

1 SB453  
2 151708-4  
3 By Senator Marsh  
4 RFD: Business and Labor  
5 First Read: 18-APR-13

2  
3  
4  
5  
6  
7  
8 SYNOPSIS: This bill extensively amends the workers'  
9 compensation law. The bill would: Revise certain  
10 definitions; provide for the approval of  
11 standardized claim reimbursement forms by the  
12 Director of the Department of Labor; streamline  
13 provisions related to injuries occurring  
14 out-of-state; provide further for settlement of  
15 claims having attorney representation, inadmissible  
16 evidence, and advanced payments; provide further  
17 for limitations on total permanent total disability  
18 compensation; increase the amount for burial  
19 expenses; revise maximum compensation amounts;  
20 provide further for the names of physicians on  
21 medical panels approving additional treatment;  
22 shift the burden for cut-off of treatment, and add  
23 pain management treatment; delete verification  
24 requirement for filing complaints; add a 14-day  
25 requirement to submit stipulation to courts for  
26 trial; require judges to enter an order within 90  
27 days of trial; delete requirement of judges to

1 enter an order for hiring of employee's attorney;  
2 delete references to the Department of Industrial  
3 Relations; provide further for composition of  
4 Workers' Compensation Medical Services Board and  
5 alter powers and duties of the board; revise  
6 schedules of maximum fees and reimbursement rates;  
7 and provide for contracts for medical services at  
8 mutually agreed rates.

9  
10 A BILL

11 TO BE ENTITLED

12 AN ACT

13  
14 Relating to workers' compensation; to amend Sections  
15 25-5-1, 25-5-3, 25-5-35, 25-5-56, 25-5-57, 25-5-67, 25-5-68,  
16 25-5-77, 25-5-80, 25-5-81, 25-5-88, 25-5-90, 25-5-117,  
17 25-5-197, 25-5-293, 25-5-310, 25-5-311, 25-5-312, 25-5-313,  
18 25-5-314, and 25-5-316, Code of Alabama 1975, to revise  
19 certain definitions; provide for the approval of standardized  
20 claim reimbursement forms by the Director of the Department of  
21 Labor; streamline provisions related to injuries occurring  
22 out-of-state; provide further for settlement of claims having  
23 attorney representation, inadmissible evidence, and advanced  
24 payments; provide further for limitations on permanent total  
25 disability compensation; increase the amount for burial  
26 expenses; revise maximum compensation amounts; provide further  
27 for the names of physicians on panels approving additional

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

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. 25-5-1, 25-5-3, 25-5-35, 25-5-56,  
15 25-5-57, 25-5-67, 25-5-68, 25-5-77, 25-5-80, 25-5-81, 25-5-88,  
16 25-5-90, 25-5-117, 25-5-197, 25-5-293, 25-5-310, 25-5-311,  
17 25-5-312, 25-5-313, 25-5-314, and 25-5-316, Code of Alabama  
18 1975, are amended to read as follows:

19 "§25-5-1.

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

24 "(1) COMPENSATION. The money benefits to be paid on  
25 account of injury or death, as provided in Articles 3 and 4.  
26 The recovery which an employee may receive by action at law  
27 under Article 2 of this chapter is termed "recovery of civil

1 damages," as provided for in Sections 25-5-31 and 25-5-34.

2 "Compensation" does not include medical and surgical treatment  
3 and attention, medicine, medical and surgical supplies, and  
4 crutches and apparatus furnished an employee on account of an  
5 injury.

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

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

17 "(4) EMPLOYER. Every person who employs another to  
18 perform a service for hire and pays wages directly to the  
19 person. The term shall include a service company for a  
20 self-insurer or any person, corporation, copartnership, or  
21 association, or group thereof, and shall, if the employer is  
22 insured, include his or her insurer, the insurer being  
23 entitled to the employer's rights, immunities, and remedies  
24 under this chapter, as far as applicable. The inclusion of an  
25 employer's insurer within the term shall not provide the  
26 insurer with immunity from liability to an injured employee,  
27 or his or her dependent in the case of death to whom the

1 insurer would otherwise be subject to liability under Section  
2 25-5-11. Notwithstanding the provisions of this chapter, in no  
3 event shall a common carrier by motor vehicle operating  
4 pursuant to a certificate of public convenience and necessity  
5 be deemed the "employer" of a leased-operator or  
6 owner-operator of a motor vehicle or vehicles under contract  
7 to the common carrier.

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

21 "(6) WAGES or WEEKLY WAGES. The terms shall in all  
22 cases be construed to mean "average weekly earnings", based on  
23 those earnings subject to federal income taxation and  
24 reportable on the Federal W-2 tax form which shall include  
25 voluntary contributions made by the employee to a  
26 tax-qualified retirement program, voluntary contributions to a  
27 Section 125 cafeteria program, and fringe benefits as defined

1 herein. Average weekly earnings shall not include fringe  
2 benefits if and only if the employer continues the benefits  
3 during the period of time for which compensation is paid.

4 "Fringe benefits" shall mean only the employer's portion of  
5 health, life, and disability insurance premiums.

6 "(7) ACCIDENT. The term, as used in the phrases  
7 "personal injuries due to accident" or "injuries or death  
8 caused by accident" shall be construed to mean an unexpected  
9 or unforeseen event, happening suddenly and violently, with or  
10 without human fault, and producing at the time injury to the  
11 physical structure of the body or damage to an artificial  
12 member of the body by accidental means.

13 "(8) INJURIES BY AN ACCIDENT ARISING OUT OF AND IN  
14 THE COURSE OF THE EMPLOYMENT. Without otherwise affecting  
15 either the meaning or interpretation of the clause, the clause  
16 does not cover workers except while engaged in or about the  
17 premises where their services are being performed or where  
18 their service requires their presence as a part of service at  
19 the time of the accident and during the hours of service as  
20 workers.

21 "(9) INJURY. "Injury and personal injury" shall mean  
22 only injury by accident arising out of and in the course of  
23 the employment, and shall not include a disease in any form,  
24 except for an occupational disease or where it results  
25 naturally and unavoidably from the accident. Injury shall  
26 include physical injury caused either by carpal tunnel  
27 syndrome disorder or by other cumulative trauma disorder if

1 either disorder arises out of and in the course of the  
2 employment, and breakage or damage to eyeglasses, hearing  
3 aids, dentures, or other prosthetic devices which function as  
4 part of the body, when injury to them is incidental to an  
5 on-the-job injury to the body. Injury does not include an  
6 injury caused by the act of a third person or fellow employee  
7 intended to injure the employee because of reasons personal to  
8 him or her and not directed against him or her as an employee  
9 or because of his or her employment. Injury does not include a  
10 mental disorder or mental injury that has neither been  
11 produced nor been proximately caused by some physical injury  
12 to the body.

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

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

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

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

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

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

13           "~~(16)~~(15) PARTICIPATING AND NONPARTICIPATING  
14 HOSPITALS. Those hospitals that have a negotiated rate of  
15 reimbursement or payment with the Department of ~~Industrial~~  
16 ~~Relations~~ Labor. "Nonparticipating hospitals" means those  
17 hospitals that have not negotiated a rate of reimbursement or  
18 payment with the Department of ~~Industrial Relations~~ Labor.

19           "~~(17)~~(16) HOSPITAL. A hospital, ambulatory surgical  
20 center, and diagnostic facility licensed by the State of  
21 Alabama, and outpatient rehabilitation center centers licensed  
22 by the State of Alabama, and ~~diagnostic facilities~~ accredited  
23 by the Commission on Accreditation of Rehabilitation  
24 Facilities.

25           "~~(18)~~(17) THE COURT. The circuit court that would  
26 have jurisdiction in an ordinary civil action involving a

1 claim for the injuries or death in question, and "the judge"  
2 means a judge of that court.

3 "~~(19)~~(18) UTILIZATION REVIEW. The determination of  
4 medical necessity for medical and surgical in-hospital,  
5 out-patient, and alternative settings treatments for acute and  
6 rehabilitation care. It includes precertification for elective  
7 treatments. Concurrent review and, if necessary, retrospective  
8 review are required for emergency cases.

9 "~~(20)~~(19) BILL SCREENING. The evaluation and  
10 adjudication of provider bills for appropriateness of  
11 reimbursement relative to medical necessity and ~~prevailing~~  
12 rates of reimbursement, duplicate charges, unbundling of  
13 charges, relativeness of services to injury or illness,  
14 necessity of assistant surgeons, adjudication of multiple  
15 procedures, number of modalities, global procedures, and any  
16 other prevailing adjudication ~~issues~~ rules that may apply. In  
17 no event may adjudication rules or any fees exceed the amounts  
18 provided for and established by Section 25-5-313.

19 "~~(21)~~(20) ADJUDICATION. The review of claims to  
20 apply ~~prevailing~~ the most commonly occurring applicable rules  
21 that adjust reimbursements for the amount of work required  
22 when multiple procedures are performed at the same time, when  
23 assisting surgeons are present, to eliminate duplicate billing  
24 from the unbundling of global fees, and to adjust for the most  
25 commonly occurring method adopted for total reimbursement.

26 "~~(22)~~(21) OMBUDSMAN. An individual who assists  
27 injured or disabled employees, persons claiming death

1 benefits, employers, and other persons in protecting their  
2 rights and obtaining information available under the workers'  
3 compensation law.

4 "§25-5-3.

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

24 "§25-5-35.

25 "(a) As used in this section:

26 "(1) The term "United States" includes only the  
27 states of the United States and the District of Columbia; and

1           "(2) The term "state" includes any state of the  
2 United States or the District of Columbia.

3           "(b) For the purposes of this section, a person's  
4 employment is principally localized in this or another state  
5 when his or her employer has a place of business in this or  
6 such other state and he or she regularly works at or from such  
7 place of business, or if he or she is domiciled and spends a  
8 substantial part of his or her working time in the service of  
9 his or her employer in this or such other state.

10           "(c) An employee whose duties require him or her to  
11 travel regularly in the service of his or her employer in this  
12 and one or more other states may, by written agreement with  
13 his or her employer, provide that his or her employment is  
14 principally localized in this or another such state; and,  
15 unless such other state refuses jurisdiction, such agreement  
16 shall be given effect under this section.

17           "(d) If an employee, while working outside of this  
18 state, suffers an injury on account of which he or she or, in  
19 the event of his or her death, his or her dependents, would  
20 have been entitled to the benefits provided by this article  
21 and Article 3 of this chapter had such injury occurred within  
22 this state, such employee or, in the event of his or her death  
23 resulting from such injury, his or her dependents, shall be  
24 entitled to the benefits provided by this article and Article  
25 3 of this chapter, provided that at the time of such injury:

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

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

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

9           "~~(4)~~ (3) He or she was working under a contract of  
10 hire made in this state for employment outside the United  
11 States.

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

22           "(1) The medical and related benefits furnished or  
23 paid for by the employer under such other workers'  
24 compensation law on account of such injury or death shall be  
25 credited against the medical and related benefits to which the  
26 employee would have been entitled under this article and

1 Article 3 of this chapter had claim been made solely under  
2 this article and Article 3 of this chapter;

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

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

13 "(f) The recovery of any compensation benefits under  
14 the law of any other state shall bar any common-law or  
15 statutory right of action for damages that an employee or his  
16 or her dependents might otherwise have had against the  
17 employer or the officers, directors, or employees of the  
18 employer as a result of the injury or death on account of  
19 which such compensation benefits were paid.

20 "~~(g) If, as a result of an employment principally~~  
21 ~~localized in another state, an employee of an employer who~~  
22 ~~would have been subject to this article or Article 3 of this~~  
23 ~~chapter, had the contract of employment been entered into in~~  
24 ~~this state for performance in this state, suffers injury or~~  
25 ~~death as a result of an accident occurring in this state,~~  
26 ~~compensation and medical, surgical, and hospital benefits on~~

1 ~~account of such injury or death may be recovered under this~~  
2 ~~article or Article 3 of this chapter.~~

3 "§25-5-56.

4 "The interested parties may settle all matters of  
5 benefits, whether involving compensation, medical payments, or  
6 rehabilitation, and all questions arising under this article  
7 and Article 4 of this chapter between themselves, and every  
8 settlement shall be in an amount the same as the amounts or  
9 benefits stipulated in this article. No settlement for an  
10 amount less than the amounts or benefits stipulated in this  
11 article shall be valid for any purpose, unless a judge of the  
12 court where the claim for compensation under this chapter is  
13 entitled to be made, or upon the written consent of the  
14 parties, a judge of the court determines that it is for the  
15 best interest of the employee or the employee's dependent to  
16 accept a lesser sum and approves the settlement. There shall  
17 be a presumption that the settlement is in the best interest  
18 of the employee where the employee is represented by counsel  
19 licensed to practice law in the State of Alabama. The court  
20 shall not approve any settlement unless and until it has first  
21 made inquiry into the bona fides of a claimant's claim and the  
22 liability of the defendant; and if deemed advisable, the court  
23 may hold a hearing thereon. Settlements made may be vacated  
24 for fraud, undue influence, or coercion, upon application made  
25 to the judge approving the settlement at any time not later  
26 than six months after the date of settlement. Upon settlements  
27 being approved, judgment shall be entered thereon and duly

1 entered on the records of the court in the same manner and  
2 have the same effect as other judgments or as an award if the  
3 settlement is not for a lump sum. In the event that a proposed  
4 settlement is jointly presented by the employer and employee  
5 for approval to a judge, and the settlement is not approved  
6 for any reason, the matter shall be reassigned to another  
7 judge; any statements or arguments made by the parties, their  
8 lawyers, witnesses, or the judge at the hearing where the  
9 settlement was not approved shall not be admissible in any  
10 subsequent hearing or proceeding between the parties. All  
11 moneys voluntarily paid by the employer or insurance carrier  
12 to an injured employee in advance of agreement or award shall  
13 be treated as advance payments on account of the compensation.  
14 No such advance payments or payment of medical or any other  
15 benefits of any kind shall be an admission against interest or  
16 admission of liability. In order to encourage advance  
17 payments, it is expressly provided that the payments shall not  
18 be construed as an admission of liability but shall be without  
19 prejudice.

20 "§25-5-57.

21 "(a) Compensation schedule. Following is the  
22 schedule of compensation:

23 "(1) TEMPORARY TOTAL DISABILITY. For injury  
24 producing temporary total disability, the compensation shall  
25 be 66 2/3 percent of the average weekly earnings received at  
26 the time of injury, subject to a maximum and minimum weekly  
27 compensation as stated in Section 25-5-68, but if at the time

1 of injury the employee received average weekly earnings of  
2 less than the minimum stated in Section 25-5-68, then he or  
3 she shall receive the full amount of the average weekly  
4 earnings per week. This compensation shall be paid during the  
5 time of the disability, but at the time as a temporary total  
6 disability shall become permanent, compensation for the  
7 continued total disability shall be governed by (a) (4) of this  
8 section with respect to permanent total disability. Payments  
9 are to be made at the intervals when the earnings were  
10 payable, as nearly as may be, unless the parties otherwise  
11 agree.

12 "(2) TEMPORARY PARTIAL DISABILITY.

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

24 "b. Effect of Change in Employment. If the injured  
25 employee who is receiving compensation for temporary partial  
26 disability leaves the employment of the employer by whom he or  
27 she was employed at the time of the accident for which the

1 compensation is being paid, he or she shall, upon securing  
2 employment elsewhere, give to the former employer an affidavit  
3 in writing containing the name of his or her new employer, the  
4 place of employment, and the amount of wages being received at  
5 the new employment, and until he or she gives the affidavit,  
6 the compensation for temporary partial disability shall cease.  
7 The employer for whom the employee was employed at the time of  
8 the accident for which the compensation is being paid may also  
9 at any time demand of the employee an additional affidavit, in  
10 writing, containing the name of his or her employer, the place  
11 of his or her employment, and the amount of wages he or she is  
12 receiving; and if the employee upon demand fails or refuses to  
13 make and furnish the affidavit, his or her right to  
14 compensation for temporary partial disability shall cease  
15 until the affidavit is made and furnished.

16 "(3) PERMANENT PARTIAL DISABILITY.

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

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

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

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

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

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

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

8           "7. The loss of two or more phalanges shall be  
9 considered as the loss of the entire finger or thumb, but in  
10 no case shall the amount received for more than one finger  
11 exceed the amount provided in this schedule for the loss of a  
12 hand.

13           "8. For the loss of a great toe, 32 weeks.

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

16           "10. The loss of the first phalange of any toe shall  
17 be considered to be equal to the loss of one half of the toe,  
18 and compensation shall be paid at the prescribed rate during  
19 one half the time prescribed above for the toe.

20           "11. The loss of two or more phalanges shall be  
21 considered as the loss of an entire toe.

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

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

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

25           "15. Amputation between the elbow and wrist shall be  
26 considered as the equivalent to the loss of a hand, and

1 amputation between the knee and ankle shall be considered as  
2 the equivalent of the loss of a foot.

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

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

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

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

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

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

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

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

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

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

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

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

18 "28. For the loss of one arm and the other hand, 400  
19 weeks.

20 "29. For the loss of one hand and one foot, 400  
21 weeks.

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

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

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

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

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

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

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

25           "d. Loss of Use of Member. The permanent and total  
26 loss of the use of a member shall be considered as equivalent  
27 to the loss of that member, but in such cases the compensation

1 specified in the schedule for such injury shall be in lieu of  
2 all other compensation, except as otherwise provided herein.  
3 For permanent disability due to injury to a member resulting  
4 in less than total loss of use of the member not otherwise  
5 compensated in this schedule, compensation shall be paid at  
6 the prescribed rate during that part of the time specified in  
7 the schedule for the total loss or total loss of use of the  
8 respective member which the extent of the injury to the member  
9 bears to its total loss.

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

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

22 "g. Compensation for Permanent Partial Disabilities  
23 Not Enumerated. For all other permanent partial disabilities  
24 not above enumerated, the compensation shall be 66 2/3 percent  
25 of the difference between the average weekly earnings of the  
26 worker at the time of the injury and the average weekly  
27 earnings he or she is able to earn in his or her partially

1 disabled condition, subject to the same maximum weekly  
2 compensation as stated in Section 25-5-68. If a permanent  
3 partial disability, compensation for which is not calculated  
4 by use of the schedule in subdivision (a) (3) of this section,  
5 follows a period of temporary total disability resulting from  
6 the same injury, the number of weeks of the temporary total  
7 disability shall be deducted from the number of weeks payable  
8 for the permanent partial disability. Compensation shall  
9 continue during disability, but not beyond ~~300~~ 400 weeks.

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

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

1 court within two years thereof for reconsideration of his or  
2 her permanent partial disability rating:

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

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

17 "(iii) The loss of employment is for a dishonest or  
18 criminal act committed in connection with his or her work, for  
19 sabotage, or an act endangering the safety of others.

20 "(iv) The loss of employment is for actual or  
21 threatened misconduct committed in connection with his or her  
22 work after previous warning to the employee.

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

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

22           "(4) PERMANENT TOTAL DISABILITY.

23           "a. Amount, Duration, and Payment of Compensation.  
24 For permanent total disability, as defined in paragraph d. of  
25 this subdivision, the employee shall receive 66 2/3 percent of  
26 the average weekly earnings received at the time of the  
27 injury, subject to a maximum and minimum weekly compensation

1 as stated in Section 25-5-68; provided, in no event shall  
2 permanent total disability benefits be paid beyond the  
3 employee attaining 70 years of age or exceeding 500 weeks,  
4 whichever total of disability benefits is greater.

5 Notwithstanding the foregoing, if at the time of injury the  
6 employee was receiving earnings of less than the minimum as  
7 stated in Section 25-5-68, then he or she shall receive the  
8 full amount of his or her earnings per week. This compensation  
9 shall be paid during the permanent total disability, as  
10 defined in paragraph d. of this subdivision. Payment of the  
11 compensation shall be made at the intervals when the earnings  
12 were payable, as nearly as may be, unless the parties  
13 otherwise agree. The payments, with the approval of the  
14 circuit judge or by the agreement of the parties, may be made  
15 monthly, quarterly, or otherwise as the parties may agree.  
16 Payments for permanent total disability shall not be ordered  
17 to be paid in a lump sum without the consent of both the  
18 employer and the employee.

19 "b. Alteration, Amendment, or Revision of  
20 Compensation. At any time, the employer may petition the court  
21 that awarded or approved compensation for permanent total  
22 disability to alter, amend, or revise the award or approval of  
23 the compensation on the ground that as a result of physical or  
24 vocational rehabilitation, or otherwise, the disability from  
25 which the employee suffers is no longer a permanent total  
26 disability and, if the court is so satisfied after a hearing,  
27 it shall alter, amend, or revise the award accordingly. If

1 compensation for permanent total disability is being paid  
2 pursuant to a written agreement between employer and employee  
3 without approval, the employer may make application to the  
4 court that would have had jurisdiction to award the  
5 compensation to the employee to alter, amend, or revise the  
6 agreement on such grounds. If an employee is receiving  
7 benefits for permanent total disability other than as a result  
8 of an award or a written agreement between the employer and  
9 employee and if the employer terminates the payment of the  
10 benefits, the employee may, within two years of the last  
11 payment, petition the court to reinstate the benefits and,  
12 upon a showing that the permanent total disability still  
13 exists, shall be entitled to have the benefits reinstated  
14 effective the date of the last payment.

15 "c. Employees in Public Institutions. In case an  
16 employee who is permanently and totally disabled becomes an  
17 inmate of a public institution, no compensation shall be  
18 payable unless the employee has wholly dependent on him or her  
19 for support a person or persons named in Sections 25-5-61 and  
20 25-5-62, whose dependency shall be determined as if the  
21 employee were deceased, in which case the compensation  
22 provided for in this subdivision shall be paid for the benefit  
23 of the person so dependent, during dependency, in the manner  
24 so ordered by the court, while the employee is an inmate in  
25 the institution. Nothing contained herein shall be construed  
26 to deprive a permanently and totally disabled employee who has  
27 no dependent named in Sections 25-5-61 and 25-5-62 from

1 receiving benefits to which he or she would otherwise be  
2 entitled if the employee, although an inmate of a public  
3 institution, is paying or on whose behalf funds are paid from  
4 any source to the public institution the normal and customary  
5 charge for the services rendered by the public institution.  
6 Normal and customary charge shall mean that charge actually  
7 made by the public institution to persons able to pay for the  
8 services rendered them whether the charge actually covers the  
9 expense of the upkeep of the inmate or not. If the employee  
10 has had a guardian appointed by a court of competent  
11 jurisdiction, the workers' compensation payments shall be  
12 directly paid to the guardian.

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

26 "e. Second Permanent Injuries Generally. If an  
27 employee has a permanent disability or has previously

1 sustained another injury than that in which the employee  
2 received a subsequent permanent injury by accident, as is  
3 specified in this section defining permanent injury, the  
4 employee shall be entitled to compensation only for the degree  
5 of injury that would have resulted from the latter accident if  
6 the earlier disability or injury had not existed.

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

14 g. Concurrent Compensation Payments. If an employee  
15 receives an injury for which compensation is payable while he  
16 or she is still receiving or entitled to receive compensation  
17 for a previous injury in the same employment, he or she shall  
18 not at the same time be entitled to compensation for both  
19 injuries, unless the later injury is a permanent injury, as  
20 specified in this section, but he or she shall be entitled to  
21 compensation for that injury and from the time of that injury  
22 which will cover the longest period and the largest amount  
23 payable under this article and Article 4 of this chapter.

24 "If an employee receives a permanent injury as  
25 specified in this section, after having sustained another  
26 permanent injury in the same employment, he or she shall be  
27 entitled to compensation for both injuries, subject to

1 paragraph e. of this subdivision, but the total compensation  
2 shall be paid by extending the period and not by increasing  
3 the amount of weekly compensation, and in no case for  
4 permanent partial disability exceeding 700 weeks.

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

17 "1. The employer's liability for the payment of 66  
18 2/3 percent of the difference shall continue for 200 weeks  
19 from the date of reemployment or 300 weeks from the date of  
20 injury, whichever is the longer period.

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

24 "3. No payments shall be due for any week the  
25 employee earns as much as or more than his or her average  
26 weekly wage at the time of injury. If the employee who obtains  
27 gainful employment suffered a permanent partial disability as

1 specified in subsection (a), subdivision (3) of this section,  
2 the total amount of compensation paid for permanent total  
3 disability shall not be less than that amount which would have  
4 been payable for the permanent partial disability.

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

24 "(5) DEATH FOLLOWING DISABILITY. If an employee  
25 sustains an injury occasioned by an accident arising out of  
26 and in the course of his or her employment and, during the  
27 period of disability caused thereby, death results proximately

1       therefrom, all payments previously made as compensation for  
2       the injury shall be deducted from the compensation, if any,  
3       due on account of death. If an employee who sustains a  
4       permanent partial or permanent total disability, the degree of  
5       which has been agreed upon by the parties or has been  
6       ascertained by the court, and death results not proximately  
7       therefrom, the employee's surviving spouse or dependent  
8       children or both shall be entitled to the balance of the  
9       payments which would have been due and payable to the worker,  
10      whether or not the decedent employee was receiving  
11      compensation for permanent total disability, not exceeding,  
12      however, the amount that would have been due the surviving  
13      spouse or dependent children or both if death had resulted  
14      proximately from an injury on account of which compensation is  
15      being paid to an employee.

16               "(6) HERNIA.

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

21               "1. That there was an injury resulting in hernia.

22               "2. That the hernia appeared suddenly.

23               "3. That it was accompanied by pain.

24               "4. That the hernia immediately followed an  
25      accident.

26               "5. That the hernia did not exist prior to the  
27      accident for which compensation is claimed.

1            "b. Treatment. All hernia, inguinal, femoral, or  
2 otherwise, proved to be the result of an injury by accident  
3 arising out of and in the course of the employment, shall be  
4 treated in a surgical manner by radical operation. If the  
5 injured employee refuses to undergo the radical operation for  
6 the cure of the hernia, no compensation will be allowed during  
7 the time the refusal continues. If, however, it is shown that  
8 the employee has some chronic disease or is otherwise in  
9 physical condition that the court considers it unsafe for the  
10 employee to undergo the operation, the employee shall be paid  
11 as otherwise provided in this chapter.

12            "(b) Computation of compensation; determination of  
13 average weekly earnings. Compensation under this section shall  
14 be computed on the basis of the average weekly earnings.  
15 Average weekly earnings shall be based on the wages, as  
16 defined in Section 25-5-1(6) of the injured employee in the  
17 employment in which he or she was working at the time of the  
18 injury during the period of 52 weeks immediately preceding the  
19 date of the injury divided by 52, but if the injured employee  
20 lost more than seven consecutive calendar days during the  
21 period, although not in the same week, then the earnings for  
22 the remainder of the period, although not in the same week,  
23 then the earnings for the remainder of the 52 weeks shall be  
24 divided by the number of weeks remaining after the time so  
25 lost has been deducted. Where the employment prior to the  
26 injury extended over a period of less than 52 weeks, the  
27 method of dividing the earnings during that period by the

1 number of weeks and parts thereof during which the employee  
2 earned wages shall be followed, provided results just and fair  
3 to both parties will thereby be obtained. Where by reason of  
4 the shortness of the time during which the employee has been  
5 in the employment of his or her employer or the casual nature  
6 or terms of the employment it is impracticable to compute the  
7 average weekly earnings as above defined, regard shall be had  
8 to the average weekly amount which during the 52 weeks prior  
9 to the injury was being earned by a person in the same grade,  
10 employed at the same work by the same employer, and if there  
11 is no person so employed, by a person in the same grade  
12 employed in the same class of employment in the same district.  
13 Whatever allowances of any character made to an employee in  
14 lieu of wages are specified as part of the wage contract shall  
15 be deemed a part of his or her earnings.

16 "(c) Setoff for other recovery. In calculating the  
17 amount of workers' compensation due:

18 "(1) The employer may reduce or accept an assignment  
19 from an employee of the amount of benefits paid pursuant to a  
20 disability plan, retirement plan, or other plan providing for  
21 sick pay by the amount of compensation paid, if and only if  
22 the employer provided the benefits or paid for the plan or  
23 plans providing the benefits deducted.

24 "(2) The employee shall forfeit to the employer all  
25 compensation paid for any period to which is attributed any  
26 award of back pay either by a court, administrative agency,

1 arbitration, or settlement, provided, however, social security  
2 payments shall not be included herein.

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

11 "§25-5-67.

12 "If death results to an employee as the result of an  
13 accident or an occupational disease arising out of and in the  
14 course of the employment, the employer shall pay, in addition  
15 to the medical and hospital expenses provided for in Section  
16 25-5-77, the expenses of burial, not exceeding in amount  
17 ~~\$3,000.00~~ six thousand five hundred dollars (\$6,500). If a  
18 dispute arises as to the reasonable value of the services  
19 rendered in connection with the burial, the same shall be  
20 approved by the court before payment after reasonable notice  
21 to interested parties as the court may require.

22 "§25-5-68.

23 "(a) The compensation paid under this article shall  
24 be not less than, except as otherwise provided in this  
25 article, 27 1/2 percent of the average weekly wage of the  
26 state as determined by the director, rounded to the nearest  
27 dollar, pursuant to subsection (b) of this section and, in any

1 event, no more than 100 percent of the average weekly wage.  
2 Notwithstanding the foregoing, the maximum compensation  
3 payable under this article for permanent partial disability  
4 shall be no more than the lesser of ~~\$220.00~~ 58 percent of the  
5 average weekly wage of the state per week or 100 percent of  
6 the average weekly wage of the employee.

7 "(b) For the purpose of this section, the average  
8 weekly wage of the state shall be determined by the director  
9 as follows: On or before June 1 of each year, the total wages  
10 reported on contribution reports to the unemployment  
11 compensation division of the department for the preceding  
12 calendar year shall be divided by the average monthly number  
13 of insured workers, which shall be determined by dividing the  
14 sum of the number of insured workers reported for each month  
15 of the preceding year by 12. The average annual wage thus  
16 obtained shall be divided by 52, and the average weekly wage  
17 thus determined rounded to the nearest cent. The average  
18 weekly wage as so determined shall be applicable for the  
19 12-month period beginning July 1 following the June 1  
20 determination. If the determination shall not be made on or  
21 before June 1, the effective date of the average weekly wage  
22 when determined shall be the first day of the month next  
23 following 30 days after the determination is made.

24 "(c) The maximum and minimum weekly benefit shall  
25 not be changed on any July 1 or as a result of any annual  
26 determination, unless the computation provided for in  
27 subsection (b) of this section results in an increase or

1 decrease of two dollars (\$2) or more in the amount of either  
2 the maximum or minimum benefit.

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

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

16 "§25-5-77.

17 "(a) In addition to the compensation provided in  
18 this article and Article 4 of this chapter, the employer,  
19 where applicable, shall pay the actual cost of the repair,  
20 refitting, or replacement of artificial members damaged as the  
21 result of an accident arising out of and in the course of  
22 employment, and the employer, except as otherwise provided in  
23 this amendatory act, shall pay an amount not to exceed the  
24 ~~prevailing rate or~~ maximum schedule of fees as established  
25 herein of reasonably necessary medical and surgical treatment  
26 and attention, physical rehabilitation, medicine, medical and  
27 surgical supplies, crutches, artificial members, and other

1 apparatus as the result of an accident arising out of and in  
2 the course of the employment, as may be obtained by the  
3 injured employee or, in case of death, obtained during the  
4 period occurring between the time of the injury and the  
5 employee's death therefrom. If the employee is dissatisfied  
6 with the initial treating physician selected by the employer  
7 and if further treatment is required, the employee may so  
8 advise the employer, and the employee shall be entitled to  
9 select a second physician from a panel or list of ~~four~~ six  
10 physicians selected by the employer. If surgery is required  
11 and if the employee is dissatisfied with the designated  
12 surgeon, he or she may so advise the employer, and the  
13 employee shall be entitled to select a second surgeon from a  
14 panel or list of four surgeons selected by the employer. If  
15 ~~four~~ six physicians or four surgeons are not available to be  
16 listed, the employer shall include on the list as many as are  
17 available. ~~The four~~ No more than three physicians or surgeons  
18 selected by the employer hereunder shall not be from or  
19 members of the same firm, partnership, or professional  
20 corporation. The total liability of the employer shall, unless  
21 otherwise provided in this chapter, not exceed the ~~prevailing~~  
22 ~~rate or~~ the maximum schedule of fees as established herein  
23 under Section 25-5-313. ~~Notwithstanding the foregoing, in~~  
24 ~~ascertaining the prevailing rate of reimbursement or payment~~  
25 ~~with regard to participating hospitals and ambulatory surgical~~  
26 ~~centers or outpatient rehabilitation centers licensed by the~~  
27 ~~State of Alabama, as well as diagnostic facilities accredited~~

1 by the Commission on Accreditation of Rehabilitation  
2 Facilities, the prevailing rate shall be negotiated with each  
3 individual hospital, ambulatory surgical center, licensed  
4 outpatient rehabilitation facility, or diagnostic facility  
5 based on that institution's treatment of comparable type cases  
6 for the 12-month period immediately preceding August 1, 1992.  
7 These rates shall be updated every 12 months thereafter.  
8 Initial rates shall be established within six months of August  
9 1, 1992. For those non-participating hospitals the prevailing  
10 rate shall be determined by a committee. In the first year  
11 following August 1, 1992, the committee shall be composed of  
12 five members. The director shall appoint one member from the  
13 Department of Industrial Relations and two members from the  
14 community in which the non-participating hospital is located.  
15 The non-participating hospital shall appoint two members. This  
16 committee shall by a majority vote establish the maximum rates  
17 of reimbursement or payment for the non-participating  
18 hospital, and the hospital shall be bound for one year by the  
19 determined rates of reimbursement or payment for workers'<sup>1</sup>  
20 compensation cases. If, following the first year after the  
21 rates were established by this committee, the hospital is  
22 again non-participating, then another committee shall be  
23 appointed. This second committee shall have three members  
24 selected by the non-participating hospital and two members  
25 selected by the director. The committee composition shall  
26 alternate as above described each year the hospital is  
27 non-participating. The total liability of the employer shall

1 not exceed the rates established by the committee. This  
2 committee, in determining the rates of reimbursement or  
3 payments to the hospital, may consider such factors as the  
4 size, staffing, and medical equipment of the hospital, and any  
5 other factors which the committee may consider relevant. If an  
6 insurer of the employee or a benefit association has paid or  
7 is liable for the employee's medical, surgical, and hospital  
8 service or for a part thereof, or if the employee is entitled  
9 to the same or a part thereof, from any source whatever by  
10 virtue of any agreement or understanding or law, state or  
11 federal, without any loss of benefit to the employee, the  
12 employer shall not be required to pay any part of the expense.  
13 If the benefits are insufficient to pay all the employee's  
14 expense, the employer shall be liable for the deficiency only.  
15 If three years pass during which time the employee receives no  
16 medical treatment by his or her authorized treating physician  
17 for the alleged job injury or occupational disease, there  
18 shall be a presumption that any subsequent medical treatment  
19 is unrelated to the alleged job injury or occupational  
20 disease, subject to rebuttal by the employee that the  
21 employee's medical treatment is causally related to the  
22 employee's original job injury or occupational disease; if  
23 five years pass during which time the employee receives no  
24 medical treatment by his or her authorized treating physician  
25 for the alleged job injury or occupational disease, the  
26 employee shall be entitled to no further medical treatment or  
27 benefits pursuant to the workers' compensation statutes, with

1 the only exception relating to previously implanted medical  
2 devices or prosthetic devices. All cases of dispute as to the  
3 necessity and value of the services shall be determined by the  
4 tribunal having jurisdiction of the claim of the injured  
5 employee for compensation.

6 " (b) If requested to do so by the employer, the  
7 injured employee shall submit to examination by the employer's  
8 physician at all reasonable times, but the employee shall have  
9 the right to have a physician of his or her own selection  
10 present at the examination, in which case the employee shall  
11 be liable to the physician of his or her own selection for his  
12 or her services. The employer shall pay for the services of  
13 the physician making the examination at the instance of the  
14 employer. If a dispute arises as to the injury, or as to the  
15 extent of the disability therefrom, the court may, at the  
16 instance of either party or of its own motion, appoint a  
17 neutral physician of good standing and ability to make an  
18 examination of the injured employee and to report his or her  
19 findings to the court, the expense of which examination shall  
20 be borne equally by the parties. If the injured employee  
21 refuses to comply with reasonable request for examination, or  
22 refuses to accept the medical service or physical  
23 rehabilitation, which the employer elects to furnish under  
24 this chapter, the employee's right to compensation shall be  
25 suspended and no compensation shall be payable for the period  
26 of the refusal. A physician whose services are furnished or  
27 paid for by the employer, or a physician of the injured

1 employee who treats or makes or is present at any examination  
2 of an injured employee may be required to testify as to any  
3 knowledge obtained by him or her in the course of the  
4 treatment or examination as the treatment or examination  
5 related to the injury or the disability arising therefrom. The  
6 physician shall, upon written request of the injured employee  
7 or his or her employer and without consent of or notice to the  
8 employee or employer not making the request, furnish the  
9 injured employee or his or her employer a written statement of  
10 his or her professional opinion as to the extent of the injury  
11 and disability. In all death claims where the cause of death  
12 is obscure or is disputed, any interested party may require an  
13 autopsy, the cost of which is to be borne by the party  
14 demanding the autopsy. The term "physicians" shall include  
15 medical doctor, surgeon, and chiropractor. A hospital, medical  
16 clinic, rehabilitation service, or other person or entity  
17 providing treatment to an employee or providing facilities at  
18 which the employee receives treatment shall, upon the written  
19 request of the employee or of the employer, furnish, at a  
20 reasonable cost, the employee or the employer a copy of the  
21 records, including X-rays and laboratory reports, relating to  
22 the treatment of the injured employee. The copy may be  
23 furnished without the consent of or notice to the employee or  
24 employer not making the request. A physician, hospital,  
25 medical clinic, rehabilitation service, or other person or  
26 entity providing written statement of professional opinion or  
27 copies of records pursuant to this subsection shall not be

1        liable to any person for a claim arising out of the release of  
2        medical information concerning the employee.

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

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

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

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

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

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

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

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

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

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

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

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

16           "(5) In any review under this subsection of medical  
17 services provided by a physician, any party to a dispute may  
18 request that the ombudsman consult with an independent medical  
19 expert for the purpose of obtaining advice and consultation on  
20 the resolution of any issue involving medical practice. If  
21 such a request is made, the ombudsman shall select an  
22 independent medical expert from among a list of at least three  
23 names provided by the ~~Workers' Compensation Medical Services~~  
24 ~~Board~~ Director of the Department of Labor in a medical  
25 specialty appropriate to the issues raised in the dispute and  
26 shall secure a written opinion from the independent medical  
27 expert. In rendering a decision or recommendation, the

1        ombudsman shall give full consideration to the opinion of the  
2        independent medical expert but shall not be bound by that  
3        opinion. The independent medical expert shall be compensated  
4        at a rate set by the ~~Workers' Compensation Medical Services~~  
5        ~~Board and approved by the director~~ Director of the Department  
6        of Labor.

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

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

25                "a. There shall be a rebuttable presumption that the  
26        employee's right to pain management through the prescription  
27        of Schedule II, III, or IV controlled substances under this

1 chapter may be terminated and the injured or disabled employee  
2 shall no longer be entitled under this chapter to the  
3 prescription of such substances for the management of pain;

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

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

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

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

1           "§25-5-80.

2           "In case of a personal injury not involving  
3 cumulative physical stress, all claims for compensation under  
4 this article shall be forever barred unless within two years  
5 after the accident the parties shall have agreed upon the  
6 compensation payable under this article or unless within two  
7 years after the accident one of the parties shall have filed a  
8 ~~verified~~ complaint as provided in Section 25-5-88. In cases  
9 involving personal injury due to cumulative physical stress,  
10 compensation under this article shall be forever barred unless  
11 within two years after the date of the injury one of the  
12 parties shall have filed a ~~verified~~ complaint as provided in  
13 Section 25-5-88. In cases involving claims for lost earning  
14 capacity under Section 25-5-57(a)(3)i., other than those  
15 involving cumulative physical stress, following termination of  
16 employment as outlined therein, compensation under this  
17 article and Article 4 shall be forever barred unless brought  
18 within two years of the termination. In case of death, all  
19 claims for compensation shall be forever barred unless within  
20 two years after death, when the death results proximately from  
21 the accident within three years, the parties shall have agreed  
22 upon the compensation under this article or unless within two  
23 years after the death one of the parties shall have filed a  
24 ~~verified~~ complaint as provided in Section 25-5-88. Where,  
25 however, payments of compensation, as distinguished from  
26 medical or vocational payments, have been made in any case,  
27 the period of limitation shall not begin to run until the time

1 of making the last payment. In case of physical or mental  
2 incapacity, other than the minority of the injured person or  
3 his or her dependents, to perform or cause to be performed any  
4 act required within the time in this section specified, the  
5 period of limitation in any case shall be extended to become  
6 effective two years from the date when the incapacity ceases.

7 "§25-5-81.

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

9 "(1) PROCEDURE. In case of a dispute between  
10 employer and employee or between the dependents of a deceased  
11 employee and the employer with respect to the right to  
12 compensation or medical benefits under this article and  
13 Article 2 of this chapter, or the amount thereof, either party  
14 may submit the controversy to the circuit court of the county  
15 which would have jurisdiction of a civil action in tort  
16 between the parties. The controversy shall be heard and  
17 determined by the judge who would hear and determine a civil  
18 action between the same parties arising out of tort, and, in  
19 case there is more than one judge of the court, the  
20 controversies shall be set and assigned for hearing under the  
21 same rules and statutes that civil actions in tort are set and  
22 assigned. The court may hear and determine the controversies  
23 in a summary manner. The decision of the judge hearing the  
24 same shall be conclusive and binding between the parties,  
25 subject to the right of appeal provided for in this article.  
26 In the event that the proceeding is to be resolved by trial,  
27 the parties, at least 14 days before trial, shall submit to

1 the court written joint stipulations as to which issues shall  
2 be tried.

3 "(2) RIGHT TO JURY TRIAL. When willful misconduct on  
4 the part of the employee is set up by the employer, as it is  
5 provided for in this article, the employer may, upon  
6 appearing, demand a jury to hear and determine, under the  
7 direction of the court, the issues involved in this defense.  
8 If the employer fails to demand a jury upon appearing, the  
9 employee may demand a jury to try the issues by filing a  
10 demand within five days after the appearance of the employer.  
11 When a jury is demanded by either party, the court shall  
12 submit the issues of fact as to willful misconduct set up by  
13 the employer to the jury, for a special finding of the facts  
14 subject to the usual powers of the court over verdicts  
15 rendered contrary to the evidence or the law, but the judge  
16 shall determine all other questions involved in the  
17 controversy without a jury. Upon setting up the defense, the  
18 employer shall serve a copy of the answer, setting up the  
19 defense, upon the employee or the attorney of record.

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

25 "(c) Evidence. The decision of the court shall be  
26 based on a preponderance of the evidence as contained in the  
27 record of the hearing, except in cases involving injuries

1 which have resulted from gradual deterioration or cumulative  
2 physical stress disorders, which shall be deemed compensable  
3 only upon a finding of clear and convincing proof that those  
4 injuries arose out of and in the course of the employee's  
5 employment.

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

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

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

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

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

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

13           "(1) Two depositions for each side shall be  
14 permitted without leave of court, however, any additional  
15 depositions shall not be permitted except with leave of court  
16 for good cause shown including, but not limited to, a claim by  
17 the employee for permanent total disability.

18           "(2) Notwithstanding the limitations in (1) above,  
19 each party may take the deposition of every other party.

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

23           "(4) ~~Certified sealed copies~~ Copies of records of  
24 medical treatment, and reports of opinions obtained in  
25 accordance with Section 25-5-77(b), and charges therefor,  
26 whether from a physician, hospital, clinic, or other provider,  
27 shall be authenticated in accordance with Alabama Rules of

1 Civil Procedure, Rule 44(h), without further need for  
2 authenticating testimony. Copies of records obtained by one  
3 party shall be furnished ~~by certified mail~~ to the other party  
4 not less than ~~21~~ 14 days prior to trial, unless the party  
5 offering the records can establish unusual circumstances  
6 justifying their admission despite the failure to make the  
7 exchange after receiving the records of a physician's  
8 treatment prior to trial, the party not offering the records  
9 of a physician's treatment shall, without regard to the  
10 limitation set forth herein, have the right to depose prior to  
11 trial the physician whose records of treatment are to be  
12 offered by any other party.

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

15 "§25-5-88.

16 "Either party to a controversy arising under this  
17 article and Article 2 of this chapter may file a ~~verified~~  
18 complaint in the circuit court of the county which would have  
19 jurisdiction of an action between the same parties arising out  
20 of tort, which shall set forth the names and residences of the  
21 parties and the circumstances relating to the employment at  
22 the time of the injury, with a full description of the injury,  
23 its nature and extent, the amount of the average earnings  
24 received by the employee which would affect his or her  
25 compensation under this article and Article 2 of this chapter,  
26 the knowledge of the employer of the injury or the notice to  
27 him or her thereof, which must be of the kind provided for in

1 this article and Article 2 of this chapter and such other  
2 facts as may be necessary to enable the court to determine  
3 what, if any, compensation the employee or, in case of a  
4 deceased employee, his or her dependents, are entitled to  
5 under this article and Article 2 of this chapter. The  
6 complaint shall be filed with the clerk of the circuit court,  
7 who shall cause summons to be issued thereon requiring the  
8 defendant to come in and answer ~~said~~ the complaint within 30  
9 days of the service thereof. Thereafter, ~~said~~ the action shall  
10 proceed in accordance with and shall be governed by the same  
11 rules and statutes as govern civil actions, except as  
12 otherwise provided in this article and Article 2 of this  
13 chapter, and except that all civil actions filed hereunder  
14 shall be preferred actions and shall be set down and tried as  
15 expeditiously as possible. At the hearing or any adjournment  
16 thereof the court shall hear such witnesses as may be  
17 presented by each party, and in a summary manner without a  
18 jury, unless one is demanded to try the issue of willful  
19 misconduct on the part of the employee, shall decide the  
20 controversy. This determination shall be filed in writing with  
21 the clerk of ~~said~~ the court, and judgment shall be entered  
22 thereon in the same manner as in civil actions tried in the  
23 ~~said~~ the circuit court and shall contain a statement of the  
24 law and facts and conclusions as determined by ~~said~~ the judge.  
25 The circuit court shall enter its judgment within 90 days of  
26 the trial of the matter, or within 90 days after submission of  
27 post-trial briefs, evidence or proposed orders for which the

1 record was left open, in its discretion, to facilitate the  
2 process, the court may request of all parties the submission  
3 of proposed orders. Subsequent proceedings thereon shall only  
4 be for the recovery of moneys thereby determined to be due,  
5 but nothing in this section contained shall be construed as  
6 limiting the jurisdiction of the Court of Civil Appeals to  
7 review questions of law by certiorari.

8 "§25-5-90.

9 ~~"(a) Unless otherwise provided in this chapter, no~~  
10 ~~part of the compensation payable under this article and~~  
11 ~~Article 4 of this chapter shall be paid to an attorney for the~~  
12 ~~plaintiff for legal services, unless upon the application of~~  
13 ~~the plaintiff, the judge shall order or approve of the~~  
14 ~~employment of an attorney by the plaintiff; and in such event,~~  
15 ~~the~~ The judge, upon the hearing of the complaint for  
16 compensation, either by law or by settlement, shall fix the  
17 fee of the attorney for the plaintiff for his or her legal  
18 services and the manner of its payment, but the fee shall not  
19 exceed ~~15~~ 20 percent of the compensation awarded or paid.

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

25 "§25-5-117.

26 "(a) In case of the contraction of an occupational  
27 disease, as defined in this article, or of injury or

1 disability resulting therefrom, a claim for compensation, as  
2 defined in Section 25-5-1, shall be forever barred, unless  
3 within two years after the date of the injury, as hereinafter  
4 defined, the parties shall have agreed upon the compensation  
5 payable under this article, or unless within two years after  
6 the date of the injury, one of the parties shall have filed a  
7 ~~verified~~ complaint as provided in Section 25-5-88. In case of  
8 death, the claim shall be forever barred, unless within two  
9 years after death, if death results proximately from the  
10 occupational disease, as defined in this article, and death  
11 occurs within three years of the date of the injury, as  
12 hereinafter defined, the parties have agreed upon the  
13 compensation under this article, or unless within two years  
14 after death, one of the parties shall have filed a ~~verified~~  
15 complaint as provided in Section 25-5-88. Notwithstanding the  
16 foregoing, if upon the date of death the employee's claim is  
17 barred, any claim by his or her dependents likewise shall be  
18 barred. If, however, payments of compensation have been made,  
19 the limitations as to compensation shall not take effect until  
20 the expiration of two years from the time of making the last  
21 payment. In case of physical or mental incapacity, other than  
22 the minority of the injured employee or his or her dependent,  
23 to perform or cause to be performed any act required within  
24 the time specified in this section, the period of limitation  
25 in any case shall be extended to become effective two years  
26 from the date when the incapacity ceases. No agreement,  
27 express or implied, to shorten or to extend the limitations

1 shall be valid or binding on either of the parties if the  
2 employment, at the time of the exposure, is or was subject to  
3 this article.

4 "(b) For the purposes of occupational diseases other  
5 than pneumoconiosis or radiation, "the date of the injury"  
6 shall mean the date of the last exposure to the hazards of the  
7 disease in the employment of the employer in whose employment  
8 the employee was last exposed to the hazards of the disease.

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

15 "§25-5-197.

16 "In case of occupational exposure to radiation, as  
17 defined in this article, or of injury or disability resulting  
18 therefrom, all claims for compensation shall be forever  
19 barred, unless within one year after the employee first  
20 suffered disability therefrom and either knew or in the  
21 exercise of reasonable diligence should have known that the  
22 disability was caused therefrom, but in no event more than  
23 three years after date of the injury as hereinafter defined,  
24 the parties shall have agreed upon the compensation payable  
25 under this article, or unless within such period of time one  
26 of the parties shall have filed a ~~verified~~ complaint as  
27 provided in Section 25-5-88. In case of death, all claims for

1 compensation shall be forever barred, unless the death results  
2 proximately from occupational exposure to radiation, as  
3 defined in this article, and occurs within three years of the  
4 date of the injury, as hereinafter defined, and unless within  
5 one year after such death the parties shall have agreed upon  
6 the compensation under this article, or unless within one year  
7 after such death one of the parties shall have filed a  
8 ~~verified~~ complaint as provided in Section 25-5-88; provided,  
9 however, that if upon the date of the death of the employee  
10 the employee's claim is barred, any claim by or for his or her  
11 dependents shall likewise be barred. Where, however, payments  
12 of compensation have been made in any case, ~~said the~~  
13 limitations shall not take effect until the expiration of one  
14 year from the time of making the last payment. In case of the  
15 mental incapacity of the injured employee or his or her  
16 dependents to perform or cause to be performed any act  
17 required within the time in this section specified, the period  
18 of limitation in any such case shall be extended to become  
19 effective one year from the date when such incapacity ceases.  
20 No agreement, express or implied, to shorten or to extend ~~said~~  
21 the limitations shall be valid or binding on either of the  
22 parties when ~~said the~~ employment, at the time of ~~said the~~  
23 exposure, is or was subject to the provisions of this article.  
24 The "date of the injury" shall mean, for all purposes of this  
25 article, the date of the last exposure to the hazards of  
26 radiation in the employment of the employer in whose  
27 employment the employee was last exposed, within a period of

1 five years prior to the date of the injury, to the hazards of  
2 radiation in each of at least 12 months.

3 "§25-5-293.

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

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

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

23 "(d) The director shall appoint appropriate advisory  
24 committees on workers' compensation matters, including: An  
25 advisory committee consisting of three administrators who are  
26 members of the Alabama Hospital Association, who shall be  
27 selected by the director from nominations submitted by the

1 Alabama Hospital Association; an advisory committee consisting  
2 of three chiropractors who are members in good standing with  
3 the Alabama State Chiropractic Association, who shall be  
4 selected by the director from nominations submitted by the  
5 Alabama State Chiropractic Association; an advisory committee  
6 consisting of three pharmacists who are members in good  
7 standing with the Alabama Pharmaceutical Association who shall  
8 be selected by the director from nominations submitted by the  
9 Alabama Pharmaceutical Association; and an advisory committee  
10 consisting of three optometrists who are members in good  
11 standing with the Alabama Optometric Association who shall be  
12 selected by the director from nominations submitted by the  
13 Alabama Optometric Association. ~~These committees shall guide~~  
14 ~~the director and make recommendations to ascertain the~~  
15 ~~prevailing rate of reimbursement or payment of medical costs~~  
16 ~~in the State of Alabama.~~ These committees shall make  
17 recommendations with regard to the implementation of all other  
18 rules and regulations, including, but not limited to,  
19 utilization review by like peers. These committees shall also  
20 advise and guide the director in determining all other rules  
21 and regulations required to accomplish the intent of the  
22 Legislature in assuring the quality of medical care and  
23 achieving medical cost control.

24 "The director shall also appoint a vocational  
25 rehabilitation advisory committee consisting of at least five  
26 professional licensed rehabilitation specialists. These  
27 rehabilitation specialists shall be selected by the director

1 from nominations from the rehabilitation associations in the  
2 State of Alabama, including, but not limited to, the Alabama  
3 Physical Therapy Association. ~~The committee shall guide the~~  
4 ~~director and make recommendations to ascertain the prevailing~~  
5 ~~rate of reimbursement or payment of rehabilitation costs in~~  
6 ~~the State of Alabama.~~ The committee shall also make  
7 recommendations with regard to the implementation of all other  
8 rules and regulations, including, but not limited to,  
9 utilization review, and with regard to rehabilitation policies  
10 as provided by this article. The committee shall also advise  
11 and guide the director in determining all other rules and  
12 regulations required to accomplish the intent of the  
13 Legislature in assuring the quality of rehabilitation care and  
14 achieving rehabilitation cost control.

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

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

24 "(f) It is the intent of the Legislature that final  
25 reimbursements related to workers' compensation claims be  
26 commensurate and in line with the ~~prevailing~~ rate of  
27 reimbursement ~~or payment in the State of Alabama, or as~~

1 ~~otherwise provided in this article~~ established by Section  
2 25-5-313. The director shall conduct field audits as necessary  
3 to assist the private sector to gain compliance with the  
4 legislative intent. The department shall develop  
5 administrative rules to facilitate implementation and  
6 continuity of the legislative intent of this article. The  
7 director, except as otherwise provided in this article, shall  
8 not establish the ~~prevailing~~ rate of payment or reimbursement,  
9 but may collect data which are construed to be statistically  
10 significant as defined by an independent, disinterested  
11 consultant. By definition, the ~~prevailing~~ rate of payment or  
12 reimbursement is self-defining and self-setting pursuant to  
13 Section 25-5-313 and shall be updated annually. The director  
14 may create a statistically valid data base from which  
15 ~~prevailing~~ the rates of reimbursement or payment shall be  
16 ascertained. Except as otherwise provided herein, the  
17 ~~prevailing~~ rate of reimbursement or payment for medical  
18 services provided under this article shall be effective 30  
19 days after the ~~prevailing~~ rate of reimbursement or payment is  
20 discovered, but in no event earlier than six months from ~~May~~  
21 ~~19, 1992~~ July 1, 2013.

22 " (g) Insurance carriers and self-insurers,  
23 individual and group, are required to make appropriate payment  
24 for services provided under this article. Unless otherwise  
25 provided in this article, an insurance carrier or  
26 self-insurer, individual or group, shall not pay more than the  
27 applicable ~~prevailing~~ rate of reimbursement for medical

1 services. Insurance carriers and self-insurers, individual and  
2 group, may have utilization review and medical bill  
3 screenings. Utilization review and bill screening shall be  
4 performed by qualified individuals or entities to insure the  
5 integrity of the services and the quality of cost containment.  
6 It is the express legislative intent of this article to ensure  
7 that the highest quality health care is available to employees  
8 who become injured or ill as the result of employment, at ~~an~~  
9 ~~appropriate rate of provider reimbursement~~ rates set forth in  
10 accordance with Section 25-5-313. All insurers, claims  
11 adjusters, self-administered employers, and any entity  
12 involved in the administration or payment of workers'  
13 compensation claims may, but are not required to, implement  
14 utilization review and bill screening for health services  
15 provided to employees covered under this article. In this  
16 regard, employers' liability for reimbursement shall be  
17 limited to the ~~prevailing~~ rate or maximum fee schedule  
18 established by the ~~Workers' Compensation Services Board~~  
19 Director of the Department of Labor ~~for similar treatment~~.  
20 Services provided that are deemed not medically necessary are  
21 not reimbursable and the employer is held harmless. In no  
22 event is the employee responsible or held liable for any  
23 charges associated with an authorized workers' compensation  
24 claim. To ensure compliance of providers, insurance carriers,  
25 and self-insurers, the director may provide by rule for the  
26 review and audit of insurance carriers and self-insurers,  
27 individual and group, of payments for medical services. The

1 director may maintain a statewide data base from insurance  
2 carriers and self-insurers, individual and group, on medical  
3 charges, actual payments, and adjudication methods for use in  
4 administering this article.

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

18 "(i) Beginning immediately after ~~May 19, 1992~~ July  
19 1, 2013, and to be completed within six months thereafter, the  
20 director may engage an independent firm to identify ~~the~~  
21 ~~initial costs for the program. These initial expenses shall~~  
22 ~~include, but not be limited to, the establishment of a data~~  
23 ~~base to determine prevailing rates, and the conducting of cost~~  
24 ~~analysis for appropriate reimbursement rates to hospitals and~~  
25 ~~other facilities~~ all items needed for the Director of the  
26 Department of Labor to complete his or her duties under  
27 Section 25-5-313.

1           "(j) A person who performs services for the director  
2           pertaining to the policies of any advisory committee or board  
3           is immune from civil liability against any claim arising out  
4           of, or related to, any decision made in good faith, and  
5           without malice, and predicated upon information which was then  
6           available to the person. Immunity from liability under this  
7           section does not apply to a person providing medical treatment  
8           to an injured employee.

9           "~~Notwithstanding any other provision of this~~  
10          ~~section to the contrary, it~~ It is the intent of this section  
11          that any and all utilization review, bill screening, medical  
12          necessity determinations, or audits which relate to the  
13          services of ~~physicians~~ providers as defined in Section  
14          25-5-310 shall ~~only~~ be conducted under and in accordance with  
15          ~~policies, guidelines, or regulations which have been jointly~~  
16          ~~approved by the Workers' Compensation Medical Services Board~~  
17          ~~and the director under the provisions of Section 25-5-312, as~~  
18          ~~and when such policies, guidelines, criteria, and regulations~~  
19          ~~are adopted in a final and effective form pursuant to the~~  
20          ~~Alabama Administrative Procedure Act~~ Section 25-5-313. Not  
21          later than six months from ~~May 19, 1992~~ July 1, 2013, the  
22          ~~director, with the approval of the board,~~ shall publish a  
23          notice of the intended action in Alabama Administrative  
24          Monthly to adopt initial policies, guidelines, criteria, or  
25          regulations for utilization review, medical necessity  
26          determinations, and bill screenings; however, each insurer,  
27          self-insured employer, claims administrator, or other payor

1 may continue utilization review, medical necessity  
2 determinations, and bill screenings unaffected by this article  
3 during the first six months from ~~May 19, 1992~~ July 1, 2013, or  
4 until such policies, guidelines, criteria, or regulations may  
5 become effective in a final adopted form within that initial  
6 six-month period. If such above referenced pending policies,  
7 guidelines, criteria, or regulations have not become effective  
8 in a final form pursuant to the Administrative Procedure Act  
9 after six months from ~~May 19, 1992~~ July 1, 2013, then until  
10 such time as they are finally adopted, each insurer,  
11 self-insured employer, or claims administrator shall conduct  
12 utilization review, medical necessity determinations, and bill  
13 screenings in a manner that is consistent with similar  
14 practices of a majority of commercial insurance companies  
15 authorized to issue policies of health insurance in this  
16 state. Any amendments, including additions or deletions, to  
17 the initial policies, guidelines, criteria, or regulations  
18 shall be adopted in accordance with the requirements of this  
19 section and Section 25-5-312. Notwithstanding the foregoing,  
20 in no case shall utilization review as to reasonableness or  
21 medical necessity of treatment recommended by an authorized  
22 provider be conducted by a person who has been licensed to  
23 practice in Alabama, and who is not in the same area of  
24 practice and similarly board certified, if applicable, to the  
25 authorized treating provider. However, the director shall  
26 promulgate administrative rules to address peer review and

1 utilization review where the director concludes that the use  
2 of an Alabama physician is impracticable.

3 "§25-5-310.

4 "For the purposes of this article the following  
5 words and phrases have the following meanings:

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

8 "~~(1)~~(2) BOARD. The Workers' Compensation Medical  
9 Services Board.

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

15 "~~(2)~~(4) MEDICAL or MEDICAL SERVICES. Any and all  
16 medical or surgical services, treatment, or equipment, or any  
17 combination thereof provided by physicians under this new  
18 article a provider.

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

1                   "§25-5-311.

2                   "There is established a Workers' Compensation  
3 Medical Services Board composed of ~~five physicians licensed to~~  
4 ~~practice medicine in the State of Alabama who shall be~~  
5 ~~appointed by the Director of the Department of Industrial~~  
6 ~~Relations. The initial board shall be selected from a list of~~  
7 ~~15 physicians who are members of the Medical Association of~~  
8 ~~the State of Alabama, submitted by the association of seven~~  
9 ~~members appointed in a manner set forth in this section. The~~  
10 ~~composition of the board shall be as follows: Two claims~~  
11 ~~professionals, two employers, two providers, and one member of~~  
12 ~~the judiciary.~~

13                   "The two claims professionals shall be chosen by the  
14 Alabama Workers' Compensation Organization. The two employer  
15 representatives shall be chosen by the Alabama Council of  
16 Association Workers Compensation Self-Insureds Funds. One  
17 medical provider shall be chosen by the Medical Association of  
18 the State of Alabama. One hospital representative shall be  
19 chosen by the Alabama Hospital Association. The remaining  
20 member shall be a representative of the judiciary to be chosen  
21 by the Alabama State Bar Association.

22                   "Members of the board shall serve terms of ~~five~~ four  
23 ~~years. In order that the appointments be staggered, one member~~  
24 ~~shall serve an initial term of six years, one member shall~~  
25 ~~serve an initial term of two years, one member shall serve an~~  
26 ~~initial term of three years, one member shall serve an initial~~  
27 ~~term of four years, and the remaining member shall serve an~~

1 ~~initial term of five years. Thereafter, successors shall be~~  
2 ~~appointed by the director from among a list of three nominees~~  
3 ~~submitted by the Medical Association of the State of Alabama~~  
4 ~~to serve full five-year terms. Service of all current board~~  
5 ~~members will cease on July 1, 2013, and all new appointments~~  
6 ~~as mandated by this section shall be made no later than the~~  
7 ~~last day of the fourth month following the effective date of~~  
8 ~~the enactment of this amended section. If appointments for new~~  
9 ~~board members are not made as mandated by this section within~~  
10 ~~30 days of the last day of the fourth month following the~~  
11 ~~effective date of this amended section, remaining appointments~~  
12 ~~shall be made by the Chief Justice of the Supreme Court of~~  
13 ~~Alabama.~~

14 "A member of the board shall continue to serve  
15 beyond the expiration of his or her term of office until his  
16 or her successor is legally appointed. Members of the Workers'  
17 Compensation Medical Services Board shall be eligible to serve  
18 ~~two five-year terms~~ a maximum of two four-year terms of office  
19 in addition to an initial or unexpired term of less than ~~three~~  
20 two years, but shall not serve thereafter. Members of the  
21 board shall ~~be entitled to receive per diem at the rate of~~  
22 ~~\$100.00 for each day or portion thereof spent in the~~  
23 ~~performance of the duties of their office, and in addition,~~  
24 ~~shall be reimbursed for expenses of travel in the same manner~~  
25 ~~as employees of the State of Alabama~~ receive the same per  
26 diem, travel, and expense allowance as is paid by law to state

1 employees for the time spent in the performance of duties and  
2 necessary travel.

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

13 "The Workers' Compensation Medical Services Board  
14 shall function as a part of the Department of ~~Industrial~~  
15 ~~Relations and Labor.~~ The board shall have ~~the~~ no additional  
16 authority, duties, ~~and or~~ responsibilities ~~as~~ beyond those  
17 prescribed in this article. The board may meet quarterly at a  
18 time and place designated by the chair, and may meet more  
19 frequently at the call of the chair. The board shall elect one  
20 of its members as chair who shall serve a term of one year.

21 "A quorum for purposes of the board is five of the  
22 seven board members. A quorum shall be sufficient to transact  
23 all business put forth before the board. At least five like  
24 votes is required to recommend any changes to the Director of  
25 the Department of Labor. The board may adopt rules governing  
26 its own proceedings. The department shall provide the board  
27 with necessary meeting and office space, secretarial and

1 clerical support, reimbursement for travel expenses and per  
2 diem as specified in this article. ~~Upon approval of the~~  
3 ~~director, the Lieutenant Governor, and the Speaker of the~~  
4 ~~House of Representatives, additional funding as required by~~  
5 ~~the board for the employment of consultants, attorneys, and~~  
6 ~~other professional staff necessary to accomplish the purposes~~  
7 ~~and objectives stated in this article may be provided.~~

8           "§25-5-312.

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

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

25           "(2) Study, design, and implement standardized  
26 uniform claims processing forms and forms for the reporting of

1 medical information to employers and insurance companies by  
2 physicians providers.

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

7 ~~"(3)(4)~~ Address and give consideration to those  
8 matters referred to it by the director.

9 ~~"(4)(5)~~ The board ~~shall contract~~ may consult with  
10 physicians, health care providers, professional associations  
11 of physicians, ~~and~~ health-related organizations, attorneys,  
12 and others to provide the board with ~~consultation, and~~  
13 ~~research and development~~ expertise in discharging its duties  
14 and responsibilities under this article. ~~Any contract entered~~  
15 ~~into by the board shall be approved by the director and~~  
16 ~~submitted as are other state contracts.~~

17 ~~"(5)(6)~~ The board ~~may establish, by regulations~~  
18 ~~promulgated by the department, regional committees of~~  
19 ~~physicians appointed by the board to perform any duties and~~  
20 ~~responsibilities specified by the board in programs~~  
21 ~~established for the delivery of medical services under this~~  
22 ~~article. In addition the board shall appoint board certified~~  
23 ~~physicians in any of the medical or surgical specialties to~~  
24 ~~act as independent expert medical consultants to the ombudsman~~  
25 ~~in connection with the resolution of disputes involving~~  
26 ~~physicians providing medical services to injured workers.~~  
27 ~~Members of the regional committees shall be physicians and~~

1 ~~shall serve at the pleasure of the board.~~ Physicians serving  
2 ~~as members of the regional committees as constituted under~~  
3 ~~this section or~~ independent expert medical consultants to the  
4 ombudsman shall be granted the same immunities as provided  
5 members of the board under this article and existing state  
6 law.

7 "(7) The Workers' Compensation Medical Services  
8 Board must provide to the Director of the Department of Labor  
9 all initial reports, designs, and recommendations contemplated  
10 under subdivisions (1), (2), and (3) to the director within  
11 three months from the date upon which all appointments to the  
12 board have been made pursuant to Section 25-5-311. Regardless  
13 of the status of the board's communication of or the  
14 director's review, approval, or implementation of these  
15 reports, designs, and recommendations, the schedule of maximum  
16 fees set forth in Section 25-5-313 shall take effect on the  
17 last day of the third month from the date upon which all  
18 appointments to the board have been made pursuant to Section  
19 25-5-311.

20 "(6)(8) Implementation of this section shall be  
21 governed by and subject to the Alabama Administrative  
22 Procedure Act. Rules and regulations relating to the duties  
23 and authority of the board, enumerated herein, may be  
24 promulgated only with the consent of both the director and the  
25 board. In no event may the board or the director implement any  
26 procedure or rule that increases the maximum fees established  
27 pursuant to Section 25-5-313.

1                   "§25-5-313.

2                   "The Workers' Compensation Medical Services Board  
3                   shall adopt a comprehensive schedule of maximum fees for  
4                   compensation to providers as set forth below. Within 60 days  
5                   from ~~May 19, 1992~~ of July 1, 2013, the ~~Workers' Compensation~~  
6                   ~~Medical Services Board~~ board shall submit to the Governor an  
7                   initial schedule of maximum fees for medical services covered  
8                   by this article, which schedule shall become effective  
9                   immediately upon submission to the Governor. The initial  
10                   schedule of maximum fees shall be established by the board in  
11                   the manner prescribed in this section. The fee for each  
12                   service in the schedule shall be exactly equal to an amount  
13                   derived by multiplying the preferred provider reimbursement  
14                   customarily paid on ~~May 19, 1992~~, by the largest health care  
15                   service plan incorporated pursuant to Sections ~~10-4-100~~ to  
16                   ~~10-4-115~~, inclusive, by a factor of 1.075, which product shall  
17                   be the maximum fee for each such service. In addition the  
18                   board may submit to the Governor for approval on or before  
19                   ~~January 31, 1993~~, a revised schedule of selected fees for  
20                   medical services covered by this article, which fees shall not  
21                   exceed the fees established in the initial schedule of fees by  
22                   more than 2 1/2 percent. The revised schedule of fees, but not  
23                   individual fees or separate portions thereof, shall be subject  
24                   to acceptance or rejection by the Governor. If the revised  
25                   schedule of fees is rejected by the Governor, it shall be  
26                   referred to the board for further consideration and the  
27                   initial schedule of maximum fees shall continue to be in

1 ~~effect until the Governor and the board reach agreement;~~  
2 ~~provided, however, the schedule of maximum fees in effect on~~  
3 ~~January 31, 1993, shall not be subject to further revision~~  
4 ~~through this process. approve an initial maximum schedule of~~  
5 ~~fees as set forth below:~~

6 "(1) Provider (other than Hospital) Reimbursement  
7 Rate. The director's maximum fee schedule for providers,  
8 including physicians, other than those expressly set forth  
9 below under "hospital reimbursement maximum rates," shall be  
10 calculated by the director as follows: The provider  
11 reimbursement rate will be equal to an amount derived by  
12 multiplying the provider reimbursement rate customarily paid  
13 on January 1 of each calendar year by the largest health care  
14 service plan incorporated pursuant to Sections 10-4-100 to  
15 10-4-115, inclusive, by a factor of 1.075, which product shall  
16 be the maximum fee for each such service. If there is more  
17 than one provider reimbursement rate for the same service, the  
18 rate applied shall be the lesser of the two fees, subject to  
19 adjudication and bill screening guidelines as approved by the  
20 Department of Labor.

21 "(2) Hospital Reimbursement Maximum Rates. The  
22 director's maximum fee schedule for hospitals, inpatient and  
23 outpatient, including radiology, pathology and lab, diagnostic  
24 and physician fees not generally associated to the approved  
25 procedure, implantables, and physical therapy services, shall  
26 be calculated by the director as follows:

1           "a. Hospital Inpatient Reimbursement Rate. The  
2 hospital inpatient reimbursement rate shall be equal to an  
3 amount derived by multiplying the Medicare National Base Rate  
4 customarily paid on January 1 of each calendar year, times a  
5 factor of 1.02, multiplied by the diagnosis related group  
6 weight value as published by Medicare. All implantables will  
7 be paid at the hospital implant acquisition cost.

8           "b. Hospital Outpatient Reimbursement Rate. The  
9 hospital outpatient reimbursement shall be a flat rate equal  
10 to an amount derived by multiplying the Medicare outpatient  
11 pricer system payment rate customarily paid on January 1 of  
12 each calendar year times a factor of 1.035. Radiology,  
13 pathology and lab, diagnostic and physician fees not generally  
14 associated to the approved procedure will be equal to the  
15 provider reimbursement rate stated in subdivision (1), which  
16 shall be the maximum fee for each service. All implantables  
17 will be paid at the hospital implant acquisition cost.

18           "c. Physical Therapy in Hospital Outpatient Setting.  
19 The reimbursement rate for physical therapy services in a  
20 hospital outpatient setting shall be equal to the provider  
21 reimbursement rate stated in subdivision (1), which shall be  
22 the maximum fee for each such service.

23           "(3) Pharmacy Maximum Reimbursement Rates.  
24 Pharmacies will be reimbursed pursuant to the pharmaceutical  
25 reimbursement formula for prescribed drugs, subject to the  
26 following:

1           "a. Brand name drugs will be reimbursed at a rate  
2 equal to the average wholesale price as published by the  
3 Medi-Span Directory, plus a five dollar (\$5) handling fee.

4           "b. A pharmaceutically and therapeutically  
5 equivalent drug product (generic) will be reimbursed at a rate  
6 equal to the average wholesale priced as published by the  
7 Medi-Span Directory minus 40 percent plus a five dollar (\$5)  
8 handling fee.

9           "c. A pharmaceutically and therapeutically  
10 equivalent drug product (generic) must be selected by the  
11 physician or authorized health care provider, in accordance  
12 with the requirements of Section 34-23-9, unless the physician  
13 or authorized health care provider mandates a brand name drug  
14 in contemporaneous clinic notes.

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

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

26           "No physician or provider who is authorized to issue  
27 or prescribe prescription drugs may have the prescription

1 filled in any location, facility, pharmacy, or business  
2 establishment in which such physician or provider has a  
3 financial interest of any kind; and no reimbursement shall be  
4 owed for any such act or omission in violation thereof.

5 "No maximum reimbursement rate set forth herein may  
6 be exceeded. However, the parties are free to contract for  
7 lower reimbursement rates as set forth in Section 25-5-314.  
8 ~~The schedule of maximum fees and any additions, deletions,~~  
9 ~~corrections, or changes thereto shall not be considered is a~~  
10 ~~rule or regulation requiring publication under the Alabama~~  
11 ~~Administrative Procedure Act. It is the express legislative~~  
12 ~~intent that the Workers' Compensation Medical Services Board~~  
13 ~~may establish a system of maximum fees under this section for~~  
14 ~~services rendered by physicians to employees covered by the~~  
15 ~~Workers' Compensation Law and that the schedule of fees shall~~  
16 ~~replace and supplant traditional competitive market mechanisms~~  
17 ~~in the interest of obtaining quality physician services in a~~  
18 ~~cost effective manner. The board shall annually adjust the~~  
19 ~~schedule of fees established pursuant to this section by~~  
20 ~~increases which shall be no more than the annual increase in~~  
21 ~~the cost of living as reflected by the U. S. Department of~~  
22 ~~Labor consumer price index. The board may, from time to time,~~  
23 ~~add to or adjust the schedule of fees in response to changes~~  
24 ~~in technology and medical practice, subject only to the right~~  
25 ~~of the Governor to accept or reject the addition or adjustment~~  
26 ~~made by the board, and to refer to the board for further~~  
27 ~~consideration any additions or adjustments which he or she may~~

1 ~~reject. In the event that at any time a state or federal tax,~~  
2 ~~levy, fee, or assessment is imposed or assessed on physicians~~  
3 ~~licensed to practice medicine which tax, levy, fee, or~~  
4 ~~assessment is based in whole or in part upon the provision of~~  
5 ~~professional services in connection with the practice of~~  
6 ~~medicine, then, in that event, the board may, subject to the~~  
7 ~~approval of the Governor, within three months of the effective~~  
8 ~~date of the tax, levy, fee, or assessment issue a revised~~  
9 ~~schedule of maximum fees which increases the maximum fee for~~  
10 ~~each service reflected therein by an amount which shall be no~~  
11 ~~more than the rate fixed by law of the tax, levy, fee, or~~  
12 ~~assessment. This provision shall not be construed to include~~  
13 ~~income or sales tax increases published by the Department of~~  
14 Labor. The liability of the employer for the payment of  
15 services rendered by ~~physicians~~ providers shall not exceed  
16 those maximum fees ~~established by the board and approved by~~  
17 ~~the Governor~~ determined pursuant to this section. The  
18 employees shall not be liable to the ~~physician~~ provider for  
19 any amount in excess of the schedule of maximum fees  
20 ~~established by the board and approved by the Governor~~  
21 determined pursuant to this section.

22 "The reimbursement rates set forth in this section  
23 will become effective on the date of approval by the board, or  
24 July 1, 2013, whichever is first.

25 "\$25-5-314.

26 "Notwithstanding any other provisions of this  
27 article to the contrary, any employer, workers' compensation

1 ~~insurance carrier, self-insured employer, or group fund, may~~  
2 ~~contract with physicians, hospitals, and any other health care~~  
3 ~~provider for the provision of medical services to injured~~  
4 ~~workers at any rates, fees, or levels of reimbursement which~~  
5 ~~shall be mutually agreed upon between the physician,~~  
6 ~~hospitals, and any other health care provider and the~~  
7 ~~employer, workers' compensation insurance carrier,~~  
8 ~~self-insured employer, or group fund.~~

9 "The state shall establish a schedule of fees to be  
10 paid to providers. The schedule of fees as established under  
11 this article in Section 25-5-313 shall in no event be reduced.

12 "§25-5-316.

13 "(a) There is established in the State Treasury a  
14 fund entitled the Workers' Compensation Administrative Trust  
15 Fund, into which shall be deposited certain assessments  
16 provided under Chapter 5 (commencing with Section 25-5-1) of  
17 Title 25 collected by the Department of ~~Industrial Relations~~  
18 Labor. The fund shall constitute a separate fund to be  
19 disbursed by the state Comptroller on order of the Director of  
20 the Department of ~~Industrial Relations~~ Labor. All expenses  
21 incurred by the department under the Workers' Compensation  
22 Law, including the salaries of all employees, travel cost, and  
23 any other cost of administration and enforcement as may become  
24 necessary, either within or without the state, shall be paid  
25 from the separate fund in the State Treasury upon warrants of  
26 the state Comptroller drawn upon the State Treasury from time  
27 to time when vouchers therefor are approved by the director.

1 The State Treasurer shall pay moneys from the separate fund  
2 upon the order of the director. The total expense for every  
3 purpose incurred shall not exceed the total assessment  
4 collected and paid into the fund. The total expense for every  
5 purpose incurred in implementing this article shall not exceed  
6 the amount appropriated by the Legislature in the general fund  
7 appropriation act. No funds shall be withdrawn or expended  
8 except those budgeted and allocated in accordance with Article  
9 4 (commencing with Section 41-4-80) of Chapter 4 of Title 41.  
10 All moneys remaining unexpended in the separate fund at the  
11 end of the fiscal year shall remain in the State Treasury to  
12 be expended as herein provided. Included in the budget shall  
13 be an amount of money allocated for the specific and exclusive  
14 purpose of paying only benefits to the claimants who have  
15 qualified to receive benefits from the Second Injury Trust  
16 Fund on May 19, 1992. Payments of these benefits shall be made  
17 weekly. The director shall each week make requisitions to the  
18 state Comptroller who shall draw warrants on the State  
19 Treasurer for the weekly compensation amount. The warrants  
20 shall be drawn only if there are sufficient moneys in the  
21 Treasury for immediate payment. Claims shall take priority in  
22 an ascending numerical order according to the time of the  
23 accident, and the time shown in the settlement between the  
24 employer and employee shall be prima facie evidence of the  
25 time of the accident. No funds allocated for the payment of  
26 benefits from the fund shall be used to pay lump-sum  
27 attorney's fees. Payment shall resume at the end of the first

1 week of the fiscal year in which the Legislature approves the  
2 requested budget for the Workers' Compensation Administrative  
3 Trust Fund. The claimants who were receiving weekly benefits  
4 from the Second Injury Trust Fund as of August 31, 1991, shall  
5 be paid all weekly benefits due to date and the benefits shall  
6 be continued for the duration of claim. Those amounts shall be  
7 paid from the moneys as allocated.

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

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

20 "(d) Each insurance carrier, self-insured employer,  
21 and group fund shall be assessed \$250.00. The gross claims for  
22 compensation and medical payments paid by the carriers,  
23 self-insured employers, and group funds are the basis for  
24 computing the amount to be assessed. The amount of assessment  
25 shall be based upon the proportion that the total gross claims  
26 for compensation and medical payments paid by the carrier,  
27 self-insured employer, or group fund during the preceding

1 calendar year bore to the total gross claims for compensation  
2 and medical payments paid by all carriers, self-insured  
3 employers, and group funds during that period. The total  
4 assessment shall not exceed \$5,000,000.00 per year. The  
5 director shall determine if the assessment shall be a specific  
6 amount or shall be a percentage of gross claims for  
7 compensation and medical payments paid by the insurance  
8 carriers, self-insured employers, and group funds. An  
9 assessment shall not exceed an amount reasonably necessary to  
10 defray the necessary administration expense.

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

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

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

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

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

25           Section 2. The provisions of this act are expressly  
26 declared not to be severable. If any provision of this act

1 shall be adjudged to be invalid by any court of competent  
2 jurisdiction, then this entire act shall be invalid and void.

3 Section 3. This act shall become effective on the  
4 first day of the third month following its passage and  
5 approval by the Governor, or its otherwise becoming law.