

1 SB330
2 166444-1
3 By Senators Marsh and Ward
4 RFD: Fiscal Responsibility and Economic Development
5 First Read: 02-APR-15

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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; provide further
25 for attorney fees; add a 14-day requirement to
26 submit stipulation to courts for trial; require
27 judges to enter an order within 90 days of trial;

1 delete requirement of judges to enter an order for
2 hiring of employee's attorney; delete references to
3 the Department of Industrial Relations; provide
4 further for composition of Workers' Compensation
5 Medical Services Board and alter powers and duties
6 of the board; revise schedules of maximum fees and
7 reimbursement rates; and provide for contracts for
8 medical services at 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, 25-5-11.1, 25-5-35, 25-5-56, 25-5-57, 25-5-67,
16 25-5-68, 25-5-77, 25-5-80, 25-5-81, 25-5-88, 25-5-90,
17 25-5-110, 25-5-117, 25-5-197, 25-5-293, 25-5-310, 25-5-311,
18 25-5-312, 25-5-313, 25-5-314, and 25-5-316, Code of Alabama
19 1975, to revise certain definitions; provide for the approval
20 of standardized claim reimbursement forms by the Director of
21 the Department of Labor; streamline provisions related to
22 injuries occurring out-of-state; provide further for
23 settlement of claims having attorney representation,
24 inadmissible evidence, and advanced payments; provide further
25 for limitations on permanent total disability compensation;
26 increase the amount for burial expenses; revise maximum
27 compensation amounts; provide further for the names of

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

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. 25-5-1, 25-5-3, 25-5-11.1, 25-5-35,
16 25-5-56, 25-5-57, 25-5-67, 25-5-68, 25-5-77, 25-5-80, 25-5-81,
17 25-5-88, 25-5-90, 25-5-110, 25-5-117, 25-5-197, 25-5-293,
18 25-5-310, 25-5-311, 25-5-312, 25-5-313, 25-5-314, and
19 25-5-316, Code of Alabama 1975, are amended to read as
20 follows:

21 "§25-5-1.

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

26 "(1) COMPENSATION. The money benefits to be paid on
27 account of injury or death, as provided in Articles 3 and 4.

1 The recovery which an employee may receive by action at law
2 under Article 2 of this chapter is termed "recovery of civil
3 damages," as provided for in Sections 25-5-31 and 25-5-34.

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

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

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

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

1 insurer with immunity from liability to an injured employee,
2 or his or her dependent in the case of death to whom the
3 insurer would otherwise be subject to liability under Section
4 25-5-11. Notwithstanding the provisions of this chapter, in no
5 event shall a common carrier by motor vehicle operating
6 pursuant to a certificate of public convenience and necessity
7 be deemed the "employer" of a leased-operator or
8 owner-operator of a motor vehicle or vehicles under contract
9 to the common carrier.

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

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

1 tax-qualified retirement program, voluntary contributions to a
2 Section 125 cafeteria program, and fringe benefits as defined
3 herein. Average weekly earnings shall not include fringe
4 benefits if and only if the employer continues the benefits
5 during the period of time for which compensation is paid.
6 "Fringe benefits" shall mean only the employer's portion of
7 health, life, and disability insurance premiums.

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

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

23 "(9) INJURY. "Injury and personal injury" shall mean
24 only injury by accident arising out of and in the course of
25 the employment, and shall not include a disease in any form,
26 except for an occupational disease or where it results
27 naturally and unavoidably from the accident. Injury shall

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

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

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

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

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

1 treatment, service, or equipment, or person or entity
2 providing facilities at which the employee receives treatment.

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

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

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

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

26 ~~"(18)~~ (17) THE COURT. The circuit court that would
27 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 "§25-5-11.1.

25 "No employee shall be terminated by an employer
26 ~~solely because~~ where the substantial motivating factor for the
27 termination is that the employee has instituted or maintained

1 any action against the employer to recover workers'
2 compensation benefits under this chapter or ~~solely because~~
3 that the employee has filed a written notice of violation of a
4 safety rule pursuant to subdivision (c) (4) of Section 25-5-11.

5 "§25-5-35.

6 "(a) As used in this section:

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

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

11 "(b) For the purposes of this section, a person's
12 employment is principally localized in this or another state
13 when his or her employer has a place of business in this or
14 such other state and he or she regularly works at or from such
15 place of business, or if he or she is domiciled and spends a
16 substantial part of his or her working time in the service of
17 his or her employer in this or such other state.

18 "(c) An employee whose duties require him or her to
19 travel regularly in the service of his or her employer in this
20 and one or more other states may, by written agreement with
21 his or her employer, provide that his or her employment is
22 principally localized in this or another such state; and,
23 unless such other state refuses jurisdiction, such agreement
24 shall be given effect under this section.

25 "(d) If an employee, while working outside of this
26 state, suffers an injury on account of which he or she or, in
27 the event of his or her death, his or her dependents, would

1 have been entitled to the benefits provided by this article
2 and Article 3 of this chapter had such injury occurred within
3 this state, such employee or, in the event of his or her death
4 resulting from such injury, his or her dependents, shall be
5 entitled to the benefits provided by this article and Article
6 3 of this chapter, provided that at the time of such injury:

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

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

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

17 ~~"(4)~~ (3) He or she was working under a contract of
18 hire made in this state for employment outside the United
19 States.

20 "(e) The payment or award of benefits under the
21 workers' compensation law of another state, territory,
22 province, or foreign nation to an employee or his or her
23 dependents otherwise entitled on account of such injury or
24 death to the benefits of this article and Article 3 of this
25 chapter shall not be a bar to a claim for benefits under this
26 article and Article 3 of this chapter; provided that claim
27 under this article is filed within the time limits set forth

1 in Section 25-5-80. If compensation is paid or awarded under
2 this article and Article 3 of this chapter:

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

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

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

20 "(f) The recovery of any compensation benefits under
21 the law of any other state shall bar any common-law or
22 statutory right of action for damages that an employee or his
23 or her dependents might otherwise have had against the
24 employer or the officers, directors, or employees of the
25 employer as a result of the injury or death on account of
26 which such compensation benefits were paid.

1 "~~(g) If, as a result of an employment principally~~
2 ~~localized in another state, an employee of an employer who~~
3 ~~would have been subject to this article or Article 3 of this~~
4 ~~chapter, had the contract of employment been entered into in~~
5 ~~this state for performance in this state, suffers injury or~~
6 ~~death as a result of an accident occurring in this state,~~
7 ~~compensation and medical, surgical, and hospital benefits on~~
8 ~~account of such injury or death may be recovered under this~~
9 ~~article or Article 3 of this chapter.~~

10 "§25-5-56.

11 "The interested parties may settle all matters of
12 benefits, whether involving compensation, medical payments, or
13 rehabilitation, and all questions arising under this article
14 and Article 4 of this chapter between themselves, and every
15 settlement shall be in an amount the same as the amounts or
16 benefits stipulated in this article. No settlement for an
17 amount less than the amounts or benefits stipulated in this
18 article shall be valid for any purpose, unless a judge of the
19 court where the claim for compensation under this chapter is
20 entitled to be made, or upon the written consent of the
21 parties, a judge of the court determines that it is for the
22 best interest of the employee or the employee's dependent to
23 accept a lesser sum and approves the settlement. There shall
24 be a presumption that the settlement is in the best interest
25 of the employee where the employee is represented by counsel
26 licensed to practice law in the State of Alabama. The court
27 shall not approve any settlement unless and until it has first

1 made inquiry into the bona fides of a claimant's claim and the
2 liability of the defendant; and if deemed advisable, the court
3 may hold a hearing thereon. Settlements made may be vacated
4 for fraud, undue influence, or coercion, upon application made
5 to the judge approving the settlement at any time not later
6 than six months after the date of settlement. Upon settlements
7 being approved, judgment shall be entered thereon and duly
8 entered on the records of the court in the same manner and
9 have the same effect as other judgments or as an award if the
10 settlement is not for a lump sum. In the event that a proposed
11 settlement is jointly presented by the employer and employee
12 for approval to a judge, and the settlement is not approved
13 for any reason, the matter shall be reassigned to another
14 judge; any statements or arguments made by the parties, their
15 lawyers, witnesses, or the judge at the hearing where the
16 settlement was not approved shall not be admissible in any
17 subsequent hearing or proceeding between the parties. All
18 moneys voluntarily paid by the employer or insurance carrier
19 to an injured employee in advance of agreement or award shall
20 be treated as advance payments on account of the compensation.
21 No such advance payments or payment of medical or any other
22 benefits of any kind shall be an admission against interest or
23 admission of liability. In order to encourage advance
24 payments, it is expressly provided that the payments shall not
25 be construed as an admission of liability but shall be without
26 prejudice.

27 "§25-5-57.

1 "(a) Compensation schedule. Following is the
2 schedule of compensation:

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

19 "(2) TEMPORARY PARTIAL DISABILITY.

20 "a. Amount and Duration of Compensation. For
21 temporary partial disability, the compensation shall be 66 2/3
22 percent of the difference between the average weekly earnings
23 of the worker at the time of the injury and the average weekly
24 earnings he or she is able to earn in his or her partially
25 disabled condition. This compensation shall be paid during the
26 period of the disability, but not beyond 300 weeks. Payments
27 shall be made at the intervals when the earnings were payable,

1 as nearly as may be, unless the parties otherwise agree, and
2 shall be subject to the same maximum weekly compensation as
3 stated in Section 25-5-68.

4 "b. Effect of Change in Employment. If the injured
5 employee who is receiving compensation for temporary partial
6 disability leaves the employment of the employer by whom he or
7 she was employed at the time of the accident for which the
8 compensation is being paid, he or she shall, upon securing
9 employment elsewhere, give to the former employer an affidavit
10 in writing containing the name of his or her new employer, the
11 place of employment, and the amount of wages being received at
12 the new employment, and until he or she gives the affidavit,
13 the compensation for temporary partial disability shall cease.
14 The employer for whom the employee was employed at the time of
15 the accident for which the compensation is being paid may also
16 at any time demand of the employee an additional affidavit, in
17 writing, containing the name of his or her employer, the place
18 of his or her employment, and the amount of wages he or she is
19 receiving; and if the employee upon demand fails or refuses to
20 make and furnish the affidavit, his or her right to
21 compensation for temporary partial disability shall cease
22 until the affidavit is made and furnished.

23 "(3) PERMANENT PARTIAL DISABILITY.

24 "a. Amount and Duration of Compensation. For
25 permanent partial disability, the compensation shall be based
26 upon the extent of the disability. In cases included in the
27 following schedule, the compensation shall be 66 2/3 percent

1 of the average weekly earnings, during the number of weeks set
2 out in the following schedule:

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

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

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

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

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

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

15 "7. The loss of two or more phalanges shall be
16 considered as the loss of the entire finger or thumb, but in
17 no case shall the amount received for more than one finger
18 exceed the amount provided in this schedule for the loss of a
19 hand.

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

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

23 "10. The loss of the first phalange of any toe shall
24 be considered to be equal to the loss of one half of the toe,
25 and compensation shall be paid at the prescribed rate during
26 one half the time prescribed above for the toe.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 "28. For the loss of one arm and the other hand, 400
26 weeks.

1 "29. For the loss of one hand and one foot, 400
2 weeks.

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

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

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

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

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

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

26 "c. Concurrent Disabilities. If an employee sustains
27 concurrent injuries resulting in concurrent disabilities, he

1 or she shall receive compensation only for the injury which
2 entitled him or her to the largest amount of compensation, but
3 this paragraph shall not affect liability for the concurrent
4 loss of more than one member for which members compensation is
5 provided in the specific schedule.

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

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

25 "f. Maximum and Minimum Compensation Awards.
26 Compensation provided in this subsection (a) for loss of
27 members or loss of use of members is subject to the same

1 limitations as to maximum and minimum weekly compensation as
2 stated in Section 25-5-68.

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

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

24 "i. Return to Work. If, on or after the date of
25 maximum medical improvement, except for scheduled injuries as
26 provided in Section 25-5-57(a) (3), an injured worker returns
27 to work at a wage equal to or greater than the worker's

1 pre-injury wage, the worker's permanent partial disability
2 rating shall be equal to his or her physical impairment and
3 the court shall not consider any evidence of vocational
4 disability. Notwithstanding the foregoing, if the employee has
5 lost his or her employment under circumstances other than any
6 of the following within a period of time not to exceed 300
7 weeks from the date of injury, an employee may petition a
8 court within two years thereof for reconsideration of his or
9 her permanent partial disability rating:

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

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

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

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

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

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

1 effect upon any evidentiary issues or claims made in third
2 party actions pursuant to Section 25-5-11.

3 "(4) PERMANENT TOTAL DISABILITY.

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

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

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

1 "b. Alteration, Amendment, or Revision of
2 Compensation. At any time, the employer may petition the court
3 that awarded or approved compensation for permanent total
4 disability to alter, amend, or revise the award or approval of
5 the compensation on the ground that as a result of physical or
6 vocational rehabilitation, or otherwise, the disability from
7 which the employee suffers is no longer a permanent total
8 disability and, if the court is so satisfied after a hearing,
9 it shall alter, amend, or revise the award accordingly. If
10 compensation for permanent total disability is being paid
11 pursuant to a written agreement between employer and employee
12 without approval, the employer may make application to the
13 court that would have had jurisdiction to award the
14 compensation to the employee to alter, amend, or revise the
15 agreement on such grounds. If an employee is receiving
16 benefits for permanent total disability other than as a result
17 of an award or a written agreement between the employer and
18 employee and if the employer terminates the payment of the
19 benefits, the employee may, within two years of the last
20 payment, petition the court to reinstate the benefits and,
21 upon a showing that the permanent total disability still
22 exists, shall be entitled to have the benefits reinstated
23 effective the date of the last payment.

24 "c. Employees in Public Institutions. In case an
25 employee who is permanently and totally disabled becomes an
26 inmate of a public institution, no compensation shall be
27 payable unless the employee has wholly dependent on him or her

1 for support a person or persons named in Sections 25-5-61 and
2 25-5-62, whose dependency shall be determined as if the
3 employee were deceased, in which case the compensation
4 provided for in this subdivision shall be paid for the benefit
5 of the person so dependent, during dependency, in the manner
6 so ordered by the court, while the employee is an inmate in
7 the institution. Nothing contained herein shall be construed
8 to deprive a permanently and totally disabled employee who has
9 no dependent named in Sections 25-5-61 and 25-5-62 from
10 receiving benefits to which he or she would otherwise be
11 entitled if the employee, although an inmate of a public
12 institution, is paying or on whose behalf funds are paid from
13 any source to the public institution the normal and customary
14 charge for the services rendered by the public institution.
15 Normal and customary charge shall mean that charge actually
16 made by the public institution to persons able to pay for the
17 services rendered them whether the charge actually covers the
18 expense of the upkeep of the inmate or not. If the employee
19 has had a guardian appointed by a court of competent
20 jurisdiction, the workers' compensation payments shall be
21 directly paid to the guardian.

22 "d. Definition. The total and permanent loss of the
23 sight of both eyes or the loss of both arms at the shoulder or
24 any physical injury or mental impairment resulting from an
25 accident, which injury or impairment permanently and totally
26 incapacitates the employee from working at and being retrained
27 for gainful employment, shall constitute prima facie evidence

1 of permanent total disability but shall not constitute the
2 sole basis on which an award of permanent total disability may
3 be based. Any employee whose disability results from an injury
4 or impairment and who shall have refused to undergo physical
5 or vocational rehabilitation or to accept reasonable
6 accommodation shall not be deemed permanently and totally
7 disabled.

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

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

23 g. Concurrent Compensation Payments. If an employee
24 receives an injury for which compensation is payable while he
25 or she is still receiving or entitled to receive compensation
26 for a previous injury in the same employment, he or she shall
27 not at the same time be entitled to compensation for both

1 injuries, unless the later injury is a permanent injury, as
2 specified in this section, but he or she shall be entitled to
3 compensation for that injury and from the time of that injury
4 which will cover the longest period and the largest amount
5 payable under this article and Article 4 of this chapter.

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

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

26 "1. The employer's liability for the payment of 66
27 2/3 percent of the difference shall continue for 200 weeks

1 from the date of reemployment or 300 weeks from the date of
2 injury, whichever is the longer period.

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

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

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

1 or her employer, the place of his or her employment, and the
2 amount of wages he or she is receiving. If the employee, upon
3 demand, fails or refuses to make and furnish the affidavit,
4 his or her rights to compensation shall cease until the
5 affidavit is made and furnished.

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

25 "(6) HERNIA.

26 "a. Proof. For hernia resulting from injury by an
27 accident arising out of and in the course of the employee's

1 employment, it must be definitely proven to the satisfaction
2 of the court all of the following:

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

4 "2. That the hernia appeared suddenly.

5 "3. That it was accompanied by pain.

6 "4. That the hernia immediately followed an
7 accident.

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

10 "b. Treatment. All hernia, inguinal, femoral, or
11 otherwise, proved to be the result of an injury by accident
12 arising out of and in the course of the employment, shall be
13 treated in a surgical manner by radical operation. If the
14 injured employee refuses to undergo the radical operation for
15 the cure of the hernia, no compensation will be allowed during
16 the time the refusal continues. If, however, it is shown that
17 the employee has some chronic disease or is otherwise in
18 physical condition that the court considers it unsafe for the
19 employee to undergo the operation, the employee shall be paid
20 as otherwise provided in this chapter.

21 "(b) Computation of compensation; determination of
22 average weekly earnings. Compensation under this section shall
23 be computed on the basis of the average weekly earnings.
24 Average weekly earnings shall be based on the wages, as
25 defined in Section 25-5-1(6) of the injured employee in the
26 employment in which he or she was working at the time of the
27 injury during the period of 52 weeks immediately preceding the

1 date of the injury divided by 52, but if the injured employee
2 lost more than seven consecutive calendar days during the
3 period, although not in the same week, then the earnings for
4 the remainder of the period, although not in the same week,
5 then the earnings for the remainder of the 52 weeks shall be
6 divided by the number of weeks remaining after the time so
7 lost has been deducted. Where the employment prior to the
8 injury extended over a period of less than 52 weeks, the
9 method of dividing the earnings during that period by the
10 number of weeks and parts thereof during which the employee
11 earned wages shall be followed, provided results just and fair
12 to both parties will thereby be obtained. Where by reason of
13 the shortness of the time during which the employee has been
14 in the employment of his or her employer or the casual nature
15 or terms of the employment it is impracticable to compute the
16 average weekly earnings as above defined, regard shall be had
17 to the average weekly amount which during the 52 weeks prior
18 to the injury was being earned by a person in the same grade,
19 employed at the same work by the same employer, and if there
20 is no person so employed, by a person in the same grade
21 employed in the same class of employment in the same district.
22 Whatever allowances of any character made to an employee in
23 lieu of wages are specified as part of the wage contract shall
24 be deemed a part of his or her earnings.

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

1 "(1) The employer may reduce or accept an assignment
2 from an employee of the amount of benefits paid pursuant to a
3 disability plan, retirement plan, or other plan providing for
4 sick pay by the amount of compensation paid, if and only if
5 the employer provided the benefits or paid for the plan or
6 plans providing the benefits deducted.

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

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

20 "§25-5-67.

21 "If death results to an employee as the result of an
22 accident or an occupational disease arising out of and in the
23 course of the employment, the employer shall pay, in addition
24 to the medical and hospital expenses provided for in Section
25 25-5-77, the expenses of burial, not exceeding in amount
26 ~~\$3,000.00~~ six thousand five hundred dollars (\$6,500). If a
27 dispute arises as to the reasonable value of the services

1 rendered in connection with the burial, the same shall be
2 approved by the court before payment after reasonable notice
3 to interested parties as the court may require.

4 "§25-5-68.

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

16 "(b) For the purpose of this section, the average
17 weekly wage of the state shall be determined by the director
18 as follows: On or before June 1 of each year, the total wages
19 reported on contribution reports to the unemployment
20 compensation division of the department for the preceding
21 calendar year shall be divided by the average monthly number
22 of insured workers, which shall be determined by dividing the
23 sum of the number of insured workers reported for each month
24 of the preceding year by 12. The average annual wage thus
25 obtained shall be divided by 52, and the average weekly wage
26 thus determined rounded to the nearest cent. The average
27 weekly wage as so determined shall be applicable for the

1 12-month period beginning July 1 following the June 1
2 determination. If the determination shall not be made on or
3 before June 1, the effective date of the average weekly wage
4 when determined shall be the first day of the month next
5 following 30 days after the determination is made.

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

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

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

25 "§25-5-77.

26 "(a) In addition to the compensation provided in
27 this article and Article 4 of this chapter, the employer,

1 where applicable, shall pay the actual cost of the repair,
2 refitting, or replacement of artificial members damaged as the
3 result of an accident arising out of and in the course of
4 employment, and the employer, except as otherwise provided in
5 this amendatory act, shall pay an amount not to exceed the
6 ~~prevailing rate or~~ maximum schedule of fees as established
7 herein of reasonably necessary medical and surgical treatment
8 and attention, physical rehabilitation, medicine, medical and
9 surgical supplies, crutches, artificial members, and other
10 apparatus as the result of an accident arising out of and in
11 the course of the employment, as may be obtained by the
12 injured employee or, in case of death, obtained during the
13 period occurring between the time of the injury and the
14 employee's death therefrom. If the employee is dissatisfied
15 with the initial treating physician selected by the employer
16 and if further treatment is required, the employee may so
17 advise the employer, and the employee shall be entitled to
18 select a second physician from a panel or list of ~~four~~ six
19 physicians selected by the employer. If surgery is required
20 and if the employee is dissatisfied with the designated
21 surgeon, he or she may so advise the employer, and the
22 employee shall be entitled to select a second surgeon from a
23 panel or list of four surgeons selected by the employer. If
24 ~~four~~ six physicians or four surgeons are not available to be
25 listed, the employer shall include on the list as many as are
26 available. ~~The four~~ No more than two physicians or surgeons
27 selected by the employer hereunder ~~shall not~~ may be from or

1 members of the same firm, partnership, or professional
2 corporation. The total liability of the employer shall, unless
3 otherwise provided in this chapter, not exceed the prevailing
4 ~~rate or~~ the maximum schedule of fees as established herein
5 under Section 25-5-313. Notwithstanding the foregoing, in
6 ascertaining the prevailing rate of reimbursement or payment
7 with regard to participating hospitals and ambulatory surgical
8 centers or outpatient rehabilitation centers licensed by the
9 State of Alabama, as well as diagnostic facilities accredited
10 by the Commission on Accreditation of Rehabilitation
11 Facilities, the prevailing rate shall be negotiated with each
12 individual hospital, ambulatory surgical center, licensed
13 outpatient rehabilitation facility, or diagnostic facility
14 based on that institution's treatment of comparable type cases
15 for the 12-month period immediately preceding August 1, 1992.
16 These rates shall be updated every 12 months thereafter.
17 Initial rates shall be established within six months of August
18 1, 1992. For those non-participating hospitals the prevailing
19 rate shall be determined by a committee. In the first year
20 following August 1, 1992, the committee shall be composed of
21 five members. The director shall appoint one member from the
22 Department of Industrial Relations and two members from the
23 community in which the non-participating hospital is located.
24 The non-participating hospital shall appoint two members. This
25 committee shall by a majority vote establish the maximum rates
26 of reimbursement or payment for the non-participating
27 hospital, and the hospital shall be bound for one year by the

1 ~~determined rates of reimbursement or payment for workers'~~
2 ~~compensation cases. If, following the first year after the~~
3 ~~rates were established by this committee, the hospital is~~
4 ~~again non-participating, then another committee shall be~~
5 ~~appointed. This second committee shall have three members~~
6 ~~selected by the non-participating hospital and two members~~
7 ~~selected by the director. The committee composition shall~~
8 ~~alternate as above described each year the hospital is~~
9 ~~non-participating. The total liability of the employer shall~~
10 ~~not exceed the rates established by the committee. This~~
11 ~~committee, in determining the rates of reimbursement or~~
12 ~~payments to the hospital, may consider such factors as the~~
13 ~~size, staffing, and medical equipment of the hospital, and any~~
14 ~~other factors which the committee may consider relevant. If an~~
15 ~~insurer of the employee or a benefit association has paid or~~
16 ~~is liable for the employee's medical, surgical, and hospital~~
17 ~~service or for a part thereof, or if the employee is entitled~~
18 ~~to the same or a part thereof, from any source whatever by~~
19 ~~virtue of any agreement or understanding or law, state or~~
20 ~~federal, without any loss of benefit to the employee, the~~
21 ~~employer shall not be required to pay any part of the expense.~~
22 ~~If the benefits are insufficient to pay all the employee's~~
23 ~~expense, the employer shall be liable for the deficiency only.~~
24 If five years pass during which time the employee receives no
25 medical treatment by his or her authorized treating physician
26 for the alleged job injury or occupational disease, there
27 shall be a presumption that any subsequent medical treatment

1 is unrelated to the alleged job injury or occupational
2 disease, subject to rebuttal by the employee that the
3 employee's medical treatment is causally related to the
4 employee's original job injury or occupational disease; if
5 seven years pass during which time the employee receives no
6 medical treatment by his or her authorized treating physician
7 for the alleged job injury or occupational disease, the
8 employee shall be entitled to no further medical treatment or
9 benefits pursuant to the workers' compensation statutes, with
10 the only exception relating to previously implanted medical
11 devices or prosthetic devices. All cases of dispute as to the
12 necessity and value of the services shall be determined by the
13 tribunal having jurisdiction of the claim of the injured
14 employee for compensation.

15 " (b) If requested to do so by the employer, the
16 injured employee shall submit to examination by the employer's
17 physician at all reasonable times, but the employee shall have
18 the right to have a physician of his or her own selection
19 present at the examination, in which case the employee shall
20 be liable to the physician of his or her own selection for his
21 or her services. The employer shall pay for the services of
22 the physician making the examination at the instance of the
23 employer. If a dispute arises as to the injury, or as to the
24 extent of the disability therefrom, the court may, at the
25 instance of either party or of its own motion, appoint a
26 neutral physician of good standing and ability to make an
27 examination of the injured employee and to report his or her

1 findings to the court, the expense of which examination shall
2 be borne equally by the parties. If the injured employee
3 refuses to comply with reasonable request for examination, or
4 refuses to accept the medical service or physical
5 rehabilitation, which the employer elects to furnish under
6 this chapter, the employee's right to compensation shall be
7 suspended and no compensation shall be payable for the period
8 of the refusal. A physician whose services are furnished or
9 paid for by the employer, or a physician of the injured
10 employee who treats or makes or is present at any examination
11 of an injured employee may be required to testify as to any
12 knowledge obtained by him or her in the course of the
13 treatment or examination as the treatment or examination
14 related to the injury or the disability arising therefrom. The
15 physician shall, upon written request of the injured employee
16 or his or her employer and without consent of or notice to the
17 employee or employer not making the request, furnish the
18 injured employee or his or her employer a written statement of
19 his or her professional opinion as to the extent of the injury
20 and disability. In all death claims where the cause of death
21 is obscure or is disputed, any interested party may require an
22 autopsy, the cost of which is to be borne by the party
23 demanding the autopsy. The term "physicians" shall include
24 medical doctor, surgeon, and chiropractor. A hospital, medical
25 clinic, rehabilitation service, or other person or entity
26 providing treatment to an employee or providing facilities at
27 which the employee receives treatment shall, upon the written

1 request of the employee or of the employer, furnish, at a
2 reasonable cost, the employee or the employer a copy of the
3 records, including X-rays and laboratory reports, relating to
4 the treatment of the injured employee. The copy may be
5 furnished without the consent of or notice to the employee or
6 employer not making the request. A physician, hospital,
7 medical clinic, rehabilitation service, or other person or
8 entity providing written statement of professional opinion or
9 copies of records pursuant to this subsection shall not be
10 liable to any person for a claim arising out of the release of
11 medical information concerning the employee.

12 "(c) If the employer so elects, the employee shall
13 submit to and undergo vocational rehabilitation at the
14 employer's expense through a vocational rehabilitation
15 specialist, who shall be qualified to render competent
16 vocational rehabilitation service. If an employee who is
17 unable in the opinion of the treating physician to return to
18 his or her former employment shall request vocational
19 rehabilitation and if both a vocational rehabilitation
20 specialist and a treating physician, the cost of whose service
21 is the obligation of the employer under this section, shall
22 express their opinions in writing that in the judgment of each
23 of them vocational rehabilitation is reasonably calculated to
24 restore the employee to gainful employment and is in the best
25 interest of the employee, the cost of the rehabilitation shall
26 be borne by the employer. The cost, where rehabilitation
27 requires residence at or near a facility or institution away

1 from the employee's customary residence, shall include
2 reasonable charges for the employee's necessary board,
3 lodging, and travel.

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

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

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

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

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

23 "If the employer or insurer responsible for payment
24 of the claim fails to add the additional 10 percent to the
25 claim as required by this section, the person, firm,
26 corporation, or partnership providing the medical service for
27 which payment has been delayed beyond the period specified in

1 this section may file a written complaint stating that fact
2 with the director. Upon investigation, if the director
3 determines that the facts stated in the complaint are true,
4 then in that event the director shall order the employer or
5 insurer to pay to the provider the amount of the claim and any
6 applicable penalty, and in addition may assess a civil
7 monetary penalty in amount not to exceed \$500 against the
8 employer or insurer, payment of which shall be made to the
9 director within 30 days of the notice of assessment.

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

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

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

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

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

25 "(5) In any review under this subsection of medical
26 services provided by a physician, any party to a dispute may
27 request that the ombudsman consult with an independent medical

1 expert for the purpose of obtaining advice and consultation on
2 the resolution of any issue involving medical practice. If
3 such a request is made, the ombudsman shall select an
4 independent medical expert from among a list of at least three
5 names provided by the ~~Workers' Compensation Medical Services~~
6 ~~Board~~ Director of the Department of Labor in a medical
7 specialty appropriate to the issues raised in the dispute and
8 shall secure a written opinion from the independent medical
9 expert. In rendering a decision or recommendation, the
10 ombudsman shall give full consideration to the opinion of the
11 independent medical expert but shall not be bound by that
12 opinion. The independent medical expert shall be compensated
13 at a rate set by the ~~Workers' Compensation Medical Services~~
14 ~~Board and approved by the director~~ Director of the Department
15 of Labor.

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

23 "(1) As a condition of receiving pain management
24 that requires prescribing Schedule II, III, or IV controlled
25 substances, as set forth by the Drug Enforcement Agency Office
26 of Diversion Control, the injured or disabled employee shall
27 sign a formal written agreement with the physician prescribing

1 the Schedule II, III, or IV controlled substances
2 acknowledging the conditions under which the injured or
3 disabled employee may continue to be prescribed Schedule II,
4 III, or IV controlled substances and agreeing to comply with
5 such conditions. If the injured or disabled employee violates
6 any of the conditions of the agreement, then:

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

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

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

24 "(3) When initially prescribing a controlled
25 substance for the treatment of pain or chronic pain, a
26 physician shall have a medical history of the patient, a
27 physical examination of the patient shall have been conducted,

1 and informed consent shall have been obtained. In the event of
2 a documented emergency, a physician may prescribe an amount of
3 medication to cover a period of not more than 72 hours without
4 a physical examination.

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

10 "\$25-5-80.

11 "In case of a personal injury not involving
12 cumulative physical stress, all claims for compensation under
13 this article shall be forever barred unless within two years
14 after the accident the parties shall have agreed upon the
15 compensation payable under this article or unless within two
16 years after the accident one of the parties shall have filed a
17 ~~verified~~ complaint as provided in Section 25-5-88. In cases
18 involving personal injury due to cumulative physical stress,
19 compensation under this article shall be forever barred unless
20 within two years after the date of the injury one of the
21 parties shall have filed a ~~verified~~ complaint as provided in
22 Section 25-5-88. In cases involving claims for lost earning
23 capacity under Section 25-5-57(a)(3)i., other than those
24 involving cumulative physical stress, following termination of
25 employment as outlined therein, compensation under this
26 article and Article 4 shall be forever barred unless brought
27 within two years of the termination. In case of death, all

1 claims for compensation shall be forever barred unless within
2 two years after death, when the death results proximately from
3 the accident within three years, the parties shall have agreed
4 upon the compensation under this article or unless within two
5 years after the death one of the parties shall have filed a
6 ~~verified~~ complaint as provided in Section 25-5-88. Where,
7 however, payments of compensation, as distinguished from
8 medical or vocational payments, have been made in any case,
9 the period of limitation shall not begin to run until the time
10 of making the last payment. In case of physical or mental
11 incapacity, other than the minority of the injured person or
12 his or her dependents, to perform or cause to be performed any
13 act required within the time in this section specified, the
14 period of limitation in any case shall be extended to become
15 effective two years from the date when the incapacity ceases.

16 "§25-5-81.

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

18 "(1) PROCEDURE. In case of a dispute between
19 employer and employee or between the dependents of a deceased
20 employee and the employer with respect to the right to
21 compensation or medical benefits under this article and
22 Article 2 of this chapter, or the amount thereof, either party
23 may submit the controversy to the circuit court of the county
24 which would have jurisdiction of a civil action in tort
25 between the parties. The controversy shall be heard and
26 determined by the judge who would hear and determine a civil
27 action between the same parties arising out of tort, and, in

1 case there is more than one judge of the court, the
2 controversies shall be set and assigned for hearing under the
3 same rules and statutes that civil actions in tort are set and
4 assigned. The court may hear and determine the controversies
5 in a summary manner. The decision of the judge hearing the
6 same shall be conclusive and binding between the parties,
7 subject to the right of appeal provided for in this article.
8 In the event that the proceeding is to be resolved by trial,
9 the parties, at least 14 days before trial, shall submit to
10 the court written joint stipulations as to which issues shall
11 be tried.

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

1 employer shall serve a copy of the answer, setting up the
2 defense, upon the employee or the attorney of record.

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

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

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

25 "(d) Interpleader of adverse claimants to
26 compensation. If at any time there are adverse claimants to
27 compensation under this article, the employer, in submitting

1 the claim to the circuit court, may suggest in writing the
2 claimants, and they shall be required to interplead. The court
3 shall determine and order to which claimant or claimants
4 compensation is justly due, and the employer, upon complying
5 with the order of the judge, shall be released from the claims
6 of any other claimants thereto.

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

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

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

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

23 "(1) Two depositions for each side shall be
24 permitted without leave of court, however, any additional
25 depositions shall not be permitted except with leave of court
26 for good cause shown including, but not limited to, a claim by
27 the employee for permanent total disability.

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

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

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

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

25 "§25-5-88.

26 "(a) Either party to a controversy arising under
27 this article and Article 2 of this chapter may file a ~~verified~~

1 complaint in the circuit court of the county which would have
2 jurisdiction of an action between the same parties arising out
3 of tort, which shall set forth the names and residences of the
4 parties and the circumstances relating to the employment at
5 the time of the injury, with a full description of the injury,
6 its nature and extent, the amount of the average earnings
7 received by the employee which would affect his or her
8 compensation under this article and Article 2 of this chapter,
9 the knowledge of the employer of the injury or the notice to
10 him or her thereof, which must be of the kind provided for in
11 this article and Article 2 of this chapter and such other
12 facts as may be necessary to enable the court to determine
13 what, if any, compensation the employee or, in case of a
14 deceased employee, his or her dependents, are entitled to
15 under this article and Article 2 of this chapter. The
16 complaint shall be filed with the clerk of the circuit court,
17 who shall cause summons to be issued thereon requiring the
18 defendant to come in and answer ~~said~~ the complaint within 30
19 days of the service thereof. Thereafter, ~~said~~ the action shall
20 proceed in accordance with and shall be governed by the same
21 rules and statutes as govern civil actions, except as
22 otherwise provided in this article and Article 2 of this
23 chapter, and except that all civil actions filed hereunder
24 shall be preferred actions and shall be set down and tried as
25 expeditiously as possible. At the hearing or any adjournment
26 thereof the court shall hear such witnesses as may be
27 presented by each party, and in a summary manner without a

1 jury, unless one is demanded to try the issue of willful
2 misconduct on the part of the employee, shall decide the
3 controversy. This determination shall be filed in writing with
4 the clerk of ~~said~~ the court, and judgment shall be entered
5 thereon in the same manner as in civil actions tried in the
6 ~~said~~ the circuit court and shall contain a statement of the
7 law and facts and conclusions as determined by ~~said~~ the judge.
8 The circuit court shall enter its judgment within 90 days of
9 the trial of the matter, or within 90 days after submission of
10 post-trial briefs, evidence or proposed orders for which the
11 record was left open, in its discretion, to facilitate the
12 process, the court may request of all parties the submission
13 of proposed orders. Subsequent proceedings thereon shall only
14 be for the recovery of moneys thereby determined to be due,
15 but nothing in this section contained shall be construed as
16 limiting the jurisdiction of the Court of Civil Appeals to
17 review questions of law by certiorari.

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

27 "§25-5-90.

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

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

21 "\$25-5-110.

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

25 "(1) OCCUPATIONAL DISEASE. A disease arising out of
26 and in the course of employment, including occupational
27 pneumoconiosis and occupational exposure to radiation as

1 defined in subdivisions (2) and (3), respectively, of this
2 section, which is due to hazards in excess of those ordinarily
3 incident to employment in general and is peculiar to the
4 occupation in which the employee is engaged but without regard
5 to negligence or fault, if any, of the employer. A disease,
6 including, but not limited to, loss of hearing due to noise,
7 shall be deemed an occupational disease only if caused by a
8 hazard recognized as peculiar to a particular trade, process,
9 occupation, or employment as a direct result of exposure, over
10 a period of time, to the normal working conditions of the
11 trade, process, occupation, or employment. An occupational
12 disease shall also include a psychological condition which is
13 due to hazards in excess of those ordinarily incident to
14 employment in general, but without regard to negligence or
15 fault, if any, of the employer, whether or not precipitated by
16 a physical injury to the body or trauma.

17 "(2) OCCUPATIONAL PNEUMOCONIOSIS. A disease of the
18 lungs caused by inhalation of minute particles of dust over a
19 period of time, which dust is due to causes and conditions
20 arising out of and in the course of the employment, without
21 regard to whether the causes or conditions are inherent in the
22 employment or can be eliminated or reduced by due care on the
23 part of the employer. The term "occupational pneumoconiosis"
24 shall include, but without limitation, such diseases as
25 silicosis, siderosis, anthracosis, anthrasilicosis,
26 anthracosilicosis, anthraco-tuberculosis, tuberculosilicosis,

1 silico-tuberculosis, aluminosis, and other diseases of the
2 lungs resulting from causes enumerated in this section.

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

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

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

22 "§25-5-117.

23 "(a) In case of the contraction of an occupational
24 disease, as defined in this article, or of injury or
25 disability resulting therefrom, a claim for compensation, as
26 defined in Section 25-5-1, shall be forever barred, unless
27 within two years after the date of the injury, as hereinafter

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

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

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

12 "§25-5-197.

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

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

27 "§25-5-293.

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

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

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

20 "(d) The director shall appoint appropriate advisory
21 committees on workers' compensation matters, including: An
22 advisory committee consisting of three administrators who are
23 members of the Alabama Hospital Association, who shall be
24 selected by the director from nominations submitted by the
25 Alabama Hospital Association; an advisory committee consisting
26 of three chiropractors who are members in good standing with
27 the Alabama State Chiropractic Association, who shall be

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

21 "The director shall also appoint a vocational
22 rehabilitation advisory committee consisting of at least five
23 professional licensed rehabilitation specialists. These
24 rehabilitation specialists shall be selected by the director
25 from nominations from the rehabilitation associations in the
26 State of Alabama, including, but not limited to, the Alabama
27 Physical Therapy Association. ~~The committee shall guide the~~

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

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

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

21 "(f) It is the intent of the Legislature that final
22 reimbursements related to workers' compensation claims be
23 commensurate and in line with the ~~prevailing~~ rate of
24 reimbursement ~~or payment in the State of Alabama, or as~~
25 ~~otherwise provided in this article~~ established by Section
26 25-5-313. The director shall conduct field audits as necessary
27 to assist the private sector to gain compliance with the

1 legislative intent. The department shall develop
2 administrative rules to facilitate implementation and
3 continuity of the legislative intent of this article. The
4 director, except as otherwise provided in this article, shall
5 not establish the ~~prevailing~~ rate of payment or reimbursement,
6 but may collect data which are construed to be statistically
7 significant as defined by an independent, disinterested
8 consultant. By definition, the ~~prevailing~~ rate of payment or
9 reimbursement is self-defining and self-setting pursuant to
10 Section 25-5-313 and shall be updated annually. The director
11 may create a statistically valid data base from which
12 ~~prevailing~~ the rates of reimbursement or payment shall be
13 ascertained. Except as otherwise provided herein, the
14 ~~prevailing~~ rate of reimbursement or payment for medical
15 services provided under this article shall be effective 30
16 days after the ~~prevailing~~ rate of reimbursement or payment is
17 discovered, but in no event earlier than six months from ~~May~~
18 ~~19, 1992~~ July 1, 2015.

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

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

1 charges, actual payments, and adjudication methods for use in
2 administering this article.

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

16 "(i) Beginning immediately after ~~May 19, 1992~~ July
17 1, 2015, and to be completed within six months thereafter, the
18 director may engage an independent firm to identify ~~the~~
19 ~~initial costs for the program. These initial expenses shall~~
20 ~~include, but not be limited to, the establishment of a data~~
21 ~~base to determine prevailing rates, and the conducting of cost~~
22 ~~analysis for appropriate reimbursement rates to hospitals and~~
23 ~~other facilities~~ all items needed for the Director of the
24 Department of Labor to complete his or her duties under
25 Section 25-5-313.

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

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

7 " (k) ~~Notwithstanding any other provision of this~~
8 ~~section to the contrary, it~~ It is the intent of this section
9 that any and all utilization review, bill screening, medical
10 necessity determinations, or audits which relate to the
11 services of ~~physicians~~ providers as defined in Section
12 25-5-310 shall ~~only~~ be conducted under and in accordance with
13 ~~policies, guidelines, or regulations which have been jointly~~
14 ~~approved by the Workers' Compensation Medical Services Board~~
15 ~~and the director under the provisions of Section 25-5-312, as~~
16 ~~and when such policies, guidelines, criteria, and regulations~~
17 ~~are adopted in a final and effective form pursuant to the~~
18 ~~Alabama Administrative Procedure Act~~ Section 25-5-313. Not
19 later than six months from ~~May 19, 1992~~ July 1, 2015, the
20 ~~director, with the approval of the board,~~ shall publish a
21 notice of the intended action in Alabama Administrative
22 Monthly to adopt initial policies, guidelines, criteria, or
23 regulations for utilization review, medical necessity
24 determinations, and bill screenings; however, each insurer,
25 self-insured employer, claims administrator, or other payor
26 may continue utilization review, medical necessity
27 determinations, and bill screenings unaffected by this article

1 during the first six months from ~~May 19, 1992~~ July 1, 2015, or
2 until such policies, guidelines, criteria, or regulations may
3 become effective in a final adopted form within that initial
4 six-month period. If such above referenced pending policies,
5 guidelines, criteria, or regulations have not become effective
6 in a final form pursuant to the Administrative Procedure Act
7 after six months from ~~May 19, 1992~~ July 1, 2015, then until
8 such time as they are finally adopted, each insurer,
9 self-insured employer, or claims administrator shall conduct
10 utilization review, medical necessity determinations, and bill
11 screenings in a manner that is consistent with similar
12 practices of a majority of commercial insurance companies
13 authorized to issue policies of health insurance in this
14 state. Any amendments, including additions or deletions, to
15 the initial policies, guidelines, criteria, or regulations
16 shall be adopted in accordance with the requirements of this
17 section and Section 25-5-312. Notwithstanding the foregoing,
18 utilization review as to reasonableness or medical necessity
19 of treatment recommended by an authorized provider shall be
20 conducted by a person who is or has been licensed to practice
21 in Alabama, and who is in the same area of practice and
22 similarly board certified, if applicable, to the authorized
23 treating provider. However, the director shall promulgate
24 administrative rules to address peer review and utilization
25 review where the director concludes that the use of an Alabama
26 physician is impracticable.

27 "§25-5-310.

1 "For the purposes of this article the following
2 words and phrases have the following meanings:

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

5 "~~(1)~~(2) BOARD. The Workers' Compensation Medical
6 Services Board.

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

12 "~~(2)~~(4) MEDICAL or MEDICAL SERVICES. Any and all
13 medical or surgical services, treatment, or equipment, or any
14 combination thereof provided by physicians under this new
15 article a provider.

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

25 "§25-5-311.

26 "There is established a Workers' Compensation
27 Medical Services Board composed of ~~five physicians licensed to~~

1 ~~practice medicine in the State of Alabama who shall be~~
2 ~~appointed by the Director of the Department of Industrial~~
3 ~~Relations. The initial board shall be selected from a list of~~
4 ~~15 physicians who are members of the Medical Association of~~
5 ~~the State of Alabama, submitted by the association of 16~~
6 ~~members appointed in a manner set forth in this section. The~~
7 ~~composition of the board shall be as follows: Two claims~~
8 ~~professionals, two employers, two physicians, two provider~~
9 ~~practice managers, four hospital representatives, a physical~~
10 ~~therapist, two employee representatives, and one member of the~~
11 ~~judiciary.~~

12 "The two claims professionals shall be chosen by the
13 Alabama Workers' Compensation Organization. The two employer
14 representatives shall be chosen by the Alabama Council of
15 Association Workers Compensation Self-Insureds Funds. The two
16 physicians and two provider practice managers shall be chosen
17 by the Medical Association of the State of Alabama. The four
18 hospital representatives shall be chosen by the Alabama
19 Hospital Association. The physical therapist shall be chosen
20 by the Physical Therapist Association of Alabama. The two
21 employee representatives shall be chosen by the Alabama
22 Association for Justice. The remaining member shall be a
23 member of the judiciary and shall be chosen by the Alabama
24 State Bar Association.

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

1 ~~serve an initial term of two years, one member shall serve an~~
2 ~~initial term of three years, one member shall serve an initial~~
3 ~~term of four years, and the remaining member shall serve an~~
4 ~~initial term of five years. Thereafter, successors shall be~~
5 ~~appointed by the director from among a list of three nominees~~
6 ~~submitted by the Medical Association of the State of Alabama~~
7 ~~to serve full five-year terms. Service of the current board~~
8 ~~members shall continue until the members provided for in this~~
9 ~~amendatory act are all appointed. All new appointments as~~
10 ~~mandated by this section shall be made no later than the last~~
11 ~~day of the third month following the effective date of the~~
12 ~~enactment of this amended section. If all appointments for new~~
13 ~~board members are not timely made as mandated by this section,~~
14 ~~the remaining appointments shall be made by the Chief Justice~~
15 ~~of the Supreme Court of Alabama.~~

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

1 diem, travel, and expense allowance as is paid by law to state
2 employees for the time spent in the performance of duties and
3 necessary travel.

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

14 "The Workers' Compensation Medical Services Board
15 shall function as a part of the Department of ~~Industrial~~
16 ~~Relations and Labor.~~ The board shall have ~~the~~ no additional
17 authority, duties, ~~and or~~ responsibilities ~~as~~ beyond those
18 prescribed in this article. The board may meet quarterly at a
19 time and place designated by the chair, and may meet more
20 frequently at the call of the chair. Members of the board may
21 participate in a meeting of the board by means of telephone
22 conference, video conference, or similar communications
23 equipment by means of which all persons participating in the
24 meeting may hear each other at the same time and members of
25 the public may simultaneously listen to the meeting.
26 Participation by such means shall constitute presence in
27 person at a meeting for all purposes. The board shall elect

1 one of its members as chair who shall serve a term of one
2 year.

3 "A quorum for purposes of the board is eight of the
4 16 board members. A quorum shall be sufficient to transact all
5 business put forth before the board. At least eight like votes
6 is required to recommend any changes to the Director of the
7 Department of Labor. The board may adopt rules governing its
8 own proceedings. The department shall provide the board with
9 necessary meeting and office space, secretarial and clerical
10 support, reimbursement for travel expenses and per diem as
11 specified in this article. ~~Upon approval of the director, the~~
12 ~~Lieutenant Governor, and the Speaker of the House of~~
13 ~~Representatives, additional funding as required by the board~~
14 ~~for the employment of consultants, attorneys, and other~~
15 ~~professional staff necessary to accomplish the purposes and~~
16 ~~objectives stated in this article may be provided.~~

17 "§25-5-312.

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

23 "(1) Study, develop, and ~~implement any~~ recommend to
24 the Director of the Department of Labor necessary and
25 reasonable guidelines ~~for medical services and physician care~~
26 ~~provided by physicians. In addition, with respect to services~~
27 ~~provided by physicians, the board shall study, develop, and~~

1 ~~recommend to the director uniform medical criteria and~~
2 ~~policies for the conduct of utilization review, bill~~
3 ~~screenings, and medical necessity determinations for use by~~
4 ~~insurance carriers, self-insurers, and claims administrators~~
5 to promote efficiency and reduce costs with respect to
6 providing services under this article.

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

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

15 "~~(3)~~(4) Address and give consideration to those
16 matters referred to it by the director.

17 "~~(4)~~(5) The board ~~shall contract~~ may consult with
18 physicians, health care providers, professional associations
19 of physicians, ~~and~~ health-related organizations, attorneys,
20 and others to provide the board with ~~consultation, and~~
21 ~~research and development~~ expertise in discharging its duties
22 and responsibilities under this article. ~~Any contract entered~~
23 ~~into by the board shall be approved by the director and~~
24 ~~submitted as are other state contracts.~~

25 "~~(5)~~(6) The board ~~may establish, by regulations~~
26 ~~promulgated by the department, regional committees of~~
27 ~~physicians appointed by the board to perform any duties and~~

1 ~~responsibilities specified by the board in programs~~
2 ~~established for the delivery of medical services under this~~
3 ~~article. In addition the board shall appoint board certified~~
4 ~~physicians in any of the medical or surgical specialties to~~
5 ~~act as independent expert medical consultants to the ombudsman~~
6 ~~in connection with the resolution of disputes involving~~
7 ~~physicians providing medical services to injured workers.~~
8 ~~Members of the regional committees shall be physicians and~~
9 ~~shall serve at the pleasure of the board.~~ Physicians serving
10 ~~as members of the regional committees as constituted under~~
11 ~~this section or~~ independent expert medical consultants to the
12 ombudsman shall be granted the same immunities as provided
13 members of the board under this article and existing state
14 law.

15 "(7) The Workers' Compensation Medical Services
16 Board must provide to the Director of the Department of Labor
17 all initial reports, designs, and recommendations contemplated
18 under subdivisions (1), (2), and (3) within three months from
19 the date upon which all appointments to the board have been
20 made pursuant to Section 25-5-311. Regardless of the status of
21 the board's communication of or the director's review,
22 approval, or implementation of these reports, designs, and
23 recommendations, the schedule of maximum fees set forth in
24 Section 25-5-313 shall take effect no later than six months
25 after adoption of the new administrative procedures, which
26 shall be adopted no later than nine months after all the
27 members of the board are appointed.

1 "~~(6)~~(8) Implementation of this section shall be
2 governed by and subject to the Alabama Administrative
3 Procedure Act. Rules and regulations relating to the duties
4 and authority of the board, enumerated herein, may be
5 promulgated only with the consent of both the director and the
6 board. In no event may the board or the director implement any
7 procedure or rule that increases the maximum fees established
8 pursuant to Section 25-5-313.

9 "§25-5-313.

10 "(a) The Workers' Compensation Medical Services
11 Board shall adopt, pursuant to the time provisions in Section
12 25-5-312(7), a comprehensive schedule of maximum fees for
13 compensation to providers as set forth below: Within 60 days
14 from May 19, 1992, the Workers' Compensation Medical Services
15 Board shall submit to the Governor an initial schedule of
16 maximum fees for medical services covered by this article,
17 which schedule shall become effective immediately upon
18 submission to the Governor. The initial schedule of maximum
19 fees shall be established by the board in the manner
20 prescribed in this section. The fee for each service in the
21 schedule shall be exactly equal to an amount derived by
22 multiplying the preferred provider reimbursement customarily
23 paid on May 19, 1992, by the largest health care service plan
24 incorporated pursuant to Sections 10-4-100 to 10-4-115,
25 inclusive, by a factor of 1.075, which product shall be the
26 maximum fee for each such service. In addition the board may
27 submit to the Governor for approval on or before January 31,

1 ~~1993, a revised schedule of selected fees for medical services~~
2 ~~covered by this article, which fees shall not exceed the fees~~
3 ~~established in the initial schedule of fees by more than 2 1/2~~
4 ~~percent. The revised schedule of fees, but not individual fees~~
5 ~~or separate portions thereof, shall be subject to acceptance~~
6 ~~or rejection by the Governor. If the revised schedule of fees~~
7 ~~is rejected by the Governor, it shall be referred to the board~~
8 ~~for further consideration and the initial schedule of maximum~~
9 ~~fees shall continue to be in effect until the Governor and the~~
10 ~~board reach agreement; provided, however, the schedule of~~
11 ~~maximum fees in effect on January 31, 1993, shall not be~~
12 ~~subject to further revision through this process.~~

13 "(1) Provider (other than Hospital) Reimbursement
14 Rate. The director's maximum fee schedule for providers,
15 including physicians, other than those expressly set forth
16 below under "hospital reimbursement maximum rates," shall be
17 calculated by the director as follows: The provider
18 reimbursement rate will be equal to an amount derived by
19 multiplying the provider reimbursement rate customarily paid
20 on January 1 of each calendar year by the largest health care
21 service plan incorporated pursuant to Sections 10-4-100 to
22 10-4-115, inclusive, by a factor of 1.075, which product shall
23 be the maximum fee for each such service. If there is more
24 than one provider reimbursement rate for the same service, the
25 rate applied shall be the lesser of the two fees, subject to
26 adjudication and bill screening guidelines as approved by the
27 Department of Labor.

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

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

22 "b. Hospital Outpatient Reimbursement Rate. The
23 hospital outpatient reimbursement shall be a flat rate equal
24 to an amount derived by multiplying the Addendum B Medicare
25 outpatient pricer system payment rate by HCPCS customarily
26 paid on January 1 of each calendar year times a factor of
27 1.35. Radiology, pathology and lab, and diagnostic and

1 physician fees not generally associated to the approved
2 procedure shall be equal to the provider reimbursement rate
3 stated in subdivision (1), which shall be the maximum fee for
4 each service. All implantables will be paid at the hospital
5 implant acquisition cost.

6 "c. Physical Therapy in Hospital Outpatient Setting.

7 The reimbursement rate for physical therapy services in a
8 hospital outpatient setting shall be equal to the provider
9 reimbursement rate stated in subdivision (1), which shall be
10 the maximum fee for each such service.

11 "(3) Pharmacy Maximum Reimbursement Rates.

12 Pharmaceuticals shall be reimbursed pursuant to the
13 pharmaceutical reimbursement formula for prescribed drugs,
14 subject to the following:

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

18 "b. A pharmaceutically and therapeutically
19 equivalent drug product (generic) will be reimbursed at a rate
20 equal to the average wholesale priced as published by the
21 Medi-Span Directory minus 30 percent plus a five dollar (\$5)
22 handling fee.

23 "c. A pharmaceutically and therapeutically
24 equivalent drug product (generic) must be selected by the
25 physician or authorized health care provider, in accordance
26 with the requirements of Section 34-23-9, unless the physician

1 or authorized health care provider mandates a brand name drug
2 in contemporaneous clinic notes.

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

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

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

20 "No maximum reimbursement rate set forth herein may
21 be exceeded. The ~~schedule of~~ maximum fees and any additions,
22 deletions, corrections, or changes thereto ~~shall not be~~
23 considered is a rule or regulation requiring publication under
24 the Alabama Administrative Procedure Act. It is the express
25 legislative intent that the Workers' Compensation Medical
26 Services Board may establish a system of maximum fees under
27 this section for services rendered by physicians to employees

1 covered by the ~~Workers' Compensation Law~~ and that the schedule
2 of fees shall replace and supplant traditional competitive
3 market mechanisms in the interest of obtaining quality
4 physician services in a cost effective manner. The board shall
5 annually adjust the schedule of fees established pursuant to
6 this section by increases which shall be no more than the
7 annual increase in the cost of living as reflected by the U.
8 S. Department of Labor consumer price index. The board may,
9 from time to time, add to or adjust the schedule of fees in
10 response to changes in technology and medical practice,
11 subject only to the right of the Governor to accept or reject
12 the addition or adjustment made by the board, and to refer to
13 the board for further consideration any additions or
14 adjustments which he or she may reject. In the event that at
15 any time a state or federal tax, levy, fee, or assessment is
16 imposed or assessed on physicians licensed to practice
17 medicine which tax, levy, fee, or assessment is based in whole
18 or in part upon the provision of professional services in
19 connection with the practice of medicine, then, in that event,
20 the board may, subject to the approval of the Governor, within
21 three months of the effective date of the tax, levy, fee, or
22 assessment issue a revised schedule of maximum fees which
23 increases the maximum fee for each service reflected therein
24 by an amount which shall be no more than the rate fixed by law
25 of the tax, levy, fee, or assessment. This provision shall not
26 be construed to include income or sales tax increases
27 published by the Department of Labor. The liability of the

1 employer for the payment of services rendered by ~~physicians~~
2 ~~providers~~ shall not exceed those maximum fees ~~established by~~
3 ~~the board and approved by the Governor~~ determined pursuant to
4 this section. The employees shall not be liable to the
5 ~~physician provider~~ for any amount in excess of the schedule of
6 maximum fees ~~established by the board and approved by the~~
7 ~~Governor~~ determined pursuant to this section.

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

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

20 "\$25-5-314.

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

1 ~~hospitals, and any other health care provider and the~~
2 ~~employer, workers' compensation insurance carrier,~~
3 ~~self-insured employer, or group fund.~~

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

9 "§25-5-316.

10 "(a) There is established in the State Treasury a
11 fund entitled the Workers' Compensation Administrative Trust
12 Fund, into which shall be deposited certain assessments
13 provided under Chapter 5 (commencing with Section 25-5-1) of
14 Title 25 collected by the Department of ~~Industrial Relations~~
15 Labor. The fund shall constitute a separate fund to be
16 disbursed by the state Comptroller on order of the Director of
17 the Department of ~~Industrial Relations~~ Labor. All expenses
18 incurred by the department under the Workers' Compensation
19 Law, including the salaries of all employees, travel cost, and
20 any other cost of administration and enforcement as may become
21 necessary, either within or without the state, shall be paid
22 from the separate fund in the State Treasury upon warrants of
23 the state Comptroller drawn upon the State Treasury from time
24 to time when vouchers therefor are approved by the director.
25 The State Treasurer shall pay moneys from the separate fund
26 upon the order of the director. The total expense for every
27 purpose incurred shall not exceed the total assessment

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

1 from the Second Injury Trust Fund as of August 31, 1991, shall
2 be paid all weekly benefits due to date and the benefits shall
3 be continued for the duration of claim. Those amounts shall be
4 paid from the moneys as allocated.

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

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

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

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

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

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

25 "(g) The department may require from each insurance
26 carrier, self-insured employer, and group fund reports with
27 respect to all payments of compensation and medical payments

1 by the insurance carriers, self-insured employers, or group
2 funds during each calendar year, and may determine the amounts
3 paid by each insurance carrier, self-insured employer, and
4 group fund and may determine the amounts paid by all insurance
5 carriers, self-insured employers, and group funds during the
6 period.

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

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

22 Section 2. The provisions of this act are expressly
23 declared not to be severable. If any provision of this act
24 shall be adjudged to be invalid by any court of competent
25 jurisdiction, then this entire act shall be invalid and void.

1 Section 3. This act shall become effective
2 immediately following its passage and approval by the
3 Governor, or its otherwise becoming law.