SB330

166444-1

By Senators Marsh and Ward

RFD: Fiscal Responsibility and Economic Development

First Read: 02-APR-15
SYNOPSIS: This bill extensively amends the workers' compensation law. The bill would: Revise certain definitions; provide for the approval of standardized claim reimbursement forms by the Director of the Department of Labor; streamline provisions related to injuries occurring out-of-state; provide further for settlement of claims having attorney representation, inadmissible evidence, and advanced payments; provide further for limitations on total permanent total disability compensation; increase the amount for burial expenses; revise maximum compensation amounts; provide further for the names of physicians on medical panels approving additional treatment; shift the burden for cut-off of treatment, and add pain management treatment; delete verification requirement for filing complaints; provide further for attorney fees; add a 14-day requirement to submit stipulation to courts for trial; require judges to enter an order within 90 days of trial;
delete requirement of judges to enter an order for hiring of employee's attorney; delete references to the Department of Industrial Relations; provide further for composition of Workers' Compensation Medical Services Board and alter powers and duties of the board; revise schedules of maximum fees and reimbursement rates; and provide for contracts for medical services at mutually agreed rates.

A BILL TO BE ENTITLED
AN ACT

physicians on panels approving additional treatment; shift burden for cut-off of treatment, and add pain management treatment; delete verification requirement for filing complaints; to provide further for attorney fees; add a 14-day requirement to submit stipulation to courts for trial; require judges to enter an order within 90 days of trial; delete requirement of judges to enter an order for hiring of employee's attorney; delete references to the Department of Industrial Relations; provide further for composition of Workers' Compensation Medical Services Board and alter powers and duties of the board; revise schedules of maximum fees and reimbursement rates; and provide for contracts for medical services at mutually agreed rates.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:


"§25-5-1.

"Throughout this chapter, the following words and phrases as used therein shall be considered to have the following meanings, respectively, unless the context shall clearly indicate a different meaning in the connection used:

"(1) COMPENSATION. The money benefits to be paid on account of injury or death, as provided in Articles 3 and 4."
The recovery which an employee may receive by action at law under Article 2 of this chapter is termed "recovery of civil damages," as provided for in Sections 25-5-31 and 25-5-34. "Compensation" does not include medical and surgical treatment and attention, medicine, medical and surgical supplies, and crutches and apparatus furnished an employee on account of an injury.

"(2) CHILD or CHILDREN. The terms include posthumous children and all other children entitled by law to inherit as children of the deceased; stepchildren who were members of the family of the deceased, at the time of the accident, and were dependent upon him or her for support; a grandchild of the deceased employee, whose father is dead or is an invalid, and who was supported by and a member of the family of the deceased grandparent at the time of the accident.

"(3) DEPENDENT CHILD or ORPHAN. An unmarried child under the age of 18 years or one over that age who is physically or mentally incapacitated from earning.

"(4) EMPLOYER. Every person who employs another to perform a service for hire and pays wages directly to the person. The term shall include a service company for a self-insurer or any person, corporation, copartnership, or association, or group thereof, and shall, if the employer is insured, include his or her insurer, the insurer being entitled to the employer's rights, immunities, and remedies under this chapter, as far as applicable. The inclusion of an employer's insurer within the term shall not provide the
insurer with immunity from liability to an injured employee, or his or her dependent in the case of death to whom the insurer would otherwise be subject to liability under Section 25-5-11. Notwithstanding the provisions of this chapter, in no event shall a common carrier by motor vehicle operating pursuant to a certificate of public convenience and necessity be deemed the "employer" of a leased-operator or owner-operator of a motor vehicle or vehicles under contract to the common carrier.

"(5) EMPLOYEE or WORKER. The terms are used interchangeably, have the same meaning throughout this chapter, and shall be construed to mean the same. The terms include the plural and all ages and both sexes. The terms include every person in the service of another under any contract of hire, express or implied, oral or written, including aliens and also including minors who are legally permitted to work under the laws of this state, and also including all employees of Tannehill Furnace and Foundry Commission. Any reference in this chapter to a "worker" or "employee" shall, if the worker or employee is dead, include his or her dependent, as defined in this chapter, if the context so requires.

"(6) WAGES or WEEKLY WAGES. The terms shall in all cases be construed to mean "average weekly earnings", based on those earnings subject to federal income taxation and reportable on the Federal W-2 tax form which shall include voluntary contributions made by the employee to a
tax-qualified retirement program, voluntary contributions to a
Section 125 cafeteria program, and fringe benefits as defined
herein. Average weekly earnings shall not include fringe
benefits if and only if the employer continues the benefits
during the period of time for which compensation is paid.
"Fringe benefits" shall mean only the employer's portion of
health, life, and disability insurance premiums.
(7) ACCIDENT. The term, as used in the phrases
"personal injuries due to accident" or "injuries or death
caused by accident" shall be construed to mean an unexpected
or unforeseen event, happening suddenly and violently, with or
without human fault, and producing at the time injury to the
physical structure of the body or damage to an artificial
member of the body by accidental means.
(8) INJURIES BY AN ACCIDENT ARISING OUT OF AND IN
THE COURSE OF THE EMPLOYMENT. Without otherwise affecting
either the meaning or interpretation of the clause, the clause
does not cover workers except while engaged in or about the
premises where their services are being performed or where
their service requires their presence as a part of service at
the time of the accident and during the hours of service as
workers.
(9) INJURY. "Injury and personal injury" shall mean
only injury by accident arising out of and in the course of
the employment, and shall not include a disease in any form,
except for an occupational disease or where it results
naturally and unavoidably from the accident. Injury shall
include physical injury caused either by carpal tunnel syndrome disorder or by other cumulative trauma disorder if either disorder arises out of and in the course of the employment, and breakage or damage to eyeglasses, hearing aids, dentures, or other prosthetic devices which function as part of the body, when injury to them is incidental to an on-the-job injury to the body. Injury does not include an injury caused by the act of a third person or fellow employee intended to injure the employee because of reasons personal to him or her and not directed against him or her as an employee or because of his or her employment. Injury does not include a mental disorder or mental injury that has neither been produced nor been proximately caused by some physical injury to the body.

"(10) SINGULAR and PLURAL. Wherever the singular is used, the plural shall be included.

"(11) GENDER. Where the masculine gender is used, the feminine and neuter shall be included.

"(12) LOSS OF HAND OR FOOT. Amputation between the elbow and wrist shall be considered as the equivalent to the loss of a hand, and the amputation between the knee and ankle shall be considered as the equivalent of the loss of a foot.

"(13) PROVIDERS. A medical clinic, physician, surgeon, pharmacist, dentist, chiropractor, psychologist, podiatrist, physical therapist, pharmaceutical supply company, rehabilitation service, hospital, ambulatory surgery center, diagnostic facility, or other person or entity providing
treatment, service, or equipment, or person or entity
providing facilities at which the employee receives treatment.

"(14) MEDICAL. All services, treatment, or equipment
provided by a provider.

"(15) PREVAILING. The most commonly occurring
reimbursements for health services, other than those provided
by federal and state programs for the elderly (Medicare) and
economically disadvantaged (Medicaid). "Prevailing" shall
include not only amounts per procedure code, but also commonly
used adjudication rules as applied to multiple procedures,
global procedures, use of assistant surgeons, and others as
appropriate. For hospitals, "prevailing" rate of reimbursement
or payment shall be established by the method contained in
Section 25-5-77.

"(16)(15) PARTICIPATING AND NONPARTICIPATING
HOSPITALS. Those hospitals that have a negotiated rate of
reimbursement or payment with the Department of Industrial
Relations Labor. "Nonparticipating hospitals" means those
hospitals that have not negotiated a rate of reimbursement or
payment with the Department of Industrial Relations Labor.

"(17)(16) HOSPITAL. A hospital, ambulatory surgical
center, diagnostic facility licensed by the State of Alabama,
and outpatient rehabilitation center centers licensed by the
State of Alabama, and diagnostic facilities accredited by the
Commission on Accreditation of Rehabilitation Facilities.

"(18)(17) THE COURT. The circuit court that would
have jurisdiction in an ordinary civil action involving a
claim for the injuries or death in question, and "the judge"
means a judge of that court.

"(19)(18) UTILIZATION REVIEW. The determination of
medical necessity for medical and surgical in-hospital,
out-patient, and alternative settings treatments for acute and
rehabilitation care. It includes precertification for elective
treatments. Concurrent review and, if necessary, retrospective
review are required for emergency cases.

"(20)(19) BILL SCREENING. The evaluation and
adjudication of provider bills for appropriateness of
reimbursement relative to medical necessity and prevailing
rates of reimbursement, duplicate charges, unbundling of
charges, relativeness of services to injury or illness,
necessity of assistant surgeons, adjudication of multiple
procedures, number of modalities, global procedures, and any
other prevailing adjudication issues rules that may apply. In
no event may adjudication rules or any fees exceed the amounts
provided for and established by Section 25-5-313.

"(21)(20) ADJUDICATION. The review of claims to
apply prevailing the most commonly occurring applicable rules
that adjust reimbursements for the amount of work required
when multiple procedures are performed at the same time, when
assisting surgeons are present, to eliminate duplicate billing
from the unbundling of global fees, and to adjust for the most
commonly occurring method adopted for total reimbursement.

"(22)(21) OMBUDSMAN. An individual who assists
injured or disabled employees, persons claiming death
benefits, employers, and other persons in protecting their
rights and obtaining information available under the workers'
compensation law.

"§25-5-3.

"The director shall prepare and cause to be printed,
at the expense of the state, and to be paid for as other
supplies are paid for, and upon request furnish free sample
copies to any employer or employee the blank forms and
literature as he or she shall deem requisite to facilitate or
promote the efficient administration of Articles 2, 3, and 4
of this chapter, other than the papers relating to court
proceedings. The director shall adopt and cause a standardized
claim reimbursement form to be used by providers. The director
shall also assist providers in developing a system for
electronic reporting, billing, and payment in workers'
compensation cases. Standardized claim reimbursement forms for
physicians licensed to practice medicine and for other
providers shall be approved by the director and the Workers' Compensation Medical Services Board. If the board and the
director are unable to agree on a standardized claim
reimbursement form for physicians within three months
following May 19, 1992, then the form shall be established
under Section 27-1-16 Director of the Department of Labor.

"§25-5-11.1.

"No employee shall be terminated by an employer
solely because where the substantial motivating factor for the
termination is that the employee has instituted or maintained
any action against the employer to recover workers'
compensation benefits under this chapter or solely because
that the employee has filed a written notice of violation of a
safety rule pursuant to subdivision (c)(4) of Section 25-5-11.
§25-5-35.
"(a) As used in this section:
"(1) The term "United States" includes only the
states of the United States and the District of Columbia; and
"(2) The term "state" includes any state of the
United States or the District of Columbia.
"(b) For the purposes of this section, a person's
employment is principally localized in this or another state
when his or her employer has a place of business in this or
such other state and he or she regularly works at or from such
place of business, or if he or she is domiciled and spends a
substantial part of his or her working time in the service of
his or her employer in this or such other state.
"(c) An employee whose duties require him or her to
travel regularly in the service of his or her employer in this
and one or more other states may, by written agreement with
his or her employer, provide that his or her employment is
principally localized in this or another such state; and,
unless such other state refuses jurisdiction, such agreement
shall be given effect under this section.
"(d) If an employee, while working outside of this
state, suffers an injury on account of which he or she or, in
the event of his or her death, his or her dependents, would
have been entitled to the benefits provided by this article and Article 3 of this chapter had such injury occurred within this state, such employee or, in the event of his or her death resulting from such injury, his or her dependents, shall be entitled to the benefits provided by this article and Article 3 of this chapter, provided that at the time of such injury:

"(1) His or her employment was principally localized in this state;

"(2) He or she was working under a contract of hire made in this state, whether in employment not principally localized in any the state, or in employment principally localized in another state; or

"(3) He was working under a contract of hire made in this state in employment principally localized in another state whose workers' compensation law was not applicable to his employer; or

"(4) He or she was working under a contract of hire made in this state for employment outside the United States.

"(e) The payment or award of benefits under the workers' compensation law of another state, territory, province, or foreign nation to an employee or his or her dependents otherwise entitled on account of such injury or death to the benefits of this article and Article 3 of this chapter shall not be a bar to a claim for benefits under this article and Article 3 of this chapter; provided that claim under this article is filed within the time limits set forth
in Section 25-5-80. If compensation is paid or awarded under this article and Article 3 of this chapter:

"(1) The medical and related benefits furnished or paid for by the employer under such other workers' compensation law on account of such injury or death shall be credited against the medical and related benefits to which the employee would have been entitled under this article and Article 3 of this chapter had claim been made solely under this article and Article 3 of this chapter;

"(2) The total amount of compensation paid or awarded the employee under such other workers' compensation law shall be credited against the total amount of compensation which would have been due the employee under this article and Article 3 of this chapter, had claim been made solely under this article and Article 3 of this chapter; and

"(3) The total amount of death benefits paid or awarded under such other workers' compensation law shall be credited against the total amount of death benefits due under this article and Article 3 of this chapter.

"(f) The recovery of any compensation benefits under the law of any other state shall bar any common-law or statutory right of action for damages that an employee or his or her dependents might otherwise have had against the employer or the officers, directors, or employees of the employer as a result of the injury or death on account of which such compensation benefits were paid.
"(g) If, as a result of an employment principally localized in another state, an employee of an employer who would have been subject to this article or Article 3 of this chapter, had the contract of employment been entered into in this state for performance in this state, suffers injury or death as a result of an accident occurring in this state, compensation and medical, surgical, and hospital benefits on account of such injury or death may be recovered under this article or Article 3 of this chapter.

"§25-5-56.

"The interested parties may settle all matters of benefits, whether involving compensation, medical payments, or rehabilitation, and all questions arising under this article and Article 4 of this chapter between themselves, and every settlement shall be in an amount the same as the amounts or benefits stipulated in this article. No settlement for an amount less than the amounts or benefits stipulated in this article shall be valid for any purpose, unless a judge of the court where the claim for compensation under this chapter is entitled to be made, or upon the written consent of the parties, a judge of the court determines that it is for the best interest of the employee or the employee's dependent to accept a lesser sum and approves the settlement. There shall be a presumption that the settlement is in the best interest of the employee where the employee is represented by counsel licensed to practice law in the State of Alabama. The court shall not approve any settlement unless and until it has first
made inquiry into the bona fides of a claimant's claim and the
liability of the defendant; and if deemed advisable, the court
may hold a hearing thereon. Settlements made may be vacated
for fraud, undue influence, or coercion, upon application made
to the judge approving the settlement at any time not later
than six months after the date of settlement. Upon settlements
being approved, judgment shall be entered thereon and duly
entered on the records of the court in the same manner and
have the same effect as other judgments or as an award if the
settlement is not for a lump sum. In the event that a proposed
settlement is jointly presented by the employer and employee
for approval to a judge, and the settlement is not approved
for any reason, the matter shall be reassigned to another
judge; any statements or arguments made by the parties, their
lawyers, witnesses, or the judge at the hearing where the
settlement was not approved shall not be admissible in any
subsequent hearing or proceeding between the parties. All
moneys voluntarily paid by the employer or insurance carrier
to an injured employee in advance of agreement or award shall
be treated as advance payments on account of the compensation.
No such advance payments or payment of medical or any other
benefits of any kind shall be an admission against interest or
admission of liability. In order to encourage advance
payments, it is expressly provided that the payments shall not
be construed as an admission of liability but shall be without
prejudice.

"§25-5-57."
"(a) Compensation schedule. Following is the
schedule of compensation:

"(1) TEMPORARY TOTAL DISABILITY. For injury
producing temporary total disability, the compensation shall
be 66 2/3 percent of the average weekly earnings received at
the time of injury, subject to a maximum and minimum weekly
compensation as stated in Section 25-5-68, but if at the time
of injury the employee received average weekly earnings of
less than the minimum stated in Section 25-5-68, then he or
she shall receive the full amount of the average weekly
earnings per week. This compensation shall be paid during the
time of the disability, but at the time as a temporary total
disability shall become permanent, compensation for the
continued total disability shall be governed by (a)(4) of this
section with respect to permanent total disability. Payments
are to be made at the intervals when the earnings were
payable, as nearly as may be, unless the parties otherwise
agree.

"(2) TEMPORARY PARTIAL DISABILITY.

"a. Amount and Duration of Compensation. For
temporary partial disability, the compensation shall be 66 2/3
percent of the difference between the average weekly earnings
of the worker at the time of the injury and the average weekly
earnings he or she is able to earn in his or her partially
disabled condition. This compensation shall be paid during the
period of the disability, but not beyond 300 weeks. Payments
shall be made at the intervals when the earnings were payable,
as nearly as may be, unless the parties otherwise agree, and shall be subject to the same maximum weekly compensation as stated in Section 25-5-68.

"b. Effect of Change in Employment. If the injured employee who is receiving compensation for temporary partial disability leaves the employment of the employer by whom he or she was employed at the time of the accident for which the compensation is being paid, he or she shall, upon securing employment elsewhere, give to the former employer an affidavit in writing containing the name of his or her new employer, the place of employment, and the amount of wages being received at the new employment, and until he or she gives the affidavit, the compensation for temporary partial disability shall cease. The employer for whom the employee was employed at the time of the accident for which the compensation is being paid may also at any time demand of the employee an additional affidavit, in writing, containing the name of his or her employer, the place of his or her employment, and the amount of wages he or she is receiving; and if the employee upon demand fails or refuses to make and furnish the affidavit, his or her right to compensation for temporary partial disability shall cease until the affidavit is made and furnished.

"(3) PERMANENT PARTIAL DISABILITY.

"a. Amount and Duration of Compensation. For permanent partial disability, the compensation shall be based upon the extent of the disability. In cases included in the following schedule, the compensation shall be 66 2/3 percent
of the average weekly earnings, during the number of weeks set out in the following schedule:

"1. For the loss of a thumb, 62 weeks.

"2. For the loss of a first finger, commonly called the index finger, 43 weeks.

"3. For the loss of a second finger, 31 weeks.

"4. For the loss of a third finger, 22 weeks.

"5. For the loss of a fourth finger, commonly called the little finger, 16 weeks.

"6. The loss of the first phalange of the thumb or of any finger shall be considered as equal to the loss of one half of the thumb or finger, and compensation shall be paid at the prescribed rate during one half of the time specified above for the thumb or finger.

"7. The loss of two or more phalanges shall be considered as the loss of the entire finger or thumb, but 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, 32 weeks.

"9. For the loss of any of the toes other than the great toe, 11 weeks.

"10. The loss of the first phalange of any toe shall be considered to be equal to the loss of one half of the toe, and compensation shall be paid at the prescribed rate during one half the time prescribed above for the toe.
11. The loss of two or more phalanges shall be considered as the loss of an entire toe.

"12. For the loss of a hand, 170 weeks.

"13. For the loss of an arm, 222 weeks.

"14. For the loss of a foot, 139 weeks.

"15. Amputation between the elbow and wrist shall be considered as the equivalent to the loss of a hand, and amputation between the knee and ankle shall be considered as the equivalent of the loss of a foot.

"16. For the loss of a leg, 200 weeks.

"17. For the loss of an eye, 124 weeks.

"18. For the complete and permanent loss of hearing in both ears, 163 weeks.

"19. For the complete and permanent loss of hearing in one ear, 53 weeks.

"20. For the loss of an eye and a leg, 350 weeks.

"21. For the loss of an eye and one arm, 350 weeks.

"22. For the loss of an eye and a hand, 325 weeks.

"23. For the loss of an eye and a foot, 300 weeks.

"24. For the loss of two arms, other than at the shoulder, 400 weeks.

"25. For the loss of two hands, 400 weeks.

"26. For the loss of two legs, 400 weeks.

"27. For the loss of two feet, 400 weeks.

"28. For the loss of one arm and the other hand, 400 weeks.
29. For the loss of one hand and one foot, 400 weeks.

30. For the loss of one leg and the other foot, 400 weeks.

31. For the loss of one hand and one leg, 400 weeks.

32. For the loss of one arm and one foot, 400 weeks.

33. For the loss of one arm and one leg, 400 weeks.

34. For serious disfigurement, not resulting from the loss of a member or other injury specifically compensated, materially affecting the employability of the injured person in the employment in which he or she was injured or other employment for which he or she is then qualified, 66 2/3 percent of the average weekly earnings for the period as the court may determine, but not exceeding 100 weeks.

"b. Successive or Concurrent Temporary Total and Permanent Partial Disabilities Resulting from Same Injury. When a permanent partial disability, the number of weeks compensation for which is scheduled in subdivision (a)(3) of this section, follows or accompanies a period of temporary total disability resulting from the same injury, the number of weeks of the temporary total disability shall not be deducted from the number of weeks payable for the permanent partial disability.

"c. Concurrent Disabilities. If an employee sustains concurrent injuries resulting in concurrent disabilities, he
or she shall receive compensation only for the injury which entitled him or her to the largest amount of compensation, but this paragraph shall not affect liability for the concurrent loss of more than one member for which members compensation is provided in the specific schedule.

"d. Loss of Use of Member. The permanent and total loss of the use of a member shall be considered as equivalent to the loss of that member, but in such cases the compensation specified in the schedule for such injury shall be in lieu of all other compensation, except as otherwise provided herein. For permanent disability due to injury to a member resulting in less than total loss of use of the member not otherwise compensated in this schedule, compensation shall be paid at the prescribed rate during that part of the time specified in the schedule for the total loss or total loss of use of the respective member which the extent of the injury to the member bears to its total loss.

"e. Effect of Refusal of Suitable Employment. If an injured employee refuses employment suitable to his or her capacity offered to or procured for him or her, he or she shall not be entitled to any compensation at any time during the continuance of the refusal, unless at any time, in the opinion of the judge of the circuit court of the county of his or her residence, the refusal is justifiable.

"f. Maximum and Minimum Compensation Awards. Compensation provided in this subsection (a) for loss of members or loss of use of members is subject to the same
limitations as to maximum and minimum weekly compensation as stated in Section 25-5-68.

"g. Compensation for Permanent Partial Disabilities Not Enumerated. For all other permanent partial disabilities not above enumerated, the compensation shall be 66 2/3 percent of the difference between the average weekly earnings of the worker at the time of the injury and the average weekly earnings he or she is able to earn in his or her partially disabled condition, subject to the same maximum weekly compensation as stated in Section 25-5-68. If a permanent partial disability, compensation for which is not calculated by use of the schedule in subdivision (a)(3) of this section, follows a period of temporary total disability resulting from the same injury, the number of weeks of the temporary total disability shall be deducted from the number of weeks payable for the permanent partial disability. Compensation shall continue during disability, but not beyond 300 400 weeks.

"h. Affidavit of New Employment. If the injured employee leaves the services of the employer for whom he or she was working at the time of the accident and accepts employment elsewhere, he or she shall make and furnish affidavit as to his or her new employment in the manner as required in (a)(2) of this section.

"i. Return to Work. If, on or after the date of maximum medical improvement, except for scheduled injuries as provided in Section 25-5-57(a)(3), an injured worker returns to work at a wage equal to or greater than the worker's
pre-injury wage, the worker's permanent partial disability rating shall be equal to his or her physical impairment and the court shall not consider any evidence of vocational disability. Notwithstanding the foregoing, if the employee has lost his or her employment under circumstances other than any of the following within a period of time not to exceed 300 weeks from the date of injury, an employee may petition a court within two years thereof for reconsideration of his or her permanent partial disability rating:

"(i) The loss of employment is due to a labor dispute still in active progress in the establishment in which he or she is or was last employed. For the purposes of this section only, the term "labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee. This definition shall not relate to a dispute between an individual worker and his or her employer.

"(ii) The loss of employment is voluntary, without good cause connected with such work.

"(iii) The loss of employment is for a dishonest or criminal act committed in connection with his or her work, for sabotage, or an act endangering the safety of others.
"(iv) The loss of employment is for actual or threatened misconduct committed in connection with his or her work after previous warning to the employee.

"(v) The loss of employment is because a license, certificate, permit, bond, or surety which is necessary for the performance of such employment and which he or she is responsible to supply has been revoked, suspended, or otherwise become lost to him or her for a cause.

"The burden of proof is on the employer to prove, by clear and convincing evidence, that an employee's loss of employment was due to one of the causes (i) through (v) above. At the hearing, the court may consider evidence as to the earnings the employee is or may be able to earn in his or her partially disabled condition, and may consider any evidence of vocational disability. The fact the employee had returned to work prior to his or her loss of employment shall not constitute a presumption of no vocational impairment. In making this evaluation, the court shall consider the permanent restriction, if any, imposed by the treating physician under Section 25-5-77, as well as all available reasonable accommodations that would enable the employee in his or her condition following the accident or onset of occupational disease to perform jobs that he or she in that condition otherwise would be unable to perform, and shall treat an employee able to perform with such accommodation as though he or she could perform without the accommodation. Nothing contained in this section shall be construed as having any
effect upon any evidentiary issues or claims made in third
day actions pursuant to Section 25-5-11.

"(4) PERMANENT TOTAL DISABILITY.

"a. Amount, Duration, and Payment of Compensation.

For permanent total disability, as defined in paragraph d. of
this subdivision, the employee shall receive 66 2/3 percent of
the average weekly earnings received at the time of the
injury, subject to a maximum and minimum weekly compensation
as stated in Section 25-5-68; provided, in no event shall
permanent total disability benefits be paid beyond the
employee attaining 75 years of age or exceeding 500 weeks,
whichever total of disability benefits is greater.

Notwithstanding the foregoing, if at the time of injury the
employee was receiving earnings of less than the minimum as
stated in Section 25-5-68, then he or she shall receive the
full amount of his or her earnings per week. This compensation
shall be paid during the permanent total disability, as
defined in paragraph d. of this subdivision. Payment of the
compensation shall be made at the intervals when the earnings
were payable, as nearly as may be, unless the parties
otherwise agree. The payments, with the approval of the
circuit judge or by the agreement of the parties, may be made
monthly, quarterly, or otherwise as the parties may agree.
Payments for permanent total disability shall not be ordered
to be paid in a lump sum without the consent of both the
employer and the employee.
"b. Alteration, Amendment, or Revision of Compensation. At any time, the employer may petition the court that awarded or approved compensation for permanent total disability to alter, amend, or revise the award or approval of the compensation on the ground that as a result of physical or vocational rehabilitation, or otherwise, the disability from which the employee suffers is no longer a permanent total disability and, if the court is so satisfied after a hearing, it shall alter, amend, or revise the award accordingly. If compensation for permanent total disability is being paid pursuant to a written agreement between employer and employee without approval, the employer may make application to the court that would have had jurisdiction to award the compensation to the employee to alter, amend, or revise the agreement on such grounds. If an employee is receiving benefits for permanent total disability other than as a result of an award or a written agreement between the employer and employee and if the employer terminates the payment of the benefits, the employee may, within two years of the last payment, petition the court to reinstate the benefits and, upon a showing that the permanent total disability still exists, shall be entitled to have the benefits reinstated effective the date of the last payment.

c. Employees in Public Institutions. In case an employee who is permanently and totally disabled becomes an inmate of a public institution, no compensation shall be payable unless the employee has wholly dependent on him or her
for support a person or persons named in Sections 25-5-61 and
25-5-62, whose dependency shall be determined as if the
employee were deceased, in which case the compensation
provided for in this subdivision shall be paid for the benefit
of the person so dependent, during dependency, in the manner
so ordered by the court, while the employee is an inmate in
the institution. Nothing contained herein shall be construed
to deprive a permanently and totally disabled employee who has
no dependent named in Sections 25-5-61 and 25-5-62 from
receiving benefits to which he or she would otherwise be
entitled if the employee, although an inmate of a public
institution, is paying or on whose behalf funds are paid from
any source to the public institution the normal and customary
charge for the services rendered by the public institution.
Normal and customary charge shall mean that charge actually
made by the public institution to persons able to pay for the
services rendered them whether the charge actually covers the
expense of the upkeep of the inmate or not. If the employee
has had a guardian appointed by a court of competent
jurisdiction, the workers' compensation payments shall be
directly paid to the guardian.

"d. Definition. The total and permanent loss of the
sight of both eyes or the loss of both arms at the shoulder or
any physical injury or mental impairment resulting from an
accident, which injury or impairment permanently and totally
incapacitates the employee from working at and being retrained
for gainful employment, shall constitute prima facie evidence
of permanent total disability but shall not constitute the sole basis on which an award of permanent total disability may be based. Any employee whose disability results from an injury or impairment and who shall have refused to undergo physical or vocational rehabilitation or to accept reasonable accommodation shall not be deemed permanently and totally disabled.

"e. Second Permanent Injuries Generally. If an employee has a permanent disability or has previously sustained another injury than that in which the employee received a subsequent permanent injury by accident, as is specified in this section defining permanent injury, the employee shall be entitled to compensation only for the degree of injury that would have resulted from the latter accident if the earlier disability or injury had not existed.

"f. Second Permanent Injury in Same Employment Resulting in Permanent Total Disability. If an employee receives a permanent injury as specified in this section after having sustained another permanent injury in the same employment, and if the previous and subsequent injuries result in permanent total disability, compensation shall be payable for permanent total disability only.

"g. Concurrent Compensation Payments. If an employee receives an injury for which compensation is payable while he or she is still receiving or entitled to receive compensation for a previous injury in the same employment, he or she shall not at the same time be entitled to compensation for both
injuries, unless the later injury is a permanent injury, as
specified in this section, but he or she 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 article and Article 4 of this chapter.

"If an employee receives a permanent injury as
specified in this section, after having sustained another
permanent injury in the same employment, he or she shall be
entitled to compensation for both injuries, subject to
paragraph e. of this subdivision, but the total compensation
shall be paid by extending the period and not by increasing
the amount of weekly compensation, and in no case for
permanent partial disability exceeding 700 weeks.

"h. Effect of Rehabilitation or Recovery on
Permanent Total Disability Benefits. If an employee who is
receiving benefits for permanent total disability shall, as a
result of physical or vocational rehabilitation or otherwise,
obtain gainful employment, the obligation to pay permanent
total disability benefits shall thereupon terminate; provided,
that at any time that the employee's weekly wage from the
employment shall be less than the employee's average weekly
wage at the time of injury, the employer shall remain
obligated to pay to the employee as compensation an amount
equal to 66 2/3 percent of the difference, subject to each of
the following limitations:

"1. The employer's liability for the payment of 66
2/3 percent of the difference shall continue for 200 weeks
from the date of reemployment or 300 weeks from the date of
injury, whichever is the longer period.

"2. In no event shall the amount of weekly benefits
paid by the employer to the employee exceed the weekly benefit
the employee was receiving for permanent total disability.

"3. No payments shall be due for any week the
employee earns as much as or more than his or her average
weekly wage at the time of injury. If the employee who obtains
gainful employment suffered a permanent partial disability as
specified in subsection (a), subdivision (3) of this section,
the total amount of compensation paid for permanent total
disability shall not be less than that amount which would have
been payable for the permanent partial disability.

"i. Affidavit of Gainful Employment. If an employee
who is receiving benefits for permanent total disability
shall, as the result of physical or vocational rehabilitation,
accommodation, or otherwise, obtain gainful employment with an
employer other than with his or her former employer, he or she
shall, upon securing employment, give to his or her former
employer an affidavit in writing containing the name of his or
her new employer, the place of employment and the amount of
wages being received at the new employment. Until he or she
gives the affidavit, the compensation for permanent total
disability shall cease. The employer for whom the employee was
employed at the time of the accident for which compensation is
being paid may also at any time demand of the employee
additional affidavit, in writing, containing the name of his
or her employer, the place of his or her employment, and the amount of wages he or she is receiving. If the employee, upon demand, fails or refuses to make and furnish the affidavit, his or her rights to compensation shall cease until the affidavit is made and furnished.

"(5) DEATH FOLLOWING DISABILITY. If an employee sustains an injury occasioned by an accident arising out of and in the course of his or her employment and, during the period of disability caused thereby, death results proximately therefrom, all payments previously made as compensation for the injury shall be deducted from the compensation, if any, due on account of death. If an employee who sustains a permanent partial or permanent total disability, the degree of which has been agreed upon by the parties or has been ascertained by the court, and death results not proximately therefrom, the employee's surviving spouse or dependent children or both shall be entitled to the balance of the payments which would have been due and payable to the worker, whether or not the decedent employee was receiving compensation for permanent total disability, not exceeding, however, the amount that would have been due the surviving spouse or dependent children or both if death had resulted proximately from an injury on account of which compensation is being paid to an employee.

"(6) HERNIA.

"a. Proof. For hernia resulting from injury by an accident arising out of and in the course of the employee's
employment, it must be definitely proven to the satisfaction of the court all of the following:

1. That there was an injury resulting in hernia.
2. That the hernia appeared suddenly.
3. That it was accompanied by pain.
4. That the hernia immediately followed an accident.
5. That the hernia did not exist prior to the accident for which compensation is claimed.

b. Treatment. All hernia, inguinal, femoral, or otherwise, proved 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 radical operation. If the injured employee refuses to undergo the radical operation for the cure of the hernia, no compensation will be allowed during the time the refusal continues. If, however, it is shown that the employee has some chronic disease or is otherwise in physical condition that the court considers it unsafe for the employee to undergo the operation, the employee shall be paid as otherwise provided in this chapter.

(b) Computation of compensation; determination of average weekly earnings. Compensation under this section shall be computed on the basis of the average weekly earnings. Average weekly earnings shall be based on the wages, as defined in Section 25-5-1(6) of the injured employee in the employment in which he or she was working at the time of the injury during the period of 52 weeks immediately preceding the
date of the injury divided by 52, but if the injured employee
lost more than seven consecutive calendar days during the
period, although not in the same week, then the earnings for
the remainder of the period, although not in the same week,
then the earnings for the remainder of the 52 weeks shall be
divided by the number of weeks remaining after the time so
lost has been deducted. Where the employment prior to the
injury extended over a period of less than 52 weeks, the
method of dividing the earnings during that period by the
number of weeks and parts thereof during which the employee
earned wages shall be followed, provided results just and fair
to both parties will thereby be obtained. Where by reason of
the shortness of the time during which the employee has been
in the employment of his or her employer or the casual nature
or terms of the employment it is impracticable to compute the
average weekly earnings as above defined, regard shall be had
to the average weekly amount which during the 52 weeks prior
to the injury was being earned by a person in the same grade,
employed at the same work by the same employer, and if there
is no person so employed, by a person in the same grade
employed in the same class of employment in the same district.
Whatever allowances of any character made to an employee in
lieu of wages are specified as part of the wage contract shall
be deemed a part of his or her earnings.

"(c) Setoff for other recovery. In calculating the
amount of workers' compensation due:
"(1) The employer may reduce or accept an assignment from an employee of the amount of benefits paid pursuant to a disability plan, retirement plan, or other plan providing for sick pay by the amount of compensation paid, if and only if the employer provided the benefits or paid for the plan or plans providing the benefits deducted.

"(2) The employee shall forfeit to the employer all compensation paid for any period to which is attributed any award of back pay either by a court, administrative agency, arbitration, or settlement, provided, however, social security payments shall not be included herein.

"(3) If an employer continues the salary of an injured employee during the benefit period or pays similar compensation during the benefit period, the employer shall be allowed a setoff in weeks against the compensation owed under this article. For the purposes of this section, voluntary contributions to a Section 125-cafeteria plan for a disability or sick pay program shall not be considered as being provided by the employer.

"§25-5-67.

"If death results to an employee as the result of an accident or an occupational disease arising out of and in the course of the employment, the employer shall pay, in addition to the medical and hospital expenses provided for in Section 25-5-77, the expenses of burial, not exceeding in amount $3,000.00 six thousand five hundred dollars ($6,500). If a dispute arises as to the reasonable value of the services
rendered in connection with the burial, the same shall be
approved by the court before payment after reasonable notice
to interested parties as the court may require.

"§25-5-68.

"(a) The compensation paid under this article shall
be not less than, except as otherwise provided in this
article, 27 1/2 percent of the average weekly wage of the
state as determined by the director, rounded to the nearest
dollar, pursuant to subsection (b) of this section and, in any
event, no more than 100 percent of the average weekly wage.
Notwithstanding the foregoing, the maximum compensation
payable under this article for permanent partial disability
shall be no more than the lesser of $220.00 80 percent of the
average weekly wage of the state per week or 100 percent of
the average weekly wage of the employee.

"(b) For the purpose of this section, the average
weekly wage of the state shall be determined by the director
as follows: On or before June 1 of each year, the total wages
reported on contribution reports to the unemployment
compensation division of the department for the preceding
calendar year shall be divided by the average monthly number
of insured workers, which shall be determined by dividing the
sum of the number of insured workers reported for each month
of the preceding year by 12. The average annual wage thus
obtained shall be divided by 52, and the average weekly wage
thus determined rounded to the nearest cent. The average
weekly wage as so determined shall be applicable for the
12-month period beginning July 1 following the June 1
determination. If the determination shall not be made on or
before June 1, the effective date of the average weekly wage
when determined shall be the first day of the month next
following 30 days after the determination is made.

"(c) The maximum and minimum weekly benefit shall
not be changed on any July 1 or as a result of any annual
determination, unless the computation provided for in
subsection (b) of this section results in an increase or
decrease of two dollars ($2) or more in the amount of either
the maximum or minimum benefit.

"(d) In no event, except as provided for permanent
total disability in subdivision (a)(4) of Section 25-5-57 or
except for compensation benefits payable for permanent partial
and temporary total disability in connection with a disability
scheduled in subdivisions (1) and (3) of subsection (a) of
Section 25-5-57, shall the total amount of compensation
payable for an accident or an occupational disease exceed the
product of 500 times the maximum weekly benefit applicable on
the date of the accident.

"(e) The minimum and maximum benefits that are in
effect on the date of the accident which results in injury or
death shall be applicable for the full period during which
compensation is payable.

"$25-5-77.

"(a) In addition to the compensation provided in
this article and Article 4 of this chapter, the employer,
where applicable, shall pay the actual cost of the repair, refitting, or replacement of artificial members damaged as the result of an accident arising out of and in the course of employment, and the employer, except as otherwise provided in this amendatory act, shall pay an amount not to exceed the prevailing rate or maximum schedule of fees as established herein of reasonably necessary medical and surgical treatment and attention, physical rehabilitation, medicine, medical and surgical supplies, crutches, artificial members, and other apparatus as the result of an accident arising out of and in the course of the employment, as may be obtained by the injured employee or, in case of death, obtained during the period occurring between the time of the injury and the employee's death therefrom. If the employee is dissatisfied with the initial treating physician selected by the employer and if further treatment is required, the employee may so advise the employer, and the employee shall be entitled to select a second physician from a panel or list of four six physicians selected by the employer. If surgery is required and if the employee is dissatisfied with the designated surgeon, he or she may so advise the employer, and the employee shall be entitled to select a second surgeon from a panel or list of four surgeons selected by the employer. If four six physicians or four surgeons are not available to be listed, the employer shall include on the list as many as are available. The four No more than two physicians or surgeons selected by the employer hereunder shall not may be from or
members of the same firm, partnership, or professional corporation. The total liability of the employer shall, unless otherwise provided in this chapter, not exceed the prevailing rate or the maximum schedule of fees as established herein under Section 25-5-313. Notwithstanding the foregoing, in ascertaining the prevailing rate of reimbursement or payment with regard to participating hospitals and ambulatory surgical centers or outpatient rehabilitation centers licensed by the State of Alabama, as well as diagnostic facilities accredited by the Commission on Accreditation of Rehabilitation Facilities, the prevailing rate shall be negotiated with each individual hospital, ambulatory surgical center, licensed outpatient rehabilitation facility, or diagnostic facility based on that institution’s treatment of comparable type cases for the 12-month period immediately preceding August 1, 1992. These rates shall be updated every 12 months thereafter. Initial rates shall be established within six months of August 1, 1992. For those non-participating hospitals the prevailing rate shall be determined by a committee. In the first year following August 1, 1992, the committee shall be composed of five members. The director shall appoint one member from the Department of Industrial Relations and two members from the community in which the non-participating hospital is located. The non-participating hospital shall appoint two members. This committee shall by a majority vote establish the maximum rates of reimbursement or payment for the non-participating hospital, and the hospital shall be bound for one year by the
determined rates of reimbursement or payment for workers' compensation cases. If, following the first year after the rates were established by this committee, the hospital is again non-participating, then another committee shall be appointed. This second committee shall have three members selected by the non-participating hospital and two members selected by the director. The committee composition shall alternate as above described each year the hospital is non-participating. The total liability of the employer shall not exceed the rates established by the committee. This committee, in determining the rates of reimbursement or payments to the hospital, may consider such factors as the size, staffing, and medical equipment of the hospital, and any other factors which the committee may consider relevant. If an insurer of the employee or a benefit association has paid or is liable for the employee's medical, surgical, and hospital service or for a part thereof, or if the employee is entitled to the same or a part thereof, from any source whatever by virtue of any agreement or understanding or law, state or federal, without any loss of benefit to the employee, the employer shall not be required to pay any part of the expense. If the benefits are insufficient to pay all the employee's expense, the employer shall be liable for the deficiency only. If five years pass during which time the employee receives no medical treatment by his or her authorized treating physician for the alleged job injury or occupational disease, there shall be a presumption that any subsequent medical treatment
is unrelated to the alleged job injury or occupational disease, subject to rebuttal by the employee that the employee's medical treatment is causally related to the employee's original job injury or occupational disease; if seven years pass during which time the employee receives no medical treatment by his or her authorized treating physician for the alleged job injury or occupational disease, the employee shall be entitled to no further medical treatment or benefits pursuant to the workers' compensation statutes, with the only exception relating to previously implanted medical devices or prosthetic devices. All cases of dispute as to the necessity and value of the services shall be determined by the tribunal having jurisdiction of the claim of the injured employee for compensation.

"(b) If requested to do so by the employer, the injured employee shall submit to examination by the employer's physician at all reasonable times, but the employee shall have the right to have a physician of his or her own selection present at the examination, in which case the employee shall be liable to the physician of his or her own selection for his or her services. The employer shall pay for the services of the physician making the examination at the instance of the employer. If a dispute arises as to the injury, or as to the extent of the disability therefrom, the court may, at the instance of either party or of its own motion, appoint a neutral physician of good standing and ability to make an examination of the injured employee and to report his or her
findings to the court, the expense of which examination shall be borne equally by the parties. If the injured employee refuses to comply with reasonable request for examination, or refuses to accept the medical service or physical rehabilitation, which the employer elects to furnish under this chapter, the employee's right to compensation shall be suspended and no compensation shall be payable for the period of the refusal. A physician whose services are furnished or paid for by the employer, or a physician of the injured employee who treats or makes or is present at any examination of an injured employee may be required to testify as to any knowledge obtained by him or her in the course of the treatment or examination as the treatment or examination related to the injury or the disability arising therefrom. The physician shall, upon written request of the injured employee or his or her employer and without consent of or notice to the employee or employer not making the request, furnish the injured employee or his or her employer a written statement of his or her professional opinion as to the extent of the injury and disability. In all death claims where the cause of death is obscure or is disputed, any interested party may require an autopsy, the cost of which is to be borne by the party demanding the autopsy. The term "physicians" shall include medical doctor, surgeon, and chiropractor. A hospital, medical clinic, rehabilitation service, or other person or entity providing treatment to an employee or providing facilities at which the employee receives treatment shall, upon the written
request of the employee or of the employer, furnish, at a reasonable cost, the employee or the employer a copy of the records, including X-rays and laboratory reports, relating to the treatment of the injured employee. The copy may be furnished without the consent of or notice to the employee or employer not making the request. A physician, hospital, medical clinic, rehabilitation service, or other person or entity providing written statement of professional opinion or copies of records pursuant to this subsection shall not be liable to any person for a claim arising out of the release of medical information concerning the employee.

"(c) If the employer so elects, the employee shall submit to and undergo vocational rehabilitation at the employer's expense through a vocational rehabilitation specialist, who shall be qualified to render competent vocational rehabilitation service. If an employee who is unable in the opinion of the treating physician to return to his or her former employment shall request vocational rehabilitation and if both a vocational rehabilitation specialist and a treating physician, the cost of whose service is the obligation of the employer under this section, shall express their opinions in writing that in the judgment of each of them vocational rehabilitation is reasonably calculated to restore the employee to gainful employment and is in the best interest of the employee, the cost of the rehabilitation shall be borne by the employer. The cost, where rehabilitation requires residence at or near a facility or institution away
from the employee's customary residence, shall include reasonable charges for the employee's necessary board, lodging, and travel.

"(d) If an employee refuses, without the consent of the court, to accept vocational rehabilitation at the employer's request, the refusal shall result in loss of compensation for the period of refusal.

"(e) All disputes with regard to vocational rehabilitation may be submitted to the court for resolution.

"(f) The employer shall pay mileage costs to and from medical and rehabilitation providers at the same rate as provided by law for official state travel.

"(g) In a compensable workers' compensation claim, the injured employee shall not be liable for payment of any authorized and compensable medical expenses associated with the workers' compensation claim.

"(h) All undisputed medical reimbursements or payments shall be made within 25 working days of receipt of claims in the form specified in Section 25-5-3. There shall be added to any undisputed medical invoice which is not paid within 25 working days an amount equal to 10 percent of the unpaid balance.

"If the employer or insurer responsible for payment of the claim fails to add the additional 10 percent to the claim as required by this section, the person, firm, corporation, or partnership providing the medical service for which payment has been delayed beyond the period specified in
this section may file a written complaint stating that fact
with the director. Upon investigation, if the director
determines that the facts stated in the complaint are true,
then in that event the director shall order the employer or
insurer to pay to the provider the amount of the claim and any
applicable penalty, and in addition may assess a civil
monetary penalty in amount not to exceed $500 against the
employer or insurer, payment of which shall be made to the
director within 30 days of the notice of assessment.

"(i) Any party, including a health care provider, is
entitled to a review by an ombudsman of medical services that
are provided or for which authorization of payment is sought
if any party or the health care provider has any of the
following:

"(1) Been denied payment or had the charge reduced
for medical services rendered.

"(2) Been denied authorization for the payment of
services requested or performed when authorization is
required.

"(3) Been ordered by the director to refund payments
received for the provision of medical services.

"(4) A party to a medical dispute that remains
unresolved after a review of medical services as provided by
this section may petition the court for relief.

"(5) In any review under this subsection of medical
services provided by a physician, any party to a dispute may
request that the ombudsman consult with an independent medical
expert for the purpose of obtaining advice and consultation on
the resolution of any issue involving medical practice. If
such a request is made, the ombudsman shall select an
independent medical expert from among a list of at least three
names provided by the Workers' Compensation Medical Services
Board Director of the Department of Labor in a medical
specialty appropriate to the issues raised in the dispute and
shall secure a written opinion from the independent medical
expert. In rendering a decision or recommendation, the
ombudsman shall give full consideration to the opinion of the
independent medical expert but shall not be bound by that
opinion. The independent medical expert shall be compensated
at a rate set by the Workers' Compensation Medical Services
Board and approved by the director Director of the Department
of Labor.

"(j) If a treating physician determines the pain is
persisting for an injured or disabled employee beyond an
expected period of healing, the authorized treating physician
may either prescribe or refer such injured or disabled
employee for pain management encompassing pharmacological,
non-pharmacological, and other approaches to managing chronic
pain.

"(l) As a condition of receiving pain management
that requires prescribing Schedule II, III, or IV controlled
substances, as set forth by the Drug Enforcement Agency Office
of Diversion Control, the injured or disabled employee shall
sign a formal written agreement with the physician prescribing
the Schedule II, III, or IV controlled substances
acknowledging the conditions under which the injured or
disabled employee may continue to be prescribed Schedule II,
III, or IV controlled substances and agreeing to comply with
such conditions. If the injured or disabled employee violates
any of the conditions of the agreement, then:

"a. There shall be a rebuttable presumption that the
employee's right to pain management through the prescription
of Schedule II, III, or IV controlled substances under this
chapter may be terminated and the injured or disabled employee
shall no longer be entitled under this chapter to the
prescription of such substances for the management of pain;

"b. Upon a second violation of the agreement, the
right to pain management, through the prescription of Schedule
II, III, or IV controlled substances under this chapter shall
be terminated unless the employee, by clear and convincing
evidence, shall satisfy the court that the violation of the
contract did not occur.

"(2) A physician may disclose the employee's
violation of the formal written agreement on the physician's
own initiative. Upon request of the employer, a physician
shall disclose the employee's violation of the formal written
agreement as provided in this section.

"(3) When initially prescribing a controlled
substance for the treatment of pain or chronic pain, a
physician shall have a medical history of the patient, a
physical examination of the patient shall have been conducted,
and informed consent shall have been obtained. In the event of a documented emergency, a physician may prescribe an amount of medication to cover a period of not more than 72 hours without a physical examination.

"(k) Should the employee be prescribed medication or durable medical equipment, the employer shall have the right to designate a pharmacy, facility, or other method to enable the employee to have the prescriptions filled in a timely manner.

"§25-5-80.

"In case of a personal injury not involving cumulative physical stress, all claims for compensation under this article shall be forever barred unless within two years after the accident the parties shall have agreed upon the compensation payable under this article or unless within two years after the accident one of the parties shall have filed a verified complaint as provided in Section 25-5-88. In cases involving personal injury due to cumulative physical stress, compensation under this article shall be forever barred unless within two years after the date of the injury one of the parties shall have filed a verified complaint as provided in Section 25-5-88. In cases involving claims for lost earning capacity under Section 25-5-57(a)(3)i., other than those involving cumulative physical stress, following termination of employment as outlined therein, compensation under this article and Article 4 shall be forever barred unless brought within two years of the termination. In case of death, all
claims for compensation shall be forever barred unless within two years after death, when the death results proximately from the accident within three years, the parties shall have agreed upon the compensation under this article or unless within two years after the death one of the parties shall have filed a verified complaint as provided in Section 25-5-88. Where, however, payments of compensation, as distinguished from medical or vocational payments, have been made in any case, the period of limitation shall not begin to run until the time of making the last payment. In case of physical or mental incapacity, other than the minority of the injured person or his or her dependents, to perform or cause to be performed any act required within the time in this section specified, the period of limitation in any case shall be extended to become effective two years from the date when the incapacity ceases.

"§25-5-81."

"(a) Commencement of action in circuit court."

"(1) PROCEDURE. In case of a dispute between employer and employee or between the dependents of a deceased employee and the employer with respect to the right to compensation or medical benefits under this article and Article 2 of this chapter, or the amount thereof, either party may submit the controversy to the circuit court of the county which would have jurisdiction of a civil action in tort between the parties. The controversy shall be heard and determined by the judge who would hear and determine a civil action between the same parties arising out of tort, and, in
1 case there is more than one judge of the court, the
2 controversies shall be set and assigned for hearing under the
3 same rules and statutes that civil actions in tort are set and
4 assigned. The court may hear and determine the controversies
5 in a summary manner. The decision of the judge hearing the
6 same shall be conclusive and binding between the parties,
7 subject to the right of appeal provided for in this article.
8 In the event that the proceeding is to be resolved by trial,
9 the parties, at least 14 days before trial, shall submit to
10 the court written joint stipulations as to which issues shall
11 be tried.
12 "(2) RIGHT TO JURY TRIAL. When willful misconduct on
13 the part of the employee is set up by the employer, as it is
14 provided for in this article, the employer may, upon
15 appearing, demand a jury to hear and determine, under the
16 direction of the court, the issues involved in this defense.
17 If the employer fails to demand a jury upon appearing, the
18 employee may demand a jury to try the issues by filing a
19 demand within five days after the appearance of the employer.
20 When a jury is demanded by either party, the court shall
21 submit the issues of fact as to willful misconduct set up by
22 the employer to the jury, for a special finding of the facts
23 subject to the usual powers of the court over verdicts
24 rendered contrary to the evidence or the law, but the judge
25 shall determine all other questions involved in the
26 controversy without a jury. Upon setting up the defense, the
employer shall serve a copy of the answer, setting up the
defense, upon the employee or the attorney of record.

"(b) Court deemed open at all times. For the purpose
of hearing and determining controversies between an employer
and employee or the dependents of a deceased employee and the
employer arising under this article and Article 2 of this
chapter, the circuit court shall be deemed always in session.

"(c) Evidence. The decision of the court shall be
based on a preponderance of the evidence as contained in the
record of the hearing, except in cases involving injuries
which have resulted from gradual deterioration or cumulative
physical stress disorders, which shall be deemed compensable
only upon a finding of clear and convincing proof that those
injuries arose out of and in the course of the employee's
employment.

"For the purposes of this amendatory act, "clear and
convincing" shall mean evidence that, when weighted against
evidence in opposition, will produce in the mind of the trier
of fact a firm conviction as to each essential element of the
claim and a high probability as to the correctness of the
conclusion. Proof by clear and convincing evidence requires a
level of proof greater than a preponderance of the evidence or
the substantial weight of the evidence, but less than beyond a
reasonable doubt.

"(d) Interpleader of adverse claimants to
compensation. If at any time there are adverse claimants to
compensation under this article, the employer, in submitting
the claim to the circuit court, may suggest in writing the
claimants, and they shall be required to interplead. The court
shall determine and order to which claimant or claimants
compensation is justly due, and the employer, upon complying
with the order of the judge, shall be released from the claims
of any other claimants thereto.

"(e) Review. From an order or judgment, any
aggrieved party may, within 42 days thereafter, appeal to the
Court of Civil Appeals and review shall be as in cases
reviewed as follows:

"(1) In reviewing the standard of proof set forth
herein and other legal issues, review by the Court of Civil
Appeals shall be without a presumption of correctness.

"(2) In reviewing pure findings of fact, the finding
of the circuit court shall not be reversed if that finding is
supported by substantial evidence.

"(f) Discovery. Methods of discovery shall be
determined and established in rules promulgated by this
amendatory act and the rules established by the Alabama Rules
of Civil Procedure with the limitations of pre-trial discovery
as set forth below. Additionally, the following rules of
discovery shall apply to workers' compensation cases:

"(1) Two depositions for each side shall be
permitted without leave of court, however, any additional
depositions shall not be permitted except with leave of court
for good cause shown including, but not limited to, a claim by
the employee for permanent total disability.
"(2) Notwithstanding the limitations in (1) above, each party may take the deposition of every other party.

"(3) No more than 25 40 interrogatory questions with each sub-part to be considered a question shall be permitted without leave of court for good cause shown.

"(4) Certified sealed copies Copies of records of medical treatment, and reports of opinions obtained in accordance with Section 25-5-77(b), and charges therefor, whether from a physician, hospital, clinic, or other provider, shall be authenticated in accordance with Alabama Rules of Civil Procedure, Rule 44(h), without further need for authenticating testimony. Copies of records obtained by one party shall be furnished by certified mail to the other party not less than 21 14 days prior to trial, unless the party offering the records can establish unusual circumstances justifying their admission despite the failure to make the exchange after receiving the records of a physician's treatment prior to trial, the party not offering the records of a physician's treatment shall, without regard to the limitation set forth herein, have the right to depose prior to trial the physician whose records of treatment are to be offered by any other party.

"It is the intent of this section that limited discovery shall be available.

"§25-5-88.

"(a) Either party to a controversy arising under this article and Article 2 of this chapter may file a verified
complaint in the circuit court of the county which would have jurisdiction of an action between the same parties arising out of tort, which shall set forth the names and residences of the parties and the circumstances relating to the employment at the time of the injury, with a full description of the injury, its nature and extent, the amount of the average earnings received by the employee which would affect his or her compensation under this article and Article 2 of this chapter, the knowledge of the employer of the injury or the notice to him or her thereof, which must be of the kind provided for in this article and Article 2 of this chapter and such other facts as may be necessary to enable the court to determine what, if any, compensation the employee or, in case of a deceased employee, his or her dependents, are entitled to under this article and Article 2 of this chapter. The complaint shall be filed with the clerk of the circuit court, who shall cause summons to be issued thereon requiring the defendant to come in and answer said the complaint within 30 days of the service thereof. Thereafter, said the action shall proceed in accordance with and shall be governed by the same rules and statutes as govern civil actions, except as otherwise provided in this article and Article 2 of this chapter, and except that all civil actions filed hereunder shall be preferred actions and shall be set down and tried as expeditiously as possible. At the hearing or any adjournment thereof the court shall hear such witnesses as may be presented by each party, and in a summary manner without a
jury, unless one is demanded to try the issue of willful misconduct on the part of the employee, shall decide the controversy. This determination shall be filed in writing with the clerk of said the court, and judgment shall be entered thereon in the same manner as in civil actions tried in the said the circuit court and shall contain a statement of the law and facts and conclusions as determined by said the judge. The circuit court shall enter its judgment within 90 days of the trial of the matter, or within 90 days after submission of post-trial briefs, evidence or proposed orders for which the record was left open, in its discretion, to facilitate the process, the court may request of all parties the submission of proposed orders. Subsequent proceedings thereon shall only be for the recovery of moneys thereby determined to be due, but nothing in this section contained shall be construed as limiting the jurisdiction of the Court of Civil Appeals to review questions of law by certiorari.

"(b) If a settlement or judgment results in the reimbursement of money paid by a third party for medical care or wage replacement benefits, including, but not limited to, short- or long-term disability benefits, then notwithstanding the terms of the policy or agreement governing the payment of the benefits, the claimant's attorney shall be awarded a fee not to exceed the fee allowed pursuant to the provisions of Section 25-5-90 and a pro rata share of the costs associated with securing the reimbursement or recovery.

"§25-5-90.
"(a) Unless otherwise provided in this chapter, no part of the compensation payable under this article and Article 4 of this chapter shall be paid to an attorney for the plaintiff for legal services, unless upon the application of the plaintiff, the judge shall order or approve of the employment of an attorney by the plaintiff; and in such event, the judge, upon the hearing of the complaint for compensation, either by law or by settlement, shall fix the fee of the attorney for the plaintiff for his or her legal services and the manner of its payment, but the fee shall not exceed 15 percent of the compensation awarded or paid. If the legal services are for the procurement of medical treatment by the employer which have been denied, the judge may award attorney fees and costs not to exceed 25 percent of the reasonable value of the medical services.

"(b) All expenses of litigation and attorney's fees charged by any attorney in any representation under this chapter while representing any employer, insurance company, or self insurer shall be reported to the Department of Industrial Relations.

"§25-5-110.

"For the purposes of this article, the following terms shall have the meanings respectively ascribed to them by this section:

"(1) OCCUPATIONAL DISEASE. A disease arising out of and in the course of employment, including occupational pneumoconiosis and occupational exposure to radiation as
defined in subdivisions (2) and (3), respectively, of this
section, which is due to hazards in excess of those ordinarily
incident to employment in general and is peculiar to the
occupation in which the employee is engaged but without regard
to negligence or fault, if any, of the employer. A disease,
including, but not limited to, loss of hearing due to noise,
shall be deemed 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 exposure, over
a period of time, to the normal working conditions of the
trade, process, occupation, or employment. An occupational
disease shall also include a psychological condition which is
due to hazards in excess of those ordinarily incident to
employment in general, but without regard to negligence or
fault, if any, of the employer, whether or not precipitated by
a physical injury to the body or trauma.

"(2) OCCUPATIONAL PNEUMOCONIOSIS. A disease of the
lungs caused by inhalation of minute particles of dust over a
period of time, which dust is due to causes and conditions
arising out of and in the course of the employment, without
regard to whether the causes or conditions are inherent in the
employment or can be eliminated or reduced by due care on the
part of the employer. The term "occupational pneumoconiosis"
shall include, but without limitation, such diseases as
silicosis, siderosis, anthracosis, anthrasilicosis,
anthracosilicosis, anthraco-tuberculosis, tuberculosilicosis,
silico-tuberculosis, aluminosis, and other diseases of the lungs resulting from causes enumerated in this section.

"(3) OCCUPATIONAL EXPOSURE TO RADIATION. Gradual exposure to radiation over a period of time from the use of or direct contact with radium, radioactive substances, roentgen rays (X rays), or ionizing radiation, arising out of and in the course of the employment and resulting from the nature of the employment in which the employee is engaged, without regard to whether the exposure is inherent in the employment or can be eliminated or reduced by due care on the part of the employer.

"(4) NATURE OF EMPLOYMENT. With respect to subdivisions (2) and (3) above, this term shall mean that, as to the industry in which the employee is engaged, there is attached a particular hazard of the exposure that distinguishes it from the usual run of occupations and is in excess of the hazards of the exposure attending employment in general.

"(5) CONTRACTION OF AN OCCUPATIONAL DISEASE. This term shall include any aggravation of the disease without regard to the employment in which the disease was contracted.

"S25-5-117.

"(a) In case of the contraction of an occupational disease, as defined in this article, or of injury or disability resulting therefrom, a claim for compensation, as defined in Section 25-5-1, shall be forever barred, unless within two years after the date of the injury, as hereinafter
defined, the parties shall have agreed upon the compensation payable under this article, or unless within two years after the date of the injury, one of the parties shall have filed a verified complaint as provided in Section 25-5-88. In case of death, the claim shall be forever barred, unless within two years after death, if death results proximately from the occupational disease, as defined in this article, and death occurs within three years of the date of the injury, as hereinafter defined, the parties have agreed upon the compensation under this article, or unless within two years after death, one of the parties shall have filed a verified complaint as provided in Section 25-5-88. Notwithstanding the foregoing, if upon the date of death the employee's claim is barred, any claim by his or her dependents likewise shall be barred. If, however, payments of compensation have been made, the limitations as to compensation shall not take effect until the expiration of two years from the time of making the last payment. In case of physical or mental incapacity, other than the minority of the injured employee or his or her dependent, to perform or cause to be performed any act required within the time specified in this section, the period of limitation in any case shall be extended to become effective two years from the date when the incapacity ceases. No agreement, express or implied, to shorten or to extend the limitations shall be valid or binding on either of the parties if the employment, at the time of the exposure, is or was subject to this article.
(b) For the purposes of occupational diseases other than pneumoconiosis or radiation, "the date of the injury" shall mean the date of the last exposure to the hazards of the disease in the employment of the employer in whose employment the employee was last exposed to the hazards of the disease.

(c) For purposes of pneumoconiosis and radiation, "the date of the injury" shall mean the date of the last exposure to the hazards of the disease in the employment of the employer in whose employment the employee was last exposed to the hazards of the disease in each of at least 12 months, within a period of five years prior to the date of the injury.

§25-5-197.

In case of occupational exposure to radiation, as defined in this article, or of injury or disability resulting therefrom, all claims for compensation shall be forever barred, unless within one year after the employee first suffered disability therefrom and either knew or in the exercise of reasonable diligence should have known that the disability was caused therefrom, but in no event more than three years after date of the injury as hereinafter defined, the parties shall have agreed upon the compensation payable under this article, or unless within such period of time one of the parties shall have filed a verified complaint as provided in Section 25-5-88. In case of death, all claims for compensation shall be forever barred, unless the death results proximately from occupational exposure to radiation, as defined in this article, and occurs within three years of the
date of the injury, as hereinafter defined, and unless within one year after such death the parties shall have agreed upon the compensation under this article, or unless within one year after such death one of the parties shall have filed a verified complaint as provided in Section 25-5-88; provided, however, that if upon the date of the death of the employee the employee's claim is barred, any claim by or for his or her dependents shall likewise be barred. Where, however, payments of compensation have been made in any case, said the limitations shall not take effect until the expiration of one year from the time of making the last payment. In case of the mental incapacity of the injured employee or his or her dependents to perform or cause to be performed any act required within the time in this section specified, the period of limitation in any such case shall be extended to become effective one year from the date when such incapacity ceases. No agreement, express or implied, to shorten or to extend said the limitations shall be valid or binding on either of the parties when said the employment, at the time of said the exposure, is or was subject to the provisions of this article. The "date of the injury" shall mean, for all purposes of this article, the date of the last exposure to the hazards of radiation in the employment of the employer in whose employment the employee was last exposed, within a period of five years prior to the date of the injury, to the hazards of radiation in each of at least 12 months.

§25-5-293.
"(a) The Director of the Department of Industrial Relations Labor may prescribe rules and regulations for the purpose of conducting continuing education seminars for all personnel associated with workers' compensation claims and collect registration fees in order to cover the related expenditures. The director may adopt rules and regulations setting continuing education standards for workers' compensation claims personnel employed by insurance companies and self-insured employers and groups.

"(b) The director shall file annually with the Governor and the presiding officer of each house of the Legislature a complete and detailed written report accounting for all funds received and disbursed during the preceding fiscal year. The annual report shall be in the form and reported in the time provided by law.

"(c) The director shall establish reasonable charges to recover expenses for services not required by law or rule provided to persons requesting the services from the Department of Industrial Relations Labor.

"(d) The director shall appoint appropriate advisory committees on workers' compensation matters, including: An advisory committee consisting of three administrators who are members of the Alabama Hospital Association, who shall be selected by the director from nominations submitted by the Alabama Hospital Association; an advisory committee consisting of three chiropractors who are members in good standing with the Alabama State Chiropractic Association, who shall be
selected by the director from nominations submitted by the
Alabama State Chiropractic Association; an advisory committee
consisting of three pharmacists who are members in good
standing with the Alabama Pharmaceutical Association who shall
be selected by the director from nominations submitted by the
Alabama Pharmaceutical Association; and an advisory committee
consisting of three optometrists who are members in good
standing with the Alabama Optometric Association who shall be
selected by the director from nominations submitted by the
Alabama Optometric Association. These committees shall guide
the director and make recommendations to ascertain the
prevailing rate of reimbursement or payment of medical costs
in the State of Alabama. These committees shall make
recommendations with regard to the implementation of all other
rules and regulations, including, but not limited to,
utilization review by like peers. These committees shall also
advise and guide the director in determining all other rules
and regulations required to accomplish the intent of the
Legislature in assuring the quality of medical care and
achieving medical cost control.

"The director shall also appoint a vocational
rehabilitation advisory committee consisting of at least five
professional licensed rehabilitation specialists. These
rehabilitation specialists shall be selected by the director
from nominations from the rehabilitation associations in the
State of Alabama, including, but not limited to, the Alabama
Physical Therapy Association. The committee shall guide the
director and make recommendations to ascertian the prevailing rate of reimbursement or payment of rehabilitation costs in the State of Alabama. The committee shall also make recommendations with regard to the implementation of all other rules and regulations, including, but not limited to, utilization review, and with regard to rehabilitation policies as provided by this article. The committee shall also advise and guide the director in determining all other rules and regulations required to accomplish the intent of the Legislature in assuring the quality of rehabilitation care and achieving rehabilitation cost control.

"(e) The director shall appoint an advisory committee consisting of attorneys who are members in good standing of the Alabama State Bar. This committee shall guide and assist the director in creating and promulgating rules and regulations for the efficient administration of the Ombudsman Program.

Members of the advisory committee shall receive State of Alabama mileage expense which shall be paid by the Department of Industrial Relations Labor.

"(f) It is the intent of the Legislature that final reimbursements related to workers' compensation claims be commensurate and in line with the prevailing rate of reimbursement or payment in the State of Alabama, or as otherwise provided in this article established by Section 25-5-313. The director shall conduct field audits as necessary to assist the private sector to gain compliance with the
legislative intent. The department shall develop administrative rules to facilitate implementation and continuity of the legislative intent of this article. The director, except as otherwise provided in this article, shall not establish the prevailing rate of payment or reimbursement, but may collect data which are construed to be statistically significant as defined by an independent, disinterested consultant. By definition, the prevailing rate of payment or reimbursement is self-defining and self-setting pursuant to Section 25-5-313 and shall be updated annually. The director may create a statistically valid data base from which prevailing the rates of reimbursement or payment shall be ascertained. Except as otherwise provided herein, the prevailing rate of reimbursement or payment for medical services provided under this article shall be effective 30 days after the prevailing rate of reimbursement or payment is discovered, but in no event earlier than six months from May 19, 1992 July 1, 2015.

"(g) Insurance carriers and self-insurers, individual and group, are required to make appropriate payment for services provided under this article. Unless otherwise provided in this article, an insurance carrier or self-insurer, individual or group, shall not pay more than the applicable prevailing rate of reimbursement for medical services. Insurance carriers and self-insurers, individual and group, may have utilization review and medical bill screenings. Utilization review and bill screening shall be
performed by qualified individuals or entities to insure the integrity of the services and the quality of cost containment. It is the express legislative intent of this article to ensure that the highest quality health care is available to employees who become injured or ill as the result of employment, at an appropriate rate of provider reimbursement rates set forth in accordance with Section 25-5-313. All insurers, claims adjusters, self-administered employers, and any entity involved in the administration or payment of workers' compensation claims may, but are not required to, implement utilization review and bill screening for health services provided to employees covered under this article. In this regard, employers' liability for reimbursement shall be limited to the prevailing rate or maximum fee schedule established by the Workers' Compensation Services Board Director of the Department of Labor for similar treatment. Services provided that are deemed not medically necessary are not reimbursable and the employer is held harmless. In no event is the employee responsible or held liable for any charges associated with an authorized workers' compensation claim. To ensure compliance of providers, insurance carriers, and self-insurers, the director may provide by rule for the review and audit of insurance carriers and self-insurers, individual and group, of payments for medical services. The director may maintain a statewide data base from insurance carriers and self-insurers, individual and group, on medical
charges, actual payments, and adjudication methods for use in administering this article.

"(h) Claims payors, and insurers operating in Alabama shall, at the director's request, provide the director such data as he or she deems necessary to evaluate costs and quality. The data shall be provided in the form and content to the director's specifications and in a manner deemed timely by the director. The director may gather from health care claims intermediaries that operate in Alabama any claims data related to diagnoses and procedures encountered in the treatment of workers'-compensation-type injury and illness in Alabama. Results from all data gathered shall be made available to employers or their representatives for use in decisions regarding the direction of care or to determine appropriateness of reimbursement.

"(i) Beginning immediately after May 19, 1992 July 1, 2015, and to be completed within six months thereafter, the director may engage an independent firm to identify the initial costs for the program. These initial expenses shall include, but not be limited to, the establishment of a data base to determine prevailing rates, and the conducting of cost analysis for appropriate reimbursement rates to hospitals and other facilities all items needed for the Director of the Department of Labor to complete his or her duties under Section 25-5-313.

"(j) A person who performs services for the director pertaining to the policies of any advisory committee or board

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is immune from civil liability against any claim arising out
of, or related to, any decision made in good faith, and
without malice, and predicated upon information which was then
available to the person. Immunity from liability under this
section does not apply to a person providing medical treatment
to an injured employee.

"(k) Notwithstanding any other provision of this
section to the contrary, it is the intent of this section
that any and all utilization review, bill screening, medical
necessity determinations, or audits which relate to the
services of physicians as defined in Section
25-5-310 shall only be conducted under and in accordance with
policies, guidelines, or regulations which have been jointly
approved by the Workers' Compensation Medical Services Board
and the director under the provisions of Section 25-5-312, as
and when such policies, guidelines, criteria, and regulations
are adopted in a final and effective form pursuant to the
Alabama Administrative Procedure Act Section 25-5-313. Not
later than six months from May 19, 1992 July 1, 2015, the
director, with the approval of the board, shall publish a
notice of the intended action in Alabama Administrative
Monthly to adopt initial policies, guidelines, criteria, or
regulations for utilization review, medical necessity
determinations, and bill screenings; however, each insurer,
self-insured employer, claims administrator, or other payor
may continue utilization review, medical necessity
determinations, and bill screenings unaffected by this article
during the first six months from May 19, 1992 July 1, 2015, or
until such policies, guidelines, criteria, or regulations may
become effective in a final adopted form within that initial
six-month period. If such above referenced pending policies,
guidelines, criteria, or regulations have not become effective
in a final form pursuant to the Administrative Procedure Act
after six months from May 19, 1992 July 1, 2015, then until
such time as they are finally adopted, each insurer,
self-insured employer, or claims administrator shall conduct
utilization review, medical necessity determinations, and bill
screenings in a manner that is consistent with similar
practices of a majority of commercial insurance companies
authorized to issue policies of health insurance in this
state. Any amendments, including additions or deletions, to
the initial policies, guidelines, criteria, or regulations
shall be adopted in accordance with the requirements of this
section and Section 25-5-312. Notwithstanding the foregoing,
utilization review as to reasonableness or medical necessity
of treatment recommended by an authorized provider shall be
conducted by a person who is or has been licensed to practice
in Alabama, and who is in the same area of practice and
similarly board certified, if applicable, to the authorized
treating provider. However, the director shall promulgate
administrative rules to address peer review and utilization
review where the director concludes that the use of an Alabama
physician is impracticable.

"§25-5-310.
"For the purposes of this article the following words and phrases have the following meanings:

"(1) ACQUISITION COST. The actual invoice cost of the implantable item, shipping costs, and taxes, if any.

"(1)(2) BOARD. The Workers' Compensation Medical Services Board.

"(3) HOSPITAL A hospital, ambulatory surgical center, or diagnostic facility licensed by the State of Alabama, or an outpatient rehabilitation center licensed by the State of Alabama and accredited by the Commission on Accreditation of Rehabilitation Facilities.

"(2)(4) MEDICAL or MEDICAL SERVICES. Any and all medical or surgical services, treatment, or equipment, or any combination thereof provided by physicians under this new article a provider.

"(3) PHYSICIAN (5) PROVIDER. A doctor of medicine or doctor of osteopathy licensed to practice medicine medical clinic, physician, surgeon, pharmacist, dentist, chiropractor, psychologist, podiatrist, physical therapist, pharmaceutical supply company, rehabilitation service, hospital, ambulatory surgery center, diagnostic facility, or other person or entity providing treatment, service, or equipment, or person or entity providing facilities at which the employee receives treatment, under the Workers' Compensation Act.

"§25-5-311.

"There is established a Workers' Compensation Medical Services Board composed of five physicians licensed to
practice medicine in the State of Alabama who shall be appointed by the Director of the Department of Industrial Relations. The initial board shall be selected from a list of 15 physicians who are members of the Medical Association of the State of Alabama, submitted by the association of 16 members appointed in a manner set forth in this section. The composition of the board shall be as follows: Two claims professionals, two employers, two physicians, two provider practice managers, four hospital representatives, a physical therapist, two employee representatives, and one member of the judiciary.

"The two claims professionals shall be chosen by the Alabama Workers' Compensation Organization. The two employer representatives shall be chosen by the Alabama Council of Association Workers Compensation Self-Insureds Funds. The two physicians and two provider practice managers shall be chosen by the Medical Association of the State of Alabama. The four hospital representatives shall be chosen by the Alabama Hospital Association. The physical therapist shall be chosen by the Physical Therapist Association of Alabama. The two employee representatives shall be chosen by the Alabama Association for Justice. The remaining member shall be a member of the judiciary and shall be chosen by the Alabama State Bar Association."

"Members of the board shall serve terms of five four years. In order that the appointments be staggered, one member shall serve an initial term of six years, one member shall
serve an initial term of two years, one member shall serve an
initial term of three years, one member shall serve an initial
term of four years, and the remaining member shall serve an
initial term of five years. Thereafter, successors shall be
appointed by the director from among a list of three nominees
submitted by the Medical Association of the State of Alabama
to serve full five-year terms. Service of the current board
members shall continue until the members provided for in this
amendatory act are all appointed. All new appointments as
mandated by this section shall be made no later than the last
day of the third month following the effective date of the
enactment of this amended section. If all appointments for new
board members are not timely made as mandated by this section,
the remaining appointments shall be made by the Chief Justice
of the Supreme Court of Alabama.

"A member of the board shall continue to serve
beyond the expiration of his or her term of office until his
or her successor is legally appointed. Members of the Workers'
Compensation Medical Services Board shall be eligible to serve
two five-year terms a maximum of two four-year terms of office
in addition to an initial or unexpired term of less than three
two years, but shall not serve thereafter. Members of the
board shall be entitled to receive per diem at the rate of
$100.00 for each day or portion thereof spent in the
performance of the duties of their office, and in addition,
shall be reimbursed for expenses of travel in the same manner
as employees of the State of Alabama receive the same per
diem, travel, and expense allowance as is paid by law to state
employees for the time spent in the performance of duties and
necessary travel.

"The appointing authority may remove its designated
member of the board for misconduct, incapacity, incompetence,
or neglect of duty after the member so charged has been served
with a written notice of the same and has been given an
opportunity to be heard by the appointing authority. Absence
from any three consecutive meetings of the board, without
cause acceptable to the appointing authority, shall be deemed
neglect of duty and cause for removal of any member. If a
vacancy occurs on the board for any reason, that position
shall be filled in a manner consistent with this section.

"The Workers' Compensation Medical Services Board
shall function as a part of the Department of Industrial
Relations and Labor. The board shall have the no additional
authority, duties, and or responsibilities as beyond those
prescribed in this article. The board may meet quarterly at a
time and place designated by the chair, and may meet more
frequently at the call of the chair. Members of the board may
participate in a meeting of the board by means of telephone
conference, video conference, or similar communications
equipment by means of which all persons participating in the
meeting may hear each other at the same time and members of
the public may simultaneously listen to the meeting.
Participation by such means shall constitute presence in
person at a meeting for all purposes. The board shall elect
one of its members as chair who shall serve a term of one year.

"A quorum for purposes of the board is eight of the 16 board members. A quorum shall be sufficient to transact all business put forth before the board. At least eight like votes is required to recommend any changes to the Director of the Department of Labor. The board may adopt rules governing its own proceedings. The department shall provide the board with necessary meeting and office space, secretarial and clerical support, reimbursement for travel expenses and per diem as specified in this article. Upon approval of the director, the Lieutenant Governor, and the Speaker of the House of Representatives, additional funding as required by the board for the employment of consultants, attorneys, and other professional staff necessary to accomplish the purposes and objectives stated in this article may be provided.

"§25-5-312.

"The board shall exercise general supervision in all matters related to the provision of medical services provided by physicians, as defined in Section 25-5-310, rendered to workers under this article. The duties of the board shall include, but are not limited to, the following:

"(1) Study, develop, and implement any recommend to the Director of the Department of Labor necessary and reasonable guidelines for medical services and physician care provided by physicians. In addition, with respect to services provided by physicians, the board shall study, develop, and
recommend to the director uniform medical criteria and
policies for the conduct of utilization review, bill
screenings, and medical necessity determinations for use by
insurance carriers, self insurers, and claims administrators
to promote efficiency and reduce costs with respect to
providing services under this article.

"(2) Study, design, and implement standardized
uniform claims processing forms and forms for the reporting of
medical information to employers and insurance companies by
physicians providers.

"(3) Study, develop, and recommend to the Director
of the Department of Labor improvements in the maintenance and
transfer of records, including medical records, as necessary
and in accordance with this article.

"(3)(4) Address and give consideration to those
matters referred to it by the director.

"(4)(5) The board shall contract may consult with
physicians, health care providers, professional associations
of physicians, and health-related organizations, attorneys,
and others to provide the board with consultation, and
research and development expertise in discharging its duties
and responsibilities under this article. Any contract entered
into by the board shall be approved by the director and
submitted as are other state contracts.

"(5)(6) The board may establish, by regulations
promulgated by the department, regional committees of
physicians appointed by the board to perform any duties and
responsibilities specified by the board in programs established for the delivery of medical services under this article. In addition the board shall appoint board certified physicians in any of the medical or surgical specialties to act as independent expert medical consultants to the ombudsman in connection with the resolution of disputes involving physicians providing medical services to injured workers. Members of the regional committees shall be physicians and shall serve at the pleasure of the board. Physicians serving as members of the regional committees as constituted under this section or independent expert medical consultants to the ombudsman shall be granted the same immunities as provided members of the board under this article and existing state law.

"(7) The Workers' Compensation Medical Services Board must provide to the Director of the Department of Labor all initial reports, designs, and recommendations contemplated under subdivisions (1), (2), and (3) within three months from the date upon which all appointments to the board have been made pursuant to Section 25-5-311. Regardless of the status of the board's communication of or the director's review, approval, or implementation of these reports, designs, and recommendations, the schedule of maximum fees set forth in Section 25-5-313 shall take effect no later than six months after adoption of the new administrative procedures, which shall be adopted no later than nine months after all the members of the board are appointed."
Implementation of this section shall be governed by and subject to the Alabama Administrative Procedure Act. Rules and regulations relating to the duties and authority of the board, enumerated herein, may be promulgated only with the consent of both the director and the board. In no event may the board or the director implement any procedure or rule that increases the maximum fees established pursuant to Section 25-5-313.

"§25-5-313.

"(a) The Workers' Compensation Medical Services Board shall adopt, pursuant to the time provisions in Section 25-5-312(7), a comprehensive schedule of maximum fees for compensation to providers as set forth below: Within 60 days from May 19, 1992, the Workers' Compensation Medical Services Board shall submit to the Governor an initial schedule of maximum fees for medical services covered by this article, which schedule shall become effective immediately upon submission to the Governor. The initial schedule of maximum fees shall be established by the board in the manner prescribed in this section. The fee for each service in the schedule shall be exactly equal to an amount derived by multiplying the preferred provider reimbursement customarily paid on May 19, 1992, by the largest health care service plan incorporated pursuant to Sections 10-4-100 to 10-4-115, inclusive, by a factor of 1.075, which product shall be the maximum fee for each such service. In addition the board may submit to the Governor for approval on or before January 31,
1993, a revised schedule of selected fees for medical services
covered by this article, which fees shall not exceed the fees
established in the initial schedule of fees by more than 2 1/2
percent. The revised schedule of fees, but not individual fees
or separate portions thereof, shall be subject to acceptance
or rejection by the Governor. If the revised schedule of fees
is rejected by the Governor, it shall be referred to the board
for further consideration and the initial schedule of maximum
fees shall continue to be in effect until the Governor and the
board reach agreement; provided, however, the schedule of
maximum fees in effect on January 31, 1993, shall not be
subject to further revision through this process.

"(1) Provider (other than Hospital) Reimbursement
Rate. The director's maximum fee schedule for providers,
including physicians, other than those expressly set forth
below under "hospital reimbursement maximum rates," shall be
calculated by the director as follows: The provider
reimbursement rate will be equal to an amount derived by
multiplying the provider reimbursement rate customarily paid
on January 1 of each calendar year by the largest health care
service plan incorporated pursuant to Sections 10-4-100 to
10-4-115, inclusive, by a factor of 1.075, which product shall
be the maximum fee for each such service. If there is more
than one provider reimbursement rate for the same service, the
rate applied shall be the lesser of the two fees, subject to
adjudication and bill screening guidelines as approved by the
Department of Labor.
"(2) Hospital Reimbursement Maximum Rates. The
director's maximum fee schedule for hospitals, inpatient and
outpatient, including radiology, pathology and lab, and
diagnostic and physician fees not generally associated to the
approved procedure, implantables, and physical therapy
services, shall be calculated by the director as follows:

"a. Hospital Inpatient Reimbursement Rate. The
hospital inpatient reimbursement rate shall be equal to an
amount derived by multiplying the Medicare National Base Rate
customarily paid on January 1 of each calendar year, times a
factor of 1.2, multiplied by the diagnosis related group
weight value as published by Medicare. All implantables will
be paid at the hospital implant acquisition cost. The hospital
inpatient reimbursement rate for an inpatient rehabilitation
facility, hospital, or unit of a hospital that limits services
to patients primarily to rehabilitation services shall be
equal to an amount derived by multiplying the Medicare
inpatient rehabilitation facility base rate customarily paid
on January 1 of each calendar year, times a factor of 1.2,
multiplied by the case mix group weight value as published by
Medicare.

"b. Hospital Outpatient Reimbursement Rate. The
hospital outpatient reimbursement shall be a flat rate equal
to an amount derived by multiplying the Addendum B Medicare
outpatient pricer system payment rate by HCPCS customarily
paid on January 1 of each calendar year times a factor of
1.35. Radiology, pathology and lab, and diagnostic and
1 physician fees not generally associated to the approved
2 procedure shall be equal to the provider reimbursement rate
3 stated in subdivision (1), which shall be the maximum fee for
4 each service. All implantables will be paid at the hospital
5 implant acquisition cost.
6
7 "c. Physical Therapy in Hospital Outpatient Setting. The reimbursement rate for physical therapy services in a
8 hospital outpatient setting shall be equal to the provider
9 reimbursement rate stated in subdivision (1), which shall be
10 the maximum fee for each such service.
11
12 "(3) Pharmacy Maximum Reimbursement Rates. Pharmaceuticals shall be reimbursed pursuant to the
13 pharmaceutical reimbursement formula for prescribed drugs,
14 subject to the following:
15
16 "a. Brand name drugs will be reimbursed at a rate
17 equal to the average wholesale price as published by the
18 Medi-Span Directory, plus a five dollar ($5) handling fee.
19
20 "b. A pharmaceutically and therapeutically
21 equivalent drug product (generic) will be reimbursed at a rate
22 equal to the average wholesale priced as published by the
23 Medi-Span Directory minus 30 percent plus a five dollar ($5)
24 handling fee.
25
26 "c. A pharmaceutically and therapeutically
27 equivalent drug product (generic) must be selected by the
28 physician or authorized health care provider, in accordance
29 with the requirements of Section 34-23-9, unless the physician
or authorized health care provider mandates a brand name drug in contemporaneous clinic notes.

"(4) Other Maximum Reimbursement Rates. For all medical services not covered above in subdivisions (1), (2), and (3), the director shall determine the reasonable and customary maximum payable amount, and implement necessary procedures and rules to determine the same, as may be required; however, in no event may a maximum reimbursement rate exceed any amount required above in subdivisions (1), (2), and (3).

"(5) In addition to the above maximum fee schedule, reimbursements shall be further governed by and subject to the following:

"No physician who is authorized to issue or prescribe prescription drugs may have the prescription filled in any location, facility, pharmacy, or business establishment in which such physician has a financial interest of any kind; and no reimbursement shall be owed for any such act or omission in violation thereof.

"No maximum reimbursement rate set forth herein may be exceeded. The schedule of maximum fees and any additions, deletions, corrections, or changes thereto shall not be considered is a rule or regulation requiring publication under the Alabama Administrative Procedure Act. It is the express legislative intent that the Workers' Compensation Medical Services Board may establish a system of maximum fees under this section for services rendered by physicians to employees
covered by the Workers' Compensation Law and that the schedule of fees shall replace and supplant traditional competitive market mechanisms in the interest of obtaining quality physician services in a cost effective manner. The board shall annually adjust the schedule of fees established pursuant to this section by increases which shall be no more than the annual increase in the cost of living as reflected by the U. S. Department of Labor consumer price index. The board may, from time to time, add to or adjust the schedule of fees in response to changes in technology and medical practice, subject only to the right of the Governor to accept or reject the addition or adjustment made by the board, and to refer to the board for further consideration any additions or adjustments which he or she may reject. In the event that at any time a state or federal tax, levy, fee, or assessment is imposed or assessed on physicians licensed to practice medicine which tax, levy, fee, or assessment is based in whole or in part upon the provision of professional services in connection with the practice of medicine, then, in that event, the board may, subject to the approval of the Governor, within three months of the effective date of the tax, levy, fee, or assessment issue a revised schedule of maximum fees which increases the maximum fee for each service reflected therein by an amount which shall be no more than the rate fixed by law of the tax, levy, fee, or assessment. This provision shall not be construed to include income or sales tax increases published by the Department of Labor. The liability of the
employer for the payment of services rendered by physicians
providers shall not exceed those maximum fees established by
the board and approved by the Governor determined pursuant to
this section. The employees shall not be liable to the
physician provider for any amount in excess of the schedule of
maximum fees established by the board and approved by the
Governor determined pursuant to this section.

"(6) Outlier Payments. To provide additional
reimbursement for inpatient high cost cases where the DRG
payment is insufficient to cover costs incurred by the
facility, the amount eligible for outlier reimbursement is
equal to total charges minus DRG payment minus implantable
charges minus non-covered or non-qualified charges minus the
outlier threshold of forty thousand dollars ($40,000). The
amount determined eligible for outlier reimbursement shall be
at 40 percent.

"(b) The reimbursement rates set forth in this
section will become effective on the date of approval by the
board, or July 1, 2015, whichever is first.

"§25-5-314.

"Notwithstanding any other provisions of this
article to the contrary, any employer, workers' compensation
insurance carrier, self-insured employer, or group fund, may
contract with physicians, hospitals, and any other health care
provider for the provision of medical services to injured
workers at any rates, fees, or levels of reimbursement which
shall be mutually agreed upon between the physician,
hospitals, and any other health care provider and the
employer, workers' compensation insurance carrier,
self-insured employer, or group fund.

"The schedule of fees established pursuant to this
article shall be the fees paid to providers; however, an
employer, as defined by Section 25-5-1(4), may enter into
agreements with providers, as defined by Section 25-5-1(13),
as to rates, fees, or levels of reimbursement.

"§25-5-316.

"(a) There is established in the State Treasury a
fund entitled the Workers' Compensation Administrative Trust
Fund, into which shall be deposited certain assessments
provided under Chapter 5 (commencing with Section 25-5-1) of
Title 25 collected by the Department of Industrial Relations
Labor. The fund shall constitute a separate fund to be
disbursed by the state Comptroller on order of the Director of
the Department of Industrial Relations Labor. All expenses
incurred by the department under the Workers' Compensation
Law, including the salaries of all employees, travel cost, and
any other cost of administration and enforcement as may become
necessary, either within or without the state, shall be paid
from the separate fund in the State Treasury upon warrants of
the state Comptroller drawn upon the State Treasury from time
to time when vouchers therefor are approved by the director.
The State Treasurer shall pay moneys from the separate fund
upon the order of the director. The total expense for every
purpose incurred shall not exceed the total assessment
collected and paid into the fund. The total expense for every
purpose incurred in implementing this article shall not exceed
the amount appropriated by the Legislature in the general fund
appropriation act. No funds shall be withdrawn or expended
except those budgeted and allocated in accordance with Article
4 (commencing with Section 41-4-80) of Chapter 4 of Title 41.
All moneys remaining unexpended in the separate fund at the
end of the fiscal year shall remain in the State Treasury to
be expended as herein provided. Included in the budget shall
be an amount of money allocated for the specific and exclusive
purpose of paying only benefits to the claimants who have
qualified to receive benefits from the Second Injury Trust
Fund on May 19, 1992. Payments of these benefits shall be made
weekly. The director shall each week make requisitions to the
state Comptroller who shall draw warrants on the State
Treasurer for the weekly compensation amount. The warrants
shall be drawn only if there are sufficient moneys in the
Treasury for immediate payment. Claims shall take priority in
an ascending numerical order according to the time of the
accident, and the time shown in the settlement between the
employer and employee shall be prima facie evidence of the
time of the accident. No funds allocated for the payment of
benefits from the fund shall be used to pay lump-sum
attorney's fees. Payment shall resume at the end of the first
week of the fiscal year in which the Legislature approves the
requested budget for the Workers' Compensation Administrative
Trust Fund. The claimants who were receiving weekly benefits
from the Second Injury Trust Fund as of August 31, 1991, shall be paid all weekly benefits due to date and the benefits shall be continued for the duration of claim. Those amounts shall be paid from the moneys as allocated.

"(b) The State Treasurer shall determine if the money in the trust fund shall be kept in cash or invested. The moneys in the fund may be invested by the State Treasurer and all moneys and interest remaining unexpended in the separate fund provided at the end of the fiscal year shall remain in the State Treasury to be expended as herein provided.

"(c) The director is designated as trustee of the fund and the State Treasurer is designated as custodian of the fund, and both shall furnish bonds in amounts deemed appropriate. The cost of bonds for the trustee, custodian, and other employees or officials required to post bond in connection with the program shall be paid out of the fund.

"(d) Each insurance carrier, self-insured employer, and group fund shall be assessed $250.00. The gross claims for compensation and medical payments paid by the carriers, self-insured employers, and group funds are the basis for computing the amount to be assessed. The amount of assessment shall be based upon the proportion that the total gross claims for compensation and medical payments paid by the carrier, self-insured employer, or group fund during the preceding calendar year bore to the total gross claims for compensation and medical payments paid by all carriers, self-insured employers, and group funds during that period. The total
assessment shall not exceed $5,000,000.00 per year. The
director shall determine if the assessment shall be a specific
amount or shall be a percentage of gross claims for
compensation and medical payments paid by the insurance
carriers, self-insured employers, and group funds. An
assessment shall not exceed an amount reasonably necessary to
defray the necessary administration expense.

"(e) The department shall provide by regulation for
the collection of the amounts assessed against each insurance
carrier, self-insured employer, and group fund. The amounts
shall be paid within 30 days from the date that the notice is
served upon the insurance carrier, self-insured employer, and
group fund. If the amounts are not paid within that period,
there may be assessed, for each 30 days that the amount so
assessed remains unpaid, a civil penalty equal to 10 percent
of the amount unpaid. The amount of the civil penalty shall be
collected at the same time the amount assessed is collected.

"(f) If an insurance carrier, self-insured employer,
or group fund fails to pay the amounts assessed against it
within 60 days from the time the notice is served, the
department may suspend or revoke the authorization to the
self-insurer and may request that the Department of Insurance
revoke the authority of the insurance company to insure
workers' compensation.

"(g) The department may require from each insurance
carrier, self-insured employer, and group fund reports with
respect to all payments of compensation and medical payments
by the insurance carriers, self-insured employers, or group funds during each calendar year, and may determine the amounts paid by each insurance carrier, self-insured employer, and group fund and may determine the amounts paid by all insurance carriers, self-insured employers, and group funds during the period.

"(h) On or before the first day of March of each year, every insurance carrier, self-insured employer, and group fund shall file with the department a statement on the prescribed forms showing the gross claims for compensation and medical payments paid by the insurance carrier, self-insured employer, or group fund during the preceding one-year period ending on the 31st day of December. Any insurance carrier, self-insured employer, or group fund which neglects to file its annual written statement within the time provided in this manner shall pay to the Workers' Compensation Administrative Trust Fund a penalty for each day's neglect in an amount prescribed by rule of the director.

"(i) All money collected under this section shall be deposited in the Workers' Compensation Administrative Trust Fund."

Section 2. The provisions of this act are expressly declared not to be severable. If any provision of this act shall be adjudged to be invalid by any court of competent jurisdiction, then this entire act shall be invalid and void.
Section 3. This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law.