of premiums for those losses the Adjutant General shall pay, at the beginning of each premium year, the amount estimated by the fund to be required to cover actual workers' compensation benefits to guard members during the premium year. If the amount actually paid as benefits differs from the estimated pay out advanced under this paragraph, the difference must be debited or credited to the Adjutant General's account in the same manner that an actual adjusted premium is handled.

The State Treasurer and the Comptroller General shall pay from the general fund of the State to the State Accident Fund any necessary funds to cover actual benefit claims paid during any fiscal year, which exceed the amounts paid in for this purpose by the various agencies, departments, and institutions. The State Accident Fund shall certify quarterly to the State Fiscal Accountability Authority the state's liability for the benefit claims actually paid to claimants who are employees of any agency or political subdivision of this State and who are entitled to such payment under state law. The amount certified must be remitted to the State Accident Fund.

If there are not sufficient funds in the State Accident Fund Trust Account to pay operating expenses and claims as they arise, the State Treasurer shall, from the general fund of the State, deposit in the account monthly sufficient funds to pay expenses and claims required by law to be paid, but the amount deposited may not exceed the amount of investment income which the account would have earned from its inception if all such earnings had been credited to the fund.

HISTORY: 1987 Act No. 170, Part II, Section 35, eff June 22, 1987 (became law without Governor's signature); 1989 Act No. 189, Part II, Section 22B(2), eff June 8, 1989 (became law without the Governor's signature); 1990 Act No. 612 Part II, Section 15B (became law on June 13, 1990, without the Governor's signature), applicable to claims occurring after June 30, 1985; 1993 Act No. 181, Section 992, eff July 1, 1993.

Code Commissioner's Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

Editor's Note

1989 Act No. 189, Part II, Section 22B(1), effective June 8, 1989 provides as follows:

"The purpose and effect of the amendment to Section 42-7-75 of the 1976 Code contained in item (2) of this subsection is to continue the state's guarantee for that portion of any reserve deficiency which is attributable to failure to credit investment income to the State Fund Trust Account and also to provide that

the State Workers' Compensation Fund must operate solely on revenue derived from operations, including investment income, in the future."

1990 Act No. 612, Part II, Section 15E, effective June 13, 1990, became law without the Governor's signature, provides as follows:

"SECTION 15E. The amendment to Section 42-7-75 of the 1976 Code, as contained in Subsection B. of this section, applies to claims occurring after June 30, 1985."

SECTION 42-7-80. Payment of awards; notice of intention to contest award.

When awards under this article are made by the commission, the commission shall transmit to the director of the fund an official copy of such award, which shall contain the name of the claimant or beneficiary, an itemized statement of the payments to be made and such other information as may be necessary to constitute a full record of the case. Upon receipt of such official award the director of the fund, if he approves the award, shall forward an official copy thereof to the Comptroller General who shall issue his warrant upon the State Treasurer in payment of the claim and retain the award as his voucher therefor. If the director intends to litigate or otherwise contest the award, he shall notify the commission of such intention.

HISTORY: 1962 Code Section 72-458; 1952 Code Section 72-458; 1947 (45) 147; 1974 (58) 2237.

SECTION 42-7-90. Expenditures from fund.

From the State Accident Fund the following expenditures are authorized:

(1) for the payment of any award under this article made by the commission in connection with accidental injury or death of any official or employee of the State, any county or municipality therein, any political subdivision thereof or any agency or institution of the State or a county, municipality, or political subdivision thereof participating hereunder; or

(2) any other expenses authorized by law or approved by the State Fiscal Accountability Authority.

HISTORY: 1962 Code Section 72-459; 1952 Code Section 72-459; 1947 (45) 147; 1976 Act No. 709 Part II Section 21; 1978 Act No. 628; 1993 Act No. 181, Section 993, eff July 1, 1993.

Code Commissioner's Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

SECTION 42-7-100. Fund director may insure liability.

The fund director may, with the approval of the State Fiscal Accountability Authority, carry in a reliable insurance company or companies, such portion of the insurance liability as may be deemed advantageous.

HISTORY: 1962 Code Section 72-460; 1952 Code Section 72-460; 1947 (45) 147; 1974 (58) 2237.

Code Commissioner's Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

SECTION 42-7-200. Workers' Compensation Uninsured Employers' Fund; claims; collection powers; reimbursement agreements; funding.

(A)(1) There is hereby established, within the office of the Second Injury Fund, the South Carolina Workers' Compensation Uninsured Employers' Fund. This fund is created to ensure payment of workers' compensation benefits to injured employees whose employers have failed to acquire necessary coverage for employees in accordance with provisions of this section. The fund must be administered by the Director

of the Second Injury Fund, who shall establish procedures to implement this section, until June 30, 2013. Effective July 1, 2013, all functions within the Second Injury Fund related to the Uninsured Employers' Fund, including all allied, advisory, affiliated, or related entities, as well as the employees, funds, property, and all contractual rights and obligations associated with the Uninsured Employers' Fund, is transferred to the South Carolina Workers' Compensation Uninsured Employers' Fund, and all powers, duties, obligations, and responsibilities of the Second Injury Fund that relate to the Uninsured Employers' Fund are devolved upon the South Carolina Workers' Compensation Uninsured Employers' Fund in accordance with the State Budget and Control Board's plan for the closure of the Second Injury Fund. This item is effective until July 1, 2013.

(2) There is hereby established, within the office of the State Accident Fund, the South Carolina Workers' Compensation Uninsured Employers' Fund. This fund is created to ensure payment of workers' compensation benefits to injured employees whose employers have failed to acquire necessary coverage for employees in accordance with provisions of this section. The fund must be administered by the Director of the State Accident Fund, who shall establish procedures to implement this section. This item is effective as of July 1, 2013.

(B) When an employee makes a claim for benefits pursuant to Title 42 and the State Workers' Compensation Commission determines that the employer is subject to Title 42 and is operating without insurance or as an unqualified self-insurer, the commission shall notify the fund of the claim. The fund shall pay or defend the claim as it considers necessary in accordance with the provisions of Title 42.

(C) When the fund is notified of a claim, the fund may place a lien on the assets of the employer by way of *lis pendens* or otherwise so as to protect the fund from payments of costs and benefits. If the fund is required to incur costs or expenses or to pay benefits, the fund has a lien against the assets of the employer to the full extent of all costs, expenses, and benefits paid and may file notice of the lien with the clerk of court or register of deeds of any county in which the employer has assets in the same manner as the filing of South Carolina tax liens and with the Secretary of State in the same manner as utilized under Title 36 (Uniform Commercial Code). Any of the employer's assets sold or conveyed during the litigation of the claim must be sold or conveyed subject to the lien.

(D) The fund has all rights of attachment set forth in Section 15-19-10 and has the right to proceed otherwise in the collection of its lien in the same manner as the Department of Revenue is allowed to enforce a collection of taxes generally pursuant to Section 12-49-10, et seq. When all benefits due the claimant, as well as all expenses and costs of litigation, have been paid, the fund shall file notice of the total of all monies paid with the clerk of court in any county in which the employer has assets and with the Secretary of State. This notice constitutes a judgment against the employer and has priority as a first lien in the same manner as liens of the Department of Revenue, subject only to the lien of the Department of Revenue pursuant to Section 12-49-10, et seq. If the employer files for bankruptcy or otherwise is placed into receivership, the fund becomes a secured creditor to the assets of the employer in the same manner as the Department of Revenue has priority for unpaid taxes, subject only to the lien of the Department of Revenue. The fund otherwise has all rights and remedies afforded the Department of Revenue as set forth in Section 12-54-10, et seq.

(E) Nothing in this section precludes the South Carolina Workers' Compensation Uninsured Employers' Fund from entering into an agreement for the reimbursement of expenses, costs, or benefits paid by the fund. If an agreement is entered into subsequent to the filing of a lien, the lien may be canceled by the fund. Provided, however, an agreement between the fund and an employer under this section may provide that in the event the employer breaches the terms or conditions of the agreement, the fund may file or reinstate a lien, as the case may be. For purposes of this section, the term "costs" includes reasonable administrative costs which must be set by the director of the fund, subject to the approval of the Workers' Compensation Commission.

(F) To establish and maintain the South Carolina Workers' Compensation Uninsured Employers' Fund, there must be earmarked from the collections of the tax on insurance carriers and self-insured persons provided for in Sections 38-7-50 and 42-5-190 an amount sufficient to establish and annually maintain the fund at a level of not less than two hundred thousand dollars. In addition, the State Treasurer may deposit

to the account of the fund monies authorized to be paid to the Workers' Compensation Commission under Section 42-9-140 upon determination additional funds are needed for the operation of the fund.

(G) When an employee makes a claim for benefits pursuant to Title 42 and the records of the South Carolina Workers' Compensation Commission indicate that the employer is operating without insurance, the South Carolina Workers' Compensation Uninsured Employers' Fund or any person designated by the director may subpoena the employer or its agents and require the production of any documents or records which the fund considers relevant to its investigation of the claim. The subpoena shall be returnable at the office of the fund or any place designated by it. In the case of refusal to obey a subpoena issued to any person or agent of any employer, a court of common pleas upon application of the fund may issue an order requiring the person or agent of an employer to appear at the fund and produce documentary evidence or give other evidence concerning the matter under inquiry.

HISTORY: 1982 Act No. 286; 1987 Act No. 155, Section 22, eff January 1, 1988; 1989 Act No. 54, Section 1, eff April 24, 1989; 1990 Act No. 589, Section 2, eff June 12, 1990; 1993 Act No. 181, Section 994, eff July 1, 1993; 1994 Act No. 459, Section 1, eff June 16, 1994; 2007 Act No. 111, Pt II, Section 4, eff July 1, 2007, applicable to injuries that occur on or after that date.

Editor's Note

2007 Act No. 111, Part II Section 4, provides that paragraph (A)(1) is effective until July 1, 2013, and that paragraph (A)(2) takes effect July 1, 2013.

SECTION 42-7-210. Transfers from general fund to State Accident Fund authorized.

Notwithstanding the amounts annually appropriated as Workers' Compensation Insurance to cover Workers' Compensation benefit claims paid to employees of the state government who are entitled under state law, the State Treasurer and the Comptroller General are hereby authorized and directed to pay from the general fund of the State to the State Accident Fund such funds as are necessary to cover actual benefit claims paid and expenses relating to the operations of the agency during the current fiscal year which exceed the amounts paid in for this purpose by the various agencies, departments, and institutions. The State Accident Fund must certify quarterly to the State Fiscal Accountability Authority the state's liability for such benefit claims actually paid to claimants who are employees of the State of South Carolina and entitled under state law. The amount so certified must be remitted to the State Accident Fund.

HISTORY: 2002 Act No. 356, Section 1, Pt IX.K, eff July 1, 2002.

Code Commissioner's Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

ARTICLE 3 Second Injury Fund

SECTION 42-7-310. Establishment, purpose, administration, funding and staff of Second Injury Fund.

(a) There is hereby established, under the Budget and Control Board, the Second Injury Fund for the purpose of making payments in accordance with the provisions of Section 42-9-400, Section 42-9-410, and this section. The fund shall be administered by a director appointed by the State Budget and Control Board. The State Treasurer shall be the custodian of the fund, and all monies and securities in the fund shall be held in a separate and distinct trust account by the State Treasurer.

(b) Disbursements from the fund shall be made with the approval of the director by forwarding a disbursement voucher, along with an itemized statement of payments and such other information as may be necessary to justify payment, to the Comptroller General who shall issue his warrant upon the State Treasurer in payment of the disbursement request.

Agreements to reimburse an employer or his carrier for compensation or medical benefits as provided in Section 42-9-400 or 42-9-410 shall be forwarded to the commission for approval. If approved and unappealed, such agreements shall be binding in the same manner as other orders, decisions, or awards of the commission.

When awards are made under Section 42-9-400 or 42-9-410 by the commission, it shall transmit to the director of the fund an official copy of such awards which shall contain the name of the employer, carrier, and employee to whom benefits were originally paid, an itemized statement of payments, and such other information as may be necessary to constitute a full record of the case. Upon the receipt of such official award, the director of the fund, if he approves the award, shall forward a disbursement voucher, along with an official copy, to the Comptroller General who shall issue his warrant upon the State Treasurer in payment of the claim. If the director intends to litigate or otherwise contest the award, he shall notify the commission of such intention. Any questions or controversies arising under this subsection shall be decided by the commission in the procedural manner now provided under this title.

(c) The original funding of the Second Injury Fund shall be in a manner as follows:

(1) From the State Accident Fund, the State Treasurer is hereby authorized and directed to transfer one hundred thousand dollars to be deposited in the Second Injury Fund.

(2) The State Treasurer is hereby authorized and directed to deposit in the Second Injury Fund one third of the workers' compensation premium tax.

(3) The State Treasurer shall deposit to the account of the Second Injury Fund the money authorized paid to the Workers' Compensation Commission under Section 42-9-140.

(d) The funding of the Division of the Second Injury Fund on a continuing basis is by:

(1) deposits to the account of the fund by the State Treasurer of those monies authorized to be paid to the Workers' Compensation Commission under Section 42-9-140;

(2) equitable assessments upon each carrier which, as used in this section, includes all insurance carriers, self-insurers, and the State Accident Fund. Each carrier shall make payments to the fund in an amount equal to that proportion of one hundred thirty-five percent of the total disbursement made from the fund during the preceding fiscal year less the amount of net assets in the fund as of June thirtieth of the preceding fiscal year which the normalized premium of each carrier bore to the normalized premium of all carriers during the preceding calendar year. Each insurance carrier, self-insurer, and the State Accident Fund shall make payment based upon workers' compensation normalized premiums during the preceding calendar year. The charge to each insurance carrier is a charge based upon normalized premiums. An employer who has ceased to be a self-insurer shall continue to be liable for any assessments into the fund on account of any benefits paid by him during such calendar year. Any assessment levied or established in accordance with this section constitutes a personal debt of every employer or insurance carrier so assessed and is due and payable to the Second Injury Fund when payment is called for by the fund. In the event of failure to pay any assessment upon the date determined by the fund, the employer or insurance carrier immediately may be assessed a penalty in an amount not exceeding ten percent of the unpaid assessment. If the employer or insurance carrier fails to pay the assessment and penalty, they shall be barred from any recovery from the fund on all claims without exception until the assessment and penalty are paid in full. The director may file a complaint for collection against the employer or insurance carrier in a court of competent jurisdiction for the assessment, penalty, and interest at the legal rate, and the employer/carrier is responsible for attorney's fees and costs. The penalty and interest under this subsection are payable to the Second Injury Fund. At the time of the filing of the complaint, the fund also shall notify the South Carolina Department of Insurance and the South Carolina Workers' Compensation Commission, and these government agencies shall take the appropriate legal and administrative action immediately; and

(3) "Normalized premium" is defined as gross paid losses before salvage and subrogation times a factor representing normalized expenses. Normalized expenses include taxes, licenses, fees, general expenses, profit, contingencies, and other expenses as reported on the Insurance Expense Exhibit of the NAIC Annual Statement blank. This normalized expense factor shall be computed annually by the Workers' Compensation Commission by August first of each year and must be based upon aggregate expense

information obtained from the Department of Insurance derived from insurers' most recently filed annual statements.

(e) The director shall be authorized to employ necessary staff for administering the fund, and the monies necessary for administration of the fund shall be paid out of the fund. In furtherance of this purpose, the Attorney General shall appoint a member of his staff to represent the fund in all proceedings brought to enforce claims against the fund.

HISTORY: 1962 Code Section 72-602; 1972 (57) 2578; 1973 (58) 623; 1974 (58) 2237; 1976 Act No. 615; 1977 Act No. 24 Section 1; 1982 Act No. 276; 1988 Act No. 295, eff February 2, 1988; 1993 Act No. 181, Section 995, eff July 1, 1993; 2000 Act No. 364, Section 1, eff June 14, 2000; 2003 Act No. 73, Section 21, eff June 25, 2003; 2007 Act No. 111, Pt II, Section 2, eff July 1, 2007, applicable to injuries that occur on or after that date.

Code Commissioner's Note

At the direction of the Code Commissioner, reference in this section to the former Budget and Control Board has not been changed pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), until further action by the General Assembly.

SECTION 42-7-320. Termination of Second Injury Fund; schedule.

(A) Except as otherwise provided in this section, on and after July 1, 2013, the programs and appropriations of the Second Injury Fund are terminated. The State Fiscal Accountability Authority must provide for the efficient and expeditious closure of the fund with the orderly winding down of the affairs of the fund so that the remaining liabilities of the fund are paid utilizing assessments, accelerated assessments, annuities, loss portfolio transfers, or such other mechanisms as are reasonably determined necessary to fund any remaining liabilities of the fund. The Department of Insurance and the Workers' Compensation Commission may submit comments and suggestions to be considered by the State Fiscal Accountability Authority in planning for the closure of the fund. The State Fiscal Accountability Authority shall cause all necessary actions to be taken to provide appropriate staffing of the fund until such time as the staff services are no longer required to administer the obligations of the fund. The fund's administrative costs, including employee salaries and benefits, shall be paid from the Second Injury Fund Trust if the interest from the trust becomes insufficient to pay these obligations.

(B) After December 31, 2011, the Second Injury Fund shall not accept a claim for reimbursement from any employer, self-insurer, or insurance carrier. The fund shall not consider a claim for reimbursement for an injury that occurs on or after July 1, 2008.

(1) An employer, self-insurer, or insurance carrier must notify the Second Injury Fund of a potential claim by December 31, 2010. Failure to submit notice by December 31, 2010, shall bar an employer, self-insurer, or insurance carrier from recovery from the fund.

(2) An employer, self-insurer, or insurance carrier must submit all required information for consideration of accepting a claim to the Second Injury Fund by June 30, 2011. Failure to submit all required information to the fund by June 30, 2011, so that the claim can be accepted, compromised, or denied shall bar an employer, self-insurer, or insurance carrier from recovery from the fund.

(3) Insurance carriers, self-insurers, and the State Accident Fund remain liable for Second Injury Fund assessments, as determined by the State Fiscal Accountability Authority, in order to pay accepted claims. The fund shall continue reimbursing employers and insurance carriers for claims accepted by the fund on or before December 31, 2011.

HISTORY: 2007 Act No. 111, Pt II, Section 5, eff July 1, 2007, applicable to injuries that occur on or after that date.

Code Commissioner's Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer

of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

CHAPTER 9

Compensation and Payment

SECTION 42-9-5. Basis for award.

Any award made pursuant to this title must be based upon specific and written detailed findings of fact substantiating the award.

HISTORY: 2007 Act No. 111, Pt I, Section 16, eff July 1, 2007, applicable to injuries that occur on or after that date.

SECTION 42-9-10. Amount of compensation for total disability; what constitutes total disability.

(A) When the incapacity for work resulting from an injury is total, the employer shall pay, or cause to be paid, as provided in this chapter, to the injured employee during the total disability a weekly compensation equal to sixty-six and two-thirds percent of his average weekly wages, but not less than seventy-five dollars a week so long as this amount does not exceed his average weekly salary; if this amount does exceed his average weekly salary, the injured employee may not be paid, each week, less than his average weekly salary. The injured employee may not be paid more each week than the average weekly wage in this State for the preceding fiscal year. In no case may the period covered by the compensation exceed five hundred weeks except as provided in subsection (C).

(B) The loss of both hands, arms, shoulders, feet, legs, hips, or vision in both eyes, or any two thereof, constitutes total and permanent disability to be compensated according to the provisions of this section.

(C) Notwithstanding the five-hundred-week limitation prescribed in this section or elsewhere in this title, any person determined to be totally and permanently disabled who as a result of a compensable injury is a paraplegic, a quadriplegic, or who has suffered physical brain damage is not subject to the five-hundred-week limitation and shall receive the benefits for life.

(D) Notwithstanding the provisions of Section 42-9-301, no total lump sum payment may be ordered by the commission in any case under this section where the injured person is entitled to lifetime benefits.

HISTORY: 1962 Code Section 72-151; 1952 Code Section 72-151; 1942 Code Sections 7035-32, 7035-34; 1936 (39) 1231; 1937 (40) 613; 1941 (42) 221; 1953 (48) 103; 1966 (54) 2753; 1972 (57) 2339; 1974 (58) 2265; 1976 Act No. 532 Section 3; 1978 Act No. 500 Section 1; 1984 Act No. 417; 1986 Act No. 389, eff April 29, 1986; 2007 Act No. 111, Pt I, Section 17, eff July 1, 2007, applicable to injuries that occur on or after that date.

SECTION 42-9-20. Amount of compensation for partial disability.

Except as otherwise provided in Section 42-9-30, when the incapacity for work resulting from the injury is partial, the employer shall pay, or cause to be paid, as provided in this chapter, to the injured employee during such disability a weekly compensation equal to sixty-six and two-thirds percent of the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter, but not more than the average weekly wage in this State for the preceding fiscal year. In no case shall the period covered by such compensation be greater than three hundred forty weeks from the date of injury. In case the partial disability begins after a period of total disability, the latter period shall not be deducted from a maximum period allowed in this section for partial disability.

HISTORY: 1962 Code Section 72-152; 1952 Code Section 72-152; 1942 Code Section 7035-33; 1936 (39) 1231; 1937 (40) 613; 1953 (48) 103; 1966 (54) 2753; 1972 (57) 2339; 1974 (58) 2265; 1976 Act No. 532 Section 4; 1977 Act No. 70.

SECTION 42-9-30. Schedule of period of disability and compensation.

In cases included in the following schedule, the disability in each case is considered to continue for the period specified and the compensation paid for the injury is as specified:

- (1) for the loss of a thumb sixty-six and two-thirds percent of the average weekly wages during sixty-five weeks;
- (2) for the loss of a first finger, commonly called the index finger, sixty-six and two-thirds percent of the average weekly wages during forty weeks;
- (3) for the loss of a second finger, sixty-six and two-thirds percent of the average weekly wages during thirty-five weeks;
- (4) for the loss of a third finger, sixty-six and two-thirds percent of the average weekly wages during twenty-five weeks;
- (5) for the loss of a fourth finger, commonly called the little finger, sixty-six and two-thirds percent of the average weekly wages during twenty weeks;
- (6) the loss of the first phalange of the thumb or any finger is considered to be equal to the loss of one half of such thumb or finger and the compensation must be for one half of the periods of time above specified;
- (7) the loss of more than one phalange is considered the loss of the entire finger or thumb; provided, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand;
- (8) for the loss of a great toe, sixty-six and two-thirds percent of the average weekly wages during thirty-five weeks;
- (9) for the loss of one of the toes other than a great toe, sixty-six and two-thirds percent of the average weekly wages during ten weeks;
- (10) the loss of the first phalange of any toe is considered to be equal to the loss of one half of such toe and the compensation must be for one half the periods of time above specified;
- (11) the loss of more than one phalange is considered as the loss of the entire toe;
- (12) for the loss of a hand, sixty-six and two-thirds percent of the average weekly wages during one hundred and eighty-five weeks;
- (13) for the loss of an arm, sixty-six and two-thirds percent of the average weekly wages during two hundred twenty weeks;
- (14) for the loss of a shoulder, sixty-six and two-thirds percent of the average weekly wages during three hundred weeks;
- (15) for the loss of a foot, sixty-six and two-thirds percent of the average weekly wages during one hundred forty weeks;
- (16) for the loss of a leg, sixty-six and two-thirds percent of the average weekly wages during one hundred ninety-five weeks;
- (17) for the loss of a hip, sixty-six and two-thirds percent of the average weekly wages during two hundred eighty weeks;
- (18) for the loss of an eye, sixty-six and two-thirds percent of the average weekly wages during one hundred forty weeks;
- (19) for the complete loss of hearing in one ear, sixty-six and two-thirds percent of the average weekly wages during eighty weeks; and for the complete loss of hearing in both ears, sixty-six and two-thirds percent of the average weekly wages during one hundred sixty-five weeks, and the commission, by regulation, shall provide for the determination of proportional benefits for total or partial loss of hearing based on accepted national medical standards;
- (20) total loss of use of a member or loss of vision of an eye is considered as equivalent to the loss of the member or eye. The compensation for partial loss of or for partial loss of use of a member or for partial loss of vision of an eye is the proportion of the payments provided in this section for total loss as such partial loss bears to total loss;
- (21) for the loss of use of the back in cases where the loss of use is forty-nine percent or less, sixty-six and two-thirds percent of the average weekly wages during three hundred weeks. In cases where there is fifty percent or more loss of use of the back, sixty-six and two-thirds percent the average weekly wages during five hundred weeks. The compensation for partial loss of use of the back shall be such proportions of the periods of payment herein provided for total loss as such partial loss bears to total loss, except that

in cases where there is fifty percent or more loss of use of the back the injured employee shall be presumed to have suffered total and permanent disability and compensated under Section 42-9-10(B). The presumption set forth in this item is rebuttable;

(22) for the total or partial loss of, or loss of use of, a member, organ, or part of the body not covered in this section and not covered under Section 42-9-10 or 42-9-20, sixty-six and two-thirds of the average weekly wages not to exceed five hundred weeks. The commission, by regulation, shall prescribe the ratio which the partial loss or loss or partial loss of use of a particular member, organ, or body part bears to the whole man, basing these ratios on accepted medical standards and these ratios determine the benefits payable under this subsection;

(23) proper and equitable benefits must be paid for serious permanent disfigurement of the face, head, neck, or other area normally exposed in employment, not to exceed fifty weeks. Where benefits are paid or payable for injury to or loss of a particular member or organ under other provisions of this title, additional benefits must not be paid under this item, except that disfigurement also includes compensation for serious burn scars or keloid scars on the body resulting from injuries, in addition to any other compensation.

The weekly compensation payments referred to in this section all are subject to the same limitations as to maximum and minimum as set out in Section 42-9-10.

HISTORY: 1962 Code Section 72-153; 1952 Code Section 72-153; 1942 Code Section 7035-34; 1936 (39) 1231; 1937 (40) 613; 1941 (42) 221; 1972 (57) 2339; 1974 (58) 2265; 1982 Act No. 343; 1988 Act No. 412, eff March 28, 1988; 2007 Act No. 111, Pt I, Section 18, eff July 1, 2007, applicable to injuries that occur on or after that date.

SECTION 42-9-35. Evidence of preexisting injury or condition.

(A) The employee shall establish by a preponderance of the evidence, including medical evidence, that:

- (1) the subsequent injury aggravated the preexisting condition or permanent physical impairment; or
- (2) the preexisting condition or the permanent physical impairment aggravates the subsequent injury.

(B) The commission may award compensation benefits to an employee who has a permanent physical impairment or preexisting condition and who incurs a subsequent disability from an injury arising out of and in the course of his employment for the resulting disability of the permanent physical impairment or preexisting condition and the subsequent injury. However, if the subsequent injury is limited to a single body part or member scheduled in Section 42-9-30, except for total disability to the back as provided in Section 42-9-30(21), the subsequent injury must impair or affect another body part or system in order to obtain benefits in addition to those provided for in Section 42-9-30.

(C) As used in this section, "medical evidence" means expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed health care provider.

(D) The provisions of this section apply whether or not the employer knows of the preexisting permanent disability.

(E) On and after the effective date of this section, an employee who suffers a subsequent injury which affects a single body part or member injury set forth in Section 42-9-30 is limited to the recovery set forth in that section.

HISTORY: 2007 Act No. 111, Pt I, Section 19, eff July 1, 2007, applicable to injuries that occur on or after that date.

SECTION 42-9-40. Compensation for hernia.

In all claims for compensation for hernia or rupture, resulting from injury by accident arising out of and in the course of the employee's employment, it must be definitely proven to the satisfaction of the commission that:

- (1) there was an injury resulting in hernia or rupture;
- (2) the hernia or rupture appeared suddenly;

- (3) it was accompanied by pain;
- (4) the hernia or rupture immediately followed an accident; and
- (5) the hernia or rupture did not exist prior to the accident for which compensation is claimed.

All hernia or rupture, inguinal, femoral or otherwise, so proven to be the result of an injury by accident arising out of and in the course of the employment shall be treated in a surgical manner by a radical operation. If death results from such operation, the death shall be considered as a result of the injury and compensation paid in accordance with the provisions of Section 42-9-290. In nonfatal cases if it is shown by special examination, as provided in Section 42-15-80, that the injured employee has a disability resulting after the operation, compensation for such disability shall be paid in accordance with the provisions of this title.

In case the injured employee refuses to undergo the radical operation for the cure of the hernia or rupture, no compensation will be allowed during the time such refusal continues. If, however, it is shown that the employee has some chronic disease or is otherwise in such physical condition that the commission considers it unsafe for the employee to undergo such operation, the employee shall be paid compensation in accordance with the provisions of this title.

HISTORY: 1962 Code Section 72-154; 1952 Code Section 72-154; 1942 Code Section 7035-2; 1936 (39) 1231.

SECTION 42-9-60. Injury or death occasioned by intoxication or wilful intention of employee; burden of proof.

No compensation shall be payable if the injury or death was occasioned by the intoxication of the employee or by the wilful intention of the employee to injure or kill himself or another. In the event that any person claims that the provisions of this section are applicable in any case, the burden of proof shall be upon such person.

HISTORY: 1962 Code Section 72-156; 1952 Code Section 72-156; 1942 Code Section 7035-15; 1936 (39) 1231; 2007 Act No. 111, Pt I, Section 20, eff July 1, 2007, applicable to injuries that occur on or after that date.

SECTION 42-9-90. Increase in compensation which is not paid when due.

If any installment of compensation payable in accordance with the terms of an agreement approved by the commission without an award is not paid within fourteen days after it becomes due, as provided in Section 42-9-230, or if any installment of compensation payable in accordance with the terms of an award by the commission is not paid within fourteen days after it becomes due, as provided in Section 42-9-240, there shall be added to such unpaid installment an amount equal to ten per cent thereof, which shall be paid at the same time as, but in addition to, such installment, unless such nonpayment is excused by the commission after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

HISTORY: 1962 Code Section 72-159; 1952 Code Section 72-159; 1942 Code Section 7035-21; 1936 (39) 1231.

SECTION 42-9-110. Persons conclusively presumed to be wholly dependent.

A surviving spouse or a child shall be conclusively presumed to be wholly dependent for support on a deceased employee.

HISTORY: 1962 Code Section 72-161; 1952 Code Section 72-161; 1942 Code Section 7035-42; 1936 (39) 1231; 1983 Act No. 92 Section 2.

SECTION 42-9-120. Determination and requirements of other cases of dependency.

In all other cases questions of dependency, in whole or in part, shall be determined in accordance with the facts as the facts may be at the time of the accident; but no allowance shall be made for any payment in lieu of board and lodging or services and no compensation shall be allowed unless dependency existed for a period of three months or more prior to the accident.

HISTORY: 1962 Code Section 72-162; 1952 Code Section 72-162; 1942 Code Section 7035-42; 1936 (39) 1231.

SECTION 42-9-130. Division of death benefit when there is more than one dependent.

If there is more than one person wholly dependent, the death benefit shall be divided among them and the persons partly dependent, if any, shall receive no part thereof. If there is no one wholly dependent and more than one person partially dependent, the death benefit shall be divided among them according to the relative extent of their dependency.

HISTORY: 1962 Code Section 72-163; 1952 Code Section 72-163; 1942 Code Section 7035-42; 1936 (39) 1231.

SECTION 42-9-140. Payment when deceased employee leaves no dependents or partial dependents.

(A) If the deceased employee leaves no dependents, the employer shall pay the commuted amounts provided for in Section 42-9-290 for whole dependents, less burial expenses which must be deducted from those commuted amounts, to his surviving nondependent children.

(B) If the deceased employee leaves no dependents or nondependent children, the employer shall pay the commuted amounts provided for in Section 42-9-290 for whole dependents, less burial expenses which must be deducted from those commuted amounts, to his father and mother, irrespective of age or dependency.

(C) If the deceased employee leaves a partial dependent or dependents as defined in Section 42-9-120, the employer shall pay compensation to those dependents, in accordance with Section 42-9-290, and the remainder of the commuted amounts provided for in Section 42-9-290, less burial expenses, which must be deducted from the commuted amounts, to his nondependent children. If no children survive the deceased employee, then the remainder must be paid to his father and mother, irrespective of age or dependency.

(D) If the deceased employee leaves no dependents or nondependent children or mother or father, then his employer shall pay to the deceased's personal representative the actual costs for burial expenses and the administration of the deceased's estate, and to the commission the commuted amounts provided for dependents under Section 42-9-290, to be expended in accordance with Section 42-9-400.

(E) If the deceased employee leaves partial dependents as defined in Section 42-9-120 and no children or mother or father, then his employer shall pay to that partial dependent in accordance with provisions found in Section 42-9-290 and shall pay to the deceased's personal representative the actual cost of burial expenses and the administration of the deceased's estate, and to the commission the remaining compensation, commuted as provided under Section 42-9-290, to be expended in accordance with Section 42-9-400.

(F) If amounts are payable to the mother and father of the deceased employee pursuant to subsections (B) and (C), upon the motion of either parent or any other potential party of interest based upon the decedent having died intestate, the commission may deny or limit either or both parent's entitlement for a share of the benefits if the commission determines, by a preponderance of the evidence, that the parent or parents failed to reasonably provide support for the decedent as defined in Section 63-5-20 and did not otherwise provide for the needs of the decedent during his or her minority.

(G) Payment as prescribed in this section releases the employer from all death benefit liability.

HISTORY: 1962 Code Section 72-165; 1952 Code Section 72-165; 1942 Code Section 7035-43; 1936 (39) 1231; 1944 (43) 1299; 1955 (49) 459; 1972 (57) 2339; 1974 (58) 2237; 1989 Act No. 58, Section 1, eff April 26, 1989; 1996 Act No. 370, Section 2, eff May 29, 1996.

SECTION 42-9-150. Employees with permanent disability or injury from service in Armed Forces or previous employment; entitlement to compensation; additional benefits.

If an employee has a permanent disability or has sustained a permanent injury that resulted from serving in the United States Armed Forces or in another employment other than that in which he receives a subsequent permanent injury by accident, such as specified in Section 42-9-30 or the second paragraph of Section 42-9-10, he shall be entitled to compensation only for the degree of disability which would have resulted from the later accident if the earlier disability or injury had not existed, except that such employee may receive further benefits if his subsequent injury qualifies for additional benefits under Section 42-9-35.

HISTORY: 1962 Code Section 72-166; 1952 Code Section 72-166; 1942 Code Section 7035-36; 1936 (39) 1231; 1974 (58) 2235; 2007 Act No. 111, Pt I, Section 21, eff July 1, 2007, applicable to injuries that occur on or after that date.

SECTION 42-9-160. Amount of compensation for employee injured while drawing compensation for previous disability in same employment.

If an employee receives an injury for which compensation is payable while he is still receiving or entitled to compensation for a previous injury in the same employment, he shall not at the same time be entitled to compensation for both injuries, unless the later injury be a permanent injury such as specified in Section 42-9-30 or the second paragraph of Section 42-9-10, but he shall be entitled to compensation for that injury and from the time of that injury which will cover the longest period and the largest amount payable under this title.

HISTORY: 1962 Code Section 72-167; 1952 Code Section 72-167; 1942 Code Section 7035-37; 1936 (39) 1231.

SECTION 42-9-170. Permanent injury after sustaining another permanent injury in same employment; entitlement to compensation; extension of period of payment.

(A) If an employee receives a permanent injury as specified in Section 42-9-30 or Section 42-9-10(B) after having sustained another permanent injury in the same employment, he is entitled to compensation for both injuries, but the total compensation must be paid by extending the period and not by increasing the amount of weekly compensation, and in no case exceeding five hundred weeks. If an employee previously has incurred permanent partial disability through the loss of a hand, arm, shoulder, foot, leg, hip, or eye and by subsequent accident incurs total permanent disability through the loss of another member, the employer's liability is for the subsequent injury only, except that the employee may receive further benefits as provided by Sections 42-7-310, 42-9-400, and 42-9-410 if his subsequent injury qualifies for additional benefits provided in those sections. This subsection is effective until June 30, 2008.

(B) If an employee receives a permanent injury as specified in Section 42-9-30 or Section 42-9-10(B) after having sustained another permanent injury in the same employment, he is entitled to compensation for both injuries, but the total compensation must be paid by extending the period and not by increasing the amount of weekly compensation, and in no case exceeding five hundred weeks. If an employee previously has incurred permanent partial disability through the loss of a hand, arm, shoulder, foot, leg, hip, or eye and by subsequent accident incurs total permanent disability through the loss of another member, the employer's liability is for the subsequent injury only, except that the employee may receive further benefits as provided under the provisions of Section 42-9-35. This subsection is effective on July 1, 2008.

HISTORY: 1962 Code Section 72-168; 1952 Code Section 72-168; 1942 Code Section 7035-38; 1936 (39) 1231; 1974 (58) 2235; 2007 Act No. 111, Pt I, Section 22, eff July 1, 2007, applicable to injuries that occur on or after that date.

Editor's Note

Subsection (A), as amended by 2007 Act No. 111, Part I, Section 22, is effective until June 30, 2008, and subsection (B), added by that same provision, is effective on July 1, 2008.

SECTION 42-9-190. No compensation to injured employee refusing suitable employment.

If an injured employee refuses employment procured for him suitable to his capacity and approved by the commission he shall not be entitled to any compensation at any time during the continuance of such refusal.

HISTORY: 1962 Code Section 72-170; 1952 Code Section 72-170; 1942 Code Section 7035-35; 1936 (39) 1231.

SECTION 42-9-200. Dates on which compensation commences.

No compensation shall be allowed for the first seven calendar days of disability resulting from an injury, except the benefits provided for in Section 42-15-60; but, if the injury results in disability of more than fourteen days, compensation shall be allowed from the date of the disability.

HISTORY: 1962 Code Section 72-171; 1952 Code Section 72-171; 1942 Code Section 7035-31; 1936 (39) 1231; 1937 (40) 613; 1953 (48) 103; 1974 (58) 2265.

SECTION 42-9-210. Deduction from compensation of payments made by employer when not due and payable.

Any payments made by an employer to an injured employee during the period of his disability, or to his dependents, which by the terms of this title were not due and payable when made may, subject to the approval of the commission, be deducted from the amount to be paid as compensation; provided, that in the case of disability such deductions shall be made by shortening the period during which compensation must be paid and not by reducing the amount of the weekly payment.

HISTORY: 1962 Code Section 72-172; 1952 Code Section 72-172; 1942 Code Section 7035-45; 1936 (39) 1231.

SECTION 42-9-220. Manner in which compensation paid.

Compensation under this title shall be paid periodically, promptly and directly to the person entitled thereto, unless otherwise specifically provided.

HISTORY: 1962 Code Section 72-173; 1952 Code Section 72-173; 1942 Code Section 7035-21; 1936 (39) 1231.

SECTION 42-9-230. Date on which compensation payable under agreement becomes due.

The first installment of compensation payable under the terms of an agreement is due on the fourteenth day after the employer has knowledge of the injury or death, on which date all compensation due must be paid. Thereafter, compensation must be paid in installments weekly, except when the commission determines that payment in installments should be made monthly or at some other period.

Installments paid weekly must be paid on the same day of the week, installments paid monthly must be paid on the same day of the month, and installments paid on some period other than weekly or monthly must be paid on the same day of each period.

HISTORY: 1962 Code Section 72-174; 1952 Code Section 72-174; 1942 Code Section 7035-21; 1936 (39) 1231; 1989 Act No. 59, Section 1, eff April 24, 1989.

SECTION 42-9-240. Date on which compensation payable under award becomes due.

The first installment of compensation payable under the terms of an award by the commission or under the terms of a judgment of a court upon an appeal from such an award shall become due seven days from the date of such an award or from the date of such a judgment of the court, on which date all compensation then due shall be paid, including interest from the original date of the award at the maximum legal rate. Thereafter compensation shall be paid in installments weekly, except when the commission determines that payment in installments shall be made monthly or in some other manner.

HISTORY: 1962 Code Section 72-175; 1952 Code Section 72-175; 1942 Code Section 7035-21; 1936 (39) 1231; 1972 (57) 2135.

SECTION 42-9-250. Payment of compensation monthly or quarterly authorized.

The commission, upon application of either party, may in its discretion, having regard to the welfare of the employee and the convenience of the employer, authorize compensation to be paid monthly or quarterly instead of weekly.

HISTORY: 1962 Code Section 72-176; 1952 Code Section 72-176; 1942 Code Section 7035-46; 1936 (39) 1231.

SECTION 42-9-260. Notice to commission when payments have begun; suspension or termination of payments.

(A) When an employee has been out of work due to a reported work-related injury or occupational disease for eight days, an employer may start temporary disability payments immediately and may continue these payments for up to one hundred fifty days from the date the injury or disease is reported without waiver of any grounds for good faith denial. Upon making the first payment, the employer immediately shall notify the commission, in accordance with a form prescribed by the commission, that payment of compensation has begun.

(B) Once temporary disability payments are commenced, the payments may be terminated or suspended immediately at any time within the one hundred fifty days if:

- (1) the employee has returned to work; however, if the employee does not remain at work for a minimum of fifteen days, temporary disability payments must be resumed immediately; or
- (2) the employee agrees that he is able to return to work and executes the proper commission form indicating that he is able to return to work; or
- (3) a good faith investigation by the employer reveals grounds for denial of the claim; or
- (4) the employee has been released by the treating physician to work without restriction and the employer offers comparable employment; or
- (5) the employee has been released by the treating physician to limited duty work and the employer provides limited duty work consistent with the terms upon which the employee has been released; or
- (6) the employee refuses medical treatment, as provided in Section 42-15-60, or refuses an examination or evaluation, as provided in Section 42-15-80, and the termination or suspension of benefits continues until the refusal ceases or the commission determines the refusal is justified pursuant to either Section 42-15-60 or 42-15-80.

(C) An employee whose disability payments have been terminated or suspended pursuant to this section may request a hearing to have the payments reinstated. The hearing must be held within sixty days of the date of the employee's request for a hearing.

(D) If an employee has been declared as having reached maximum medical improvement, the employer may request a hearing to address the termination of temporary disability payments. The hearing must be held within sixty days of the date of the employer's request for a hearing.

(E) An employer may request a hearing at any time to address termination or reduction of temporary disability payments.

(F) After the one-hundred-fifty-day period has expired, the commission shall provide by regulation the method and procedure by which benefits may be suspended or terminated for any cause, but the regulation

must provide for an evidentiary hearing and commission approval prior to termination or suspension unless such prior hearing is expressly waived in writing by the recipient or the circumstances identified in Section 42-9-260(B)(1) or (B)(2) are present. Further, the commission may not entertain any application to terminate or suspend benefits unless and until the employer or carrier is current with all payments due.

(G) Failure to comply with this section shall result in a twenty-five percent penalty imposed upon the carrier or employer computed on the amount of benefits withheld in violation of this section, and the amount of the penalty must be paid to the employee in addition to the amount of benefits withheld. However, the penalty does not apply if the employer or carrier has terminated or suspended benefits when the employee has returned to any employment at the same or similar wage.

HISTORY: 1962 Code Section 72-177; 1952 Code Section 72-177; 1942 Code Section 7035-21; 1936 (39) 1231; 1974 (58) 2265; 1982 Act No. 415; 1988 Act No. 410, eff March 28, 1988; 1996 Act No. 424, Section 6, eff June 18, 1996.

Editor's Note

1996 Act No. 424, Section 13, provides, in part, as follows:

"Section 13. Employers who have filed with the Workers' Compensation Commission a notice to reject the provisions of Title 42 before the effective date of the 1996 amendment will have until July 1, 1997, to comply with the provisions of the 1996 amendment relating to insuring their workers' compensation liabilities. Any employer who has rejected the terms of this title prior to approval of the 1996 amendment and has procured another form of employee benefits insurance shall comply, not later than July 1, 1997, with the provisions of the 1996 amendment relating to the insuring of its workers' compensation liabilities. Furthermore, nothing in the 1996 amendment shall affect or alter any cause of action, right, or claim accruing before the effective date of the 1996 amendment; however, any such cause of action, remedy, or claim accruing before the effective date of the 1996 amendment shall be governed by the law prior to the effective date of the 1996 amendment".

SECTION 42-9-270. Notice of final payment; penalty for failure to give notice.

Within sixteen days after final payment of compensation has been made the employer shall send to the commission a notice, in accordance with a form prescribed by the commission, stating that such final payment has been made, the total amount of compensation paid, the name of the employee and of any other person to whom compensation has been paid, the date of the injury or death and the date to which compensation has been paid. If the employer fails to so notify the commission within such time, the commission shall assess against such employer a civil penalty in the amount of twenty-five dollars.

HISTORY: 1962 Code Section 72-178; 1952 Code Section 72-178; 1942 Code Section 7035-21; 1936 (39) 1231.

SECTION 42-9-280. Payment of unpaid balance of compensation when employee dies.

When an employee receives or is entitled to compensation under this title for an injury covered by the second paragraph of Section 42-9-10 or 42-9-30 and dies from any other cause than the injury for which he was entitled to compensation, payment of the unpaid balance of compensation shall be made to his next of kin dependent upon him for support, in lieu of the compensation the employee would have been entitled to had he lived. But if the death is due to a cause that is compensable under this title and the dependents of such employee are awarded compensation therefor, all right to unpaid compensation provided by this section shall cease and determine.

HISTORY: 1962 Code Section 72-179; 1952 Code Section 72-179; 1942 Code Section 7035-40; 1936 (39) 1231.

SECTION 42-9-290. Amount of compensation for death of employee due to accident.

(A) If death results proximately from an accident and within two years of the accident or while total disability still continues and within six years after the accident, the employer shall pay or cause to be paid, subject, however, to the provisions of the other sections of this title, in one of the methods provided in this chapter, to the dependents of the employee wholly dependent upon his earnings for support at the time of the accident, a weekly payment equal to sixty-six and two-thirds percent of his average weekly wages, but not less than seventy-five dollars a week so long as this amount does not exceed his average weekly wages; if this amount does exceed his average weekly wages, the amount payable may not be less than his average weekly wages nor more than the average weekly wage in this State for the preceding fiscal year, for a period of five hundred weeks from the date of the injury, and burial expenses up to but not exceeding twelve thousand dollars. If the employee leaves dependents, only partly dependent upon his earnings for support at the time of the injury, the weekly compensation to be paid must equal the same proportion of the weekly payments for the benefit of persons wholly dependent as the amount contributed by the employee to such partial dependence bears to the annual earnings of the deceased at the time of his injury. When weekly payments have been made to an injured employee before his death, the compensation to dependents begins from the date of the last of such payments but does not continue more than five hundred weeks from the date of the injury. Compensation under this title to aliens not residents (or about to become nonresidents) of the United States or Canada is the same in amount as provided for residents, except that dependents in any foreign country are limited to a surviving spouse and child or children or, if there be no surviving spouse or child, to a surviving father or mother whom the employee has supported, either wholly or in part, for a period of three years before the date of the injury, and except that the commission may, at its option, or upon the application of the insurance carrier, commute all future installments of compensation to be paid to such aliens by paying or causing to be paid to them one-half of the commuted amount of future installments of compensation as determined by the commission.

(B) The provisions of this section may not be construed to prohibit lump-sum payments to surviving spouses. Provisions for lump-sum settlement may be retroactive.

(C) Any death benefits to which a child through the age of eighteen years of an employee is entitled under this section vest with the child at the date of death of the employee and continue to be paid to the beneficiary subject to the five-hundred-week limitation regardless of his age.

(D) If at the date of death of the employee, the employee has a child nineteen years of age or older enrolled as a full-time student in an accredited educational institution, the child is entitled to death benefits in the same manner as though he were under nineteen and shall receive benefits, subject to the five-hundred-week limitation, until the age of twenty-three. However, if a student's enrollment ends, except for normal breaks and vacations in accordance with schedules of the school, the child no longer is considered a dependent. When all the deceased employee's children are no longer dependent, the remainder of that portion of the award must be paid to a surviving spouse or other full dependent, or if there be none, the remainder of that portion of the award must be paid in the same manner as provided in this section for cases where the employee is survived by no full dependents.

(E) Any dependent child mentally or physically incapable of self-support must be paid benefits for the full five-hundred-week period regardless of age.

(F) In cases where benefits are payable to a surviving spouse and dependent children, the surviving spouse shall receive not less than one-half of the benefits paid if there are two or more children.

HISTORY: 1962 Code Section 72-180; 1952 Code Section 72-180; 1942 Code Section 7035-41; 1936 (39) 1231; 1937 (40) 613; 1953 (48) 103; 1955 (49) 462; 1967 (55) 894; 1972 (57) 2339; 1974 (58) 2265; 1976 Act Nos. 532 Section 5, 560 Section 2; 1982 Act No. 294; 1984 Act No. 390; 1988 Act No. 390, eff March 21, 1988; 1989 Act No. 57, Section 1, eff April 24, 1989; 1989 Act No. 58, Section 2, eff April 26, 1989; 1990 Act No. 517, Section 1, eff May 30, 1990; 2017 Act No. 38 (H.3879), Section 1, eff May 10, 2017.

Effect of Amendment

2017 Act No. 38, Section 1, inserted the paragraph identifiers, and in (A), in the first sentence, substituted "twelve thousand dollars" for "twenty-five hundred dollars".

SECTION 42-9-301. Lump-sum payments.

Whenever any weekly payment has been continued for not less than six weeks, the liability therefor may, when the employee so requests and the commission deems it not to be contrary to the best interest of the employee or his dependents, or when it will prevent undue hardship on the employer or his insurance carrier, without prejudicing the interest of the employee or his dependents, be redeemed, in whole or in part, by the payment by the employer of a lump sum which shall be fixed by the commission, but in no case to be less than ninety percent of, nor to exceed, the commutable value of the future installments commuted so as not to exceed six percent nor to be less than two percent. The commission, however, in its discretion, may at any time in the case of a minor who has received permanently disabling injuries, either partial or total, provide that he be compensated, in whole or in part, by the payment of a lump sum, the amount of which shall be fixed by the commission but in no case to be less than ninety percent of, nor to exceed, the commutable value of the future installments which may be due under this title. Upon a finding by the commission that a lump sum payment should be made, the burden of proof as to the abuse of discretion in such finding shall be upon the employer or carrier in any appeal proceedings.

HISTORY: 1983 Act No. 92 Section 5.

Editor's Note

Prior Laws: Former Section 42-9-300 was titled Lump-sum payments, and had the following history: 1936 (39) 1231; 1937 (30) 613; 1942 Code Section 7035-47; 1952 Code Section 72-181; 1962 Code 72-181; repealed by 1983 Act No. 92, Section 6.

SECTION 42-9-310. Trustees may administer lump-sum settlements.

Whenever the commission considers it expedient, any lump sum subject to the provisions of Section 42-9-301 must be paid by the employer to some suitable person or corporation appointed by a court of competent jurisdiction in the county wherein the accident occurred, as trustee, to administer it for the benefit of the person entitled thereto, in the manner provided by the commission. When the amount to be paid under this section is in excess of one hundred dollars, the trustee is required to give sufficient bond approved by the probate court or clerk of the court of common pleas. The receipt of the trustee for the amount as paid discharges the employer or anyone else who is liable therefor.

HISTORY: 1962 Code Section 72-182; 1952 Code Section 72-182; 1942 Code Section 7035-48; 1936 (39) 1231; 1988 Act No. 313, Section 1, eff February 24, 1988.

SECTION 42-9-320. Persons who may receive and receipt for payments; discharge of liability of employer on receipt.

Whenever payment of compensation is made to a surviving spouse for her or his use or, for her or his use and the use of a child or children, the written receipt of the surviving spouse shall acquit the employer.

Whenever payment is made to any person eighteen years of age or over, the written receipt of the person shall acquit the employer. When an infant or minor under the age of eighteen is entitled to receive not more than ten thousand dollars as compensation for injuries, or as a distributive share by virtue of this title, the father, mother, or natural guardian upon whom the infant or minor is dependent for support may receive and receipt for the monies to the same extent as a guardian of the person and property of the infant or minor duly appointed by the court and the release or discharge of the father, mother, or natural guardian is a full and complete discharge of all claims or demands of the infant or minor.

Whenever any payment of over ten thousand dollars is made to a minor under eighteen years of age, it must be made to some person or corporation appointed by the probate court as a guardian and the receipt of the guardian shall acquit the employer.

HISTORY: 1962 Code Section 72-183; 1952 Code Section 72-183; 1942 Code Section 7035-50; 1936 (39) 1231; 1962 (52) 1697; 1979 Act No. 36; 1983 Act No. 92 Section 2; 1985 Act No. 16, Section 3, eff March 19, 1985.

SECTION 42-9-330. Exercise of rights for incompetent or infant employees.

If an injured employee is mentally incompetent or is under eighteen years of age at the time when any right or privilege accrues to him under this title, his guardian, trustee or committee may in his behalf claim and exercise such right or privilege.

HISTORY: 1962 Code Section 72-184; 1952 Code Section 72-184; 1942 Code Section 7035-51; 1936 (39) 1231.

SECTION 42-9-340. Effect of payment in good faith to junior dependents.

Payment of death benefits by an employer in good faith to a dependent subsequent in right to another dependent shall protect and discharge the employer, unless and until such dependent prior in right shall have given notice of his claim. In case the employer is in doubt as to the respective rights of rival claimants, he may apply to the commission to decide between them.

HISTORY: 1962 Code Section 72-185; 1952 Code Section 72-185; 1942 Code Section 7035-50; 1936 (39) 1231.

SECTION 42-9-350. Payment of compensation of employee working for several employers at time of injury.

Whenever an employee for whose injury or death compensation is payable under this title shall, at the time of the injury, be in joint service of two or more employers subject to this title, such employers shall contribute to the payment of such compensation in proportion to their wages liability to such employee. But nothing in this section shall prohibit any reasonable arrangement between such employers for a different distribution as between themselves of the ultimate burden of compensation.

HISTORY: 1962 Code Section 72-186; 1952 Code Section 72-186; 1942 Code Section 7035-53; 1936 (39) 1231.

SECTION 42-9-360. Assignments of compensation; exemptions from claims of creditors and taxes.

(A) No claim for compensation under this title shall be assignable and all compensation and claims therefor shall be exempt from all claims of creditors and from taxes.

(B) It shall be unlawful for an authorized health care provider to actively pursue collection procedures against a workers' compensation claimant prior to the final adjudication of the claimant's claim. Nothing in this section shall be construed to prohibit the collection from and demand for collection from a workers' compensation insurance carrier or self-insured employer. Violation of this section, after written notice to the provider from the claimant or his representative that adjudication is ongoing, shall result in a penalty of five hundred dollars payable to the workers' compensation claimant.

(C) Any person who receives any fee or other consideration or any gratuity on account of services so rendered, unless the consideration or gratuity is approved by the commission or the court, or who makes it a business to solicit employment for a lawyer or for himself in respect of any claim or award for compensation is guilty of a misdemeanor and, upon conviction, must, for each offense, be fined not more than five hundred dollars or imprisoned not more than one year, or both.

(D) Payment to an authorized health care provider for services shall be made in a timely manner but no later than thirty days from the date the authorized health care provider tenders request for payment to the employer's representative, unless the commission has received a request to review the medical bill.

HISTORY: 1962 Code Section 72-187; 1952 Code Section 72-187; 1942 Code Section 7035-24; 1936 (39) 1231; 1996 Act No. 424, Section 7, eff June 18, 1996.

Editor's Note

1996 Act No. 424, Section 13, provides, in part, as follows:

"Section 13. Employers who have filed with the Workers' Compensation Commission a notice to reject the provisions of Title 42 before the effective date of the 1996 amendment will have until July 1, 1997, to comply with the provisions of the 1996 amendment relating to insuring their workers' compensation liabilities. Any employer who has rejected the terms of this title prior to approval of the 1996 amendment and has procured another form of employee benefits insurance shall comply, not later than July 1, 1997, with the provisions of the 1996 amendment relating to the insuring of its workers' compensation liabilities. Furthermore, nothing in the 1996 amendment shall affect or alter any cause of action, right, or claim accruing before the effective date of the 1996 amendment; however, any such cause of action, remedy, or claim accruing before the effective date of the 1996 amendment shall be governed by the law prior to the effective date of the 1996 amendment."

SECTION 42-9-370. Preferences or priorities of rights of compensation.

All rights of compensation granted by this title shall have the same preference or priority for the whole thereof against the assets of the employer as is allowed by law for any unpaid wages for labor.

HISTORY: 1962 Code Section 72-188; 1952 Code Section 72-188; 1942 Code Section 7035-23; 1936 (39) 1231.

SECTION 42-9-390. Voluntary settlements.

Nothing contained in this chapter may be construed so as to prevent settlements made by and between an employee and employer as long as the amount of compensation and the time and manner of payment are in accordance with the provisions of this title. The employer must file a copy of the settlement agreement with the commission if each party is represented by an attorney. If the employee is not represented by an attorney, a copy of the settlement agreement must be filed by the employer with the commission and approved by one member of the commission.

HISTORY: 1962 Code Section 72-191; 1952 Code Section 72-191; 1942 Code Section 7035-20; 1936 (39) 1231; 1986 Act No. 388, eff April 29, 1986; 2007 Act No. 111, Pt I, Section 23, eff July 1, 2007, applicable to injuries that occur on or after that date.

SECTION 42-9-400. Reimbursement from Second Injury Fund when disability substantially greater or caused by aggravation of preexisting impairment.

(a) If an employee who has a permanent physical impairment from any cause or origin incurs a subsequent disability from injury by accident arising out of and in the course of his employment, resulting in compensation and medical payments liability or either, for disability that is substantially greater and is caused by aggravation of the preexisting impairment than that which would have resulted from the subsequent injury alone, the employer or his insurance carrier shall pay all awards of compensation and medical benefits provided by this title; but such employer or his insurance carrier shall be reimbursed from the Second Injury Fund as created by Section 42-7-310 for compensation and medical benefits in the following manner:

(1) reimbursement of all compensation benefit payments payable subsequent to those payable for the first seventy-eight weeks following the injury;

(2) reimbursement of fifty percent of medical payments in excess of three thousand dollars during the first seventy-eight weeks following the injury and then reimbursement of all medical benefit payments payable subsequent to the first seventy-eight weeks following the injury; provided, however, in order to obtain reimbursement for medical expense during the first seventy-eight weeks following the subsequent injury, an employer or carrier must establish that his liability for medical payments is substantially greater by reason of the aggravation of the preexisting impairment than that which would have resulted from the subsequent injury alone.

(b) If the subsequent injury of such an employee shall result in the death of the employee, and it shall be determined that the death would not have occurred except for such preexisting permanent physical

impairment, the employer or his insurance carrier shall in the first instance pay the compensation prescribed by this title; but he or his insurance carrier shall be reimbursed from the Second Injury Fund created by Section 42-7-310, for all compensation payable in excess of seventy-eight weeks.

(c) In order to qualify under this section for reimbursement from the Second Injury Fund, the employer must establish when claim is made for reimbursement thereunder, that the employer had knowledge of the permanent physical impairment at the time that the employee was hired, or at the time the employee was retained in employment after the employer acquired such knowledge. However, the employer may qualify for reimbursement hereunder upon proof that he did not have prior knowledge of the employee's preexisting physical impairment because the existence of the condition was concealed by the employee.

(d) As used in this section, "permanent physical impairment" means any permanent condition, whether congenital or due to injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed.

When an employer establishes his prior knowledge of the permanent impairment, then there shall be a presumption that the condition is permanent and that a hindrance or obstacle to employment or reemployment exists when the condition is one of the following impairments:

- (1) Epilepsy;
- (2) Diabetes;
- (3) Cardiac disease;
- (4) Amputated foot, leg, arm, or hand;
- (5) Loss of sight of one or both eyes or partial loss of uncorrected vision of more than seventy-five percent bilateral;
- (6) Residual disability from Poliomyelitis;
- (7) Cerebral Palsy;
- (8) Multiple Sclerosis;
- (9) Parkinson's disease;
- (10) Cerebral vascular accident;
- (11) Tuberculosis;
- (12) Silicosis;
- (13) Psychoneurotic disability following treatment in a recognized medical or mental institution;
- (14) Hemophilia;
- (15) Chronic Osteomyelitis;
- (16) Ankylosis of joints;
- (17) Hyperinsulinism;
- (18) Muscular Dystrophy;
- (19) Arteriosclerosis;
- (20) Thrombophlebitis;
- (21) Varicose veins;
- (22) Heavy metal poisoning;
- (23) Ionizing radiation injury;
- (24) Compressed air sequelae;
- (25) Ruptured intervertebral disc;
- (26) Hodgkins disease;
- (27) Brain damage;
- (28) Deafness;
- (29) Cancer;
- (30) Sickle-Cell Anemia;
- (31) Pulmonary disease;
- (32) Intellectual disability provided the employee's intelligence quotient is such that he falls within the lowest percentile of the general population. However, it shall not be necessary for the employer to know the employee's actual intelligence quotient or actual relative ranking in relation to the intelligence quotient of the general population.

(e) The Second Injury Fund shall not be bound as to any question of law or fact by reason of any compensation agreement, settlement, award, and adjudication to which it was not a party, or in relation to which it was not notified at least twenty days prior to a hearing on liability that it might be subject to liability for the injury or death.

(f) An employer or his carrier must notify the Workers' Compensation Commission and the Director of the Second Injury Fund in writing of any possible claim against the fund as soon as practicable but in no event later than after the payment of the first seventy-eight weeks of compensation. This written notice must provide the:

- (1) date of accident;
- (2) employee's name;
- (3) employer's name and address;
- (4) insurance carrier's name, address, and the National Council on Compensation Insurance code; and
- (5) insurance carrier's claim number, policy number, and policy effective date. The carrier claim number is the unique identifier a carrier uses throughout the life of a claim to report that claim to the National Council on Compensation Insurance. Failure to comply with the provisions of this subsection shall bar an employer or his carrier from recovery from the fund.

(g) If the employee has a permanent physical impairment, as defined in this section and the prerequisites for reimbursement have been met, and if it can be shown that the subsequent injury most probably would not have occurred "but for" the presence of the prior impairment, then reimbursement will be granted as provided in this section even if the subsequent injury does not cause the employer's liability for compensation and medical benefits to be substantially greater than that which would have resulted from the subsequent injury alone.

(h) When a third party is deemed to be an employer for the purposes of paying workers' compensation benefits, that third party will be entitled to reimbursement from the Second Injury Fund if either he or the employer of record have met the knowledge requirements outlined in this section, as well as all other requirements.

(i) The Second Injury Fund is entitled to a credit for sums recovered by the employer or his workers' compensation carrier from third parties, after the employer or his workers' compensation carrier have been reimbursed for the monies paid out by them and not reimbursed by the fund.

(j) The Second Injury Fund can enter into compromise settlements at the discretion of the director with approval of a majority of the Workers' Compensation Commission, provided a bona fide dispute exists.

(k) Any employer operating in violation of Section 42-5-20 is not eligible for reimbursement from the South Carolina Second Injury Fund.

(l) As a prerequisite to reimbursement from the fund, the insurer shall be required to certify that the medical and indemnity reserves have been reduced to the threshold limits of reimbursement and report in accordance with the National Council on Compensation Insurance Workers' Compensation Statistical Plan.

(m) The Second Injury Fund Director must quarterly submit to the National Council on Compensation Insurance information regarding Second Injury Fund accepted claims.

(n) The National Council on Compensation Insurance must submit a report of any discrepancies pursuant to regulations established by the Department of Insurance. The Department of Insurance is directed to establish regulations concerning Second Injury Fund discrepancies.

HISTORY: 1962 Code Section 72-601; 1972 (57) 2578; 1974 (58) 2237; 1976 Act No. 560 Section 1; 1982 Act No. 314, Section 1A; 1982 Act No. 438, Section 1; 1988 Act No. 309, Section 1, eff February 24, 1988; 1990 Act No. 589, Section 1, eff June 12, 1990; 2003 Act No. 73, Section 22, eff June 25, 2003; 2007 Act No. 111, Pt II, Section 3, eff July 1, 2007, applicable to injuries that occur on or after that date.

SECTION 42-9-410. Reimbursement from Second Injury Fund for employee who becomes totally and permanently disabled in a subsequent injury; notice of preexisting permanent impairment.

(a) When an employee shall become totally and permanently disabled under Section 42-9-10, because of the loss of a hand, arm, foot, leg or the vision of an eye in a subsequent injury under Section 42-9-150 or

42-9-170, he may receive from the employer compensation and medical care provided by this title for total and permanent disability, and the employer shall be reimbursed a portion of the cost thereof from the Second Injury Fund as herein provided.

(b) If the loss of the member or eyesight is not caused or contributed to by any of the conditions defined as "permanent physical impairment" in Section 42-9-400, the employer shall be responsible to pay such compensation and provide such medical care as is required by Sections 42-9-150 or 42-9-170 and 42-15-60, and the employer shall thereafter be reimbursed by the Second Injury Fund for the cost of such further compensation and medical care as the injured employee shall receive under this chapter.

(c) If the loss of the member or eyesight is caused or contributed to by any of the conditions defined in Section 42-9-400 as "permanent physical impairment," the employer shall pay the compensation and medical expense for seventy-eight weeks as required by subsection (a) of Section 42-9-400 and thereafter the employer shall be reimbursed from the Second Injury Fund for such further compensation or medical expense as the employer shall provide for the employee under this chapter.

(d) In order to receive additional benefits from the Second Injury Fund as permitted by Sections 42-9-150 and 42-9-170, the employer shall establish that he had knowledge of the employee's preexisting permanent physical impairment prior to the time of the subsequent injury by accident, unless the employer can establish that he did not have prior knowledge of the employee's preexisting physical impairment because the existence of the condition was concealed by the employee.

HISTORY: 1962 Code Section 72-601.1; 1974 (58) 2237, 2758; 1982 Act No. 314, Section 1; 2003 Act No. 73, Section 23, eff June 25, 2003.

SECTION 42-9-430. Workers' compensation benefits.

Whenever a dispute arises between two or more parties as to which party is liable for the payment of workers' compensation benefits to an injured employee pursuant to the provisions of this title and there is no genuine issue of material fact as to the employee's employment, his average weekly wage, the occurrence of an injury, the extent of the injury, and the fact that the injury arose out of and in the course of the employment, the hearing commissioner may, in his discretion, require the disputing parties involved to pay benefits immediately to the employee and to share equally in the payment of those benefits until it is determined which party is solely liable, at which time the liable party must reimburse all other parties for the benefits they have paid to the employee with interest at the legal rate of interest provided in Section 34-31-20(A).

HISTORY: 1984 Act No. 276.

SECTION 42-9-440. Suspected false statements or misrepresentations to be reported to Insurance Fraud Division of Office of Attorney General.

The commission shall report all cases of suspected false statement or misrepresentation, as defined in Section 38-55-530(D), to the Insurance Fraud Division of the Office of the Attorney General for investigation and prosecution, if warranted, pursuant to the Omnibus Insurance Fraud and Reporting Immunity Act.

HISTORY: 1994 Act No. 497, Part II, Section 31B, eff July 1, 1994.

SECTION 42-9-450. Employer's representatives to pay by check or electronic payment systems.

An employer's representative shall make payment of compensation by means of check or electronic payment system including, but not limited to, an electronic funds transfer, a direct deposit, debit card, or similar payment system if such payments are made in accordance with the policies, procedures, or regulations as provided by the commission.

HISTORY: 2017 Act No. 24 (H.3441), Section 1, eff May 9, 2017.

CHAPTER 11

Occupational Diseases

SECTION 42-11-10. "Occupational disease" defined.

(A) "Occupational disease" means a disease arising out of and in the course of employment that is due to hazards in excess of those ordinarily incident to employment and is peculiar to the occupation in which the employee is engaged. A disease is considered an occupational disease only if caused by a hazard recognized as peculiar to a particular trade, process, occupation, or employment as a direct result of continuous exposure to the normal working conditions of that particular trade, process, occupation, or employment. In a claim for an occupational disease, the employee shall establish that the occupational disease arose directly and naturally from exposure in this State to the hazards peculiar to the particular employment by a preponderance of the evidence.

(B) No disease shall be considered an occupational disease when it:

(1) does not result directly and naturally from exposure in this State to the hazards peculiar to the particular employment;

(2) results from exposure to outside climatic conditions;

(3) is a contagious disease resulting from exposure to fellow employees or from a hazard to which the workman would have been equally exposed outside of his employment;

(4) is one of the ordinary diseases of life to which the general public is equally exposed, unless such disease follows as a complication and a natural incident of an occupational disease or unless there is continuous exposure peculiar to the occupation itself which makes such disease a hazard inherent in such occupation;

(5) is any disease of the cardiac, pulmonary, or circulatory system not resulting directly from abnormal external gaseous pressure exerted upon the body or the natural entrance into the body through the skin or natural orifices thereof of foreign organic or inorganic matter under circumstances peculiar to the employment and the processes utilized therein; or

(6) is any chronic disease of the skeletal joints.

(C) As used in this section, "medical evidence" means expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed health care provider.

(D) No compensation shall be payable for any occupational disease unless the employee suffers a disability as described in Section 42-9-10, 42-9-20, or 42-9-30.

HISTORY: 1962 Code Section 72-251; 1952 Code Section 72-251; 1949 (46) 565; 2007 Act No. 111, Pt I, Section 24, eff July 1, 2007, applicable to injuries that occur on or after that date.

SECTION 42-11-20. "Disablement" and "disability" defined.

As used in this chapter, "disablement" means the event of an employee's becoming actually incapacitated, partially or totally, because of an occupational disease, from performing his work in the last occupation in which injuriously exposed to the hazards of such disease, "partial disability" means the physical inability to continue work in such occupation only and "total disability" means the physical inability to perform work in any occupation. The disablement and disability of an employee from an occupational disease shall be determined as provided in this chapter.

HISTORY: 1962 Code Section 72-252; 1952 Code Section 72-252; 1949 (46) 565.

SECTION 42-11-30. . Presumptions; heart or respiratory disease as to firefighters; cardiac-related incident as to law enforcement officers; report of physical examination required.

(A) Notwithstanding the provisions of this chapter, for purposes of the South Carolina Workers' Compensation Law, any impairment or injury to the health of a firefighter caused by heart disease or

respiratory disease resulting in total or partial disability or death is presumed to have arisen out of and in the course of employment, unless the contrary is shown by competent evidence, if the firefighter is at the time of such impairment or injury a bona fide member of a municipal, county, state, port authority, or fire control district fire department in this State. In order to be entitled to the presumption provided for in this section, any person becoming a member of a fire department after May 29, 1968, must be under the age of thirty-seven years and must have successfully passed a physical examination by a competent physician upon entering into such service or by July 1, 2012, a written report of which must have been made and filed before any alleged injury with the fire department, which examination failed to reveal any evidence of such condition or conditions, and the condition or conditions developed while actively engaged in fighting a fire or within twenty-four hours from the date of last service in the activity.

(B)(1) Notwithstanding the provisions of this chapter, for purposes of the South Carolina Workers' Compensation Law, a cardiac-related incident resulting in impairment or injury to a law enforcement officer resulting in total or partial disability, or death, is presumed to have arisen out of and in the course of employment if this impairment or injury developed while actively engaged in, or within twenty-four hours from the date of, a law enforcement incident involving unusual or extraordinary physical exertion, unless the contrary is shown by competent evidence. At the time of the incident, the law enforcement officer must be employed as a law enforcement officer of a municipal, county, state, port authority, or other law enforcement agency in this State. In order to be entitled to the presumption provided by this section, a person becoming a law enforcement officer, must be under thirty-seven years of age and upon entering into the service, must have successfully passed a physical examination which includes a risk factor assessment for coronary artery disease conducted by a competent physician who should counsel on risk factor reduction and consider current medical literature on evaluation and prevention of coronary artery disease in conducting the risk factor assessment. A written report of the examination must have been made and filed with the law enforcement agency, which examination must not have revealed evidence of cardiac impairment or injury. If the law enforcement officer is identified as being a high risk for coronary artery disease during the risk factor assessment and the law enforcement officer fails to undergo, at his own expense, additional medical tests related to discovery of coronary artery disease, he is not entitled to the presumption provided by this section.

(2) If a law enforcement agency cannot produce the report described in subitem (B)(1), the law enforcement officer may submit a written report of a physical examination conducted before July 1, 2012, which includes a risk factor assessment for coronary artery disease conducted by a competent physician who also shall counsel on risk factor reduction and consider current medical literature on evaluation and prevention of coronary artery disease in conducting the risk factor.

HISTORY: 1962 Code Section 72-251.1; 1968 (55) 2798; 2005 Act No. 108, Section 1, eff upon approval (became law without the Governor's signature on June 2, 2005); 2010 Act No. 126, Section 1, eff upon approval (became law without the Governor's signature on February 25, 2010).

SECTION 42-11-40. Occupational diseases treated as injuries by accident.

When employer and employee are subject to the provisions of this title, the disablement or death of an employee resulting from an occupational disease shall be treated as an injury by accident and the employee, or in case of death his dependents, shall be entitled to compensation as for an injury under this title, except as otherwise provided in this chapter, and the practice and procedure prescribed in this title shall apply to all proceedings under this chapter, except as otherwise provided in this chapter. In no case shall an employer be liable for compensation for an occupational disease unless such disease was contracted by the employee while in the employ of the employer as a direct result of the employment.

HISTORY: 1962 Code Section 72-253; 1952 Code Section 72-253; 1949 (46) 565.

SECTION 42-11-50. Limitation on compensation payable to employee disabled by both injury and occupational disease.

When an employee suffers disability from an occupational disease and also from an injury which is otherwise compensable under this title, he shall not be entitled to receive compensation for both and benefits payable shall be limited to the cause which results in the longest period of disability, either as provided under this chapter or as provided for an injury by accident arising out of and in the course of employment. In no event shall compensation payable for disability or death exceed the maximum benefits provided under this title.

HISTORY: 1962 Code Section 72-254; 1952 Code Section 72-254; 1949 (46) 565.

SECTION 42-11-60. Requirements for compensation for pulmonary diseases.

No compensation shall be payable for any pulmonary disease arising out of the inhalation of organic or inorganic dust or fumes unless the claimant suffers disability as described in Section 42-9-10 or Section 42-9-20 and shall not be compensable under Section 42-9-30; provided, however, in claims based on byssinosis the claimant must have been exposed to dust in his employment for a period of at least seven years.

HISTORY: 1962 Code Section 72-255; 1952 Code Section 72-255; 1949 (46) 565; 1977 Act No. 103 Section 1.

SECTION 42-11-70. Time in which disease must have been contracted.

Neither an employee nor his dependents shall be entitled to compensation for disability or death from an occupational disease, except that due to exposure to ionizing radiation, unless such disease was contracted within one year after the last exposure to the hazard peculiar to his employment which caused the disease, save that in the case of a pulmonary disease arising out of the inhalation of organic or inorganic dusts the period shall be two years.

HISTORY: 1962 Code Section 72-256; 1952 Code Section 72-256; 1949 (46) 565; 1963 (53) 143.

SECTION 42-11-80. Wilful misrepresentation by employee as to absence of disease; waivers.

If an employee, at the time of his employment, wilfully and falsely represents in writing that he has not previously suffered from the disease which is the cause of disability or death, no compensation shall be payable. If an employee who has previously suffered from an occupational disease desires to continue in an employment to which such a disease is a hazard, he may waive his right to receive further benefits for disablement or disability from such disease by written agreement approved by the commission in accordance with such rules as it may promulgate.

HISTORY: 1962 Code Section 72-257; 1952 Code Section 72-257; 1949 (46) 565.

SECTION 42-11-90. Amount of compensation when noncompensable cause or disease affects occupational disease.

When an occupational disease prolongs, accelerates or aggravates or is prolonged, accelerated or aggravated by any other cause or infirmity not otherwise compensable, the compensation payable for disability or death shall be limited to the disability which would have resulted solely from the occupational disease if there were no other such cause or infirmity and shall be computed by the proportion which the disability from occupational disease bears to the entire disability.

HISTORY: 1962 Code Section 72-258; 1952 Code Section 72-258; 1949 (46) 565.

SECTION 42-11-100. Amount of compensation payable for disability; exceptions.

Compensation payable for disability from an occupational disease must be the same as that provided for an injury under this title. No compensation is payable:

(1) for the degree of disability resulting from noncompensable causes or the employee's refusal to use a safety appliance provided by and regularly required to be used by the employer or to obey a safety rule or regulation adopted and regularly enforced by the employer;

(2) for any disability resulting from the employee's intoxication or wilful intent to injure himself;

(3) for the time the employee refuses to accept suitable employment when ordered to do so by the commission;

(4) after the disability terminates.

HISTORY: 1962 Code Section 72-259; 1952 Code Section 72-259; 1949 (46) 565; 1977 Act No. 103 Section 2; 1988 Act No. 677, Section 1, eff June 27, 1988.

SECTION 42-11-110. No presumptions; misconception of remedy.

There shall be no presumption that disablement from any cause or infirmity is the result of an occupational disease, nor that an occupational disease will result in disablement or disability. But when disability results from a disease which is compensable under other provisions of this title, although not an occupational disease, the employee shall not be deprived of any benefits to which he may be entitled because he may have misconceived his remedy to be for an occupational disease.

HISTORY: 1962 Code Section 72-260; 1952 Code Section 72-260; 1949 (46) 565.

SECTION 42-11-120. Procedure for determining claims; reference of medical question to medical board.

The procedure for determining claims for benefits from an occupational disease shall be the same as that followed in determining other claims under this title, save that if any medical question shall be in controversy the commission may, upon its own motion, and shall, upon motion of either party to the proceeding, refer the question to the medical board as provided in this chapter for investigation and report. A medical question shall be deemed to include any issue concerning the existence, cause and duration of a disease or disability, the date of disablement, the degree of disability and the proportion thereof attributable to a noncompensable cause and any other matter necessarily pertinent thereto requiring the opinion of experts.

HISTORY: 1962 Code Section 72-261; 1952 Code Section 72-261; 1949 (46) 565.

SECTION 42-11-130. Membership of medical board.

The medical board employed to determine controverted medical questions shall consist of three members appointed by the commission or hearing commissioner and selected from the medical advisory panel as follows: one to be named by the claimant and one to be named by the employer or his insurer as the case may be, and the third to be chosen by the commission or hearing commissioner. But if within ten days after the hearing in which a controverted medical question is raised one or more of the parties have failed to nominate a member, the commission or commissioner hearing the case shall nominate a member or members to complete the board to three members.

HISTORY: 1962 Code Section 72-262; 1952 Code Section 72-262; 1949 (46) 565; 1977 Act No. 103 Section 3.

SECTION 42-11-140. Fees and expenses of medical board.

The fees and expenses of the medical board shall be charged in accordance with a schedule adopted by the commission upon the advice and recommendations of the medical advisory panel and such fees and expenses, along with such clinical and X-ray expenses as the medical board may require in order to properly complete its investigation in a particular case, shall be chargeable as cost to the losing party in the controversy, save that when the claimant is the losing party such fees, costs and expenses shall be borne by the commission.

HISTORY: 1962 Code Section 72-263; 1952 Code Section 72-263; 1949 (46) 565.

SECTION 42-11-150. Procedure before medical board.

The medical board, upon referral to it of a medical question, shall notify the claimant and the employer or its insurer, as the case may be, to appear before the board at a time and place stated in the notice and shall examine the employee, if living, and may examine the body of the employee, if deceased. The medical board shall consider any testimony given before the commission pertaining to the medical question and necessary to a proper determination thereof. The medical board shall, as soon as practical after it has completed its consideration of the case, report in writing its findings and conclusions on every medical question in controversy. Such report shall be a part of the record in the case and shall include a statement indicating the physician or physicians, if any, who appeared before it, the medical board, what, if any, medical reports and X-rays were considered by it and any other matters which it deems necessary to explain or substantiate its conclusions. The commission upon receipt of the report shall send a copy thereof to the claimant and to the employer and his insurance carrier, if any.

HISTORY: 1962 Code Section 72-264; 1952 Code Section 72-264; 1949 (46) 565.

SECTION 42-11-160. Decisions on questions by medical board.

The decisions and award in the case shall conform to the findings and conclusions in such report insofar as it is restricted to medical questions, except that either party may, within ten days after receipt of a copy of the report, file written objection thereto with the commission; provided, the report shall not be binding on the commission if it be proven that the conclusion of the board upon a medical question be erroneous, due to fraud, undue influence, or mistake of law or material fact.

HISTORY: 1962 Code Section 72-265; 1952 Code Section 72-265; 1949 (46) 565; 1977 Act No. 103 Section 4.

SECTION 42-11-170. Membership of medical advisory panel.

The medical board shall be chosen from the medical advisory panel, composed of medical experts appointed by the Governor who shall be chosen from a list submitted by the executive committee of the South Carolina Medical Association, which list shall be approved by the Workers' Compensation Commission. The medical advisory panel shall include at least three doctors of medicine with no less than five years' specialization in the field of X-ray diagnosis and treatment, at least three doctors of medicine with no less than five years' specialization in pathology, at least three doctors of medicine with no less than five years' experience in the treatment and diagnosis of occupational diseases or who are specially qualified by training and experience as experts in the diagnosis and treatment of diseases in general and two doctors who are qualified for the treatment of pulmonary diseases. Members of the medical advisory panel shall serve for a term of two years and the Governor may from time to time fill vacancies in the membership thereof from its lists submitted to him as provided in this section.

HISTORY: 1962 Code Section 72-266; 1952 Code Section 72-266; 1949 (46) 565; 1977 Act No. 103 Section 5.

SECTION 42-11-180. Compensation of members of medical advisory panel.

Members of the medical advisory panel shall receive no compensation save that provided when they serve on a medical board. But when the panel is convened to give its advice and recommendations to the commission, the members participating therein shall receive per diem allowances plus their reasonable maintenance and travel expenses to be paid by the commission.

HISTORY: 1962 Code Section 72-267; 1952 Code Section 72-267; 1949 (46) 565; 1951 (47) 506.

SECTION 42-11-185. Medical examination in lieu of medical panel for occupationally related disease claims.

Notwithstanding the provisions of Section 42-11-120, in lieu of a medical panel in claims involving occupationally related diseases, at the election of either party or the hearing commissioner, the claimant shall be referred to a medical doctor or doctors who diagnose or treat occupational diseases and who are employed by or associated with one of the medical universities in South Carolina. The findings and testimony of such doctors shall be deemed advisory to, but not binding upon the hearing commissioner. Fees and expenses of such medical examinations shall be paid by the commission unless the claimant prevails in the controversy in which case such fees and expenses will be charged to the losing party.

HISTORY: 1978 Act No. 522 Section 3; 1978 Act No. 644 Part II Section 10.

SECTION 42-11-190. Promulgation of rules, regulations, and schedules.

The commission may, upon the advice and recommendations of the medical advisory panel:

(1) Make reasonable regulations regarding the conduct of hearings and investigations by medical boards and the fees and expenses to be allowed members of the panel for serving on such boards from time to time.

(2) Adopt a schedule of occupational diseases which shall include also a schedule of the processes or occupations giving rise to such diseases under the definitions given in Section 42-11-10.

HISTORY: 1962 Code Section 72-268; 1952 Code Section 72-268; 1949 (46) 565; 1988 Act No. 677, Section 2, eff June 27, 1988.

SECTION 42-11-200. Rejection of chapter.

Either employer or employee may reject the provisions of this chapter under the same terms and conditions as he may reject the other provisions of this title.

HISTORY: 1962 Code Section 72-269; 1952 Code Section 72-269; 1949 (46) 565.

CHAPTER 13

Ionizing Radiation Injury

SECTION 42-13-10. Definitions.

As used in this chapter:

(1) "Ionizing radiation" means any particulate or electromagnetic radiation capable of producing ions directly or indirectly in its passage through matter.

(2) "Ionizing radiation injury" means any harmful change in the human organism, including damage to or loss of a prosthetic appliance, arising out of and in the course of employment and caused by exposure to ionizing radiation.

(3) "Ionizing radiation disability" means any temporary or permanent, partial or total impairment of natural capability or a decrease in wage-earning capacity arising out of and in the course of employment and caused by exposure to ionizing radiation.

(4) "Permanent physical impairment" means any permanent condition, whether congenital or due to injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed.

(5) "Death" means death resulting from an ionizing radiation injury.

HISTORY: 1962 Code Section 72-280; 1969 (56) 685.

SECTION 42-13-20. Employers and employees subject to chapter.

(a) The following shall constitute employers who shall be subject to the provisions of this chapter:

(1) Every person, partnership firm, association, trust, profit or nonprofit organization, corporation or legal representatives thereof, that has one or more employees in this State and is engaged in activities which involve the use or presence of ionizing radiation. Provided, however, that any employer who employs less than three employees may, at his option, elect not to be subject to the provisions of this chapter.

(2) The State, or any agency thereof, and each political subdivision of the State, or any agency thereof, or public or quasipublic corporation that has one or more employees and is engaged in activities which involve the use or presence of ionizing radiation.

(b) The following shall constitute employees who shall be subject to the provisions of this chapter:

(1) Every person, including a minor, whether lawfully or unlawfully employed, in the service of an employer subject to this chapter under any contract of hire or apprenticeship, express or implied, and all helpers and assistants of employees whether paid by the employer or employee, if employed with the knowledge, actual or constructive, of the employer.

(2) Every person performing service in the course of the trade, business, profession or occupation of an employer at the time of injury or disability, provided such person in relation to this service does not maintain a separate business, does not hold himself out to and render service to the public and is not himself an employer subject to this chapter.

HISTORY: 1962 Code Section 72-281; 1969 (56) 685.

SECTION 42-13-30. Effect of injury suffered outside State; effect of injury to employee of nonresident employer; effect of award under law of another state.

(a) If an employee of an employer subject to this chapter, while working outside the territorial limits of this State, suffers an ionizing radiation injury or disability, he, or in the event of his death, his dependents, shall be entitled to the same benefits under this chapter as if the injury or disability had occurred within this State.

(b) If an employee of an employer domiciled or residing outside of this State suffers an ionizing radiation injury or disability while working within the territorial limits of this State, he, or in the event of his death, his dependents, shall be entitled to the same benefits under this chapter as if his employer were domiciled or residing within this State.

(c) The payment or award of benefits under the workers' compensation provisions of another state to an employee or his dependents otherwise entitled to the benefits of this chapter, on account of an ionizing radiation injury or disability, or death, shall not be a bar to a claim for benefits under this chapter; provided, that such payment or award shall be credited against the benefits to which the employee or his dependents would have been entitled had claim been made solely under this chapter.

HISTORY: 1962 Code Section 72-282; 1969 (56) 685.

SECTION 42-13-40. Waiver by employee shall be invalid.

No agreement by an employee to waive his right to compensation shall be valid with regard to ionizing radiation injury or disability.

HISTORY: 1962 Code Section 72-283; 1969 (56) 685.

SECTION 42-13-50. Employer who is liable for awards; apportionment of liability.

The employer, in whose employment an employee was last exposed to ionizing radiation, shall be liable for all awards of compensation should such employee suffer an ionizing radiation injury, disability or death. If, however, such ionizing radiation injury, disability or death is attributable in part to exposure to ionizing radiation which such employee received in any previous employment, the employer who is made liable for all awards of compensation as provided by this section may appeal to the Workers' Compensation Commission which shall apportion such liability among the several employers in whose employ the employee was exposed to ionizing radiation. The method of apportionment shall be determined by the commission.

HISTORY: 1962 Code Section 72-284; 1969 (56) 685.

SECTION 42-13-60. Time for filing claims.

(a) In cases involving radiation injury or disability the time for filing claims shall not begin to run until:

(1) the employee sustains such injury or disability; and

(2) the employee knows, or by the exercise of reasonable diligence should know, of the existence of the injury or disability and its possible relationship to his employment.

(b) The time for filing claims for benefits in the event of death shall not begin to run until the person entitled to file such claims knows, or by the exercise of reasonable diligence should know, the possible relationship of the death to the employment.

HISTORY: 1962 Code Section 72-285; 1969 (56) 685.

SECTION 42-13-70. Compensability of all forms of injury, disability or death.

All forms of ionizing radiation injury, disability or death shall be compensable under this chapter.

HISTORY: 1962 Code Section 72-286; 1969 (56) 685.

SECTION 42-13-80. Employee's right to medical services, appliances and supplies.

(a) For any ionizing radiation injury or disability, the employee shall be entitled to all medical services, appliances and supplies which are required by the nature of his injury or disability and which will relieve pain and promote and hasten his restoration to health and employment. The employer shall furnish such services, appliances and supplies and necessary replacements or repairs of such appliances unless the need for such replacements or repairs is due to lack of proper care by the employee.

(b) The Workers' Compensation Commission, on competent medical advice, shall have authority to determine the necessity, character and sufficiency of any medical services or medical rehabilitation

furnished or to be furnished, and shall have authority to order a change of physician, hospital or rehabilitation facility when, in its judgment, such change is desirable or necessary.

HISTORY: 1962 Code Section 72-287; 1969 (56) 685.

SECTION 42-13-90. Employee's right to vocational rehabilitation services.

(a) An employee covered by this chapter who, for reasons of injury or medically determined restrictions on radiation exposure, and whose skills are not transferable to equivalent work not involving radiation exposure, shall be entitled to such vocational rehabilitation services, including retraining and job replacement, as may be reasonably necessary to restore him to suitable employment. If such services are not voluntarily offered and accepted, the Workers' Compensation Commission, on its own motion or upon application of the employee, after affording the parties an opportunity to be heard, may refer the employee to one or more qualified physicians or facilities for evaluation of the practicability of, the need for, and the kind of service, treatment or training necessary for and appropriate to render him fit for a remunerative occupation. Upon receipt and evaluation of such report, the Workers' Compensation Commission may order that the services and treatment recommended in the report, or such other rehabilitation treatment or service it may deem necessary, be provided at the expense of the employer. Vocational rehabilitation training, treatment or service required pursuant to this section shall not extend for a period of more than fifty-two weeks, except in unusual cases when by special order of the Workers' Compensation Commission, after affording the parties an opportunity to be heard, the period may be extended for an additional twenty-six weeks.

(b) Where rehabilitation services require residence at or near the facility or institution away from the employee's customary residence, reasonable cost of his board, lodging and travel shall be paid for by the employer.

(c) Refusal to accept rehabilitation services pursuant to order of the Workers' Compensation Commission shall result in loss of compensation for each week of the period of refusal.

HISTORY: 1962 Code Section 72-288; 1969 (56) 685.

SECTION 42-13-100. Certain settlements shall be invalid unless approved by commission.

Any settlement which waives liability for possible subsequently appearing consequences of ionizing radiation injury or disability is invalid unless approved by the Workers' Compensation Commission.

HISTORY: 1962 Code Section 72-289; 1969 (56) 685.

SECTION 42-13-110. Powers of commission.

The Workers' Compensation Commission is hereby authorized to:

- (1) accept and administer loans, grants or other funds or gifts, conditional or otherwise, in furtherance of its function, from the federal government and other sources, public or private; and
- (2) require the keeping of radiation exposure records by employers covered under Section 42-13-20 of this chapter and the furnishing of such exposure records to the Workers' Compensation Commission or its successor organizations upon request.

HISTORY: 1962 Code Section 72-290; 1969 (56) 685.

SECTION 42-13-120. Application of other provisions.

All the provisions of the Workers' Compensation Act, Title 42, shall be applicable to this chapter except where they are specifically contrary thereto.

HISTORY: 1962 Code Section 72-291; 1969 (56) 685.

SECTION 42-13-130. Rejection of chapter.

Either employer or employee may reject the provisions of this chapter under the same terms and conditions as he may reject other provisions of this title.

HISTORY: 1962 Code Section 72-292; 1969 (56) 685.

CHAPTER 15
Notice of Accident; Filing of Claims; Medical Attention and Examination

SECTION 42-15-10. State law under which claim is authorized to be filed.

Any employee covered by the provisions of this title is authorized to file his claim under the laws of the state where he is hired, the state where he is injured, or the state where his employment is located. If an employee shall receive compensation or damages under the laws of any other state, nothing contained in this section shall be construed to permit a total compensation for the same injury greater than that provided in this title.

HISTORY: 1962 Code Section 72-121.1; 1974 (58) 2265; 1976 Act No. 532 Section 2.

SECTION 42-15-20. Notice to employer of accident or repetitive trauma.

(A) Every injured employee or his representative immediately shall on the occurrence of an accident, or as soon thereafter as practicable, give or cause to be given to the employer a notice of the accident and the employee shall not be entitled to physician's fees nor to any compensation which may have accrued under the terms of this title prior to the giving of such notice, unless it can be shown that the employer, his agent, or representative, had knowledge of the accident or that the party required to give such notice had been prevented from doing so by reason of physical or mental incapacity or the fraud or deceit of some third person.

(B) Except as provided in subsection (C), no compensation shall be payable unless such notice is given within ninety days after the occurrence of the accident or death, unless reasonable excuse is made to the satisfaction of the commission for not giving timely notice, and the commission is satisfied that the employer has not been prejudiced thereby.

(C) In the case of repetitive trauma, notice must be given by the employee within ninety days of the date the employee discovered, or could have discovered by exercising reasonable diligence, that his condition is compensable, unless reasonable excuse is made to the satisfaction of the commission for not giving timely notice, and the commission is satisfied that the employer has not been unduly prejudiced thereby.

HISTORY: 1962 Code Section 72-301; 1952 Code Section 72-301; 1942 Code Section 7035-25; 1936 (39) 1231; 1974 (58) 2265; 2007 Act No. 111, Pt I, Section 25, eff July 1, 2007, applicable to injuries that occur on or after that date.

SECTION 42-15-40. Time for filing claim; filing by registered mail.

The right to compensation under this title is barred unless a claim is filed with the commission within two years after an accident, or if death resulted from the accident, within two years of the date of death. However, for occupational disease claims the two-year period does not begin to run until the employee concerned has been diagnosed definitively as having an occupational disease and has been notified of the diagnosis. For the death or injury of a member of the South Carolina National Guard, as provided for in Section 42-7-67, the time for filing a claim is two years after the accident or one year after the federal claim is finalized, whichever is later. The filing required by this section may be made by registered mail, and the service within the time periods set forth in this section constitutes timely filing. For a "repetitive trauma injury" as defined in Section 42-1-172, the right to compensation is barred unless a claim is filed with the commission within two years after the employee knew or should have known that his injury is compensable but no more than seven years after the last date of injurious exposure. This section applies regardless of whether the employee was aware that his repetitive trauma injury was the result of his employment.

HISTORY: 1962 Code Section 72-303; 1952 Code Section 72-303; 1942 Code Section 7035-27; 1936 (39) 1231; 1955 (49) 319; 1974 (58) 2265; 1978 Act No. 522 Section 6; 1979 Act No. 194 Part III Section 6; 1990 Act No. 612, Part II, Section 15C, eff June 13, 1990 (became law without the Governor's signature); 2007 Act No. 111, Pt I, Section 26, eff July 1, 2007, applicable to injuries that occur on or after that date.

SECTION 42-15-50. Limitation of time on notice or claim of mentally incompetent person or minor.

No limitation of time provided in this title for the giving of notice or making claim under this title shall run against any person who is mentally incompetent or a minor dependent as long as he has no guardian, trustee or committee.

HISTORY: 1962 Code Section 72-304; 1952 Code Section 72-304; 1942 Code Section 7035-52; 1936 (39) 1231.

SECTION 42-15-55. Appointment of guardian ad litem for minors or mentally incompetent persons.

When a minor or mentally incompetent person is a party in a proceeding before the Workers' Compensation Commission of this State a guardian ad litem for the minor or mentally incompetent person may be appointed by a judge of probate, clerk of court, or master, if there is a master, of the county where the minor or mentally incompetent person resides or by any circuit judge or a member of the Workers' Compensation Commission.

HISTORY: 1986 Act No. 371, eff April 14, 1986.

SECTION 42-15-60. Time period medical treatment and supplies furnished; refusal to accept treatment; settled claims; total and permanent disability.

(A) The employer shall provide medical, surgical, hospital, and other treatment, including medical and surgical supplies as reasonably may be required, for a period not exceeding ten weeks from the date of an injury, to effect a cure or give relief and for an additional time as in the judgment of the commission will tend to lessen the period of disability as evidenced by expert medical evidence stated to a reasonable degree of medical certainty. In addition to it, the original artificial members as reasonably may be necessary must be provided by the employer. During any period of disability resulting from the injury, the employer, at his own option, may continue to furnish or cause to be furnished, free of charge to the employee, and the employee shall accept, an attending physician and any medical care or treatment that is considered necessary by the attending physician, unless otherwise ordered by the commission for good cause shown. The refusal of an employee to accept any medical, hospital, surgical, or other treatment or evaluation when provided by the employer or ordered by the commission bars the employee from further compensation until the refusal ceases and compensation is not paid for the period of refusal unless in the opinion of the commission the circumstances justified the refusal, in which case the commission may order a change in the medical or hospital service. If in an emergency, on account of the employer's failure to provide the medical care as specified in this section, a physician other than provided by the employer is called to treat the employee, the reasonable cost of the service must be paid by the employer, if ordered by the commission.

(B)(1) When a claim is settled on the commission's Agreement for Permanent Disability/Disfigurement Compensation form, the employer is not required to provide further medical treatment or medical modalities after one year from the date of full payment of the settlement unless the form specifically provides otherwise.

(2) Each award of permanency as ordered by the single commissioner or by the commission must contain a finding as to whether or not further medical treatment or modalities must be provided to the employee. If the employee is entitled to receive such benefits, the medical treatment or modalities to be provided must be set forth with as much specificity as possible in the single commissioner's order or the commission's order.

(3) In no case shall an employer be required to provide medical treatment or modalities in any case where there is a lapse in treatment of the employee by an authorized physician in excess of one year unless:

(a) the settlement agreement or commission order provides otherwise; or

(b) the employee has made reasonable attempts to obtain further treatment or modality from an authorized physician, but through no fault of the employee's own, is unable to obtain such treatment or modalities.

(C) In cases in which total and permanent disability results, reasonable and necessary nursing services, medicines, prosthetic devices, sick travel, medical, hospital, and other treatment or care shall be paid during the life of the injured employee, without regard to any limitation in this title including the maximum compensation limit. In cases of permanent partial disability, prosthetic devices shall be furnished during the life of the injured employee or for as long as such devices are necessary.

HISTORY: 1962 Code Section 72-305; 1952 Code Section 72-305; 1942 Code Section 7035-28; 1936 (39) 1231; 1972 (57) 2339; 1980 Act No. 445; 2007 Act No. 111, Pt I, Section 27, eff July 1, 2007, applicable to injuries that occur on or after that date.

SECTION 42-15-65. Compensation for damage to prosthetic device, eyeglasses, or hearing aid.

Damage to a prosthetic device of an injured employee as the result of an injury by accident arising out of and in the course of the employment entitles the employee to compensation ensuring that the prosthetic device is repaired or replaced.

Damage to eye glasses or a hearing aid used by an injured employee as the result of an injury by accident arising out of and in the course of the employment entitles the employee to compensation ensuring that the eye glasses or the hearing aid is repaired or replaced.

HISTORY: 1992 Act No. 329, Section 1, eff May 4, 1992.

SECTION 42-15-70. Liability of employer for medical treatment; effect of malpractice.

The pecuniary liability of the employer for medical, surgical and hospital service or other treatment required, when ordered by the commission, shall be limited to such charges as prevail in the community for similar treatment of injured persons of a like standard of living when such treatment is paid for by the injured person and the employer shall not be liable in damages for malpractice by a physician or surgeon furnished by him pursuant to the provisions of this section, but the consequences of any such malpractice shall be deemed part of the injury resulting from the accident and shall be compensated for as such.

HISTORY: 1962 Code Section 72-306; 1952 Code Section 72-306; 1942 Code Section 7035-29; 1936 (39) 1231.

SECTION 42-15-80. Submission to physical examinations; admissibility of communications to physician; autopsy; role of rehabilitation professionals.

(A) After an injury and so long as he claims compensation, the employee, if so requested by his employer or ordered by the commission, shall submit himself to examination, at reasonable times and places, by a qualified physician or surgeon designated and paid by the employer or the commission. The employee has the right to have present at the examination any qualified physician or surgeon provided and paid by him. A fact communicated to or otherwise learned by any physician or surgeon who may have attended or examined the employee, or who may have been present at any examination, is not privileged, either in hearings provided for by this title or any action at law brought to recover damages against an employer who may have accepted the compensation provisions of this title. If the employee refuses to submit himself to or in any way obstructs the examination requested by and provided for by the employer, his right to compensation and his right to take or prosecute a proceeding under this title must be suspended until the refusal or objection ceases and compensation is not payable at any time for the period of suspension unless in the opinion of the commission the circumstances justify the refusal or obstruction. The employer or the commission may require in any case of death an autopsy at the expense of the person requesting it.

(B) The commission shall promulgate regulations establishing the role of rehabilitation professionals and other similarly situated professionals in workers' compensation cases with consideration given to these

persons' duties to both the employer and the employee and the standards of care applicable to the rehabilitation professional or other similarly situated professional as the case may be.

HISTORY: 1962 Code Section 72-307; 1952 Code Section 72-307; 1942 Code Section 7035-30; 1936 (39) 1231; 2007 Act No. 111, Pt I, Section 28, eff July 1, 2007, applicable to injuries that occur on or after that date.

SECTION 42-15-90. Fees of attorneys and physicians and hospital charges approved by commission.

(A) Attorney fees, physician fees, and hospital charges for services under this title are subject to the approval of the commission, but a physician or hospital may not collect a fee from an employer or insurance carrier until the physician or hospital has made the reports required by the commission in connection with the case.

(B)(1) A person may not:

(a) receive a fee, gratuity, or other consideration for a service rendered pursuant to this title unless the fee, gratuity, or other consideration is approved by the commission or a court of competent jurisdiction; or

(b) make it a business to solicit employment for an attorney or himself with respect to a claim or award for compensation under this title.

(2) A violation of this section constitutes a misdemeanor and, upon conviction, each offense is subject to a fine of not more than five hundred dollars, imprisonment for not more than one year, or both.

(C)(1) The commission may adopt criteria to establish a new fee schedule or adjust an existing fee schedule to establish maximum allowable payments for medical services provided by medical practitioners exclusive of hospital inpatient services and hospital outpatient services and ambulatory surgery centers based in whole or in part on the requirements of a federally funded program, but if it adopts adjustments to an existing fee schedule, it must adopt these adjustments on an annual basis and the adjustments may not exceed the percentage change indicated by the federally funded program. The commission shall conduct an evidentiary hearing to review a proposed adjustment to increase or reduce these fees by more than ten percent annually to determine whether to:

(a) increase or reduce the proposed adjustment as the commission considers appropriate; or

(b) accept the proposed adjustment.

(2)(a) A decision of the commission to increase or reduce a fee schedule to establish maximum allowable payments for medical services provided by medical practitioners exclusive of hospital inpatient services and hospital outpatient services and ambulatory surgery centers by more than ten percent is reviewable by expedited appeal to the Administrative Law Court pursuant to the Administrative Procedures Act.

(b) On appeal, the court may:

(i) accept the increase or decrease;

(ii) impose a lesser increase or decrease;

(iii) revert the fee schedule as it was immediately prior to the annual adjustment;

(iv) adjust the appropriate conversion factors as necessary; or

(v) make other adjustments the court considers reasonable.

(c) The court shall issue a decision within ninety days after it receives the appeal.

(d) During the pendency of this appeal, the portion of the fee schedule under review must remain the same as it was immediately prior to the proposed changes, but all other portions of the fee schedule or conversion factors are effective and remain unchanged.

HISTORY: 1962 Code Section 72-19; 1952 Code Section 72-19; 1942 Code Section 7035-67; 1936 (39) 1231; 1980 Act No. 318, Section 3; 2012 Act No. 183, Section 1, eff June 7, 2012.

SECTION 42-15-95. Release of medical records; communication of medical history by health care provider.

(A) Any employee who seeks treatment for any injury, disease, or condition for which compensation is sought under the provisions of this title shall be considered to have given his consent for the release of medical records relating to such examination or treatment under any applicable law or regulation. All information compiled by a health care facility, as defined in Section 44-7-130, or a health care provider licensed pursuant to Title 40 pertaining directly to a workers' compensation claim must be provided to the insurance carrier, the employer, the employee, their respective attorneys or certified rehabilitation professionals, or the South Carolina Workers' Compensation Commission, within fourteen days after receipt of written request. A health care facility and a health care provider may charge a fee for the search and duplication of a medical record in accordance with regulations promulgated by the Workers' Compensation Commission. Fee schedules established through regulations of the Workers' Compensation Commission shall apply only to claims under Title 42. If a health care provider fails to send the requested information within thirty days after receipt of the request, the person or entity making the request may apply to the commission for an appropriate penalty payable to the commission, not to exceed two hundred dollars.

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

(1) notified by the employer, carrier, or its representative requesting the discussion or communication with the health care provider in a timely fashion, in writing or orally, of the discussion or communication and may attend and participate. This notification must occur prior to the actual discussion or communication if the health care provider knows the discussion or communication will occur in the near future;

(2) advised by the employer, carrier, or its representative requesting the discussion or communication with the health care provider of the nature of the discussion or communication prior to the discussion or communication; and

(3) provided with a copy of the written questions at the same time the questions are submitted to the health care provider. The employee also must be provided with a copy of the response by the health care provider.

Any discussion or communication must not conflict with or interfere with the employee's examination or treatment.

Any discussions, communications, medical reports, or opinions obtained in accordance with this section will not constitute a breach of the physician's duty of confidentiality.

(C) Any discussions, communications, medical reports, or opinions obtained in violation of this section must be excluded from any proceedings under the provisions of this title.

HISTORY: 1980 Act No. 318, Section 1; 1989 Act No. 186, Section 1, eff June 8, 1989; 1990 Act No. 476, Section 1, eff May 14, 1990; 1994 Act No. 468, Section 5, eff July 14, 1994; 2007 Act No. 111, Pt I, Section 29, eff July 1, 2007, applicable to injuries that occur on or after that date.

CHAPTER 17

Awards Procedure

SECTION 42-17-10. Agreement as to compensation.

If more than seven days after the date of an injury or at any time in case of death, the employer and the injured employee or his dependents reach an agreement in regard to compensation under this title, a memorandum of the agreement in the form prescribed by the commission, accompanied by a full and complete medical report shall be filed with the commission within fifteen days after agreement has been reached by the parties for approval of the commission; otherwise, such agreement shall be voidable by the employee or his dependents. All such agreements shall be subject to adjustment and correction as to the compensable rate if subsequent to filing with the commission it is determined that such rate does not reflect the correct average weekly wage of the claimant. If approved by the commission, the memorandum shall for all purposes be enforceable by a court's decree as specified in this title.

HISTORY: 1962 Code Section 72-351; 1952 Code Section 72-351; 1942 Code Section 7035-59; 1936 (39) 1231; 1980 Act No. 318, Section 5.

SECTION 42-17-20. Hearing before commission on compensation payable.

If the employer and the injured employee or his dependents fail to reach an agreement in regard to compensation under this title within fourteen days after the employer has knowledge of the injury or after a death or if they have reached such an agreement which has been signed and filed with the commission and compensation has been paid or is due in accordance therewith and the parties thereto then disagree as to the continuance of any weekly payment under such agreement, either party may make application to the commission for a hearing in regard to the matters at issue and for a ruling thereon. Immediately after such application has been received the commission shall set a date for a hearing, which shall be held as soon as practicable, and shall notify the parties at issue of the time and place of such hearing. The hearing shall be held in the district in which the injury occurred, but no greater than seventy-five miles from the county seat of the county in which the injury occurred, unless otherwise agreed to by the parties and authorized by the commission. For purposes of this section, the "county seat" is the county courthouse. These districts are defined as those districts designated by the commission and in effect as of January 1, 2018.

HISTORY: 1962 Code Section 72-352; 1952 Code Section 72-352; 1942 Code Section 7035-60; 1936 (39) 1231; 1955 (49) 459; 2018 Act No. 233 (H.5153), Section 1, eff May 18, 2018.

Effect of Amendment

2018 Act No. 233, Section 1, in the third sentence, substituted "district in which the injury occurred, but no greater than seventy-five miles from the county seat of the" for "city or", and added the fourth and fifth sentences, relating to the definition of "county seat" and the designation of districts, respectively.

SECTION 42-17-30. Commission may appoint doctor to examine injured employee; compensation.

The commission or any member thereof may, upon the application of either party or upon its own motion, appoint a disinterested and duly qualified physician or surgeon to make any necessary medical examination of any employee and to testify in respect thereto. The physician or surgeon must be allowed traveling expenses and a reasonable fee in accordance with a fee schedule set by the commission. The commission may allow additional reasonable amounts in extraordinary cases. The commission or any member thereof has the discretion to order either party to pay the fees and expenses of the physician or surgeon, or the commission or any member thereof may order the parties to share responsibility for payment of the fees and expenses.

HISTORY: 1962 Code Section 72-353; 1952 Code Section 72-353; 1942 Code Section 7035-66; 1936 (39) 1231; 1990 Act No. 407, Section 1, eff April 11, 1990.

SECTION 42-17-40. Conduct of hearing; award.

(A) The commission or any of its members shall hear the parties at issue and their representatives and witnesses and shall determine the dispute in a summary manner. The award, together with a statement of the findings of fact, rulings of law, and other matters pertinent to the questions at issue, must be filed with the record of the proceedings and a copy of the award must immediately be sent to the parties in dispute. The parties may be heard by a deputy, in which event he shall swear or cause the witnesses to be sworn and shall transmit all testimony to the commission for its determination and award.

(B) In the event any commissioner or any member of his family residing in the commissioner's household or any employee of the Workers' Compensation Commission receives an injury in the course of employment, the case must be heard and determined by the circuit court judge in the county in which the injury occurred. The clerk of court shall docket these cases in the file book for the court of common pleas and these cases must be heard in that court. These cases may be called up for trial out of their order by either party. An appeal from an order of the circuit court judge, pursuant to this subsection, shall be taken in the manner provided by the South Carolina Appellate Court Rules. If the order is not appealed, payment must be made as provided in Section 42-17-60. However, this subsection does not apply with respect to claims involving medical benefits only; for claims solely involving medical benefits, subsection (A) applies.

HISTORY: 1962 Code Section 72-354; 1952 Code Section 72-354; 1942 Code Section 7035-61; 1936 (39) 1231; 1989 Act No. 70, Section 1, eff May 10, 1989; 1999 Act No. 55, Section 45, eff June 1, 1999.

SECTION 42-17-50. Review and rehearing by commission.

If an application for review is made to the commission within fourteen days from the date when notice of the award shall have been given, the commission shall review the award and, if good grounds be shown therefor, reconsider the evidence, receive further evidence, rehear the parties or their representatives and, if proper, amend the award.

Each application for commission review must be accompanied by a fee equal to that charged in circuit court for filing a summons and complaint in order to defray the costs of the review. If the commission determines at the conclusion of the review that the appeal was without merit, it may charge, in its sole discretion, the appellant an additional fee not to exceed two hundred fifty dollars.

HISTORY: 1962 Code Section 72-355; 1952 Code Section 72-355; 1942 Code Section 7035-62; 1936 (39) 1231; 1981 Act No. 178 Part II Section 38; 1989 Act No. 197, Section 2.

SECTION 42-17-60. Conclusiveness of award; appeals; payment of compensation during appeal; accrual of interest.

The award of the commission, as provided in Section 42-17-40, if not reviewed in due time, or an award of the commission upon the review, as provided in Section 42-17-50, is conclusive and binding as to all questions of fact. However, either party to the dispute, within thirty days from the date of the award or within thirty days after receipt of notice to be sent by registered mail of the award, but not after, whichever is the longest, may appeal from the decision of the commission to the court of appeals. Notice of appeal must state the grounds of the appeal or the alleged errors of law. In case of an appeal from the decision of the commission on questions of law, the appeal does not operate as a supersedeas and, after that time, the employer is required to make weekly payments of compensation and to provide medical treatment ordered by the commission involved in the appeal or certification until the questions at issue have been fully determined in accordance with the provisions of this title. Interest accrues on an unpaid portion of the award at the legal rate of interest as established in Section 34-31-20(B) during the pendency of an appeal.

HISTORY: 1962 Code Section 72-356; 1952 Code Section 72-356; 1942 Code Section 7035-63; 1936 (39) 1231; 1988 Act No. 677, Section 3, eff June 27, 1988; 1990 Act No. 439, Section 1, eff April 24, 1990; 2007 Act No. 111, Pt I, Section 30, eff July 1, 2007, applicable to injuries that occur on or after that date.

SECTION 42-17-70. Judgment on agreement or award.

Any party in interest may file in the court of common pleas of the county in which the injury occurred a certified copy of a memorandum of agreement approved by the commission, an order or decision of the commission, an award of the commission unappealed from or an award of the commission affirmed upon appeal, whereupon such court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though such judgment had been rendered in a suit duly heard and determined by such court. But if the judgment debtor shall file a certificate duly issued by the commission, showing compliance with Section 42-5-20, with the clerk of the court in the county in which such judgment is docketed, such clerk shall make upon the judgment roll an entry showing the filing of such certificate which shall operate as a discharge of the lien of such judgment and no execution shall be issued thereon. But if at any time there is default in the payment of any installment due under the award set forth in such judgment the court may, upon application for cause and after ten days' notice to the judgment debtor, order the lien of such judgment restored and execution or other proper process may be immediately issued thereon for past-due installments and for future installments as they may become due.

HISTORY: 1962 Code Section 72-357; 1952 Code Section 72-357; 1942 Code Section 7035-64; 1936 (39) 1231.

SECTION 42-17-80. Costs.

If the commission or any court before whom any proceedings are brought under this title shall determine that such proceedings have been brought, prosecuted or defended without reasonable grounds, it may assess the whole cost of the proceedings upon the party who has brought or defended them.

HISTORY: 1962 Code Section 72-358; 1952 Code Section 72-358; 1942 Code Section 7035-65; 1936 (39) 1231.

SECTION 42-17-90. Review of award on change of condition.

(A) On its own motion or on the application of a party in interest on the ground of a change in condition, the commission may review an award and on that review may make an award ending, diminishing, or increasing the compensation previously awarded, on proof by a preponderance of the evidence that there has been a change of condition caused by the original injury, after the last payment of compensation. An award is subject to the maximum or minimum provided in this title, and the commission immediately shall send to the parties a copy of the order changing the award. The review does not affect the award as regards any monies paid and the review must not be made after twelve months from the date of the last payment of compensation pursuant to an award provided by this title.

(B) A motion or application for change in condition involving a repetitive trauma injury must be made within one year from the date of the last compensation payment for the repetitive trauma injury. Any filing not made within this one-year period shall be considered untimely and shall not be reviewed.

(C) A motion or application for change in condition involving an occupational disease must be made within one year from the date of the last compensation payment for the occupational disease. Any filing not made within this one-year period shall be considered untimely and shall not be reviewed.

HISTORY: 1962 Code Section 72-359; 1952 Code Section 72-359; 1942 Code Section 7035-49; 1936 (39) 1231; 2007 Act No. 111, Pt I, Section 31, eff July 1, 2007, applicable to injuries that occur on or after that date.

CHAPTER 19

Records and Reports

SECTION 42-19-10. Employers' records and reports of injuries.

Every employer shall keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment on forms approved by the commission.

If the injury requires minimal medical attention at a cost not to exceed an amount specified by regulation of the Workers' Compensation Commission, and does not cause more than one lost workday or permanency, the employer is not required to make a written report to the commission or the employer's insurance carrier, provided the employer maintains a record as prescribed by the commission and pays directly the incurred cost of the resulting medical attention.

All other injuries must be reported in writing to the commission according to the following guidelines:

(1) An injury for which there is no compensable lost time or permanency and the medical treatment does not exceed an amount specified by regulation of the Workers' Compensation Commission must be reported annually on a form and at a time prescribed by the commission.

(2) An injury involving compensable lost time, medical attention in excess of the limit established by commission regulation in item (1), or the possibility of permanency must be reported within ten business days after the occurrence and knowledge of it, as provided in Section 42-15-20, on a form or in an electronic format prescribed by the commission.

However, for the injury of a South Carolina National Guard member as provided for in Section 42-7-67, the reporting periods must be counted from the date the employer, the South Carolina National Guard, has knowledge that the federal government has denied benefits to the injured guard member or that benefits or additional benefits may be due under the provisions of Title 42.

HISTORY: 1962 Code Section 72-501; 1952 Code Section 72-501; 1942 Code Section 7035-69; 1936 (39) 1231; 1955 (49) 459; 1980 Act No. 318, Section 7; 1989 Act No. 197, Section 1, eff June 20, 1989; 1990 Act No. 612, Part II, Section 15D, eff June 13, 1990 (became law without the Governor's signature); 1996 Act No. 424, Section 8, eff June 18, 1996.

Editor's Note

1996 Act No. 424, Section 13, provides, in part, as follows:

"Employers who have filed with the Workers' Compensation Commission a notice to reject the provisions of Title 42 before the effective date of the 1996 amendment will have until July 1, 1997, to comply with the provisions of the 1996 amendment relating to insuring their workers' compensation liabilities. Any employer who has rejected the terms of this title prior to approval of the 1996 amendment and has procured another form of employee benefits insurance shall comply, not later than July 1, 1997, with the provisions of the 1996 amendment relating to the insuring of its workers' compensation liabilities. Furthermore, nothing in the 1996 amendment shall affect or alter any cause of action, right, or claim accruing before the effective date of the 1996 amendment; however, any such cause of action, remedy, or claim accruing before the effective date of the 1996 amendment shall be governed by the law prior to the effective date of the 1996 amendment."

SECTION 42-19-20. Employers' reports of termination or extension beyond sixty days of disability.

Upon the termination of the disability of an injured employee, or if the disability extends beyond a period of sixty days then also at the expiration of such period, the employer shall make a supplementary report to the commission on blanks approved by the commission for this purpose.

HISTORY: 1962 Code Section 72-502; 1952 Code Section 72-502; 1942 Code Section 7035-69; 1936 (39) 1231; 1980 Act No. 318, Section 8.

SECTION 42-19-30. Penalty for failure to make required reports.

Any employer or insurance carrier who refuses or neglects to submit required forms, records, and reports as may be necessary for the proper handling or adjudication of a claim is liable for a penalty of not less than ten dollars nor more than one hundred dollars for each refusal or neglect. The fine provided in this section may be assessed by the commission with the right of review and appeal as in other cases.

HISTORY: 1962 Code Section 72-503; 1952 Code Section 72-503; 1942 Code Section 7035-69; 1936 (39) 1231; 1980 Act No. 318, Section 9; 1981 Act No. 27, Section 1; 1986 Act No. 366, eff April 11, 1986.

SECTION 42-19-40. Records shall not be public.

The records of the commission, in so far as they refer to accidents, injuries and settlements, shall not be open to the public, but only to parties satisfying the commission of their interest in such records and of the right to inspect them.

HISTORY: 1962 Code Section 72-504; 1952 Code Section 72-504; 1942 Code Section 7035-69; 1936 (39) 1231.

SECTION 42-19-50. Penalty for failing to file report of insurance coverage.

Every insurance carrier providing coverage under the Workers' Compensation law shall file a report of coverage with the Workers' Compensation Commission within thirty days from the inception date of the policy on forms prescribed by the commission.

Any insurance company who refuses or neglects to properly submit the required forms is liable for a penalty of not less than one hundred dollars and not more than two hundred fifty dollars for each day's refusal to so file. The fine provided for in this section may be assessed by the commission with the right to review and appeal as in other cases.

HISTORY: 1985 Act No. 180, Section 1, eff June 21, 1985.