

CHAPTER 615

AN ACT to amend the workers' compensation law, generally
Became a law April 13, 1922, with the approval of the Governor.
Passed, three-fifths being present.

The People of the State of New York, represented in Senate and
Assembly, do enact as follows:

Section 1. Chapter eight hundred and sixteen of the laws of nineteen
hundred and thirteen, entitled "An act in relation to assuring
compensation for injuries or death of certain employees in the course of
their employment and repealing certain sections of the labor law
relating thereto, constituting chapter sixty-seven of the consolidated
laws," as re-enacted by chapter forty-one of the laws of nineteen
hundred and fourteen, as amended, is hereby amended to read as follows:

CHAPTER 67 OF THE CONSOLIDATED LAWS

WORKERS' COMPENSATION LAW

Article 1.	Short title; definitions; application	(§§ 1-4)
2.	Compensation	(§§ 9-35)
3.	Occupational diseases	(§§ 37-48)
3-A.	Occupational loss of hearing	(§§ 49-aa--49-hh)
4.	Security for compensation	(§§ 50-58)
5.	County self-insurance plan	(§§ 60--75-a)
6.	State insurance fund	(§§ 76-100)
6-A.	Workers' compensation security funds	(§§ 106--109-f)
7.	Miscellaneous provisions	(§§ 110-137)
8.	Administration	(§§ 140-157)
8-A.	World Trade Center rescue, recovery and clean-up operations	(§§ 161-169)
9.	Disability benefits	(§§ 200-242)
10.	Workmen's compensation act for civil defense volunteers	(§§ 300-328)
10-A.	Preferred provider organizations	(§§ 350-355)
11.	Laws repealed; when to take effect	(§§ 400-401)

ARTICLE 1

SHORT TITLE; DEFINITIONS; APPLICATION

Section 1. Short title.

2. Definitions.
3. Application.
4. Special applicability; domestic partners; surviving domestic partners; death benefits; funeral expenses; terrorist attacks of September eleventh, two thousand one; construction.

§ 1. Short title. a. This chapter shall be known as the "workers' compensation law."

b. Reference in this chapter or in any other law to the workmen's compensation law shall be deemed to mean and refer to the workers' compensation law. The terms "workman" or "workmen" appearing in this chapter shall be deemed to mean "worker" or "workers", respectively. The terms "he," "his," or "him," appearing in this chapter shall be deemed to mean "he or she," "his or her," and "him or her."

§ 2. Definitions. As used in this chapter, 1. "Hazardous employment" means a work or occupation described in section three of this chapter.

2. "Department" means the department of labor of the state of New York;

"Chairman" means the chairman of the workers' compensation board of the state of New York;

"Commissioner" means the industrial commissioner of the state of New York;

"Board" means the workers' compensation board of the state of New York;

"Commissioners" means the commissioners of the state insurance fund of the department of labor of the state of New York.

3. "Employer," except when otherwise expressly stated, means a person, partnership, association, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association or corporation, having one or more persons in

employment, including the state, a municipal corporation, fire district or other political subdivision of the state, and every authority or commission heretofore or hereafter continued or created by the public authorities law. For the purposes of this chapter only "employer" shall also mean a person, partnership, association, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association or corporation who delivers or causes to be delivered newspapers or periodicals for delivering or selling and delivering by a newspaper carrier under the age of eighteen years as defined in section thirty-two hundred twenty-eight of the education law, but shall not include delivering newspapers or shopping news to the consumer (including any services directly related to such trade or business) by a person who is not performing commercial goods transportation services for a commercial goods transportation contractor within the meaning of article twenty-five-C of the labor law. For the purpose of this chapter only, "employer" shall also mean a person, partnership, association, or corporation who leases or otherwise contracts with an operator or lessee for the purpose of driving, operating or leasing a taxicab as so defined in section one hundred forty-eight-a of the vehicle and traffic law, except where such person is an owner-operator of such taxicab who personally regularly operates such vehicle an average of forty or more hours per week and leases such taxicab for some portion of the remaining time, and except if the taxicab is a livery subject to section eighteen-c of this chapter, in which case the livery driver's employer shall only be such employer as is defined in that section. For the purposes of this section only, such an owner-operator shall be deemed to be an employer if he controls, directs, supervises, or has the power to hire or terminate such other person who leases the vehicle.

Notwithstanding any other provision of this chapter and for purposes of this chapter only, "employer" shall mean, with respect to a jockey, apprentice jockey or exercise person licensed under article two or four of the racing, pari-mutuel wagering and breeding law, and at the election of the New York Jockey Injury Compensation Fund, Inc., with the approval of the New York state gaming commission, employees of licensed trainers or owners, performing services for an owner or trainer in

connection with the training or racing of a horse at a facility of a racing association or corporation subject to article two or four of the racing, pari-mutuel wagering and breeding law and subject to the jurisdiction of the New York state gaming commission, The New York Jockey Injury Compensation Fund, Inc. and all owners and trainers who are licensed or required to be licensed under article two or four of the racing, pari-mutuel wagering and breeding law at the time of any occurrence for which benefits are payable pursuant to this chapter in respect to the injury or death of such jockey, apprentice jockey, exercise person or, if approved by the New York state gaming commission, employee of a licensed trainer or owner.

Notwithstanding any other provision of this chapter, and for purposes of this chapter only, the employer of a black car operator, as defined in article six-F of the executive law, shall, on and after the fund liability date, as defined in such article, be the New York black car operators' injury compensation fund, inc. created pursuant to such article.

For the purpose of this chapter only, whether a livery base operating in any locality where liveries must register with a local taxi and limousine commission shall be deemed the "employer" of any livery driver engaging in covered services shall be determined in accordance with section eighteen-c of this chapter.

4. "Employee" means a person engaged in one of the occupations enumerated in section three of this article or who is in the service of an employer whose principal business is that of carrying on or conducting a hazardous employment upon the premises or at the plant, or in the course of his or her employment away from the plant of his or her employer; "employee" shall also mean for the purposes of this chapter any individual performing services in construction for a contractor who does not overcome the presumption of employment as provided under section eight hundred sixty-one-c of the labor law; "employee" shall also mean for the purposes of this chapter any individual performing services in the commercial goods transportation industry for a commercial goods transportation contractor who does not overcome the

presumption of employment as provided under section eight hundred sixty-two-b of the labor law; "employee" shall also mean for the purposes of this chapter civil defense volunteers who are personnel of volunteer agencies sponsored or authorized by a local office under regulations of the civil defense commission, to the extent of the provisions of groups seventeen and nineteen; "employee" shall at the election of a municipal corporation made pursuant to local law duly enacted also mean a member of an auxiliary police organization authorized by local law; and for the purposes of this chapter only a newspaper carrier under the age of eighteen years as defined in section thirty-two hundred twenty-eight of the education law, but shall not include delivery of newspapers or shopping news to the consumer (including any services directly related to such trade or business) by a person who is not performing commercial goods transportation services for a commercial goods transportation contractor within the meaning of article twenty-five-C of the labor law, and shall not include domestic servants except as provided in section three of this chapter, and except where the employer has elected to bring such employees under the law by securing compensation in accordance with the terms of section fifty of this chapter. The term "employee" shall not include persons who are members of a supervised amateur athletic activity operated on a non-profit basis, provided that said members are not also otherwise engaged or employed by any person, firm or corporation participating in said athletic activity, nor shall it include the spouse or minor child of an employer who is a farmer unless the services of such spouse or minor child shall be engaged by said employer under an express contract of hire nor shall it include an executive officer of a corporation who at all times during the period involved owns all of the issued and outstanding stock of the corporation and holds all of the offices pursuant to paragraph (e) of section seven hundred fifteen of the business corporation law or two executive officers of a corporation who at all times during the period involved between them own all of the issued and outstanding stock of such corporation and hold all such offices except as provided in subdivision six of section fifty-four of this chapter provided, however, that where there are two executive officers of a corporation each officer must own at least one share of stock, nor shall it include a self-employed person or a partner of a

partnership as defined in section ten of the partnership law who is not covered under a compensation insurance contract or a certificate of self-insurance as provided in subdivision eight of section fifty-four of this chapter, nor shall it include farm laborers except as provided in group fourteen-b of section three of this chapter. If a farm labor contractor recruits or supplies farm laborers for work on a farm, such farm laborers shall for the purposes of this chapter be deemed to be employees of the owner or lessee of such farm. The term "employee" shall not include baby sitters as defined in subdivision three of section one hundred thirty-one and subdivision three of section one hundred thirty-two of the labor law or minors fourteen years of age or over engaged in casual employment consisting of yard work and household chores in and about a one family owner-occupied residence or the premises of a non-profit, non-commercial organization, not involving the use of power-driven machinery. The term "employee" shall not include persons engaged by the owner in casual employment consisting of yard work, household chores and making repairs to or painting in and about a one-family owner-occupied residence. The term "employee" shall not include the services of a licensed real estate broker or sales associate if it be proven that (a) substantially all of the remuneration (whether or not paid in cash) for the services performed by such broker or sales associate is directly related to sales or other output (including the performance of services) rather than to the number of hours worked; (b) the services performed by the broker or sales associate are performed pursuant to a written contract executed between such broker or sales associate and the person for whom the services are performed within the past twelve to fifteen months; and (c) the written contract provided for in paragraph (b) of this subdivision was not executed under duress and contains the following provisions:

(i) that the broker or sales associate is engaged as an independent contractor associated with the person for whom services are performed pursuant to article twelve-A of the real property law and shall be treated as such for all purposes, including but not limited to federal and state taxation, withholding, unemployment insurance and workers' compensation;

(ii) that the broker or sales associate (A) shall be paid a commission on his or her gross sales, if any, without deduction for taxes, which

commission shall be directly related to sales or other output; (B) shall not receive any remuneration related to the number of hours worked; and (C) shall not be treated as an employee with respect to such services for federal and state tax purposes;

(iii) that the broker or sales associate shall be permitted to work any hours he or she chooses;

(iv) that the broker or sales associate shall be permitted to work out of his or her own home or the office of the person for whom services are performed;

(v) that the broker or sales associate shall be free to engage in outside employment;

(vi) that the person for whom the services are performed may provide office facilities and supplies for the use of the broker or sales associate, but the broker or sales associate shall otherwise bear his or her own expenses, including but not limited to automobile, travel, and entertainment expenses;

(vii) that the person for whom the services are performed and the broker or sales associate shall comply with the requirements of article twelve-A of the real property law and the regulations pertaining thereto, but such compliance shall not affect the broker or sales associate's status as an independent contractor nor should it be construed as an indication that the broker or sales associate is an employee of the person for whom the services are performed for any purpose whatsoever;

(viii) that the contract and the association created thereby may be terminated by either party thereto at any time upon notice given to the other.

"Employee" shall also mean, for purposes of this chapter, an infant rendering services for the public good as prescribed in sections seven hundred fifty-eight-a and 353.6 of the family court act.

For the purpose of this chapter only, "employee" shall also mean a driver, operator or lessee who contracts with an owner, operator or lessor for the purpose of operating a taxicab as so defined in section one hundred forty-eight-a of the vehicle and traffic law, except where such person leases the taxicab from a person who personally, regularly operates such vehicle an average of forty or more hours per week, and

except if the taxicab is a livery subject to section eighteen-c of this chapter, in which case the livery driver's employer shall only be such employer as is defined in that section. For the purposes of this section only, such person shall be deemed to be an employee of the owner-operator if the owner-operator controls, directs, supervises, or has the power to hire or terminate such person.

"Employee" shall also mean, for purposes of this chapter, a professional musician or a person otherwise engaged in the performing arts who performs services as such for a television or radio station or network, a film production, a theatre, hotel, restaurant, night club or similar establishment unless, by written contract, such musician or person is stipulated to be an employee of another employer covered by this chapter. "Engaged in the performing arts" shall mean performing service in connection with the production of or performance in any artistic endeavor which requires artistic or technical skill or expertise.

Notwithstanding any other provision of this chapter, and for purposes of this chapter only, a jockey, apprentice jockey or exercise person licensed under article two or four of the racing, pari-mutuel wagering and breeding law, and at the election of the New York Jockey Injury Compensation Fund, Inc., with the approval of the New York state gaming commission, employees of licensed trainers or owners, performing services for an owner or trainer in connection with the training or racing of a horse at a facility of a racing association or corporation subject to article two or four of the racing, pari-mutuel wagering and breeding law and subject to the jurisdiction of the New York state gaming commission shall be regarded as the "employee" not solely of such owner or trainer, but shall instead be conclusively presumed to be the "employee" of The New York Jockey Injury Compensation Fund, Inc. and also of all owners and trainers who are licensed or required to be licensed under article two or four of the racing, pari-mutuel wagering and breeding law at the time of any occurrence for which benefits are payable pursuant to this chapter in respect of the injury or death of such jockey, apprentice jockey, exercise person or, if approved by the New York state gaming commission, employee of a licensed trainer or owner.

"Employee" shall also mean, for purposes of this chapter, a professional model, who:

(a) performs modeling services for; or

(b) consents in writing to the transfer of his or her exclusive legal right to the use of his or her name, portrait, picture or image, for advertising purposes or for the purposes of trade, directly to

a retail store, a manufacturer, an advertising agency, a photographer, a publishing company or any other such person or entity, which dictates such professional model's assignments, hours of work or performance locations and which compensates such professional model in return for a waiver of such professional model's privacy rights enumerated above, unless such services are performed pursuant to a written contract wherein it is stated that such professional model is the employee of another employer covered by this chapter. For the purposes of this paragraph, the term "professional model" means a person who, in the course of his or her trade, occupation or profession, performs modeling services. For purposes of this paragraph, the term "modeling services" means the appearance by a professional model in photographic sessions or the engagement of such model in live, filmed or taped modeling performances for remuneration.

Notwithstanding any other provision of this chapter, and for purposes of this chapter only, a black car operator, as defined in article six-F of the executive law, shall, on and after the fund liability date, as defined in such article, be an "employee" of the New York black car operators' injury compensation fund, inc. created pursuant to such article.

"Employee" shall not include, for the purposes of this chapter, the services of a licensed insurance agent or broker if it be proven that (a) substantially all of the remuneration (whether or not paid in cash) for the services performed by such agent or broker is directly related to sales or other output (including the performance of services) rather than to the number of hours worked; (b) such agent is not a life insurance agent receiving a training allowance subsidy described in paragraph three of subsection (e) of section four thousand two hundred twenty-eight of the insurance law; (c) the services performed by the

broker or sales associate are performed pursuant to a written contract executed between such broker or sales associate and the person for whom the services are performed; and (d) the written contract provided for in clause (c) of this paragraph was not executed under duress and contains the following provisions:

(i) that the agent or broker is engaged as an independent contractor associated with the person for whom services are performed pursuant to article twenty-one of the insurance law and shall be treated as such for all purposes, including but not limited to federal and state taxation, withholding (other than federal insurance contributions act (FICA) taxes required for full time life insurance agents pursuant to section 3121(d)(3) of the federal internal revenue code), unemployment insurance and workers' compensation;

(ii) that the agent or broker (1) shall be paid a commission on his or her gross sales, if any, without deduction for taxes (other than federal insurance contributions act (FICA) taxes required for full time life insurance agents pursuant to section 3121(d)(3) of the federal internal revenue code), which commission shall be directly related to sales or other output; (2) shall not receive any remuneration related to the number of hours worked; and (3) shall not be treated as an employee with respect to such services for federal and state tax purposes (other than federal insurance contributions act (FICA) taxes required for full time life insurance agents pursuant to section 3121(d)(3) of the federal internal revenue code);

(iii) that the agent or broker shall be permitted to work any hours he or she chooses;

(iv) that the agent or broker shall be permitted to work out of his or her own office or home or the office of the person for whom services are performed;

(v) that the person for whom the services are performed may provide office facilities, clerical support, and supplies for the use of the agent or broker, but the agent or broker shall otherwise bear his or her own expenses, including but not limited to automobile, travel, and entertainment expenses;

(vi) that the person for whom the services are performed and the agent or broker shall comply with the requirements of article twenty-one of the insurance law and the regulations pertaining thereto, but such

compliance shall not affect the agent's or broker's status as an independent contractor nor should it be construed as an indication that the agent or broker is an employee of the person for whom the services are performed for any purpose whatsoever;

(vii) that the contract and the association created thereby may be terminated by either party thereto at any time with notice given to the other.

"Employee" shall not include a media sales representative if it be proven that (a) substantially all of the compensation for the services performed by such media sales representative is directly related to sales or other productivity rather than to the number of hours worked; (b) the media sales representative must be incorporated under the laws of this state in order to be considered an independent contractor and shall be solely responsible for the payment of workers' compensation premiums; (c) the services performed by the media sales representative are performed pursuant to a written contract executed between such media sales representative and the person for whom the services are performed; and (d) the written contract provided for in subparagraph (c) of this paragraph was not executed under duress and contains the following provisions:

(i) that the media sales representative is engaged as an independent contractor associated with the person for whom services are performed and shall be treated as such for all purposes, including but not limited to federal and state taxation, withholdings, and workers' compensation;

(ii) that the media sales representative (A) shall be paid a commission based on a fixed fee rate outlined in the written contract, if any, without deduction for taxes, which commission shall be directly related to sales pursuant to price guidelines or other productivity within the sales area; (B) shall not receive any compensation related to the number of hours worked; and (C) shall not be treated as an employee with respect to such services for federal and state tax purposes;

(iii) that the media sales representative shall be permitted to work any hours he or she chooses subject to the restrictions in section three hundred ninety-nine-p of the general business law;

(iv) that the media sales representative may work at any site other than on the premises of the person for whom services are performed;

(v) that the person for whom the services are performed shall not be

responsible for any reimbursement expenses other than those outlined in the written contract;

(vi) that the person for whom the services are performed and the media sales representative shall comply with all articles of the labor law that apply to such work other than article eighteen of the labor law, but such compliance shall not affect the media sales representative's status as an independent contractor nor shall it be construed as an indication that the media sales representative is an employee of the person for whom the services are performed for any purpose whatsoever; and

(vii) that the contract and the association created thereby may be terminated by the media sales representative thereto at any time with two weeks notice given to the person for whom the services are performed.

For the purposes of this subdivision, "media sales representative" shall include any contractor engaged in the sale or renewal of magazine subscriptions or the sale or renewal of magazine advertising space who (i) receives no direction or control on the methods by which they perform services other than training on product characteristics, (ii) are solely in control of their work schedule, and (iii) may refuse any work assignment.

For the purpose of this chapter only, whether a livery driver dispatched by an independent livery base, as those terms are defined in article six-G of the executive law, is an "employee" shall be determined in accordance with section eighteen-c of this chapter.

5. "Employment" includes employment in a trade, business or occupation carried on by the employer for pecuniary gain, or in connection therewith, except where the employer elects to bring his or her employees within the provisions of this chapter as provided in section three of this article, and except employment as a domestic worker as provided in section three of this article, and except where a town elects to have the provisions of this chapter apply to the town superintendent of highways. "Employment" shall also include, in connection with the civil defense effort and for purposes of this

chapter the service of a civil defense volunteer in authorized activities of a volunteer agency sponsored or authorized by a local office as defined in a state defense emergency act. "Employment" shall also include participation with an auxiliary police effort made within a municipal corporation which elected to include auxiliary police officers within the definition of "employee" as authorized by subdivision four of this section and for purposes of this chapter, the services of members or volunteers in activities authorized by local law. The service of a civil defense volunteer who is also an employee recompensed by an employer for service to such employer, shall not be deemed to be in employment of a local office when he or she is performing civil defense service in his or her employment or in relation thereto. For the purposes of this chapter only "employment" shall also include the delivery or sale and delivery of newspapers or periodicals by a newspaper carrier as defined in section thirty-two hundred twenty-eight of the education law, but shall not include delivery of newspapers or shopping news to the consumer (including any services directly related to such trade or business) by a person who is not performing commercial goods transportation services for a commercial goods transportation contractor within the meaning of article twenty-five-C of the labor law. The term "employment" shall not include the services of a licensed real estate broker or sales associate if it be proven that (a) substantially all of the remuneration (whether or not paid in cash) for the services performed by such broker or sales associate is directly related to sales or other output (including the performance of services) rather than to the number of hours worked; (b) the services performed by the broker or sales associate are performed pursuant to a written contract executed between such broker or sales associate and the person for whom the services are performed within the past twelve to fifteen months; and (c) the written contract provided for in paragraph (b) herein was not executed under duress and contains the following provisions:

(i) that the broker or sales associate is engaged as an independent contractor associated with the person for whom services are performed pursuant to article twelve-A of the real property law and shall be treated as such for all purposes, including but not limited to federal and state taxation, withholding, unemployment insurance and workers' compensation;

(ii) that the broker or sales associate (A) shall be paid a commission on his or her gross sales, if any, without deduction for taxes, which commission shall be directly related to sales or other output; (B) shall not receive any remuneration related to the number of hours worked; and (C) shall not be treated as an employee with respect to such services for federal and state tax purposes;

(iii) that the broker or sales associate shall be permitted to work any hours he or she chooses;

(iv) that the broker or sales associate shall be permitted to work out of his or her own home or the office of the person for whom services are performed;

(v) that the broker or sales associate shall be free to engage in outside employment;

(vi) that the person for whom the services are performed may provide office facilities and supplies for the use of the broker or sales associate, but the broker or sales associate shall otherwise bear his or her own expenses, including but not limited to automobile, travel, and entertainment expenses;

(vii) that the person for whom the services are performed and the broker or sales associate shall comply with the requirements of article twelve-A of the real property law and the regulations pertaining thereto, but such compliance shall not affect the broker or sales associate's status as an independent contractor nor should it be construed as an indication that the broker or sales associate is an employee of the person for whom the services are performed for any purpose whatsoever;

(viii) that the contract and the association created thereby may be terminated by either party thereto at any time upon notice given to the other.

For the purpose of this chapter only, "employment" shall also include the service of a driver, operator or lessee of a taxicab as so defined in section one hundred forty-eight-a of the vehicle and traffic law, except where a person leases a taxicab from an owner-operator of a taxicab who, regularly operates the vehicle an average of forty or more hours per week. Such a lessee shall be deemed to be in employment if the lessor controls, directs, supervises, or has the power to hire or

terminate the lessee.

Notwithstanding any other provision of this chapter, and for purposes of this chapter only, a jockey, apprentice jockey or exercise person licensed under article two or four of the racing, pari-mutuel wagering and breeding law, and at the election of the New York Jockey Injury Compensation Fund, Inc., with the approval of the New York state gaming commission, employees of licensed trainers or owners, performing services for an owner or trainer in connection with the training or racing of a horse at a facility of a racing association or corporation subject to article two or four of the racing, pari-mutuel wagering and breeding law and subject to the jurisdiction of the New York state gaming commission shall be regarded as in the "employment" not solely of such owner and trainer, but shall instead be conclusively presumed to be in the "employment" of The New York Jockey Injury Compensation Fund, Inc. and of all owners and trainers who are licensed or required to be licensed under article two or four of the racing, pari-mutuel wagering and breeding law, at the time of any occurrence for which benefits are payable pursuant to this chapter in respect of the injury or death of such jockey, apprentice jockey, exercise person or, if approved by the New York state gaming commission, employee of a licensed trainer or owner. For the purpose of this chapter only, whether a livery driver's performance of covered services, as those terms are defined in article six-G of the executive law, constitutes "employment" shall be determined in accordance with section eighteen-c of this chapter.

Notwithstanding any other provision of this chapter, and for purposes of this chapter only, a black car operator, as that term is defined in article six-F of the executive law, shall, on and after the fund liability date, as that term is defined in such article, be regarded as in the "employment" of the New York black car operators' injury compensation fund, inc. created pursuant to such article.

"Employment" shall not include, for the purposes of this chapter, the services of a licensed insurance agent or broker if it be proven that (a) substantially all of the remuneration (whether or not paid in cash) for the services performed by such agent or broker is directly related to sales or other output (including the performance of services) rather

than to the number of hours worked; (b) such agent is not a life insurance agent receiving a training allowance subsidy described in paragraph three of subsection (e) of section four thousand two hundred twenty-eight of the insurance law; (c) the services performed by the agent or broker are performed pursuant to a written contract executed between such agent or broker and the person for whom the services are performed; and (d) the written contract provided for in clause (c) of this paragraph was not executed under duress and contains the following provisions:

(i) that the agent or broker is engaged as an independent contractor associated with the person for whom services are performed pursuant to article twenty-one of the insurance law and shall be treated as such for all purposes, including but not limited to federal and state taxation, withholding (other than federal insurance contributions act (FICA) taxes required for full time life insurance agents pursuant to section 3121(d)(3) of the federal internal revenue code), unemployment insurance and workers' compensation;

(ii) that the agent or broker (1) shall be paid a commission on his or her gross sales, if any, without deduction for taxes (other than federal insurance contributions act (FICA) taxes required for full time life insurance agents pursuant to section 3121(d)(3) of the federal internal revenue code), which commission shall be directly related to sales or other output; (2) shall not receive any remuneration related to the number of hours worked; and (3) shall not be treated as an employee with respect to such services for federal and state tax purposes (other than federal insurance contributions act (FICA) taxes required for full time life insurance agents pursuant to section 3121(d)(3) of the federal internal revenue code);

(iii) that the agent or broker shall be permitted to work any hours he or she chooses;

(iv) that the agent or broker shall be permitted to work out of his or her own office or home or the office of the person for whom services are performed;

(v) that the person for whom the services are performed may provide office facilities, clerical support, and supplies for the use of the agent or broker, but the agent or broker shall otherwise bear his or her own expenses, including but not limited to automobile, travel, and

entertainment expenses;

(vi) that the person for whom the services are performed and the agent or broker shall comply with the requirements of article twenty-one of the insurance law and the regulations pertaining thereto, but such compliance shall not affect the agent's or broker's status as an independent contractor nor should it be construed as an indication that the agent or broker is an employee of the person for whom the services are performed for any purpose whatsoever;

(vii) that the contract and the association created thereby may be terminated by either party thereto at any time with notice given to the other.

"Employment" shall not include the services of a media sales representative if it be proven that (A) substantially all of the compensation for the services performed by such media sales representative is directly related to sales or other productivity rather than to the number of hours worked; (B) the media sales representative must be incorporated under the laws of this state in order to be considered an independent contractor and shall be solely responsible for the payment of workers' compensation premiums; (C) the services performed by the media sales representative are performed pursuant to a written contract executed between such media sales representative and the person for whom the services are performed; and (D) the written contract provided for in subparagraph (C) of this paragraph was not executed under duress and contains the following provisions:

(i) that the media sales representative is engaged as an independent contractor associated with the person for whom services are performed and shall be treated as such for all purposes, including but not limited to federal and state taxation, withholdings, and workers' compensation;

(ii) that the media sales representative (A) shall be paid a commission, based on a fixed fee rate outlined in the written contract, if any, without deduction for taxes, which commission shall be directly related to sales pursuant to price guidelines or other productivity within the sales area; (B) shall not receive any compensation related to the number of hours worked; and (C) shall not be treated as an employee with respect to such services for federal and state tax purposes;

(iii) that the media sales representative shall be permitted to work any hours he or she chooses subject to the restrictions in section three

hundred ninety-nine-p of the general business law;

(iv) that the media sales representative may work at any site other than on the premises of the person for whom services are performed;

(v) that the person for whom the services are performed shall not be responsible for any reimbursement expenses other than those outlined in the written contract;

(vi) that the person for whom the services are performed and the media sales representative shall comply with all articles of the labor law that apply to such work other than article eighteen of the labor law, but such compliance shall not affect the media sales representative's status as an independent contractor nor shall it be construed as an indication that the media sales representative is an employee of the person for whom the services are performed for any purpose whatsoever; and

(vii) that the contract and the association created thereby may be terminated by the media sales representative thereto at any time with two weeks notice given to the person for whom the services are performed.

For the purposes of this subdivision, "media sales representative" shall include any contractor engaged in the sale or renewal of magazine subscriptions or the sale or renewal of magazine advertising space who (i) receives no direction or control on the methods by which they perform services other than training on product characteristics, (ii) are solely in control of their work schedule, and (iii) may refuse any work assignment.

6. "Compensation" means the money allowance payable to an employee or to his dependents as provided for in this chapter, and includes funeral benefits provided therein.

7. "Injury" and "personal injury" mean only accidental injuries arising out of and in the course of employment and such disease or infection as may naturally and unavoidably result therefrom. The terms "injury" and "personal injury" shall not include an injury which is solely mental and is based on workrelated stress if such mental injury is a direct consequence of a lawful personnel decision involving a

disciplinary action, work evaluation, job transfer, demotion, or termination taken in good faith by the employer.

8. "Death" when mentioned as a basis for the right to compensation means only death resulting from such injury.

9. "Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the accident, including the reasonable value of board, rent, housing, lodging or similar advantage received from the employer, or in the case of (a) a civil defense volunteer, (b) a volunteer worker in a state department as provided in group sixteen of subdivision one of section three of this chapter, (c) a volunteer worker for a social services district as provided in group seventeen of subdivision one of section three of this chapter, (d) a county fire coordinator, a deputy county fire coordinator or a comparable county official to whom the provisions of group fifteen-a of subdivision one of section three of this chapter are applicable, who is also a volunteer firefighter or ambulance worker, (e) a fire district officer whether elective or appointive and whether or not he or she is compensated for his or her services or a paid fire or ambulance district employee, (f) a state fire instructor whose compensation is paid in whole or in part by the state, (g) an enrolled member of a fire company who, is not a volunteer firefighter, receives compensation for his or her services and is not a full-time firefighter, known as a "call firefighter", (h) persons who are performing services for a public or not-for-profit corporation, association, institution or agency organized as an unincorporated association or duly incorporated under the laws of this state in fulfillment of a sentence of probation or of conditional discharge, or persons performing such services pursuant to the provisions of section 170.55 or 170.56 of the criminal procedure law, (i) an auxiliary police officer in a municipal corporation which elected to include such persons within the definition of "employee" as authorized by subdivision four of this section, or (j) a duly appointed member of a regional hazardous materials incidents team recognized under section two hundred nine-y of the general municipal law, such money rate applying in his or her regular vocation or the amount of the regular earnings of such volunteer, coordinator,

instructor, or comparable officer, fire or ambulance district officer or employee or call firefighter, or team member as the case may be, in his or her regular vocation, plus any amount earned as such a coordinator, instructor or comparable officer, or as such a fire or ambulance district officer or employee or call firefighter or team member, provided, however, that in no event shall the average weekly wage be fixed at less than thirty dollars regardless of whether or not such volunteer, coordinator, instructor or comparable officer or fire or ambulance district officer or employee or call firefighter or team member had gainful employment elsewhere at the time of the injury.

The wages of a livery driver, as defined in article six-G of the executive law, shall be calculated in accordance with this paragraph. The chair shall promulgate regulations, in consultation with the independent livery driver benefit fund, and all local taxi and limousine commissions, as defined in article six-G of the executive law, establishing amounts that livery drivers are presumptively deemed to receive in annual wages, and may vary such presumptive wage by such geographic region or political subdivision of the state as the chair may set. Such regulations may establish other factors or criteria for determining the presumptive wage. The presumptive wage shall be set based on the chair's findings as to the amount earned by livery drivers, and their expenses. A livery driver or the livery driver's employer, including the independent livery driver benefit fund, may rebut the presumptive wage by competent evidence that the driver's actual wages for covered services, as defined in article six-G of the executive law, were different. The chair shall promulgate such other rules as are necessary to compute livery driver wages in accordance with this paragraph.

10. "State fund" means the state insurance fund provided for in article five of this chapter.

11. "Child" shall include a posthumous child, a child legally adopted prior to the injury of the employee; and a step-child or child born out of wedlock dependent upon the deceased.

12. "Insurance carrier" shall include the state fund, stock corporations, mutual corporations or reciprocal insurers with which employers have insured, and employers permitted to pay compensation directly under the provisions of subdivisions three, three-a or four of section fifty of this chapter. For purposes of this chapter, a nonprofit property/casualty insurance company which is licensed pursuant to subsection (b) of section six thousand seven hundred four of the insurance law shall be deemed a stock corporation and a nonprofit property/casualty insurance company which is licensed as a reciprocal insurer pursuant to subsection (c) of section six thousand seven hundred four of the insurance law shall be deemed a reciprocal insurer.

13. "Manufacture," "construction," "operation" and "installation" shall include "repair," "demolition," "fabrication" and "alteration" and shall include all work done in connection with the repair of plants, buildings, grounds and approaches of all places where any of the hazardous employments are being carried on, operated or conducted.

14. "Minor" means a person who has not attained the age of eighteen years.

15. "Occupational disease" means a disease resulting from the nature of employment and contracted therein.

16. "New York state average weekly wage" shall mean the average weekly wage of the state of New York for the previous calendar year as reported by the commissioner of labor to the superintendent of financial services on March thirty-first.

17. A "substantially owned affiliated entity" of any person means the parent company of the person, any subsidiary of the person, or any entity in which the parent of the person owns more than fifty percent of the voting stock, or an entity in which one or more of the top five shareholders of the person individually or collectively also owns a controlling share of the voting stock, or an entity which exhibits any other indicia of control over the person or over which the person exhibits control, regardless of whether or not the controlling party or

parties have any identifiable or documented ownership interest. Such indicia shall include: power or responsibility over employment decisions; access to and/or use of the relevant entity's assets or equipment; power or responsibility over contracts of the person; responsibility for maintenance or submission of certified payroll records; and influence over the business decisions of the relevant entity.

19. A "claim for reimbursement" from the special disability fund means an application to the board under paragraph (f) of subdivision eight of section fifteen of this chapter for a determination that the special disability fund is liable in the first instance for any reimbursement to the insurance carrier, self-insured employer or state insurance fund.

20. A "request for reimbursement" from the special disability fund means an application to the special disability fund for reimbursement for specific costs, subsequent to a determination by the board that the special disability fund is liable to provide reimbursement on the claim.

21. The "workers' compensation rating board" or the "New York workers' compensation rating board" shall mean the compensation insurance rating board until February first, two thousand eight, and thereafter the superintendent of financial services or other entity designated by the superintendent of financial services for collection and analysis of data or such other purposes as set forth in this chapter.

22. "Cost of compensation" means the amount that an employer must pay to secure compensation as calculated in accordance with regulation of the board or, in the absence of such regulation, based on average market rates for a comparable employer.

23. "Special disability fund advisory committee" shall mean an advisory committee to the workers' compensation board, acting by a majority thereof, solely with respect to the special fund entitled the special disability fund, composed of the director of the budget, the commissioner of labor, the commissioner of taxation and finance, the chair of the workers' compensation board, and the superintendent of

financial services.

24. "Employees of licensed trainers or owners" means assistant trainers, foremen, watchmen and stable employees, including grooms and hot-walkers, employed by a trainer or owner licensed pursuant to article two or four of the racing, pari-mutuel wagering and breeding law.

§ 3. Application. 1. Hazardous employments. Compensation shall be payable for injuries or death incurred by employees in the following employments:

Group 1. Canning of:

Fish

Foodstuffs

Fruit

Vegetables

Group 2. Care of:

Buildings

Grounds

Trees

Group 3. Construction of:

Bridges

Buildings

Car shops

Conduits

Curbs

Dams

Dynamos

Electric light and power lines or appliances

Electric railways

Highways

Incline railways

Machine shops

Manufacturing plants

Power plants

Railways

Sewers

Sidewalks
Steam plants
Steam railways
Steel bridges and buildings
Street railways
Structures of all kinds
Subaqueous works
Subways
Telegraph lines
Telephone lines
Group 4. Installation of:
Boilers
Dynamamos
Electric light and power

lines or appliances
Elevators
Engines, stationary
Fire escapes
Heating apparatus
Lighting apparatus
Machinery, heavy
Pipes
Telephones

Group 5. Laying of:
Cables
Floor coverings
Pipes
Tiles
Wires
Group 6. Manufacture of:
Acids
Adding machines
Aeroplanes
Agricultural implements
Aircraft

Alcohol
Ammonia
Ammunition
Anchors
Artificial ice or stone
Asbestos
Asphalt
Asphalted paper
Automobiles
Baby carriages, toy
Bags, cloth and paper
Barrels
Baskets
Beds
Bedsprings
Belting
Bicycles
Biscuits
Blacking or polish for shoes
Blankets
Boats, small
Boilers
Bolts
Bone articles
Boots
Boxes
Brick
Brooms
Brushes
Butter
Buttons
Cables
Calcium carbide
Cameras and supplies
Candles
Candy
Canoes

Canvas
Caps
Cardboard boxes
Carpets
Carpet sweepers
Carriage mountings
Carriages
Cash registers
Castings
Cattle foods
Celluloid
Cement
Cereals
Charcoal
Cheese
Cheese boxes
Chemical preparations, noncorrosive
Chemicals
Cigarettes
Cigars
Cloth
Clothing
Coffins
Collars
Color
Concrete blocks
Condiments
Confectionery
Cordage
Corrosive acids or salts
Corrugated paper boxes
Corsets
Crackers
Cutlery
Dairy products
Door screens
Doors

Drugs
Dyes
Electric fixtures
Elevators
Engines, heavy and traction
Excelsior
Explosives
Extracts
Fabrics
Fabrics, articles from
Felt
Fertilizers
Fibre
Films for pictures
Firearms
Fire-proofing
Fixtures, water, gas or

 electric
Foodstuffs
Forgings
Furnaces
Furniture
Furs
Gas fixtures
Gases
Gasoline
Gelatine
Glass
Glass products and wares
Gloves
Glue
Gold ware
Gun powder
Hardware
Harness
Hats

Headings

Hemp or manila products

Hose, rubber

Hosiery

Ice, artificial

Ice cream

Ink

Implements, agricultural

Instruments

Interior woodwork

Iron, structural

Ivory articles

Japans

Jewelry

Kegs

Leather goods and products

Light machines

Liquors

Locomotives

Machinery

Machines, adding, light and

threshing

Malt liquors

Manila or hemp products

Maltesses

Mattresses

Meat products

Meats

Medicines

Men's clothing

Metal articles, beds,

instruments, toys, utensils

and wares

Metal products, sheet

Metal, structural
Milk products
Mineral water
Motor vehicles
Mouldings
Moving picture films and machines
Nails
Oil
Organs
Paint
Paper
Paper boxes
Paper, tarred, pitched or asphalted
Paste
Paving blocks and material
Perfumes
Petroleum and products thereof
Pharmaceutical preparations
Photographic cameras and supplies
Pianos
Pipes
Pitched paper
Plaster, compounds of
Plated ware
Polish for shoes
Porcelain
Pottery
Printers' rollers
Printing ink
Pyroxylin and its compounds and plastics
Rails
Rattan ware
Registers, cash
Robes
Ropes
Rubber goods
Saddlery

Safes
Salts, or acids, corrosive
Sanitary fixtures
Screens, window and door
Screws
Shades, window
Shafting
Sheet metal and products thereof
Shell articles
Shirts
Shoddy
Shoe blacking or polish
Shoes
Silver ware
Sleighs
Soaps
Socks
Soda water
Spices
Spirituous, liquors
Spokes
Stationery
Staves
Steel, structural
Stockings
Stone, artificial
Stoves
Structural steel, iron or metal
Sweepers, carpet
Tar
Tarred paper
Terra-cotta
Textiles
Textiles, articles from
Thread
Threshing machines
Tile

Tires, rubber
Tobacco and products thereof
Toilet preparations
Tools
Toys, metal and wooden
Traction engines
Trunks
Tubing, metal and rubber
Tubs
Turpentine
Typewriters
Umbrellas
Utensils
Valises
Varnish
Vats
Vehicles
Veneer
Wagons
Wallpaper
Water fixtures
Waters, mineral or soda
Wax
White ware
Wicker ware
Window screens and shades
Wine
Wire and wire goods
Women's clothing
Wooden articles
Woodwork, interior
Yarn
Group 7. Operation of:
Aeroplanes
Air craft
Baling machines
Barges

Boats

Boilers, stationary

Cables, telegraph

Car shops

Cars

Dynamos

Electric light and power lines or appliances

Electric railways

Electric vehicles, rollers and engines

Elevators, freight,

passenger and grain

Engines, stationary and traction

Gas vehicles, rollers and engines

Gas wells

Gasoline vehicles, rollers and engines

Grain elevators

Hand trucks

Horse drawn vehicles, rollers

and engines

Incline railways

Lighters

Machine shops

Oil wells

Plants, power and other

Pressing machines

Railways

Rollers

Ships

Stationary engines and

boilers

Steam plants

Steam railways

Street railways

Telegraph lines

Telephone lines
Threshing machines
Traction engines
Transports
Trucks
Tug boats
Vehicles
Vessels
Wagons
Waterworks

Group 8. Preparation of:

Fish
Foodstuffs
Fruit
Gelatine
Meat stuffs
Meats
Metals
Minerals
Paste
Vegetables
Wax

Group 9. Removal of:

Ashes
Awnings
Garbage
Snow

Group 10. Sinking of:

Drilled wells
Gas wells
Oil wells
Salt wells

Group 11. Storage or handling of:

Ammunition
Cargoes
Corrosive acids or salts
Chemicals

Explosives

Gasoline

Gun powder

Ice

Petroleum

Group 12. Work as:

Barbers

Blacksmiths

Carpenters

Chauffeurs

Domestic workers, other than

those employed on farms, employed

by the same employer for a

minimum of forty hours per week

Drivers

Furriers

Garbage sorters

Horseshoers

Janitors

Jockeys, apprentice jockeys and exercise persons
licensed under article two or four of the racing,
pari-mutuel wagering and breeding law

Life guards

Longshoremen

Marble workers

Masons

Movers

Sheet metal workers

Teamsters

Theatrical electricians, flymen,

lamp operators, moving picture

machiners, property men, stage

carpenters and stage hands

Group 13. Work at:

Awning erection

Blasting

Bleaching

Boiler covering

Bookbinding

Booming timber or logs

Bottling

Bricklaying

Building, care, maintenance

and salvage

Cable laying or repair,

underground

Canning

Carpentry

Clam cultivating, harvesting,

Opening or planting

Cleaning clothes, streets,

windows, or buildings

Concreting

Cork cutting

Decorating

Disinfecting

Dredging

Dyeing

Electrotyping

Embossing

Engraving

Excavation

Glazing

Grave digging

Heating

Ice distribution, harvesting or storage
Landscape gardening
Lighting
Lithographing
Logging
Lumbering
Marble cutting
Marine wrecking
Milling
Mining
Multigraphing
Oyster cultivation, planting,

harvesting or opening
Ore reduction
Painting
Papering
Paving
Photo-engraving
Picture hanging
Pile driving
Pipe covering
Plastering
Plumbing
Printing
Rafting
Renovating
River-driving
Road building
Roofing
Salvaging of buildings

or contents
Sea food cultivation,

harvesting or planting
Shaft sinking

Ship building
Smelting
Stereotyping
Stone crushing,

cutting, dressing,

grinding or setting
Storage of all kinds and storage for hire
Street cleaning or construction
Structural carpentry
Subaqueous construction
Subway construction
Tree moving, planting,

trimming and surgery
Tunneling
Undertaking
Upholstering
Warehousing
Well digging or drilling
Window cleaning
Wrecking, marine

Group 14. Work in
Abattoirs
Bakeries
Bark mills
Boarding stables
Breweries
Caissons
Clay pits
Coal yards
Compressed air compartments
Dining cars
Distilleries
Express cars

Fish markets
Flax mills
Foundries
Garages
Garbage plants
Gravel pits
Groceries, wholesale
Hotels
Junk dealers' places
Knitting factories
Laboratories
Lath mills
Laundries
Life-saving stations
Lime kilns
Livery stables
Lumber yards
Machine shops
Markets, fish, meat, poultry
Meat markets
Packing houses
Paper mills
Parlor cars
Pickle factories
Planing mills
Poultry markets
Printing plants
Pulp mills
Quarries
Restaurants and Grills
Rolling mills
Sales stables
Sand pits
Sash and door factories
Saw mills
Sewage disposal plants
Shale pits

Shingle mills
Sleeping cars
Spinning manufactories
Stables, livery, boarding or sales
Storage warehouses
Sugar refineries
Tanneries
Weaving manufactories
Wholesale groceries

Group 14-a. On and after January first, nineteen hundred sixty-two, any other employment in a trade, business, or occupation carried on by the employer for pecuniary gain in which one or more employees are employed.

Group 14-b. Employment as a farm laborer as provided herein. A farmer shall provide coverage under this chapter for all farm laborers.

Group 15. Employment as a keeper, guard, resident physician, nurse, interne, resident interne, assistant resident interne or orderly in a prison reformatory, hospital for the mentally ill or hospital maintained or operated by a municipal corporation or other subdivision of the state, notwithstanding the definitions of the terms "employment," "employer" or "employee" in subdivisions three, four and five of section two of this chapter.

Group 15-a. Employment as a county fire coordinator or as a deputy county fire coordinator pursuant to section two hundred twenty-five-a or section four hundred one of the county law, notwithstanding the definitions of the terms "employer", "employee" or "employment" in subdivisions three, four and five of section two of this chapter.

The terms "county fire coordinator" and "deputy county fire coordinator," as used in this group, shall include any county official who is not appointed pursuant to the provisions of section two hundred twenty-five-a of the county law, but is appointed pursuant to the provisions of a special law, a county charter or a county local law and

who is authorized or required to perform in the county the duties which are similar to those of a county fire coordinator or deputy county fire coordinator under such section of the county law and sections eight hundred seven-a and eight hundred seven-b of the education law.

Group 16. Any employment by the state, including the employment of all elected and appointed public officers, notwithstanding the definitions of the terms "employment," "employer" or "employee," in subdivisions three, four and five of section two of this chapter; but work as a civil defense volunteer under the provisions of the state defense emergency act shall not be deemed employment by the state. An employee engaged in any employment herein whose wages are paid by a municipal corporation or other subdivision of the state or by an employer other than the state shall be deemed an employee of such municipal corporation or other political subdivision of the state or such employer other than the state for the purposes of this chapter. The head of any department of the state government may, with the prior written approval of the director of the budget, accept or approve the acceptance by any bureau, agency or other unit within said department of the services of a volunteer worker without salary, and such a volunteer worker shall be deemed to be an employee in the employment of the state in the unclassified service for the purpose of this chapter.

Group 17. Any employment carried on by a municipal corporation or other subdivision of the state and enumerated in the foregoing groups one to fourteen, inclusive, and on and after July first, nineteen hundred fifty-one, other such employment to the extent of authorized services related to civil defense and performed by employees in the course of employment or in relation thereto; and the sheriff and undersheriff of any county and the duly appointed regular deputies of the sheriff, notwithstanding the definition of the term "employment" in subdivision five of section two of this chapter; but employment in the department of sanitation of the city of New York in the sanitation service classification of the classified civil service of such city shall not be within the coverage of this chapter. The activities of civil defense volunteers who are auxiliary firefighters and members of rescue squads in authorized services while undergoing training or

practice sponsored or authorized by a local office of civil defense, as defined in the state defense emergency act, and on and after July first, nineteen hundred fifty-three, the activities of all civil defense volunteers who are personnel of such local office of civil defense in authorized services during authorized participation in training and practice exercises held at the direction of or designated as state training and practice exercises by the state civil defense commission pursuant to the provisions of section twenty-one, subdivision three-f of the state defense emergency act, are hazardous employments carried on by the municipal corporation or other subdivision of the state that created the local office under the state defense emergency act and such members of an auxiliary police organization located in a municipal corporation which elected to include such persons within the definition of "employee" as authorized by subdivision four of section two of this chapter shall be deemed employees of the municipal corporation authorizing their services, and such members of rescue squads, auxiliary firefighters, and civil defense volunteers shall be deemed employees of the municipal corporation or other subdivision of the state for purposes of this chapter, provided, however, that each such municipal corporation or other subdivision of the state or insurance carrier shall in the first instance pay all awards of workers' compensation, including medical benefits, provided by this chapter; and such municipal corporation or other subdivision of the state or insurance carrier shall be reimbursed by the comptroller of the state of New York, periodically every six months, on vouchers certified by the state civil defense commission, for one-half of all workers' compensation benefits, including both cash and medical benefits, paid pursuant to awards of the board, to the extent not previously reimbursed, paid for injury or death of a civil defense volunteer caused by an accident that arose out of and in the course of any such training and practice exercise, held on and after July first, nineteen hundred fifty-three, at the direction of or designated as a state training and practice exercise by the state civil defense commission pursuant to the provisions of section twenty-one, subdivision three-f of the state defense emergency act. A town shall not be deemed to be the employer of the officers and employees of a fire district and shall not be liable for payment of compensation to such officers or employees under any provision of this chapter. A social

services official, as defined in subdivision fourteen of section two of the social services law, may accept or approve the services of volunteer workers without salary, in accordance with the regulations of the state department of social services, and such a voluntary worker shall be deemed to be an employee of the social services district in the unclassified service for the purpose of this chapter.

Group 18. All other employments, except persons engaged in a teaching or nonmanual capacity in or for a religious, charitable or educational institution, notwithstanding the definition of employment in subdivision five of section two, not hereinbefore enumerated, carried on by any person, firm or corporation in which there are engaged or employed one or more employees regularly, in the same business or in or about the same establishment either upon the premises or at the plant or away from the plant of the employer, under any contract of hire, express or implied, oral or written, except farm laborers and domestics other than those within the coverage of this chapter pursuant to groups fourteen-b and twelve respectively of this subdivision, unless the employer has elected to bring such employees under the law by securing compensation in accordance with the terms of section fifty of this chapter and persons engaged in voluntary service not under contract of hire. A duly ordained, commissioned or licensed minister, priest or rabbi, a sexton, a christian science reader, or a member of a religious order, shall not be deemed to be employed or engaged in employment under the terms of this section. Recipients of charitable aid from a religious or charitable institution who perform work in or for the institution which is incidental to or in return for the aid conferred, and not under any express contract of hire, shall not be deemed to be employed or engaged in employment under the terms of this section. All persons who are members of a supervised amateur athletic activity operated on a non-profit basis shall not be deemed to be employed or engaged in employment under the terms of this section, provided that said members are not also otherwise engaged or employed by any person, firm or corporation participating in said athletic activity. The terms "religious, charitable or educational institution" mean a corporation, unincorporated association, community chest, fund or foundation organized and operated exclusively for religious, charitable or

educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual.

Group 19. An employer may bring an employment that is not listed in this section within the coverage of this chapter by securing compensation to his employee or employees engaged in such employment in accordance with section fifty of this chapter.

Any municipal corporation or other political subdivision of the state may bring its employees or officers, elective or appointed or otherwise, not enumerated in groups one to seventeen of subdivision one of this section inclusive, of this chapter within the coverage of this chapter by appropriate action of the legislative or governmental body of the municipal corporation or political subdivision, notwithstanding the definitions of the terms "employment," "employer" or "employee" in subdivisions three, four and five of section two of this chapter; and by separate and distinct action of said legislative or governmental body may bring within the coverage of this chapter any group, as defined by order of the New York state civil defense commission, of civil defense volunteers not enumerated in group seventeen of subdivision one of this section, who are personnel of a volunteer agency of the local office of such municipal corporation or other political subdivision, as defined in the state defense emergency act, as to their authorized civil defense services to the extent not covered under article ten of this chapter. Where one or more groups of such civil defense volunteers of a county office of civil defense are not brought within the coverage of this chapter by the county, a town or a village in such county or a city participating in the consolidated county office of civil defense of such county may, by separate and distinct action of its legislative or governmental body, bring the members of such group or groups of duly enrolled civil defense volunteers who are residents of and are enrolled from such town, village or city within the coverage of this chapter during any period when the county has not so provided; however, whenever a county brings one or more groups of its civil defense volunteers within the coverage of this chapter, such other coverage of members of such group or groups by the town, village or city shall be deemed terminated to the extent and as of the date coverage is afforded by the

county. A village may not provide such coverage during any period coverage is provided by a town in which the village is located, except where there is a deputy director of civil defense for a village not wholly within one town.

A public or not-for-profit corporation, association, institution or agency organized as an unincorporated association or duly incorporated under the laws of this state shall be deemed to be an employer of persons who are performing services for it pursuant to paragraphs (h) and (i) of subdivision two of section 65.10 of the penal law in fulfillment of a sentence of probation or of conditional discharge and of persons performing such services pursuant to the provisions of section 170.55 or 170.56 of the criminal procedure law, and such persons shall for the purposes of this chapter be deemed to be employees for the public or not-for-profit corporation, association, institution or agency. Said employer may elect to bring such employees within the coverage of this chapter by securing compensation in accordance with the terms of section fifty of this chapter.

Group 20. In a city having a population of one million or more, teachers, regular or substitute, of shop work, manual training, industrial or trade subjects, mechanic arts, textiles, machine shop assistants, laboratory assistants, laboratory specialists, laboratory technicians, and teachers of any subject, trade, or employment requiring, for instruction purposes, use of tools or machinery for which protective, guarding or safety devices are required by the labor law, may elect to receive the benefits prescribed by this chapter provided they are not qualified to receive benefits even if eligible to apply for retirement under the teachers' retirement system in said city. An election to come within this chapter shall constitute a waiver of any right to receive absence refunds from the board of education of said city. But a teacher shall, if incapacitated to teach by reason of his injuries, be entitled to the refund of his accumulated deductions in the teachers' retirement system or in lieu thereof he may elect to receive an annuity which shall be the actuarial equivalent of said accumulated deductions. Any election or choice provided for herein may be made for the teacher by one acting in the teacher's behalf if said teacher is

incapacitated to act for himself.

Group 20-a. For the purposes of this chapter, the work of any person employed as a school aide by school authorities of any school district, notwithstanding the definitions of the terms "employer," "employee" or "employment" in subdivisions three, four and five of section two of this chapter.

Group 20-b. For the purposes of this chapter, the work of any person employed in a nonpedagogical capacity by school authorities within a city having a population of one million or more, notwithstanding the definitions of the terms "employer", "employee" or "employment" in subdivisions three, four and five of section two of this chapter.

Group 21. For the purposes of this chapter, on and after January first, nineteen hundred sixty-two, the work of a newspaper carrier as defined in section thirty-two hundred twenty-eight of the education law for an employer of one or more employees as defined in subdivisions three and four of section two of this chapter.

Group 22. Employment as a teacher in a public school or place of instruction maintained or operated by a board of education or trustees of a school district, other than a school district located in a city having a population of more than one million, notwithstanding the definitions of the terms "employment," "employer" or "employee" in subdivisions three, four and five of section two of this chapter.

Group 23. For the purposes of this chapter, the work of any person employed to direct vehicular traffic at any street crossing or highway intersection crossed by pupils in going to and returning from any school in this state, whose chief duty primarily is to guard the life and safety of such pupils.

Group 24. For the purposes of this chapter, employment of any person appointed by the board of water supply of the city of New York pursuant to the provisions of section K51-36.0 of the administrative code of the city of New York, notwithstanding the definitions of the terms

"employment", "employer", or "employee", in subdivisions three, four and five of section two of this chapter.

2. Occupational diseases. Compensation shall be payable for disabilities sustained or death incurred by an employee resulting from the following occupational diseases:

COLUMN ONE	COLUMN TWO
Description of Diseases	Description of Process
1. Anthrax.	1. Handling of wool, hair, bristles, hides or skins.
2. Lead poisoning or its sequelae.	2. Any process involving the use of or direct contact with lead or its preparations or compounds.
3. Zinc poisoning or its sequelae.	3. Any process involving the use of or direct contact with zinc or its preparations or compounds or alloys.
4. Mercury poisoning or its sequelae.	4. Any process involving the use of or direct contact with mercury or its preparations or compounds.
5. Phosphorus poisoning or its sequelae.	5. Any process involving the use of or direct contact with phosphorous or its preparations or compounds.
6. Arsenic poisoning or its sequelae.	6. Any process involving the use of or direct contact with arsenic or its preparations or compounds.
7. Poisoning by wood alcohol.	7. Any process involving the use of wood alcohol or any preparation containing wood alcohol.
8. Poisoning by benzol or nitro-, hydro-,	8. Any process involving the use of or direct contact with

hydroxy- and amido-derivatives of benzene (dinitro-benzol, anilin, and others), or its sequelae.

9. Poisoning by carbon bisulphide or its sequelae, or any sulphide.
10. Poisoning by nitrous fumes or its sequelae.
11. Poisoning by nickel carbonyl or its sequelae.
12. Dope poisoning (poisoning by tetrachlor-methane or any substance used as or in conjunction with a solvent for acetate of cellulose or nitro cellulose, or its sequelae.
13. Poisoning by formaldehyde and its preparations.
14. Chrome ulceration or its sequelae or chrome poisoning.
15. Epitheliomatous cancer or ulceration of the skin or of the corneal

benzol or nitro-, hydro-, hydroxy-, or amido-derivatives of benzene or its preparations or compounds.

9. Any process involving the use of or direct contact with carbon bisulphide or its preparations or compounds, or any sulphide.
10. Any process in which nitrous fumes are evolved.
11. Any process in which nickel carbonyl is evolved.
12. Any process involving the use of or direct contact with any substance used as or in conjunction with a solvent for acetate of cellulose or nitro cellulose.
13. Any process involving the use of or direct contact with formaldehyde and its preparations.
14. Any process involving the use of or direct contact with chromic acid or bychromate of ammonium, potassium or sodium, or their preparations.
15. Handling or use of tar, pitch, bitumen, mineral oil, or paraffin or any

surface of the eye,
due to tar, pitch,
bitumen, mineral oil,
or paraffin, or any
compound, product or
residue of any of these
substances.

16. Glanders.

17. Compressed air
illness or its
sequelae.

18. Miners' diseases,
including only
cellulitis, bursitis,
ankylostomiasis,
tenosynovitis and
nystagmus.

19. Cataract in
glassworkers.

20. Radium poisoning or
disability due to
radio-active pro-
perties of sub-
stances or to
Roentgen rays
(X-rays) or exposure
to ionizing radiation.

21. Methyl chloride
poisoning.

22. Carbon monoxide
poisoning.

compound, product or
residue of any of these
substances.

16. Care or handling of any
equine animal or the
carcass of any such animal.

17. Any process carried on
in compressed air.

18. Any process involving
mining.

19. Processes in the manufacture
of glass involving exposure
to the glare of molten
glass.

20. Any process involving the
use of or direct contact
with radium or radio-active
substance or the use of or
direct exposure to Roentgen
rays (X-rays) or ionizing
radiation.

21. Any process involving the
use of or direct contact
with methyl chloride or its
preparations or compounds.

22. Any process involving direct
exposure to carbon monoxide

- | | |
|---|--|
| | in buildings, sheds or enclosed places. |
| 23. Poisoning by sulphuric, hydro-chloric or hydro-fluoric acid. | 23. Any process involving the use of or direct contact with sulphuric, hydrochloric or hydrofluoric acids or their fumes. |
| 24. Respiratory, gastro-intestinal or physiological nerve and eye disorders due to contact with petroleum products and their fumes. | 24. Any process involving the use of or direct contact with petroleum or petroleum products and their fumes. |
| 25. Disability arising from blisters or abrasions. | 25. Any process involving continuous friction, rubbing or vibration causing blisters or abrasions. |
| 26. Disability arising from bursitis or synovitis. | 26. Any process involving continuous rubbing, pressure or vibration of the parts affected. |
| 27. Dermatitis (venenata). | 27. Any process involving the use of or direct contact with acids, alkalies, acids or oil, or with brick, cement, lime, concrete or mortar capable of causing dermatitis (venenata). |
| 28. Byssinosis. | 28. Any process involving exposure to raw cotton. |
| 29. Silicosis or other dust diseases. | 29. Any process involving exposure to silica or other harmful dust. |
| 30. Any and all | 30. Any and all employments |

occupational diseases.

enumerated in subdivision
one of section three of
this chapter.

Nothing in paragraph thirty of this subdivision shall be construed to apply to any disability or death due to any disease described in paragraph twenty-nine of this subdivision.

§ 4. Special applicability; domestic partners; surviving domestic partners; death benefits; funeral expenses; terrorist attacks of September eleventh, two thousand one; construction. 1. Definition.

"Domestic partner" means a person at least eighteen years of age who:

(a) is dependent upon the employee for support as shown by either unilateral dependence or mutual interdependence, as evidenced by a nexus of factors including, but not limited to, common ownership of real or personal property, common householding, children in common, signs of intent to marry, shared budgeting, and the length of the personal relationship with the employee or, if the employee is deceased, was so dependent upon the employee immediately prior to the employee's death; or

(b) has registered as the domestic partner of the employee with any registry of domestic partnerships maintained by the employer of either party, the state, or any county, city, town, or village, or, if the employee is deceased, did so register prior to the employee's death.

(c) For the purposes of this section, the definition of domestic partner made by this subdivision shall supplement or supersede any inconsistent definition of such term by any other general, special, or local law, ordinance, code, or charter so that no person qualifying as a domestic partner, as defined in this subdivision, whether registered or unregistered, shall, for the purposes of this section, be deemed not to be a domestic partner.

(d) For the purposes of this section, the term "domestic partner" shall include the term "surviving domestic partner".

Provided however, "domestic partner" shall not include any person who is related by blood to the employee in a manner that would bar marriage

to the employee in New York state.

2. Death benefits. The domestic partner, at the time of the death, of any employee shall, if such employee had no spouse at the time of his or her death, be deemed to be the surviving spouse of such employee for the purposes of any death benefit, including but not limited to funeral expenses, to which a surviving spouse would be entitled upon the death of such employee, and any and all such benefits shall be paid to such domestic partner.

3. Applicability. The provisions of this section apply only to cases in which the employee's death occurred as a result of the terrorist attacks that occurred on September eleven, two thousand one.

4. Construction. (a) The definition of the term "domestic partner" made by subdivision one of this section shall not be construed to be an exclusive definition.

(b) The enactment of this section shall not be construed to divest any court of any authority such court may otherwise have to adjudicate a person a domestic partner on the basis of any criteria other than those specified in subdivision one of this section, whether such person has or has not registered as a domestic partner.

ARTICLE 2 **COMPENSATION**

- Section 9. Definitions.
- 10. Liability for compensation.
 - 11. Alternative remedy.
 - 12. Compensation not allowed for first seven days.
 - 13. Treatment and care of injured employees.
 - 13-a. Selection of authorized physician by employee.
 - 13-aa. Medical appeals unit.
 - 13-b. Authorization of providers, medical bureaus and laboratories by the chair.
 - 13-c. Licensing of compensation medical bureaus and laboratories.

- 13-d. Removal of providers from lists of those authorized to render medical care or to conduct independent medical examinations.
- 13-e. Revocation of licenses of compensation medical bureaus and laboratories.
- 13-f. Payment of medical fees.
- 13-g. Payment of bills for medical care.
- 13-h. Ombudsman for injured workers.
- 13-i. Solicitation prohibited.
- 13-j. Medical or surgical treatment by insurance carriers and employers.
- 13-k. Care and treatment of injured employees by duly licensed podiatrists.
- 13-l. Care and treatment of injured employees by duly licensed chiropractors.
- 13-m. Care and treatment of injured employees by duly licensed psychologists.
- 13-n. Mandatory registration of entities which derive income from independent medical examinations.
- 13-o. Pharmaceutical fee schedule.
- 13-p. Comprehensive prescription drug formulary.
- 14. Weekly wages basis of compensation.
- 14-a. Double compensation and death benefits when minors illegally employed.
- 15. Schedule in case of disability.
- 15-a. Assessment on insolvent group self-insured trusts.
- 16. Death benefits.
- 16-a. Death benefits due to diesel exposure.
- 17. Noncitizens.
- 17-a. Limited English proficiency.
- 18. Notice of injury or death.
- 18-a. Notice: The New York Jockey Injury Compensation Fund, Inc.
- 18-b. Notice; the New York black car operators' injury compensation fund, inc.
- 18-c. Independent livery bases.
- 19. Physical examination.

- 19-a. Physicians not to accept fees from carriers.
- 19-b. Treatment by physicians in employ of board.
- 19-c. Actions against health services personnel; defense and indemnification.
- 20. Determination of claims for compensation.
- 21. Presumptions.
- 21-a. Temporary payment of compensation.
- 22. Modification of awards, decisions or orders.
- 23. Appeals.
- 23-a. Mistakes, defects and irregularities.
- 24. Costs and fees.
- 24-a. Representation before the workers' compensation board.
- 25. Compensation, how payable.
- 25-a. Procedure and payment of compensation in certain claims; limitation of right to compensation.
- 25-b. Awards to non-residents: Non-resident compensation fund.
- 26. Enforcement of payment in default.
- 26-a. Procedure and payment of compensation in claims against uninsured defaulting employers.
- 27. Depositing future payments in the aggregate trust fund.
- 27-a. Investments in obligations of designated public benefit corporations; indemnifications.
- 27-b. Amortization of gains or losses.
- 27-c. Appropriations to the aggregate trust fund.
- 28. Limitation of right to compensation.
- 29. Remedies of employees; subrogation.
- 30. Revenues or benefits from other sources not to affect compensation.
- 31. Agreement for contribution by employee void.
- 32. Waiver agreements.
- 32-a. Waivers of specific coverage prohibited.
- 33. Assignments; exemptions.
- 34. Preferences.
- 35. Safety net.

§ 9. Definitions. For the purposes of this article, the following

terms shall mean:

1. "World Trade Center rescue" shall mean any activity involving an employee of a private voluntary hospital that worked rescue operations under contract with the city of New York under direction of the fire department of the city of New York, conducted between September eleventh and September fifteenth, two thousand one inclusive at or in the vicinity of the World Trade Center site of the September eleventh, two thousand one terrorist attack on the World Trade Center in the city of New York, commonly referred to as "Ground Zero".

2. "Vicinity of the World Trade Center site" shall mean anywhere below a line starting from the Hudson River and Canal Street; east on Canal Street to Pike Street; south on Pike Street to the East River; and extending to the lower tip of Manhattan.

§ 10. Liability for compensation. 1. Every employer subject to this chapter shall in accordance with this chapter, except as otherwise provided in section twenty-five-a hereof, secure compensation to his employees and pay or provide compensation for their disability or death from injury arising out of and in the course of the employment without regard to fault as a cause of the injury, except that there shall be no liability for compensation under this chapter when the injury has been solely occasioned by intoxication from alcohol or a controlled substance of the injured employee while on duty; or by wilful intention of the injured employee to bring about the injury or death of himself or another; or where the injury was sustained in or caused by voluntary participation in an off-duty athletic activity not constituting part of the employee's work related duties unless the employer (a) requires the employee to participate in such activity, (b) compensates the employee for participating in such activity or (c) otherwise sponsors the activity.

2. Notwithstanding any other provisions of this chapter, an injury incurred by an individual currently employed as an emergency medical technician or an advanced emergency medical technician who is certified

pursuant to section three thousand two of the public health law, while voluntarily and without expectation of monetary compensation rendering medical assistance at the scene of an accident shall be deemed to have arisen out of and in the course of the employment with that emergency medical technician or advanced emergency medical technician's current employer.

3. (a) Notwithstanding any other provisions of this chapter, where a public safety worker, including but not limited to a firefighter, emergency medical technician, police officer, correction officer, civilian employee of the department of corrections and community supervision or other person employed by the state to work within a correctional facility maintained by the department of corrections and community supervision, driver and medical observer, in the course of performing his or her duties, is exposed to the blood or other bodily fluids of another individual or individuals, the executive officer of the appropriate ambulance, fire or police district may authorize such public safety worker to obtain the care and treatment, including diagnosis, recommended medicine and other medical care needed to ascertain whether such individual was exposed to or contracted any communicable disease and such care and treatment shall be the responsibility of the insurance carrier of the appropriate ambulance, fire or police district or, if a public safety worker was not so exposed in the course of performing his or her duties for such a district, then such person shall be covered for the treatment provided for in this subdivision by the carrier of his or her employer when such person is acting in the scope of his or her employment. For the purpose of this subdivision, the term "public safety worker" shall include persons who act for payment or who act as volunteers in an organized group such as a rescue squad, police department, correctional facility, ambulance corps, fire department, or fire company.

(b) Where a police officer or firefighter subject to section thirty of this article, or emergency medical technician, paramedic, or other person certified to provide medical care in emergencies, or emergency dispatcher files a claim for mental injury premised upon extraordinary work-related stress incurred in a work-related emergency, the board may not disallow the claim upon a factual finding that the stress was not

greater than that which usually occurs in the normal work environment.

(c) The board may not disallow a claim by a covered employee upon a factual finding that the stress was not greater than that which usually occurs in the normal work environment where a claim for post-traumatic stress disorder (PTSD), acute stress disorder or major depressive disorder resulting from work-related stress is filed upon submission of medical evidence based on the criteria contained in the version of the Diagnostic and Statistical Manual of Mental Disorders in effect on the date of accident, or as otherwise adopted by the board, provided that such adoption shall be no more stringent than the current or immediately preceding version of the Diagnostic and Statistical Manual of Mental Disorders. Such covered employee must demonstrate that such disorder arose out of extraordinary work-related stress attributable to a distinct work-related event or events directly related to the employment and occurring during the performance of the employee's job duties.

(d) Nothing in paragraphs (b) and (c) of this subdivision shall apply to a claim for mental injury due to a work-related physical injury.

4. Any person incarcerated upon conviction of a felony shall be deemed ineligible for all benefits provided under this chapter. All those whose benefits have ceased by operation of this section, may apply to the board for benefits upon their release from custody pursuant to regulation of the board.

§ 11. Alternative remedy. 1. The liability of an employer prescribed by the last preceding section shall be exclusive and in place of any other liability whatsoever, to such employee, his or her personal representatives, spouse, parents, dependents, distributees, or any person otherwise entitled to recover damages, contribution or indemnity, at common law or otherwise, on account of such injury or death or liability arising therefrom, except that if an employer fails to secure the payment of compensation for his or her injured employees and their dependents as provided in section fifty of this chapter, an injured employee, or his or her legal representative in case of death results from the injury, may, at his or her option, elect to claim compensation under this chapter, or to maintain an action in the courts for damages

on account of such injury; and in such an action it shall not be necessary to plead or prove freedom from contributory negligence nor may the defendant plead as a defense that the injury was caused by the negligence of a fellow servant nor that the employee assumed the risk of his or her employment, nor that the injury was due to the contributory negligence of the employee. The liability under this chapter of The New York Jockey Injury Compensation Fund, Inc. created under section two hundred twenty-one of the racing, pari-mutuel wagering and breeding law shall be limited to the provision of workers' compensation coverage to jockeys, apprentice jockeys, exercise persons, and at the election of the New York Jockey Injury Compensation Fund, Inc., with the approval of the New York state gaming commission, employees of licensed trainers or owners licensed under article two or four of the racing, pari-mutuel wagering and breeding law and any statutory penalties resulting from the failure to provide such coverage.

For purposes of this section the terms "indemnity" and "contribution" shall not include a claim or cause of action for contribution or indemnification based upon a provision in a written contract entered into prior to the accident or occurrence by which the employer had expressly agreed to contribution to or indemnification of the claimant or person asserting the cause of action for the type of loss suffered.

An employer shall not be liable for contribution or indemnity to any third person based upon liability for injuries sustained by an employee acting within the scope of his or her employment for such employer unless such third person proves through competent medical evidence that such employee has sustained a "grave injury" which shall mean only one or more of the following: death, permanent and total loss of use or amputation of an arm, leg, hand or foot, loss of multiple fingers, loss of multiple toes, paraplegia or quadriplegia, total and permanent blindness, total and permanent deafness, loss of nose, loss of ear, permanent and severe facial disfigurement, loss of an index finger or an acquired injury to the brain caused by an external physical force resulting in permanent total disability.

For purposes of this section "person" means any individual, firm,

company, partnership, corporation, joint venture, joint-stock association, association, trust or legal entity.

The liability under this chapter of the New York black car operators' injury compensation fund, inc. shall be limited to: (i) securing the payment of workers' compensation in accordance with article six-F of the executive law to black car operators, as defined in such article, whose injury arose out of and in the course of providing services for a central dispatch facility, as defined in such article, that is a registered member of such fund, and (ii) any statutory penalty resulting from the failure to secure such payment. The liability under this chapter of a central dispatch facility, as defined in article six-F of the executive law, that is a registered member of the New York black car operators' injury compensation fund, inc. that shall be limited to remaining a registered member in good standing of such fund and any statutory penalty, including loss of immunity provided by this section, resulting from the failure to become or remain a registered member in good standing of such fund, except, however, that such central dispatch facility shall be subject to the provisions of section one hundred thirty-one of this chapter and shall be liable for any payments for which it may become responsible pursuant to such section or pursuant to section fourteen-a of this article.

The liability under this chapter of the New York independent livery driver benefit fund, inc. shall be limited to: (i) securing the payment of workers' compensation coverage to cover those matters required by article six-G of the executive law for independent livery drivers, as defined in such article, whose injury arose out of and in the course of providing covered services for a livery base, as defined in such article, that is a registered member of such fund, and (ii) any statutory penalty resulting from the failure to secure such payment.

2. Determination by the board shall not be given collateral estoppel effect in any other action or proceeding arising out of the same occurrence, other than the determination of the existence of an employer employee relationship.

§ 12. Compensation not allowed for first seven days. No compensation shall be allowed for the first seven days of disability, except the benefits provided for in section thirteen of this chapter, provided, however, that in case the injury results in disability of more than fourteen days, the compensation shall be allowed from the date of the disability.

§ 13. Treatment and care of injured employees. (a) The employer shall promptly provide for an injured employee such medical, dental, surgical, optometric or other attendance or treatment, nurse and hospital service, medicine, optometric services, crutches, eye-glasses, false teeth, artificial eyes, orthotics, prosthetic devices, functional assistive and adaptive devices and apparatus for such period as the nature of the injury or the process of recovery may require. The employer shall be liable for the payment of the expenses of medical, dental, surgical, optometric or other attendance or treatment, nurse and hospital service, medicine, optometric services, crutches, eye-glasses, false teeth, artificial eyes, orthotics, prosthetic devices, functional assistive and adaptive devices and apparatus, as well as artificial members of the body or other devices or appliances necessary in the first instance to replace, support or relieve a portion or part of the body resulting from and necessitated by the injury of an employee, for such period as the nature of the injury or the process of recovery may require, and the employer shall also be liable for replacements or repairs of such artificial members of the body or such other devices, eye-glasses, false teeth, artificial eyes, orthotics, prosthetic devices, functional assistive and adaptive devices or appliances necessitated by ordinary wear or loss or damage to a prosthesis, with or without bodily injury to the employee. Damage to or loss of a prosthetic device shall be deemed an injury except that no disability benefits shall be payable with respect to such injury under section fifteen of this article. Such a replacement or repair of artificial members of the body or such other devices, eye-glasses, false teeth, artificial eyes, orthotics, prosthetic devices, functional assistive and adaptive devices or appliances or the providing of medical treatment and care as defined

herein shall not constitute the payment of compensation under section twenty-five-a of this article. All fees and other charges for such treatment and services shall be limited to such charges as prevail in the same community for similar treatment of injured persons of a like standard of living.

The chair shall prepare and establish a schedule for the state, or schedules limited to defined localities, of charges and fees for such medical treatment and care, and including all medical, dental, surgical, optometric or other attendance or treatment, nurse and hospital service, medicine, optometric services, crutches, eye-glasses, false teeth, artificial eyes, orthotics, prosthetic devices, functional assistive and adaptive devices and apparatus in accordance with and to be subject to change pursuant to rules promulgated by the chair. Before preparing such schedule for the state or schedules for limited localities the chair shall request the president of the medical society of the state of New York and the president of the New York state osteopathic medical society to submit to him or her a report on the amount of remuneration deemed by such society to be fair and adequate for the types of medical care to be rendered under this chapter, but consideration shall be given to the view of other interested parties. In the case of physical therapy fees schedules the chair shall request the president of a recognized professional association representing physical therapists in the state of New York to submit to him or her a report on the amount of remuneration deemed by such association to be fair and reasonable for the type of physical therapy services rendered under this chapter, but consideration shall be given to the views of other interested parties. The chair shall also prepare and establish a schedule for the state, or schedules limited to defined localities, of charges and fees for outpatient hospital services not covered under the medical fee schedule previously referred to in this subdivision, to be determined in accordance with and to be subject to change pursuant to rules promulgated by the chair. Before preparing such schedule for the state or schedules for limited localities the chair shall request the president of the hospital association of New York state to submit to him or her a report on the amount of remuneration deemed by such association to be fair and adequate for the types of hospital outpatient care to be

rendered under this chapter, but consideration shall be given to the views of other interested parties. In the case of occupational therapy fees schedules the chair shall request the president of a recognized professional association representing occupational therapists in the state of New York to submit to him or her a report on the amount of remuneration deemed by such association to be fair and reasonable for the type of occupational therapy services rendered under this chapter, but consideration shall be given to the views of other interested parties. The amounts payable by the employer for such treatment and services shall be the fees and charges established by such schedule. Nothing in this schedule, however, shall prevent voluntary payment of amounts higher or lower than the fees and charges fixed therein, but no physician rendering medical treatment or care, and no physical or occupational therapist rendering their respective physical or occupational therapy services may receive payment in any higher amount unless such increased amount has been authorized by the employer, or by decision as provided in section thirteen-g of this article. Nothing in this section shall be construed as preventing the employment of a duly authorized physician on a salary basis by an authorized compensation medical bureau or laboratory.

(b) In the case of persons, injured outside of this state, but entitled to compensation or benefits under this chapter, the provisions as to selection of authorized physicians shall be inapplicable. In such cases the employer shall promptly provide all necessary medical treatment and care but if the employer fail to provide the same, after request by the injured employee such injured employee may do so at the expense of the employer. The employee shall not be entitled to recover any amount expended by him for such treatment or services unless he shall have requested the employer to furnish the same and the employer shall have refused or neglected to do so, or unless the nature of the injury required such treatment and services and the employer or his superintendent or foreman having knowledge of such injury shall have neglected to provide the same; nor shall any claim for medical or surgical treatment be valid and enforceable, as against such employer, unless within twenty days following the first treatment, the physician giving such treatment, furnish to the employer and the chairman a report of such injury and treatment, on a form prescribed by the chairman. The

board may, however, by the unanimous vote of a panel of not less than three members qualified to act, excuse the failure to give such notice within twenty days when it finds it to be in the interest of justice to do so, and may, subject to the limitations contained in section twenty-eight of this chapter, make an award for the reasonable value of such medical or surgical treatment. All fees and other charges for such treatment and services, whether furnished by the employer or otherwise, shall be subject to regulation by the board as provided in section twenty-four of this chapter, and shall be limited to such charges as prevail in the same community for similar treatment of injured persons of a like standard of living.

(c) The liability of an employer for medical treatment as herein provided shall not be affected by the fact that his employee was injured through the fault or negligence of a third party, not in the same employ. The employer shall, however, have an additional cause of action against such third party to recover any amounts paid by him for such medical treatment, in like manner as provided in section twenty-nine of this chapter.

(d) (1) In the event that an insurer or health benefits plan makes payments for medical and/or hospital services for or on behalf of an injured employee they shall be entitled to be reimbursed for such payments by the carrier or employer within the limits of the medical and hospital fee schedules if the board determines that the claim is compensable. For the purposes of this section, an insurer or health benefits plan includes a medical expense indemnity corporation, a health or hospital service corporation, a commercial insurance company licensed to write accident and health insurance in the state of New York, a health maintenance organization operating in accordance with article forty-three of the insurance law or article forty-four of the public health law, or a self-insured or self-funded health care benefits plan operated by, or on behalf of, any business, municipality or other entity (including an employee welfare fund as defined in article forty-four of the insurance law or any other union trust fund or union health benefits plan). Notwithstanding any other provision of law, in no event shall the carrier or employer be required to reimburse the insurer or health benefits plan in an amount greater than the amount paid for medical and hospital services for or on behalf of the injured employer by such

corporation or company; provided, however, if the carrier or employer does not reimburse the insurer or health benefits plan within thirty days after the board determines that the claim is compensable, the carrier or employer shall reimburse the insurer or health benefits plan at the amount the carrier or employer would be obligated to reimburse the hospital or other provider of medical services if the carrier or employer made payment directly to the provider of medical and/or hospital services pursuant to this chapter (or, in the case of inpatient hospital services, pursuant to paragraphs (b) and (b-1) of subdivision one of section twenty-eight hundred seven-c of the public health law). Upon reimbursement to the insurer or health benefits plan pursuant to this subdivision, the carrier or employer shall be relieved of liability for the medical and/or hospital services for which payment has been made by the insurer or health benefits plan.

(2) An insurer or health benefits plan entitled to reimbursement pursuant to paragraph one of this subdivision shall receive copies of the hearing and decision notices and shall develop with the carrier or employer its own mechanisms and standard operating procedures for payment of undisputed claims for reimbursement. In cases of disputed claims for reimbursement that are filed with the board within three years of the date of payment for services rendered by the health care provider or within ninety days of the effective date of a chapter of the laws of nineteen hundred ninety-two, entitled "AN ACT to amend the workers' compensation law, in relation to reimbursement of insurers and health benefit plans", whichever is later, the sole remedy of the insurer or health benefit plan to recover on a claim arising pursuant to this subdivision shall be the submission of the controversy to mandatory arbitration or other alternative dispute resolution procedures as defined by rules and regulations promulgated by the chair in accordance with subdivision (h) of this section.

(e) The board, on its own motion, or a referee, upon the recommendation of the compensation medical director for the board, hearing a claim for compensation may require examination of any claimant, or of the testimony, reports and exhibits, or both, by a physician especially qualified with respect to the diagnosis or treatment of the disability for which compensation is claimed; and may require a report from such physician on the diagnosis, the causal

relationship between the alleged injury and subsequent disability or death, proper treatment, and the extent of the disability of such claimant. The employer or his or her insurance carrier shall pay for such examination in an amount to be directed by the chairman.

The chairman may in his discretion designate physicians of outstanding qualifications in such fields of medicine as he deems essential in order to ascertain the diagnosis, the causal relationship between the alleged injury and subsequent disability, the type of medical care and operative procedure requisite in particular cases where such matters are not readily determinable by the regularly employed medical examiners of the board. Each of such physicians shall have had, prior to his or her designation, at least five years of practice in the field with respect to which he or she is designated, and shall receive a fee for each case, or shall be paid on a per diem basis, as determined by the chairman. Claimants maybe required to submit to examination by such physicians in the manner hereinbefore specified. The contents of reports of designated physicians when introduced in evidence shall constitute prima facie evidence of fact as to the matter contained therein, and the makers of such reports shall be subject to examination upon demand and shall be paid an additional fee, as determined by the chairman, for testifying in each case.

(f) Copies of medical reports of claimant's attending physician or medical consultant, made pursuant to this chapter subsequent to the date of the request provided for in this subdivision and antedating not more than thirty days, shall be transmitted by the physician or consultant to the claimant's licensed representative or attorney representing the claimant before the board upon his written request therefor accompanied by a notice of his retainer and consent to such transmittal signed by the claimant.

(g) Every hospital operating in the state shall, within twenty days of receiving a written request by a claimant, claimant's representative, employer, carrier or special fund created under this chapter, provide to such claimant, claimant's representative, employer, carrier or special fund for use in board proceedings the medical records of an employee who has received treatment in such hospital and who is claiming benefits under this chapter. Each hospital shall designate at least one officer

or employee who shall be responsible for provision of such records on written request, and to whom the board, claimant, claimant's, employer, carrier representative or special fund may address informal inquiries regarding provision of such records.

No hospital shall be required to produce the records of any claimant pursuant to this section without receiving the cost of copying such records as determined by the chair. Such cost shall be paid by the requesting party except that the employer or carrier or special fund shall reimburse a claimant or claimant's representative the cost of an initial set of such records where the request is made by a claimant or claimant's representative. Should the hospital not be able to provide the requested records within twenty days, they shall notify in writing the party requesting the records of the reason why the records were not provided and the date on which they will be provided. Such date shall be within a reasonable period of time, but shall not exceed thirty days. Failure to either provide the records within twenty days or to provide a reason why the records have not been provided shall subject the hospital to a fine of two hundred dollars which shall be imposed by the chair payable to the board upon finding that this subdivision has not been complied with. No hospital shall be required to produce the records of any claimant without receiving its customary fees or charges for reproduction of such records.

(h) (1) The chair shall require the performance of computer searches to identify injured employees who, with respect to the same injury or illness, have filed claims under the provisions of this chapter and made claims to, or on their behalf with, a payor of medical payments eligible for reimbursement pursuant to this section. Such searches shall be done at least quarterly upon request of payors and upon submission to the board of computer tapes containing the information the chair shall need to identify injured employees who file dual claims under this section. At least quarterly, the chair shall identify injured employees who have filed dual claims by social security number and workers' compensation board number and shall notify the payor of such results.

(2) Such payor shall use the information of dual filings solely for the purpose of reimbursement from the carrier or employer. The chair, upon a finding that such entity has used the information for purposes

other than reimbursement from the carrier or employer, may, after hearing, impose a penalty of not more than ten thousand dollars and may prohibit such entity from receiving information under this subdivision for up to three years.

(3) The chair shall adopt rules and regulations to carry out the provisions of this section, which rules and regulations shall provide for alternative dispute resolution procedures for settlement of disputed claims for reimbursement under subdivision (d) of this section including but not limited to referral and submission of disputed claims to mandatory arbitration with private arbitration associations. Such rules and regulations may provide for a reasonable fee to be charged to payors for computer searches. Claims for computer searches submitted to the board prior to March thirty-first, nineteen hundred ninety-two, may be submitted with a payment date on or after April first, nineteen hundred eighty-eight. Claims for reimbursement submitted after March thirty-first, nineteen hundred ninety-two, shall have a payment date that is no later than three years prior to the date of submission of the claim for matching purposes to the board. If disputed, these claims shall be resolved through the dispute resolution procedures set forth in this section. Upon resolution of the reimbursement dispute in accordance with this section, the amount paid to the prevailing party shall be increased by the amount of any fee paid to the arbitrator or incurred by reason of any other alternate dispute resolution procedure.

(i) (1) When a claimant or pharmacy submits a claim to the employer or its carrier for payment of prescribed medicine or for reimbursement of the cost of prescribed medicine which the employer is required to provide under this section, the employer or carrier shall pay the amount prescribed by the fee schedule adopted under section thirteen-o of this article, or if the prescribed medicine is not included on the current fee schedule, the usual and customary charges for such prescribed medicine, within forty-five days of receipt of the claim, unless the liability of the employer or carrier on the claim for which the claimant seeks payment or reimbursement of payment for the prescribed medicine is not established, or the prescribed medicine is not for a causally related condition.

(2) Where the liability of the employer or carrier on the claim for which the claimant seeks payment or reimbursement of payment for the

prescribed medicine or reimbursement for payment of prescribed medicine is not established, or is not for a causally related condition, the employer or carrier shall pay any undisputed portion of the claim in accordance with this section and notify the claimant or pharmacy, as appropriate, in writing within forty-five days of receipt of the claim:

(i) that the claim is not being paid and explaining the reasons for nonpayment; or

(ii) to request all additional information reasonably needed to determine the employer's or carrier's liability for the claim. Upon receipt of the information requested in this subparagraph, the employer or carrier shall comply with paragraph one of this subdivision.

(3) Each claim for payment of prescribed medicine or reimbursement for payment of prescribed medicine that is processed in violation of this section shall constitute a separate violation. In addition to the other penalties provided in this chapter, any employer or carrier that fails to reimburse the claimant or pay the pharmacy, as appropriate and as required in this section shall be obligated to pay to the claimant or pharmacy the amount prescribed on the fee schedule adopted under section thirteen-o of this article, or if the prescribed medicine is not included on the current fee schedule, the usual and customary charges for the prescribed medicine plus simple interest at the rate set forth in section five thousand four of the civil practice law and rules.

(4) Nothing in this subdivision shall prohibit employers or carriers from agreeing to or arranging for direct billing by the pharmacy to the employer or carrier for the cost of prescribed medicine, in order for claimants to more promptly receive prescribed medicine for which employers and carriers are liable under this section.

(5) Notwithstanding any other provision of this chapter, if an employer or carrier has contracted with a pharmacy to provide prescribed medicine to claimants, then such employer or carrier may require claimants to obtain all prescribed medicines from the pharmacy with which it has contracted, except if a medical emergency occurs and it would not be reasonably possible to obtain immediately required prescribed medicine from the pharmacy with which the employer or carrier has a contract. An employer or carrier that requires claimants to obtain prescribed medicines from a pharmacy with which it has a contract must notify claimants of the pharmacy or pharmacies with which it has a

contract, the locations and addresses of the pharmacy or pharmacies, if applicable, how to initially fill and refill prescriptions through the mail, internet, telephone or other means, and any other required information that must be supplied to the pharmacy or pharmacies. If the pharmacy or pharmacies with which the employer or carrier contracts does not offer mail order service and does not have a physical location within a reasonable distance from the claimant, as defined by regulation of the board, the claimant may obtain prescribed medicines at the pharmacy or pharmacies of his or her choice and the employer or carrier will be liable for such charges in accordance with the fee schedule prescribed in section thirteen-o of this chapter.

*** § 13-a. Selection of authorized physician by employee.** (1) An injured employee may, when care is required, select to treat him or her any physician authorized by the chair to render medical care, as hereafter provided. If for any reason during the period when medical treatment and care is required, the employee wishes to transfer his or her treatment and care to another authorized physician, he or she may do so, in accordance with rules prescribed by the chair. In such instance the remuneration of the physician whose services are being dispensed with shall be limited to the value of treatment rendered at fees as established in the schedule for his or her location, unless payment in higher amounts has been approved as authorized in section thirteen, paragraph a. If a claimant shall receive treatment in any hospital or other institution operated in whole or in part by the state of New York, the employer shall be liable for food, clothing and maintenance furnished by the hospital or other institution to such employee. If the employee is unable due to the nature of the injury to select such authorized physician and the emergency nature of the injury requires immediate medical treatment and care, or if he or she does not desire to select a physician, and in writing so advises the employer, the employer shall promptly provide him or her with the necessary medical care, provided however, that nothing herein contained shall operate to prevent such employee, when subsequently able to do so, from selecting for continuance of any medical treatment or care required, any physician authorized by the chair to render medical care as hereinafter provided.

(2) The chairman shall prescribe the form of a notice informing employees of their privilege under this chapter, and such notice shall be posted and maintained by the employer in a conspicuous place or places in and about his place or places of business.

(3) The employer shall have the right to transfer the care of an injured employee from the attending physician, whether chosen originally by the employee or by the employer, to another authorized physician (1) if the interest of the injured employee necessitates the transfer or (2) if the physician has not been authorized to treat injured employees under this act or (3) if he has not been authorized under this act to treat the particular injury or condition as provided by section thirteen-b (2). An authorized physician from whom the case has been transferred shall have the right of appeal to an arbitration committee as provided in subdivision two of section thirteen-g and if said arbitration committee finds that the transfer was not authorized by this section, said employer shall pay to the physician a sum equal to the total fee earned by the physician to whom the care of the injured employee has been transferred, or such proportion of said fee as the arbitration committee shall deem adequate.

(4) (a) No claim for medical or surgical treatment shall be valid and enforceable, as against such employer, or employee, unless within forty-eight hours following the first treatment the physician giving such treatment furnishes to the employer and directly to the chair a preliminary notice of such injury and treatment, within fifteen days thereafter a more complete report and subsequent thereto progress reports if requested in writing by the chair, board, employer or insurance carrier at intervals of not less than three weeks apart or at less frequent intervals if requested on forms prescribed by the chair. The board may excuse failure to give such notices within the designated periods when it finds it to be in the interest of justice to do so.

(b) Upon receipt of the notice provided for by paragraph (a) of this subdivision, the employer, the carrier, and the claimant each shall be entitled to have the claimant examined by a physician authorized by the chair in accordance with sections thirteen-b and one hundred thirty-seven of this chapter, at a medical facility convenient to the claimant and in the presence of the claimant's physician, and refusal by the claimant to submit to such independent medical examination at such

time or times as may reasonably be necessary in the opinion of the board, shall bar the claimant from recovering compensation for any period during which he or she has refused to submit to such examination. No hospital shall be required to produce the records of any claimant without receiving its customary fees or charges for reproduction of such records.

(c) Where it would place an unreasonable burden upon the employer or carrier to arrange for, or for the claimant to attend, an independent medical examination by an authorized physician, the employer or carrier shall arrange for such examination to be performed by a qualified physician in a medical facility convenient to the claimant.

(d) The independent medical examiner shall provide such reports and shall submit to investigation as required by the chair.

(e) In order to qualify as admissible medical evidence, for purposes of adjudicating any claim under this chapter, any report submitted to the board by an independent medical examiner licensed by the state of New York shall include the following:

(i) a signed statement certifying that the report is a full and truthful representation of the independent medical examiner's professional opinion with respect to the claimant's condition:

(ii) such examiner's board issued authorization number;

(iii) the name of the individual or entity requesting the examination;

(iv) if applicable, the registration number as required by section thirteen-n of this article; and

(v) such other information as the chair may require by regulation.

Any report by an independent medical examiner who is not authorized, and who performs an independent medical examination in accordance with paragraph (c) of this subdivision, which is to be used as medical evidence under this chapter, shall include in the report such information as the chair may require by regulation.

(5) No claim for specialist consultations, surgical operations, physiotherapeutic or occupational therapy procedures, x-ray examinations or special diagnostic laboratory tests costing more than one thousand dollars shall be valid and enforceable, as against such employer, unless such special services shall have been authorized by the employer or by the board, or unless such authorization has been unreasonably withheld,

or withheld for a period of more than thirty calendar days from receipt of a request for authorization, or unless such special services are required in an emergency, provided, however, that the basis for a denial of such authorization by the employer must be based on a conflicting second opinion rendered by a physician authorized by the board. The board, with the approval of the superintendent of financial services, shall issue and maintain a list of pre-authorized procedures under this section. Such list of pre-authorized procedures shall be issued and maintained for the purpose of expediting authorization of treatment of injured workers. Such list of pre-authorized procedures shall not prohibit varied treatment when the treating provider demonstrates the appropriateness and medical necessity of such treatment.

(6) (a) Any interference by any person with the selection by an injured employee of an authorized physician to treat him, except when the selection is made pursuant to article ten-A of this chapter, and the improper influencing or attempt by any person improperly to influence the medical opinion of any physician who has treated or examined an injured employee, shall be a misdemeanor; provided, however, that it shall not constitute interference or improper influence if, in the presence of such injured employee's physician, an employer, his carrier or agent should recommend or provide information concerning rehabilitation services or the availability thereof to an injured employee or his family.

(b) Except as otherwise permitted by law, an employer, carrier, or third-party administrator shall not interfere or attempt to interfere with the selection by an injured employee of, or treatment by, an authorized medical provider, including by directing or attempting to direct that the injured employee seek treatment from a specific provider or type of provider selected by the employer, carrier, or third-party administrator. It shall not constitute improper interference under this paragraph if the direction or attempt to direct the injured employee to receive treatment from a specific provider or type of provider originates from the authorized medical provider while in the course of providing treatment to the injured employee.

(i) Notwithstanding any other provision in this chapter, the chair shall by regulation establish a performance standard concerning the subject of any penalty imposed under this paragraph against an employer,

carrier or third-party administrator. The performance standard established by the chair shall be used to measure compliance with this paragraph by employers, carriers and third-party administrators. The chair shall apply the performance standard based on multiple factors, including but not limited to, findings of improper interference submitted as complaints to the board's monitoring unit, unreasonable objections to medical care, unwarranted objections to variances, medical billing disputes, case delays brought about by employers, carriers and third-party administrators, and the unreasonable denial of medical care.

(ii) Upon validating an allegation that the employer, carrier or third-party administrator has failed to meet the promulgated performance standard, a penalty shall be assessed by the board upon notice to the employer, carrier or third-party administrator. The board shall impose such penalty against the carrier, employer or third-party administrator in the amount of fifty dollars per violation identified in subparagraph (i) of this paragraph. The penalties for violations identified in subparagraph (i) of this paragraph, may be aggregated into a single penalty upon a finding that an employer, carrier or third-party administrator has interfered with an injured employee's necessary medical treatment and care. Such aggregate penalty or assessment shall be based upon the number of violations as multiplied against the applicable penalty or assessment, but may be negotiated by the chair's designee in full satisfaction of the penalty or assessment. Any aggregate penalty or assessment issued under this paragraph shall be issued administratively, and the chair shall, by regulation, specify the method of review or redetermination, and the presentment of evidence and objections shall occur solely upon the documentation. Any final determination shall be subject to review under section twenty-three of this article but penalties may not be subject to a stay. A final determination that an employer, carrier or third-party administrator has engaged in a pattern of interference with an injured worker's access to medically necessary medical care shall result in the imposition of an aggregate penalty and publication of notice of such finding on the board's web page.

(7)(a) Notwithstanding any other provision of this chapter to the contrary, any insurance carrier authorized to transact the business of workers' compensation insurance in this state, self-insurer or the state

insurance fund may contract with a network or networks, legally and properly organized, to perform diagnostic tests, x-ray examinations, magnetic resonance imaging, or other radiological examinations or tests of claimants and may require claimant to obtain or undergo such diagnostic test, x-ray examinations, magnetic resonance imaging or other radiological examinations or tests with a provider or at a facility that is affiliated with the network or networks with which the carrier contracts, except if a medical emergency occurs requiring an immediate diagnostic test, x-ray examination, magnetic resonance imaging or other radiological examination or test or if the network with which the insurance carrier, self-insurer or the state insurance fund contracts does not have a provider or facility able to perform the examination or test within a reasonable distance from the claimant's residence or place of employment, as defined by regulation of the board.

(b) Any insurance carrier, self-insurer or the state insurance fund which requires claimants to obtain or undergo diagnostic tests, x-ray examinations, magnetic resonance imaging or other radiological examinations or tests with a provider or at a facility affiliated with a network or networks with which it contracts, must notify the claimant of the name and contact information for the network or networks at the same time the written statement of the claimant's rights as required by subdivision two of section one hundred ten of this chapter or immediately after imposing such requirement if the time period within which the written statement of the claimant's rights as required by subdivision two of section one hundred ten of this chapter has expired.

(c) At the time a request for authorization for special diagnostic tests, x-ray examinations, magnetic resonance imaging or other radiological examinations or tests costing more than one thousand dollars as required by subdivision five of this section is approved, the insurance carrier, self-insurer or state insurance fund, or if so delegated the network with which the insurance carrier, self-insurer or state insurance fund has contracted, shall notify the physician requesting authorization of the requirement that the claimant obtain or undergo the special diagnostic test, x-ray examination, magnetic resonance imaging or other radiological examination or test with a provider or at a facility affiliated with the network or networks with which it has contracted, the contact information for the network and a

list of the providers and facilities within the claimant's geographic location, as defined by regulation of the board. The claimant, in consultation with the provider who requested the special diagnostic test, x-ray examination, magnetic resonance imaging or other radiological test or exam, will determine the provider or facility from within the network which will perform such diagnostic test, x-ray examination, magnetic resonance imaging or other radiological examination or test.

(d) The results of the special diagnostic test, x-ray examination, magnetic resonance imaging or other radiological test or exam must be sent to the physician who requested the test or exam immediately upon completion of the report detailing the results.

* NB Effective until January 1, 2028

* § 13-a. Selection of authorized provider by employee. (1) An injured employee may, when care is required, select to treat with any provider authorized by the chair to render medical care or treatment, as hereafter provided. If for any reason during the period when medical care or treatment is required, the employee wishes to transfer their medical care or treatment to another authorized provider, they may do so, in accordance with rules prescribed by the chair. In such instance the remuneration of the provider whose services are being dispensed with shall be limited to the value of treatment rendered at fees as established in the schedule for their location, unless payment in higher amounts has been approved as authorized in subdivision a of section thirteen of this article. If a claimant shall receive treatment in any hospital or other institution operated in whole or in part by the state of New York, the employer shall be liable for food, clothing and maintenance furnished by the hospital or other institution to such employee. If the employee is unable due to the nature of the injury to select such authorized provider and the emergency nature of the injury requires immediate medical treatment and care, or if they do not desire to select a provider, and in writing so advises the employer, the employer shall promptly provide the employee with the necessary medical care or treatment, provided however, that nothing herein contained shall operate to prevent such employee, when subsequently able to do so, from selecting for continuance of any medical care or treatment required, any provider authorized by the chair to render medical care or treatment as

hereinafter provided.

(2) The chair shall prescribe the form of a notice informing employees of their privilege under this chapter, and such notice shall be posted and maintained by the employer in a conspicuous place or places in and about their place or places of business.

(3) The employer shall have the right to transfer the care of an injured employee from the attending physician, whether chosen originally by the employee or by the employer, to another authorized physician (1) if the interest of the injured employee necessitates the transfer or (2) if the physician has not been authorized to treat injured employees under this act or (3) if the physician has not been authorized under this act to treat the particular injury or condition as provided by section thirteen-b (2). An authorized physician from whom the case has been transferred shall have the right of appeal to an arbitration committee as provided in subdivision two of section thirteen-g of this article and if said arbitration committee finds that the transfer was not authorized by this section, said employer shall pay to the physician a sum equal to the total fee earned by the physician to whom the care of the injured employee has been transferred, or such proportion of said fee as the arbitration committee shall deem adequate.

(4) (a) No claim for medical or surgical treatment shall be valid and enforceable, as against such employer, or employee, unless within forty-eight hours following the first treatment the provider giving such treatment furnishes to the employer and directly to the chair a preliminary notice of such injury and treatment, within fifteen days thereafter a more complete report and subsequent thereto progress reports if requested in writing by the chair, board, employer or insurance carrier at intervals of not less than three weeks apart or at less frequent intervals if requested on forms prescribed by the chair. The board may excuse failure to give such notices within the designated periods when it finds it to be in the interest of justice to do so. A provider's reports or records shall be considered as evidence in support of a claim notwithstanding the provider's compliance with the foregoing time frames.

(b) Upon receipt of the notice provided for by paragraph (a) of this subdivision, the employer, the carrier, and the claimant each shall be entitled to have the claimant examined by a provider authorized by the

chair to perform independent medical examinations in accordance with sections thirteen-b and one hundred thirty-seven of this chapter, at a medical facility convenient to the claimant and in the presence of the claimant's provider, and refusal by the claimant to submit to such independent medical examination at such time or times as may reasonably be necessary in the opinion of the board, shall bar the claimant from recovering compensation for any period during which they have refused to submit to such examination. No hospital shall be required to produce the records of any claimant without receiving its customary fees or charges for reproduction of such records.

(c) Where it would place an unreasonable burden upon the employer or carrier to arrange for, or for the claimant to attend, an independent medical examination by an authorized provider, the employer or carrier shall arrange for such examination to be performed by a qualified provider in a medical facility convenient to the claimant.

(d) The independent medical examiner shall provide such reports and shall submit to investigation as required by the chair.

(e) In order to qualify as admissible medical evidence, for purposes of adjudicating any claim under this chapter, any report submitted to the board by an independent medical examiner licensed by the state of New York shall include the following:

(i) a signed statement certifying that the report is a full and truthful representation of the independent medical examiner's professional opinion with respect to the claimant's condition:

(ii) such examiner's board issued authorization number;

(iii) the name of the individual or entity requesting the examination;

(iv) if applicable, the registration number as required by section thirteen-n of this article; and

(v) such other information as the chair may require by regulation.

Any report by an independent medical examiner who is not authorized, and who performs an independent medical examination in accordance with paragraph (c) of this subdivision, which is to be used as medical evidence under this chapter, shall include in the report such information as the chair may require by regulation.

(5) No claim for specialist consultations, surgical operations, physiotherapeutic or occupational therapy procedures, x-ray examinations

or special diagnostic laboratory tests costing more than one thousand five hundred dollars shall be valid and enforceable, as against such employer, unless such special services shall have been authorized by the employer or by the board, or unless such authorization has been unreasonably withheld, or withheld for a period of more than thirty calendar days from receipt of a request for authorization, or unless such special services are required in an emergency, provided, however, that the basis for a denial of such authorization by the employer must be based on a conflicting second opinion rendered by a physician authorized by the board. The board, with the approval of the superintendent of financial services, shall issue and maintain a list of pre-authorized procedures under this section. Such list of pre-authorized procedures shall be issued and maintained for the purpose of expediting authorization of treatment of injured workers. Such list of pre-authorized procedures shall not prohibit varied treatment when the treating provider demonstrates the appropriateness and medical necessity of such treatment.

(6) (a) Any interference by any person with the selection by an injured employee of an authorized provider to treat such employee, except when the selection is made pursuant to article ten-A of this chapter, and the improper influencing or attempt by any person improperly to influence the medical opinion of any provider who has treated or examined an injured employee, shall be a misdemeanor; provided, however, that it shall not constitute interference or improper influence if, in the presence of such injured employee's provider, an employer, carrier or agent should recommend or provide information concerning rehabilitation services or the availability thereof to an injured employee or the employee's family. It shall not be presumed that a claimant's attorney or representative's communication with the injured employee's treating provider was an attempt to improperly influence the treating provider. The mere fact that a claimant's attorney or representative and their treating provider have communicated shall not support a finding of improper influence. The board may diminish or preclude the opinion of a treating provider based on improper influence only upon a determination that, due to the interference, the opinion will not help the board understand the evidence or determine a fact in issue.

(b) Except as otherwise permitted by law, an employer, carrier, or third-party administrator shall not interfere or attempt to interfere with the selection by an injured employee of, or treatment by, an authorized provider, including by directing or attempting to direct that the injured employee seek treatment from a specific provider or type of provider selected by the employer, carrier, or third-party administrator. It shall not constitute improper interference under this paragraph if the direction or attempt to direct the injured employee to receive treatment from a specific provider or type of provider originates from the employee's authorized provider while in the course of providing treatment to the injured employee.

(i) Notwithstanding any other provision in this chapter, the chair shall by regulation establish a performance standard concerning the subject of any penalty imposed under this paragraph against an employer, carrier or third-party administrator. The performance standard established by the chair shall be used to measure compliance with this paragraph by employers, carriers and third-party administrators. The chair shall apply the performance standard based on multiple factors, including but not limited to, findings of improper interference submitted as complaints to the board's monitoring unit, unreasonable objections to medical care or treatment, unwarranted objections to variances, medical billing disputes, case delays brought about by employers, carriers and third-party administrators, and the unreasonable denial of medical care or treatment.

(ii) Upon validating an allegation that the employer, carrier or third-party administrator has failed to meet the promulgated performance standard, a penalty shall be assessed by the board upon notice to the employer, carrier or third-party administrator. The board shall impose such penalty against the carrier, employer or third-party administrator in the amount of fifty dollars per violation identified in subparagraph (i) of this paragraph. The penalties for violations identified in subparagraph (i) of this paragraph, may be aggregated into a single penalty upon a finding that an employer, carrier or third-party administrator has interfered with an injured employee's necessary medical care or treatment. Such aggregate penalty or assessment shall be based upon the number of violations as multiplied against the applicable penalty or assessment, but may be negotiated by the chair's designee in

full satisfaction of the penalty or assessment. Any aggregate penalty or assessment issued under this paragraph shall be issued administratively, and the chair shall, by regulation, specify the method of review or redetermination, and the presentment of evidence and objections shall occur solely upon the documentation. Any final determination shall be subject to review under section twenty-three of this article but penalties may not be subject to a stay. A final determination that an employer, carrier or third-party administrator has engaged in a pattern of interference with an injured worker's access to medically necessary medical care or treatment shall result in the imposition of an aggregate penalty and publication of notice of such finding on the board's web page.

(7)(a) Notwithstanding any other provision of this chapter to the contrary, any insurance carrier authorized to transact the business of workers' compensation insurance in this state, self-insurer or the state insurance fund may contract with a network or networks, legally and properly organized, to perform diagnostic tests, x-ray examinations, magnetic resonance imaging, or other radiological examinations or tests of claimants and may require claimant to obtain or undergo such diagnostic test, x-ray examinations, magnetic resonance imaging or other radiological examinations or tests with a provider or at a facility that is affiliated with the network or networks with which the carrier contracts, except if a medical emergency occurs requiring an immediate diagnostic test, x-ray examination, magnetic resonance imaging or other radiological examination or test or if the network with which the insurance carrier, self-insurer or the state insurance fund contracts does not have a provider or facility able to perform the examination or test within a reasonable distance from the claimant's residence or place of employment, as defined by regulation of the board.

(b) Any insurance carrier, self-insurer or the state insurance fund which requires claimants to obtain or undergo diagnostic tests, x-ray examinations, magnetic resonance imaging or other radiological examinations or tests with a provider or at a facility affiliated with a network or networks with which it contracts, must notify the claimant of the name and contact information for the network or networks at the same time the written statement of the claimant's rights as required by subdivision two of section one hundred ten of this chapter or

immediately after imposing such requirement if the time period within which the written statement of the claimant's rights as required by subdivision two of section one hundred ten of this chapter has expired.

(c) At the time a request for authorization for special diagnostic tests, x-ray examinations, magnetic resonance imaging or other radiological examinations or tests costing more than one thousand five hundred dollars as required by subdivision five of this section is approved, the insurance carrier, self-insurer or state insurance fund, or if so delegated the network with which the insurance carrier, self-insurer or state insurance fund has contracted, shall notify the provider requesting authorization of the requirement that the claimant obtain or undergo the special diagnostic test, x-ray examination, magnetic resonance imaging or other radiological examination or test with a provider or at a facility affiliated with the network or networks with which it has contracted, the contact information for the network and a list of the providers and facilities within the claimant's geographic location, as defined by regulation of the board. The claimant, in consultation with the provider who requested the special diagnostic test, x-ray examination, magnetic resonance imaging or other radiological test or exam, will determine the provider or facility from within the network which will perform such diagnostic test, x-ray examination, magnetic resonance imaging or other radiological examination or test.

(d) The results of the special diagnostic test, x-ray examination, magnetic resonance imaging or other radiological test or exam must be sent to the provider who requested the test or exam immediately upon completion of the report detailing the results.

* NB Effective January 1, 2028

§ 13-aa. Medical appeals unit. 1. There is hereby created a medical appeals unit. Such medical appeals unit shall consist of three physicians licensed to practice in this state and known to represent the schools of medical practice eligible to practice under this chapter. The members of the medical appeals units shall be appointed by the governor: provided that the members of the medical appeals unit of the industrial council heretofore appointed and in office at the time this section

takes effect shall be and they are hereby constituted members of the medical appeals unit hereby created, and they shall continue in office as such until July first, nineteen hundred fifty-four. The members next appointed shall be appointed as follows: one for term expiring December thirty-first, nineteen hundred fifty-five; one for term expiring December thirty-first, nineteen hundred fifty-six; and one for term expiring December thirty-first, nineteen hundred fifty-seven. The members thereafter appointed, except to fill a vacancy created otherwise than by expiration of term, shall be appointed for terms of three years each. The governor may remove any member of the medical appeals unit when such member ceases to be licensed to practice. The chairman shall designate an employee of the board to act as secretary of the medical appeals unit.

2. Members of the medical appeals unit shall be entitled to compensation at a rate not exceeding one hundred fifty dollars per day for each day actually spent in the performance of their duties under this chapter, but no member shall be entitled to compensation for such duties in excess of seven thousand five hundred dollars during any year. They shall also be paid their reasonable and necessary traveling and other expenses while engaged in the performance of their duties.

3. The medical appeals unit shall (a) consider all matters connected with the practice of medicine submitted to it by the workmen's compensation board or the chairman thereof;

(b) prescribe rules and regulations to govern the procedure of investigations and hearings by the medical societies or boards of charges against authorized physicians and licensed compensation medical bureaus, laboratories and bureaus engaged in x-ray diagnosis or treatment, in clinical diagnosis or in physiotherapy or other therapeutic procedures, as provided in section thirteen-d and thirteen-e of this chapter;

(c) review, upon request, charges made by a physician, compensation medical bureau or laboratory or bureau engaged in x-ray diagnosis or treatment, in clinical diagnosis, or in physiotherapy or other therapeutic procedures, that any medical society or board has improperly refused to recommend authorization of the physician, compensation

medical bureau or laboratory or bureau to do compensation work, and if it sustain the charges, recommend such authorization to the chairman;

(d) review, upon request, charges made by a physician, compensation medical bureau or laboratory or bureau engaged in x-ray diagnosis or treatment, in clinical diagnosis, or in physiotherapy or other therapeutic procedures, that any medical society or board has improperly recommended that his or its authorization to do compensation work be revoked, and if it sustain the charges, recommend to the chairman that such authorization not be revoked.

In each case arising under this subdivision the medical appeals unit may re-open the matter and receive further evidence, and its decision and recommendation shall be advisory to the chairman and shall not be binding or conclusive upon him.

4. The medical appeals unit shall adopt rules and regulations to govern its own proceedings. The secretary of the medical appeals unit shall keep a complete record of all the proceedings of the unit which shall show the names of the members present at each meeting and every matter considered and the action taken thereon. Such records shall be filed in the office of the secretary of the board.

5. The provisions of sections nineteen-a and nineteen-b of this chapter limiting and restricting professional activities of physicians or surgeons in the employ of the board shall also be applicable to and binding upon members of the medical appeals unit.

6. For the purpose of exercising the powers and performing the duties set forth in this section, the medical appeals unit created hereunder shall be deemed to be a continuation of the medical appeals unit of the industrial council of the department of labor; and all proceedings pending before the medical appeals unit of the industrial council of the department of labor, are hereby transferred to the medical appeals unit without prejudice to the rights of any party to such proceeding.

The medical appeals unit, subject to the provisions of this chapter, shall succeed to all the rights, powers, duties and obligations of the

medical appeals unit of the industrial council, insofar as they relate to workmen's compensation.

Wherever the term "medical appeals unit of the industrial council" appears in this chapter or in the rules or regulations promulgated thereunder, it shall be construed to mean the medical appeals unit created hereunder.

*** § 13-b. Authorization of providers, medical bureaus and laboratories by the chair.** 1. No person shall render medical care or conduct independent medical examinations under this chapter without such authorization by the chair. As used in this title, the following definitions shall have the following meanings unless their context requires otherwise:

(a) "Acupuncturist" shall mean licensed as having completed a formal course of study and having passed an examination in accordance with the education law, the regulations of the commissioner of education, and the requirements of the board of regents. Acupuncturists are required by the education law to advise, in writing, each patient of the importance of consulting with a physician for the condition or conditions necessitating acupuncture care, as prescribed by the education law.

(b) "Chair" of the board shall mean either the chair or the chair's designee.

(c) "Chiropractor" shall mean licensed and having completed two years of preprofessional college study and a four-year resident program in chiropractic in accordance with the education law, and consistent with the licensing requirements of the commissioner of education.

(d) "Dentist" shall mean licensed and having completed a four-year course of study leading to a D.D.S. or D.D.M. degree, or an equivalent degree, in accordance with the education law and the licensing requirements of the commissioner of education.

(e) "Employer" shall mean a self-insured employer or, if insured, the insurance carrier.

(f) "Independent medical examination" shall mean an examination performed by a physician, podiatrist, chiropractor or psychologist, authorized under this section to perform such examination, for the

purpose of examining or evaluating injury or illness pursuant to paragraph (b) of subdivision four of section thirteen-a and section one hundred thirty-seven of this chapter and as more fully set forth in regulation.

(g) "Nurse practitioner" shall mean a licensed registered professional nurse certified pursuant to section sixty-nine hundred ten of the education law acting within their lawful scope of practice.

(h) "Occupational therapist" shall mean licensed as having at least a bachelor's or master's degree in occupational therapy from a registered program with the education department or receipt of a diploma or degree resulting from completion of not less than four years of postsecondary study, which includes the professional study of occupational therapy in accordance with the education law and the regulations of the commissioner of education.

(i) "Physical therapist" shall mean licensed in accordance with the education law and the licensing requirements of the commissioner of education.

(j) "Physician" shall mean licensed with a degree of doctor of medicine, M.D., or doctor of osteopathic medicine, D.O., or an equivalent degree in accordance with the education law and the licensing requirements of the state board of medicine and the regulations of the commissioner of education.

(k) "Physician assistant" shall mean a licensed provider who is licensed as a physician assistant pursuant to section sixty-five hundred forty-one of the education law.

(l) "Podiatrist" shall mean a doctor of podiatric medicine licensed as having received a doctoral degree in podiatric medicine in accordance with the regulations of the commissioner of education and the education law, and must satisfactorily meet all other requirements of the state board for podiatric medicine.

(m) "Provider" shall mean a duly licensed acupuncturist, chiropractor, nurse practitioner, occupational therapist, physical therapist, physician, physician assistant, podiatrist, psychologist, or social worker authorized by the chair.

(n) "Psychologist" shall mean licensed as having received a doctoral degree in psychology from a program of psychology registered with the state education department or the substantial equivalent thereof in

accordance with the education law, the requirements of the state board for psychology, and the regulations of the commissioner of education.

(o) "Social worker" shall mean a licensed clinical social worker. A licensed clinical social worker has completed a master's degree of social work that includes completion of a core curriculum of at least twelve credit hours of clinical courses or the equivalent post-graduate clinical coursework, in accordance with the education law and the regulations of the commissioner of education.

(p) "Physical therapist assistant" shall mean licensed in accordance with the education law and the licensing requirements of the commissioner of education.

(q) "Occupational therapy assistant" shall mean licensed in accordance with the education law and the licensing requirements of the commissioner of education.

2. Any provider licensed pursuant to the education law to provide medical care and treatment in the state of New York may render emergency care and treatment in an emergency hospital or urgent care setting providing emergency treatment under this chapter without authorization by the chair under this section; (a) Such licensed provider as identified in this subdivision who is on staff at any hospital or urgent care center providing emergency treatment may continue such medical care under this chapter while an injured employee remains a patient in such hospital or urgent care setting; and

(b) Under the direct supervision of an authorized provider, medical care may be rendered by a registered nurse or other person trained in laboratory or diagnostic techniques within the scope of such person's specialized training and qualifications. This supervision shall be evidenced by signed records of instructions for treatment and signed records of the patient's condition and progress. Reports of such treatment and supervision shall be made by such provider to the chair in the format prescribed by the chair at such times as the chair may require.

(b-1) Under the direction and supervision of an authorized occupational therapist, occupational therapy services may be rendered by an occupational therapy assistant. Under the direction and supervision of an authorized physical therapist, physical therapy services may be

rendered by a physical therapist assistant. Where any such care or treatment is rendered, records of the patient's condition and progress, together with records of instruction for treatment, if any, shall be maintained by the physical therapist or occupational therapist and by the referring physician, physician assistant, podiatrist, or nurse practitioner. Said records shall be submitted to the chair on forms and at such times as the chair may require.

(b-2) Under the supervision of any authorized provider, any resident or fellow who may practice medicine as an exempt person as provided for in title eight of the education law, may render medical care under this chapter so long as the supervisory requirements of the education law are met and neither the supervising provider nor resident or fellow have been prohibited from treating workers' compensation claimants pursuant to section thirteen-d of this article.

(c) Where it would place an unreasonable burden upon the employer or carrier to arrange for, or for the claimant to attend, an independent medical examination by an authorized provider, the employer or carrier shall arrange for such examination to be performed by a qualified provider in a medical facility convenient to the claimant.

(d) Upon the prescription or referral of an authorized physician, physician assistant, podiatrist, or nurse practitioner acting within the scope of his or her practice, care or treatment may be rendered to an injured employee by an authorized physical therapist, occupational therapist or acupuncturist provided the conditions and the treatment performed are among the conditions that the physical therapist, occupational therapist or acupuncturist is authorized to treat pursuant to the education law or the regulations of the commissioner of education. Where any such care or treatment is rendered, records of the patient's condition and progress, together with records of instruction for treatment, if any, shall be maintained by the physical therapist, occupational therapist or acupuncturist rendering treatment and by the referring physician, physician assistant, podiatrist, or nurse practitioner. Said records shall be submitted to the chair on forms and at such times as the chair may require.

(e) A record, report or opinion of a physical therapist, occupational therapist, acupuncturist or physician assistant shall not be considered as evidence of the causal relationship of any condition to a work

related accident or occupational disease under this chapter. Nor may a record, report or opinion of a physical therapist, occupational therapist or acupuncturist be considered evidence of disability. Nor may a record, report or opinion of a physician assistant be considered evidence of the presence of a permanent or initial disability or the degree thereof.

(f) An independent medical examination performed in accordance with section one hundred thirty-seven of this chapter, may only be performed by a physician, podiatrist, chiropractor or psychologist authorized to perform such examinations by the chair, or as specified in regulation, when qualified by the board.

3. A provider properly licensed or certified pursuant to the regulations of the commissioner of education and the requirements of the education law desirous of being authorized to render medical care under this chapter and/or to conduct independent medical examinations in accordance with paragraph (b) of subdivision four of section thirteen-a and section one hundred thirty-seven of this chapter shall file an application for authorization under this chapter with the chair or chair's designee. Prior to receiving authorization, a physician must, together with submission of an application to the chair, submit such application to the medical society of the county in which the physician's office is located or of a board designated by such county society or of a board representing duly licensed physicians of any other school of medical practice in such county, and such medical society shall submit the recommendation to the board. In the event such county society or board fails to take action upon a physician's completed and signed application within forty-five days, the chair may complete review of the application without such approval. Upon approval of the application by the chair or the chair's designee, the applicant shall further agree to refrain from subsequently treating for remuneration, as a private patient, any person seeking medical treatment, or submitting to an independent medical examination, in connection with, or as a result of, any injury compensable under this chapter, if he or she has been removed from the list of providers authorized to render medical care or to conduct independent medical examinations under this chapter, or if the person seeking such treatment, or submitting to an independent

medical examination, has been transferred from his or her care in accordance with the provisions of this chapter. This agreement shall run to the benefit of the injured person so treated or examined, and shall be available to him or her as a defense in any action by such provider for payment for treatment rendered by a provider after he or she has been removed from the list of providers authorized to render medical care or to conduct independent medical examinations under this chapter, or after the injured person was transferred from his or her care in accordance with the provisions of this chapter.

4. Laboratories and bureaus engaged in x-ray diagnosis or treatment or in physiotherapy or other therapeutic procedures and which participate in the diagnosis or treatment of injured workers under this chapter shall be operated or supervised by providers authorized under this chapter and shall be subject to the provisions of section thirteen-c of this article. The person in charge of diagnostic clinical laboratories duly authorized under this chapter shall possess the qualifications established by the public health and health planning council for approval by the state commissioner of health or, in the city of New York, the qualifications approved by the board of health of said city and shall maintain the standards of work required for such approval.

* NB Effective until January 1, 2028

* § 13-b. Authorization of providers, medical bureaus and laboratories by the chair. 1. Any provider as defined in paragraph (m) of this subdivision shall be authorized to render medical care or treatment under this chapter. Independent medical examinations may only be performed by a physician, podiatrist, chiropractor, or psychologist authorized to perform such examinations by the chair, or as specified in regulations. No provider may conduct independent medical examinations unless performed in accordance with paragraph (b) of subdivision four of section thirteen-a and section one hundred thirty-seven of this chapter. As used in this chapter, the following definitions shall have the following meanings unless their context requires otherwise:

(a) "Acupuncturist" shall mean licensed as having completed a formal course of study and having passed an examination in accordance with the education law, the regulations of the commissioner of education, and the requirements of the board of regents. Acupuncturists are required by the

education law to advise, in writing, each patient of the importance of consulting with a physician for the condition or conditions necessitating acupuncture care, as prescribed by the education law.

(b) "Chair" of the board shall mean either the chair or the chair's designee.

(c) "Chiropractor" shall mean licensed and having completed two years of preprofessional college study and a four-year resident program in chiropractic in accordance with the education law, and consistent with the licensing requirements of the commissioner of education.

(d) "Dentist" shall mean licensed and having completed a four-year course of study leading to a D.D.S. or D.D.M. degree, or an equivalent degree, in accordance with the education law and the licensing requirements of the commissioner of education.

(e) "Employer" shall mean a self-insured employer or, if insured, the insurance carrier.

(f) "Independent medical examination" shall mean an examination performed by a physician, podiatrist, chiropractor or psychologist, authorized under this section to perform such examination, for the purpose of examining or evaluating injury or illness in accordance with paragraph (b) of subdivision four of section thirteen-a and section one hundred thirty-seven of this chapter and as more fully set forth in regulation.

(g) "Nurse practitioner" shall mean a licensed registered professional nurse certified pursuant to section sixty-nine hundred ten of the education law acting within their lawful scope of practice.

(h) "Occupational therapist" shall mean licensed as having at least a bachelor's or master's degree in occupational therapy from a registered program with the education department or receipt of a diploma or degree resulting from completion of not less than four years of postsecondary study, which includes the professional study of occupational therapy in accordance with the education law and the regulations of the commissioner of education.

(i) "Physical therapist" shall mean licensed in accordance with the education law and the licensing requirements of the commissioner of education.

(j) "Physician" shall mean licensed with a degree of doctor of medicine, M.D., or doctor of osteopathic medicine, D.O., or an

equivalent degree in accordance with the education law and the licensing requirements of the state board of medicine and the regulations of the commissioner of education.

(k) "Physician assistant" shall mean a licensed provider who is licensed as a physician assistant pursuant to section sixty-five hundred forty-one of the education law.

(l) "Podiatrist" shall mean a doctor of podiatric medicine licensed as having received a doctoral degree in podiatric medicine in accordance with the regulations of the commissioner of education and the education law, and must satisfactorily meet all other requirements of the state board for podiatric medicine.

(m) "Authorized provider" or "provider" shall mean a duly licensed acupuncturist, chiropractor, nurse practitioner, occupational therapist, physical therapist, physician, physician assistant, podiatrist, psychologist, or social worker as defined in this section who is not currently on the exclusion list pursuant to section thirteen-d of this article.

(n) "Psychologist" shall mean licensed as having received a doctoral degree in psychology from a program of psychology registered with the state education department or the substantial equivalent thereof in accordance with the education law, the requirements of the state board for psychology, and the regulations of the commissioner of education.

(o) "Social worker" shall mean a licensed clinical social worker. A licensed clinical social worker has completed a master's degree of social work that includes completion of a core curriculum of at least twelve credit hours of clinical courses or the equivalent post-graduate clinical coursework, in accordance with the education law and the regulations of the commissioner of education.

(p) "Physical therapist assistant" shall mean licensed in accordance with the education law and the licensing requirements of the commissioner of education.

(q) "Occupational therapy assistant" shall mean licensed in accordance with the education law and the licensing requirements of the commissioner of education.

(r) "Exclusion list" shall mean the list published and maintained by the chair in accordance with section thirteen-d of this article listing providers who are currently disqualified from rendering care or from

performing independent medical examinations under this chapter.

2. Any provider rendering medical care or treatment under this chapter must comply with all applicable laws, regulations and guidance, including any applicable New York Medical Treatment Guidelines and the Official New York Medical Fee Schedule(s).

(a) Such provider as identified in this subdivision who is on staff at any hospital or urgent care center providing emergency treatment may continue such medical care or treatment under this chapter while an injured employee remains a patient in such hospital or urgent care setting.

(b) Under the direct supervision of an authorized provider, medical care may be rendered by a registered nurse or other person trained in laboratory or diagnostic techniques within the scope of such person's specialized training and qualifications. This supervision shall be evidenced by signed records of instructions for treatment and signed records of the patient's condition and progress. Reports of such treatment and supervision shall be made by such provider to the chair in the format prescribed by the chair at such times as the chair may require.

(b-1) Under the direction and supervision of an authorized occupational therapist, occupational therapy services may be rendered by an occupational therapy assistant. Under the direction and supervision of an authorized physical therapist, physical therapy services may be rendered by a physical therapist assistant. Where any such care or treatment is rendered, records of the patient's condition and progress, together with records of instruction for treatment, if any, shall be maintained by the physical therapist or occupational therapist and by the referring physician, physician assistant, podiatrist, or nurse practitioner. Said records shall be submitted to the chair on forms and at such times as the chair may require.

(b-2) Under the supervision of any authorized provider, any resident or fellow who may practice medicine as an exempt person as provided for in title eight of the education law, may render medical care or treatment under this chapter so long as the supervisory requirements of the education law are met and neither the supervising provider nor resident or fellow have been prohibited from treating workers'

compensation claimants pursuant to section thirteen-d of this article.

(c) Where it would place an unreasonable burden upon the employer or carrier to arrange for, or for the claimant to attend, an independent medical examination by a provider authorized to perform independent medical examinations in accordance with paragraph (b) of subdivision four of section thirteen-a of this article and section one hundred thirty-seven of this chapter, the employer or carrier shall arrange for such examination to be performed by a qualified provider in a medical facility convenient to the claimant.

(d) Upon the prescription or referral of a physician, physician assistant, podiatrist, or nurse practitioner who is not currently on the exclusion list pursuant to section thirteen-d of this article acting within the scope of their practice, medical care or treatment may be rendered to an injured employee by a physical therapist, occupational therapist or acupuncturist who is not currently on the exclusion list pursuant to section thirteen-d of this article provided the conditions and the treatment performed are among the conditions that the physical therapist, occupational therapist or acupuncturist is authorized to treat pursuant to the education law or the regulations of the commissioner of education. Where any such medical care or treatment is rendered, records of the patient's condition and progress, together with records of instruction for treatment, if any, shall be maintained by the physical therapist, occupational therapist or acupuncturist rendering treatment and by the referring physician, physician assistant, podiatrist, or nurse practitioner. Said records shall be submitted to the chair on forms and at such times as the chair may require.

(e) A record, report or opinion of a physical therapist, occupational therapist, acupuncturist or physician assistant shall not be considered as evidence of the causal relationship of any condition to a work related accident or occupational disease under this chapter. Nor may a record, report or opinion of a physical therapist, occupational therapist or acupuncturist be considered evidence of disability. Nor may a record, report or opinion of a physician assistant be considered evidence of the presence of a permanent or initial disability or the degree thereof.

(f) An independent medical examination performed in accordance with section one hundred thirty-seven of this chapter, may only be performed

by a physician, podiatrist, chiropractor or psychologist authorized to perform such examinations by the chair, or as specified in regulation, when qualified by the board.

3. In order to perform independent medical examinations in accordance with paragraph (b) of subdivision four of section thirteen-a and section one hundred thirty-seven of this chapter, a physician, podiatrist, chiropractor, or psychologist properly licensed or certified pursuant to the regulations of the commissioner of education and the requirements of the education law shall file an application for authorization under this chapter with the chair or chair's designee in the format prescribed by the chair.

4. Laboratories and bureaus engaged in x-ray diagnosis or treatment or in physiotherapy or other therapeutic procedures and which participate in the diagnosis or treatment of injured workers under this chapter shall be operated or supervised by providers authorized under this chapter and shall be subject to the provisions of section thirteen-c of this article. The person in charge of diagnostic clinical laboratories duly authorized under this chapter shall possess the qualifications established by the public health and health planning council for approval by the state commissioner of health or, in the city of New York, the qualifications approved by the board of health of said city and shall maintain the standards of work required for such approval.

* NB Effective January 1, 2028

§ 13-c. Licensing of compensation medical bureaus and laboratories. 1. The chairman may, upon the recommendation of the medical society of the county or of a board as provided in section thirteen-b, authorize and license compensation medical bureaus in such counties operated by qualified physicians wholly or principally for the diagnosis and treatment of industrial injuries or illnesses in respect to which they are authorized to render medical care under this chapter. The chairman, however, shall not authorize or license more than two such bureaus operated by the same physician. The chairman may, upon the recommendation of the medical society of the county or of a board as

provided in section thirteen-b, authorize and license separate laboratories and bureaus engaged in X-ray diagnosis or treatment and clinical diagnosis, or in physiotherapy or other therapeutic procedures, which participate in the diagnosis or treatment of injured workmen under this chapter. The chairman, however, shall not authorize or license more than two such laboratories or bureaus operated by the same physician. Application for such authorization shall be made on forms to be furnished by the chairman, and shall disclose in full the nature of the personnel and equipment of such bureaus. If within sixty days after such application has been filed the medical society or board refuses or fails to act or refuses to recommend to the chairman that such license be granted, the applicant may appeal to the medical appeals unit. Each such bureau or laboratory which receives such authorization shall:

(a) Make reports on its personnel and equipment in such form and at such times as may be required by the chairman; and

(b) Be subject to inspection by the chairman or the medical society of the county in which such bureau or laboratory is located; and

2. No claim for services in connection with x-ray examination, diagnosis or treatment of any claimant shall be valid or enforceable except by a laboratory or bureau of a voluntary hospital authorized and licensed under subdivision one of this section, or except by a physician duly authorized as a roentgenologist by the chairman for services performed by such physician or under his immediate supervision.

3. (a) The chairman may authorize a medical center, jointly operated by labor and management representatives as a non-profit corporation or as a non-profit benefit trust, approved by and under the supervision of the New York state department of health, to provide medical, surgical, dental, optometric, podiatric, or other attendance or treatment, including X-ray diagnosis or treatment, physiotherapy or other therapeutic procedures or services, laboratory services and any and all other services required to be provided for an injured employee under section thirteen of this chapter, entitled "Treatment and care of injured employees".

(b) Application for such authorization shall be made on forms to be furnished by the chairman, and shall disclose in full the nature of the

personnel and equipment of such medical center. Each such medical center which receives such authorization shall:

(i) Make reports on its personnel and equipment in such form and at such times as may be required by the chairman;

(ii) Be subject to inspection by the chairman;

(c) All treatment and services provided hereunder shall be provided on an out-patient basis to employees, who are claimants for workmen's compensation, eligible to use the medical center pursuant to an agreement, plan, deed of trust or labor-management collective bargaining agreement.

(d) (i) A physician rendering medical care at a medical center authorized hereunder must be authorized to render such care pursuant to this chapter and he shall limit his professional activities hereunder to such medical care as his experience and training qualify him to render.

(ii) When para-medical, laboratory or X-ray services or other medical care is required it shall be rendered, under the active and personal supervision of an authorized physician, by a registered nurse or other person trained in laboratory or diagnostic techniques within the scope of such person's specialized training and qualifications. This supervision shall be evidenced by signed records of instructions for treatment and signed records of the patient's condition and progress. Reports of such treatment and supervision shall be made by such physician to the chairman on such forms and at such times as the chairman may require.

(iii) When physical therapy care is required it shall be rendered by a duly licensed physical therapist upon the referral which may be directive as to treatment of an authorized physician or podiatrist within the scope of such physical therapist's specialized training and qualifications as defined in article one hundred thirty-six of the education law. Reports of such treatment and records of instruction for treatment, if any, shall be maintained by the physical therapist and referring professional and submitted to the chairman on such forms and at such times as the chairman may require.

(iv) When occupational therapy care is required it shall be rendered by a duly licensed and registered occupational therapist upon the prescription or referral of an authorized physician within the scope of such occupational therapist's specialized training and qualifications as

defined in article one hundred fifty-six of the education law. Reports of such treatment and records of instruction for treatment, if any, shall be maintained by the occupational therapist and referring professional and submitted to the chairman on such forms and at such times as the chairman may require.

(v) The physician rendering the medical care hereunder shall be in charge of the care unless, in his judgment, it is necessary to refer the case to a specially trained and qualified physician, which physician shall then assume complete responsibility for and supervision of any further medical care rendered.

(e) Notwithstanding any provision of this chapter to the contrary, a medical center authorized by the chairman to render medical care and laboratory services under this section, is authorized and may charge for any and all services rendered in accordance with such schedule or schedules prepared and established by the chairman.

(f) Nothing herein contained shall operate to prevent such employee from selecting for rendering or continuance of any medical treatment or care required, any physician authorized by the chairman to render medical care as hereinabove provided, in accordance with section thirteen-a, of this chapter.

(g) The chairman shall have full power and authority and it shall be his duty to investigate instances of misconduct, or violations of the provisions of this chapter or violations of the rules promulgated by the chairman under the provisions of this chapter, or failure to submit full and truthful medical reports directly to the chairman within the time limits provided under subdivision four of section thirteen-a of this chapter; and, after a hearing, to temporarily suspend or revoke the license of any such medical center. The chairman may also temporarily suspend or revoke the license of any such medical center upon finding, after a hearing, that such medical center has been guilty of professional or other misconduct or that the personnel of such center is not properly qualified under this chapter or the equipment of such medical center is inadequate for the proper rendering of medical care.

(h) The chairman may adopt such reasonable rules and regulations for the authorization and continued supervision of medical centers under this section, as he may deem necessary and proper.

4. (a) The chairman may authorize a hospital as defined in article twenty-eight of the public health law or a health maintenance organization holding a valid certificate of authority issued pursuant to article forty-four of the public health law or operating under the provisions of article forty-three of the insurance law to provide out-patient medical care under this chapter.

(b) Application for such authorization shall be made on forms to be furnished by the chairman, and shall disclose in full the nature of the personnel and equipment of such hospital or health maintenance organization. Each such hospital or health maintenance organization which receives such authorization shall:

(i) Make reports on its personnel and equipment in such form and at such times as may be required by the chairman; and

(ii) Be subject to inspection and investigation as provided hereunder.

(c) All treatment and services provided hereunder shall be provided on an out-patient basis to workers' compensation claimants.

(d) (i) A physician rendering medical care at a hospital or health maintenance organization authorized hereunder must be authorized to render such care pursuant to this chapter and he or she shall limit his or her professional activities hereunder to such medical care as his or her experience and training qualify him or her to render. The physician rendering the medical care shall sign and submit all forms and reports as the chairman may require.

(ii) When para-medical, laboratory or X-ray services or other medical care is required it shall be rendered, under the active and personal supervision of an authorized physician, by a registered nurse or other person trained in laboratory or diagnostic techniques within the scope of such person's specialized training and qualifications. This supervision shall be evidenced by signed records of instructions for treatment and signed records of the patient's condition and progress. Reports of such treatment and supervision shall be made by such physician to the chairman on such forms and at such times as the chairman may require.

(iii) When physical therapy care is required it shall be rendered by a duly licensed physical therapist upon the referral which may be directive as to treatment of an authorized physician or podiatrist within the scope of such physical therapist's specialized training and

qualifications as defined in article one hundred thirty-six of the education law. Reports of such treatment and records of instruction for treatment, if any, shall be maintained by the physical therapist and referring professional and submitted to the chairman of such forms and at such times as the chairman may require.

(iv) When occupational therapy care is required it shall be rendered by a duly licensed and registered occupational therapist upon the prescription or referral of an authorized physician within the scope of such occupational therapist's specialized training and qualifications as defined in article one hundred fifty-six of the education law. Reports of such treatment and records of instruction for treatment, if any, shall be maintained by the occupational therapist and referring professional and submitted to the chairman on such forms and at such times as the chairman may require.

Reports of such treatment and supervision shall be made by such physician to the chairman on such forms and at such times as the chairman may require.

(v) The physician rendering the medical care hereunder shall be in charge of the care unless, in his or her judgment, it is necessary to refer the case to a specially trained and qualified authorized physician, which physician shall then assume complete responsibility for and supervision of any further medical care rendered.

(e) Notwithstanding any provision of this chapter to the contrary, a hospital or health maintenance organization authorized by the chairman to render medical care and laboratory services under this section, is authorized and may charge for any and all services rendered in accordance with such schedule or schedules prepared and established by the chairman.

(f) Nothing herein contained shall operate to prevent such employee from selecting for rendering or continuance of any medical treatment or care required, any physician authorized by the chairman to render medical care as hereinabove provided, in accordance with section thirteen-a of this chapter.

(g) (i) The department of health shall conduct inspections and investigations and make recommendations with respect to charges of professional or other misconduct or that the personnel of an authorized hospital or health maintenance organization are not properly qualified

under this chapter or that the equipment of such hospital or health maintenance organization is inadequate for the proper rendering of medical care. After such inspection and investigation the department of health shall refer its report and recommendations to the chairman, who shall have full power and authority to temporarily suspend or revoke the authorization under this subdivision of any such hospital or health maintenance organization upon finding, after a hearing, that such hospital or health maintenance organization has been guilty of professional or other misconduct, or that the personnel of such hospital or health maintenance organization are not properly qualified under this chapter or the equipment of such hospital or health maintenance organization is inadequate for the proper rendering of medical care. The recommendations of the department of health shall be advisory to the chairman only and shall not be binding or conclusive upon him.

(ii) The chairman shall have full power and authority and it shall be his duty to investigate violations of the provisions of this chapter or violations of the rules promulgated by the chairman under the provisions of this chapter, or failure to submit full and truthful medical reports directly to the chairman within the time limits provided under subdivision four of section thirteen-a of this article, and, after a hearing, to temporarily suspend or revoke the authorization under this subdivision of any such hospital or health maintenance organization.

(h) The chairman may adopt such reasonable rules and regulations for the authorization and continued supervision of hospitals and health maintenance organizations under this section as he may deem necessary and proper.

*** § 13-d. Removal of providers from lists of those authorized to render medical care or to conduct independent medical examinations. 1.** The medical society of the county in which the physician's office is located at the time or a board designated by such county society or a board representing duly licensed physicians of any other school of medical practice in such county shall investigate, hear and make findings with respect to all charges as to professional or other misconduct of any authorized physician as herein provided under rules and procedure to be prescribed by the medical appeals unit, and shall

report evidence of such misconduct, with their findings and recommendation with respect thereto, to the chair. Failure to commence such investigation within sixty days from the date the charges are referred to the society by the chair or submit findings and recommendations relating to the charges within one hundred eighty days from the date the charges are referred shall empower the chair to appoint, as a hearing officer, a member of the board, employee, or other qualified hearing officer to hear and report on the charges to the chair. A qualified hearing officer, who is neither a member of the board, or employee thereof shall be paid at a reasonable per diem rate to be fixed by the chair.

Such investigation, hearing, findings, recommendation and report may be made by the society or board of an adjoining county upon the request of the medical society of the county in which the alleged misconduct or infraction of this chapter occurred, subject to the time limit and conditions set forth herein. The medical appeals unit shall review the findings and recommendation of such medical society or board, or hearing officer appointed by the chair upon application of the accused physician and may reopen the matter and receive further evidence. The findings, decision and recommendation of such society, board or hearing officer appointed by the chair or medical appeals unit shall be advisory to the chair only, and shall not be binding or conclusive upon him or her.

2. The chair shall remove from the list of providers authorized to render medical care under this chapter, or to conduct independent medical examinations in accordance with paragraph (b) of subdivision four of section thirteen-a of this article, the name of any provider who he or she shall find after reasonable investigation is disqualified because such provider:

(a) has been guilty of professional or other misconduct or incompetency in connection with rendering medical services under the law; or

(b) has exceeded the limits of his or her professional competence in rendering medical care or in conducting independent medical examinations under the law, or has made materially false statements regarding his or her qualifications in his or her application for the recommendation of

the medical society or board as provided in section thirteen-b of this article; or

(c) has failed to transmit copies of medical reports to claimant's attorney or licensed representative as provided in subdivision (f) of section thirteen of this article; or has failed to submit full and truthful medical reports of all his or her findings to the employer, and directly to the chair or the board within the time limits provided in subdivision four of section thirteen-a of this article with the exception of injuries which do not require (1) more than ordinary first aid or more than two treatments by a provider or person rendering first aid, or (2) loss of time from regular duties of one day beyond the working day or shift; or

(d) knowingly made a false statement or representation as to a material fact in any medical report made pursuant to this chapter or in testifying or otherwise providing information for the purposes of this chapter; or

(e) has solicited, or has employed another to solicit for himself or herself or for another, professional treatment, examination or care of an injured employee in connection with any claim under this chapter; or

(f) has refused to appear before, to testify, to submit to a deposition, or to answer upon request of, the chair, board, medical appeals unit or any duly authorized officer of the state, any legal question, or to produce any relevant book or paper concerning his or her conduct under any authorization granted to him or her under this chapter; or

(g) has directly or indirectly requested, received or participated in the division, transference, assignment, rebating, splitting or refunding of a fee for, or has directly or indirectly requested, received or profited by means of a credit or other valuable consideration as a commission, discount or gratuity in connection with the furnishing of medical or surgical care, an independent medical examination, diagnosis or treatment or service, including X-ray examination and treatment, or for or in connection with the sale, rental, supplying or furnishing of clinical laboratory services or supplies, X-ray laboratory services or supplies, inhalation therapy service or equipment, ambulance service, hospital or medical supplies, physiotherapy or other therapeutic service or equipment, artificial limbs, teeth or eyes, orthopedic or surgical

appliances or supplies, optical appliances, supplies or equipment, devices for aid of hearing, drugs, medication or medical supplies, or any other goods, services or supplies prescribed for medical diagnosis, care or treatment, under this chapter; except that reasonable payment, not exceeding the technical component fee permitted in the medical fee schedule, established under this chapter for X-ray examinations, diagnosis or treatment, may be made by a provider duly authorized as a roentgenologist to any hospital furnishing facilities and equipment for such examination, diagnosis or treatment, provided such hospital does not also submit a charge for the same services. Nothing contained in this paragraph shall prohibit such providers who practice as partners, in groups or as a professional corporation or as a university faculty practice corporation from pooling fees and moneys received, either by the partnership, professional corporation, university faculty practice corporation or group by the individual members thereof, for professional services furnished by any individual professional member, or employee of such partnership, corporation or group, nor shall the professionals constituting the partnerships, corporations, or groups be prohibited from sharing, dividing or apportioning the fees and moneys received by them or by the partnership, corporation or group in accordance with a partnership or other agreement.

3. Any person who violates or attempts to violate, and any person who aids another to violate or attempts to induce him or her to violate the provisions of paragraph (g) of subdivision two of this section shall be guilty of a misdemeanor.

4. Nothing in this section shall be construed as limiting in any respect the power or duty of the chair to investigate instances of misconduct, either before or after investigation by a medical society or board as herein provided, or to temporarily suspend the authorization of any provider that he or she may believe to be guilty of such misconduct.

5. Whenever the department of health or the department of education shall conduct an investigation with respect to charges of professional or other misconduct by a provider which results in a report, determination or consent order that includes a finding of professional

or other misconduct or incompetency by such provider, the chair shall have full power and authority to temporarily suspend, revoke or otherwise limit the authorization under this chapter of any provider upon such finding by the department of health or the department of education that the provider has been guilty of professional or other misconduct. The recommendations of the department of health or the department of education shall be advisory to the chair only and shall not be binding or conclusive upon the chair.

* NB Effective until January 1, 2028

* § 13-d. Placement of providers on the exclusion list. 1. In accordance with this section, the chair shall publish and maintain an exclusion list of providers currently disqualified from rendering medical care or treatment under this chapter or disqualified from conducting independent medical examinations in accordance with paragraph (b) of subdivision four of section thirteen-a and section one hundred thirty-seven of this chapter.

2. The exclusion list shall include the name of any provider who is found after reasonable investigation to be disqualified because such provider:

(a) has been guilty of professional or other misconduct or incompetency in connection with rendering medical services under the law; or

(b) has exceeded the limits of their professional competence in rendering medical care or treatment or in conducting independent medical examinations under the law, or has, as applicable, made materially false statements regarding their qualifications in their application; or

(c) has failed to transmit copies of medical reports to claimant's attorney or licensed representative as provided in subdivision (f) of section thirteen of this article; or has failed to submit full and truthful medical reports of all their findings to the employer, and directly to the chair or the board within the time limits provided in subdivision four of section thirteen-a of this article with the exception of injuries which do not require (1) more than ordinary first aid or more than two treatments by a provider or person rendering first aid, or (2) loss of time from regular duties of one day beyond the working day or shift; or

(d) knowingly made a false statement or representation as to a material fact in any medical report, or in any submission to the board, made pursuant to this chapter or in testifying or otherwise providing information for the purposes of this chapter; or

(e) has solicited, or has employed another to solicit for either the provider's own benefit themselves or for another, professional treatment, examination or care of an injured employee in connection with any claim under this chapter; or

(f) has refused to appear before, to testify, to submit to a deposition, or to answer upon request of, the chair, board, or any duly authorized officer of the state, any legal question, or to produce any relevant book or paper concerning their conduct in rendering medical care or treatment or in the performance of an independent medical examination under this chapter, including when a provider has accepted payments from both the health insurer and employer or carrier and failed to reimburse the health insurer after they are given notice; or

(g) has directly or indirectly requested, received or participated in the division, transference, assignment, rebating, splitting or refunding of a fee for, or has directly or indirectly requested, received or profited by means of a credit or other valuable consideration as a commission, discount or gratuity in connection with the furnishing of medical or surgical care, an independent medical examination, diagnosis or treatment or service, including X-ray examination and treatment, or for or in connection with the sale, rental, supplying or furnishing of clinical laboratory services or supplies, X-ray laboratory services or supplies, inhalation therapy service or equipment, ambulance service, hospital or medical supplies, physiotherapy or other therapeutic service or equipment, artificial limbs, teeth or eyes, orthopedic or surgical appliances or supplies, optical appliances, supplies or equipment, devices for aid of hearing, drugs, medication or medical supplies, or any other goods, services or supplies prescribed for medical diagnosis, care or treatment, under this chapter; except that reasonable payment, not exceeding the technical component fee permitted in the medical fee schedule, established under this chapter for X-ray examinations, diagnosis or treatment, may be made by a provider duly authorized as a roentgenologist to any hospital furnishing facilities and equipment for such examination, diagnosis or treatment, provided such hospital does

not also submit a charge for the same services. Nothing contained in this paragraph shall prohibit such providers who practice as partners, in groups or as a professional corporation or as a university faculty practice corporation from pooling fees and moneys received, either by the partnership, professional corporation, university faculty practice corporation or group by the individual members thereof, for professional services furnished by any individual professional member, or employee of such partnership, corporation or group, nor shall the professionals constituting the partnerships, corporations, or groups be prohibited from sharing, dividing or apportioning the fees and moneys received by them or by the partnership, corporation or group in accordance with a partnership or other agreement; or

(h) has demonstrated a repeated failure to follow the laws of this chapter and applicable laws, regulations, and guidance, including any applicable New York medical treatment guidelines and the official New York medical fee schedule(s); or

(i) has misrepresented their credentials; or

(j) has failed to timely complete any trainings required by the chair; or

(k) had previously lost the privilege to treat injured workers by being suspended, removed, denied authorization, or by voluntarily resigning their authorization under this chapter prior to January first, two thousand twenty-eight, and whose authorization had not been restored prior to January first, two thousand twenty-eight.

3. Any person who violates or attempts to violate, and any person who aids another to violate or attempts to induce them to violate the provisions of paragraph (g) of subdivision two of this section shall be guilty of a misdemeanor.

4. Nothing in this section shall be construed as limiting in any respect the power or duty of the chair to investigate instances of misconduct, either before or after investigation by a medical society or board as herein provided, or to add any provider to the exclusion list that the chair or the chair's designee may believe to be guilty of such misconduct.

5. Whenever the department of health or the department of education shall conduct an investigation with respect to charges of professional or other misconduct by a provider which results in a report, determination or consent order that includes a finding of professional or other misconduct or incompetency by such provider, the chair shall have full power and authority to add any provider to the exclusion list upon such finding by the department of health or the department of education that the provider has been guilty of professional or other misconduct. The recommendations of the department of health or the department of education shall be advisory to the chair only and shall not be binding or conclusive upon the chair.

6. The chair may promulgate regulations to effectuate the publication and maintenance of the exclusion list. Providers on the exclusion list may petition the board to be taken off the exclusion list in a format prescribed by the chair.

* NB Effective January 1, 2028

§ 13-e. Revocation of licenses of compensation medical bureaus and laboratories. The chairman may revoke the license of any compensation medical bureau or laboratory upon a finding certified to him by the medical society of the county in which such bureau or laboratory is located, or by a board designated by such medical society or otherwise, as provided under section thirteen-b, or by the medical appeals unit, that such bureau or laboratory has been guilty of professional or other misconduct, or of violation of the provisions of this chapter, or that the personnel of such bureau is not properly qualified under this chapter, or that the equipment of such bureau or laboratory is inadequate for the proper rendering of medical care.

The medical appeals unit may review the determination of such medical society or board, and on application of the compensation medical bureau or laboratory accused must do so, and may reopen the matter and receive further evidence. The decision and recommendation of the medical appeals unit shall be advisory to the chairman, and shall not be binding or conclusive upon him.

The medical appeals unit shall prescribe the rules of procedure governing the investigation, hearing and determination of all charges of professional or other misconduct under this section.

Nothing in this section shall be construed as limiting in any respect the power or duty of the chairman to investigate instances of misconduct, or violations of the provisions of this chapter, or violations of rules promulgated by the chairman under the provisions of this chapter, or failure to submit full and truthful medical reports directly to the chairman within the time limits provided under subdivision four of section thirteen-a of this chapter, either before or after investigation or hearing by a medical society or board, or review by the medical appeals unit as herein provided, and to temporarily suspend the license of any laboratory or medical bureau, or after a hearing to revoke the same.

*** § 13-f. Payment of medical fees.** (1) Fees for medical services shall be payable only to a physician or other qualified person permitted by sections thirteen-b, thirteen-k, thirteen-l and thirteen-m of this chapter or other authorized provider of health care under the education law or the public health law permitted to render medical care or treatment under this chapter, or to the agent, executor or administrator of the estate of such physician or such other qualified person. Except as provided in section thirteen-d of this chapter, no provider of health care rendering medical care or treatment to a compensation claimant, shall collect or receive a fee from such claimant within this state, but shall have recourse for payment of services rendered only to the employer under the provisions of this chapter. Any compensation claimant who pays a fee to a provider of health care for medical care or treatment under this chapter shall have a cause of action against such provider of health care for the recovery of the money paid, which cause of action may be assigned to the chair in trust for the assigning claimant. All such assignments shall run to the chair. The chair may sue the physician, or other authorized provider of health care as herein described on the assigned cause of action with the benefits and subject

to the provisions of existing law applying to such actions by the claimant himself or herself. Hospitals shall not be entitled to receive the remuneration paid to physicians on their staff for medical and surgical services.

(2) Whenever his attendance at a hearing is required, the physician of the injured employee shall be entitled to receive a fee from the employer, or carrier, in an amount to be fixed by the board in addition to any fee payable under section eight thousand one of the civil practice law and rules.

* NB Effective until January 1, 2028

* § 13-f. Payment of medical fees. (1) Fees for medical services shall be payable only to a provider permitted by section thirteen-b of this article or other authorized provider of health care under the education law or the public health law permitted to render medical care or treatment under this chapter, or to the agent, executor or administrator of the estate of such provider or such other qualified person. Except as provided in section thirteen-d of this article, no provider of health care rendering medical care or treatment to a compensation claimant, shall collect or receive a fee from such claimant within this state, but shall have recourse for payment of services rendered only to the employer under the provisions of this chapter. Any compensation claimant who pays a fee to a provider of health care for medical care or treatment under this chapter shall have a cause of action against such provider of health care for the recovery of the money paid, which cause of action may be assigned to the chair in trust for the assigning claimant. All such assignments shall run to the chair. The chair may sue the physician, or other authorized provider of health care as herein described on the assigned cause of action with the benefits and subject to the provisions of existing law applying to such actions by the claimant. Hospitals shall not be entitled to receive the remuneration paid to providers on their staff for medical and surgical services.

(2) Whenever their attendance at a hearing is required, the provider of the injured employee shall be entitled to receive a fee from the employer, or carrier, in an amount to be fixed by the board in addition to any fee payable under section eight thousand one of the civil practice law and rules.

* NB Effective January 1, 2028

§ 13-g. Payment of bills for medical care. (1) Within forty-five days after a bill for medical care or supplies delivered pursuant to section thirteen of this article has been rendered to the employer, such employer must pay the bill or notify the medical care provider or supplier in the format prescribed by the chair that the bill is not being paid and explain the reasons for non-payment. In the event that the employer fails to make payment or notify the medical care provider or supplier within such forty-five day period that payment is not being made, the medical care provider or supplier may notify the board in the format prescribed by the chair that the bill has not been paid and request that the board make an award for payment of such bill. The board or the chair may make an award not in excess of the established fee schedules for any such bill or part thereof which remains unpaid after said forty-five day period or thirty days after all other questions duly and timely raised in accordance with the provisions of this chapter, relating to the employer's liability for the payment of such amount, shall have been finally determined adversely to the employer, whichever is later, in accordance with rules promulgated by the chair, and such award may be collected in like manner as an award of compensation. The chair shall assess the sum of fifty dollars against the employer for each such award made by the board, which sum shall be paid into the state treasury.

In the event that the employer has provided an explanation in writing why the bill has not been paid, in part or in full, within the aforesaid time period, and the parties can not agree as to the value of medical aid rendered under this chapter, such value shall be decided by arbitration as set forth in rules and regulations promulgated by the chair.

Where a bill for medical care or supplies has been determined to be due and owing in accordance with the provisions of this section the board shall include in the amount of the award interest of not more than one and one-half percent (1 1/2%) per month payable to the medical care provider or supplier, in accordance with the rules and regulations

promulgated by the board. Interest shall be calculated from the forty-fifth day after the bill was rendered or from the thirtieth day after all other questions duly and timely raised in accordance with the provisions of this chapter, relating to the employer's liability for the payment of such amount, shall have been finally determined adversely to the employer, whichever is later, in accordance with rules promulgated by the chair.

(2) If the parties fail to agree to the value of medical aid rendered under this chapter, such value shall be decided by a single arbitrator process, pursuant to rules promulgated by the chair. The chair shall appoint a physician who is a member in good standing of the medical society of the state of New York to determine the value of such disputed medical bill. Where the physician whose charges are being arbitrated is a member in good standing of the New York osteopathic society, the value of such disputed bill shall be determined by a member in good standing of the New York osteopathic society appointed by the chair. Where the physician whose charges are being arbitrated is a member in good standing of the New York homeopathic society, the value of such disputed bill shall be determined by a member in good standing of the New York homeopathic society appointed by the chair. Where the value of any other authorized provider's services are at issue, such value shall be determined by a member in good standing of one or more recognized professional associations representing its respective profession in the state of New York appointed by the chair. Decisions rendered under the single arbitrator process shall be conclusive upon the parties as to the value of the services in dispute.

(3) A provider or supplier initiating a single arbitrator process, pursuant to this section shall not pay a fee to cover the costs related to the conduct of such arbitration. (4) In claims where the employer has failed to secure compensation to his employees as required by section fifty of this chapter, the board may make an award for the value of medical services, supplies or treatment rendered to such employees, in accordance with the schedules of fees and charges prepared and established under the provisions of this chapter. Such award shall be made to the medical care provider or supplier entitled thereto. A default in the payment of such award may be enforced in the manner provided for the enforcement of compensation awards as set forth in

section twenty-six of this article.

In all cases coming under this subdivision the payment of the claim for medical care or supplies shall be subordinate to that of the claimant or his or her beneficiaries.

§ 13-h. Ombudsman for injured workers. 1. The office of ombudsman for injured workers is created within the workers' compensation board. The ombudsman shall report directly to the chair. The ombudsman shall act as an advocate for injured workers by accepting complaints concerning matters related to workers' compensation, investigating them and attempting to resolve them. The ombudsman shall also provide information to injured workers to enable them to protect their rights in the workers' compensation system.

2. The office of ombudsman for small business is created within the workers' compensation board. The ombudsman shall report directly to the chair. The ombudsman shall provide information and assistance to small businesses with regard to workers' compensation insurance and claim processing matters.

§ 13-i. Solicitation prohibited. Any person who shall make it a business to solicit employment for any person authorized by this chapter to render medical care to an injured employee in connection with any claim under this chapter, shall be guilty of a misdemeanor, except that the employer shall have the right subject to regulations prescribed by the chairman, to recommend to the injured employee the names of enrolled physicians who he believes to be competent to treat him.

§ 13-j. Medical or surgical treatment by insurance carriers and employers. (1) An insurance carrier shall not participate in the treatment of injured workers, except as provided in paragraph five of subdivision (i) of section thirteen of this article and subdivision seven of section thirteen-a of this article and except, that it may

employ medical inspectors to examine compensation cases periodically, while under treatment, and report upon the adequacy of medical care, and other matters relative to the medical conduct of the case, a copy of which report shall be filed directly with the chair within ten days, and that it may maintain rehabilitation bureaus operated by qualified physicians if authorized by the chair in accordance with section thirteen-c of this article. (2) An employer may maintain a compensation medical bureau at the place or places of employment, if such bureau is required because of the nature of the industrial hazards, or the frequency of injuries to employees arising out of industry. Such bureau or bureaus shall be authorized and licensed pursuant to section thirteen-c, and their use by an injured employee shall be optional in accordance with the provisions of section thirteen-a.

*** § 13-k. Care and treatment of injured employees by duly licensed podiatrists.** 1. When the term "chairman" is hereinafter used, it shall be deemed to mean the chair of the workers' compensation board of the state of New York.

2. An employee injured under circumstances which make such injury compensable under this article, when care is required for an injury to the foot which injury or resultant condition therefrom may lawfully be treated by a duly registered and licensed podiatrist of the state of New York, may select to treat him or her any podiatrist authorized by the chair to render podiatric medical care, as hereinafter provided. If the injury or condition is one which is without the limits prescribed by the education law for podiatric medical care and treatment, or the injuries involved affect other parts of the body in addition to the foot, the said podiatrist must so advise the said injured employee and instruct him or her to consult a physician of said employee's choice for appropriate care and treatment. Such physician shall thenceforth have overall supervision of the treatment of said patient including the future treatment to be administered to the patient by the podiatrist. If for any reason during the period when podiatric medical treatment and care is required, the employee wishes to transfer his or her treatment and care to another authorized podiatrist he or she may do so, in

accordance with rules prescribed by the chair, provided however that the employer shall be liable for the proper fees of the original podiatrist for the care and treatment he or she shall have rendered. The chair shall prepare and establish a schedule for the state, or schedules limited to defined localities, of charges and fees for podiatric medical treatment and care, to be determined in accordance with and to be subject to change pursuant to rules promulgated by the chair. Before preparing such schedule for the state or schedules for limited localities the chair shall request the podiatric medicine practice committee to submit to him or her a report on the amount of remuneration deemed by such committee to be fair and adequate for the types of podiatric medical care to be rendered under this chapter, but consideration shall be given to the view of other interested parties. The amounts payable by the employer for such treatment and services shall be the fees and charges established by such schedule.

3. (a) No claim for podiatry care or treatment shall be valid and enforceable as against the employer or employee unless within forty-eight hours following the first treatment the podiatrist giving such care or treatment furnish to the employer and directly to the chair a preliminary notice of such injury and treatment, within fifteen days thereafter a more complete report and subsequent thereto progress reports as requested in writing by the chair, board, employer or insurance carrier, at intervals of not less than three weeks apart or at less frequent intervals if requested on forms prescribed by the chair. The board may excuse the failure to give such notices within the designated periods when it finds it to be in the interest of justice to do so.

(b) Upon receipt of the notice provided for by paragraph (a) of this subdivision, the employer, the carrier and the claimant each shall be entitled to have the claimant examined by a qualified podiatrist authorized by the chair in accordance with section thirteen-b and section one hundred thirty-seven of this chapter, at a medical facility convenient to the claimant and in the presence of the claimant's podiatrist, and refusal by the claimant to submit to such independent medical examination at such time or times as may reasonably be necessary in the opinion of the board shall bar the claimant from recovering

compensation for any period during which he or she has refused to submit to such examination.

(c) Where it would place an unreasonable burden upon the employer or carrier to arrange for, or for the claimant to attend, an independent medical examination by an authorized podiatrist, the employer or carrier shall arrange for such examination to be performed by a qualified podiatrist in a medical facility convenient to the claimant.

(d) The independent podiatric examiner shall provide such reports and shall submit to investigation as required by the chair.

(e) In order to qualify as admissible medical evidence, for purposes of adjudicating any claim under this chapter, any report submitted to the board by an independent podiatric examiner licensed by the state of New York shall include the following:

(i) a signed statement certifying that the report is a full and truthful representation of the independent podiatric examiner's professional opinion with respect to the claimant's condition,

(ii) such examiner's board issued authorization number,

(iii) the name of the individual or entity requesting the examination,

(iv) if applicable, the registration number as required by section thirteen-n of this article, and

(v) such other information as the chair may require by regulation.

4. Fees for podiatry services shall be payable only to a duly authorized podiatrist as defined in this section or to the agent, executor or administrator of the estate of such podiatrist. No podiatrist rendering treatment to a compensation claimant, shall collect or receive a fee from such claimant within this state, but shall have recourse for payment of services rendered only to the employer under the provisions of this section.

5. Whenever his attendance at a hearing is required, the podiatrist of the injured employee shall be entitled to receive a fee from the employer in an amount to be fixed by the board, in addition to any fee payable under section eight thousand one of the civil practice law and rules.

6. (a) The provisions of subdivisions one and three of section

thirteen-g of this article with respect to the conditions under which a hospital, physician or self-employed physical or occupational therapist may request payment or arbitration of a bill, or under which an award may be made for payment of such bill, shall be applicable to bills rendered by a podiatrist for services rendered to an injured employee.

(b) If the parties fail to agree as to the value of podiatry care rendered under this chapter to a claimant, and the amount of the disputed bill is one thousand dollars or less, or where the amount of the disputed bill exceeds one thousand dollars and the podiatrist expressly so requests, such value shall be decided by a single arbitrator process, pursuant to rules promulgated by the chair. The chair shall appoint a member in good standing of a recognized professional association representing podiatrists in the state of New York to determine the value of such disputed bill. Decisions rendered under the single arbitrator process shall be conclusive upon the parties as to the value of the services in dispute.

(c) If the parties fail to agree as to the value of podiatry care rendered under this chapter to a claimant and the amount of the disputed bill exceeds one thousand dollars and the podiatrist does not expressly request a single arbitrator process in accordance with paragraph (b) of this subdivision, such value shall be decided by an arbitration committee consisting of three duly registered and licensed podiatrists who are members of a recognized professional association representing podiatrists in the state of New York, one to be appointed by the president of such an association, one to be appointed by the employer or carrier and one to be appointed by the chair of the workers' compensation board and the majority decision of such committee shall be conclusive upon the parties as to the value of the services rendered.

(d) The board or the chair may make an award not in excess of the established fee schedules for any such bill or part thereof which remains unpaid in the same manner as an award for bills rendered under subdivisions one and three of section thirteen-g of this article, and such award may be collected in like manner as an award of compensation. Where a podiatrist's bill has been determined to be due and owing in accordance with the provisions of this section the board shall include in the amount of the award interest of not more than one and one-half percent (1 1/2%) per month payable to the podiatrist in accordance with

the rules and regulations promulgated by the board. The chair shall assess the sum of fifty dollars against the employer for each such award made by the board, which sum shall be paid into the state treasury.

(e) A provider initiating an arbitration, including a single arbitration process, pursuant to this section shall not be required to pay a fee related to the conduct of such arbitration. Each member of the arbitration committee shall be entitled to receive and shall be paid a fee for each day's attendance at an arbitration session in an amount fixed by the chair of the workers' compensation board.

7. Within the limits prescribed by the education law for podiatry care and treatment, the report or testimony of an authorized podiatrist concerning the condition of the foot of an injured employee and the treatment thereof shall be deemed competent evidence and the professional opinion of the podiatrist as to causal relation and as to required treatment shall be deemed competent but shall not be controlling. Nothing in this section shall be deemed to deprive any employer or insurance carrier of any right to medical examination or presentation of medical testimony now conferred by law.

8. The chairman shall promulgate rules governing the procedure to be followed by those rendering podiatry care under this section, which rules so far as practicable shall conform to the rules presently in effect with reference to medical care furnished to claimants in workmen's compensation. In connection with the promulgation of said rules the chairman may consult the podiatry practice committee hereinafter provided and may take into consideration the view of other interested parties.

9. The chairman shall appoint for and with jurisdiction in the entire state of New York a single podiatry practice committee composed of one duly licensed physician and two duly registered and licensed podiatrists of the state of New York. Each podiatry member of said committee shall have been engaged in the practice of podiatry as a duly registered and licensed podiatrist of the state of New York at least ten years prior to the time of his appointment and shall receive compensation either on an annual basis or on a per diem basis to be fixed by the chairman within

amounts appropriated therefor. One of said members shall be designated by the chairman as chairman of said podiatry practice committee. No member of said committee shall render podiatry treatment under this section nor be employed by or accept or participate in any fee from any insurance company authorized to write workmen's compensation insurance in this state or from any self-insurer, whether such employment or fee relates to a workmen's compensation claim or otherwise. The attorney general, upon request, shall advise and assist such committee.

10. The podiatry practice committee shall investigate, hear and make findings with respect to all charges as to professional or other misconduct of any authorized podiatrist as herein provided under rules and procedures to be prescribed by the chair and shall report evidence of such misconduct, with their findings and recommendation with respect thereto, to the chair. The findings, decision and recommendation of such podiatry practice committee shall be advisory to the chair only, and shall not be binding or conclusive upon him or her. The chair shall remove from the list of podiatrists authorized to render podiatry care under this chapter or to conduct independent medical examinations in accordance with paragraph (b) of subdivision three of this section the name of any podiatrist who he or she shall find after reasonable investigation is disqualified because such podiatrist

(a) has been guilty of professional or other misconduct or incompetency in connection with podiatry services rendered under the law; or

(b) has exceeded the limits of his or her professional competence in rendering podiatry care under the law, or has made materially false statements regarding his or her qualifications in his or her application for authorization; or

(c) has failed to submit timely, full and truthful podiatry reports of all his or her findings to the employer and directly to the chair or the board within the time limits provided in this section; or

(d) has knowingly made a false statement or presentation as to a material fact in any medical report made pursuant to this chapter or in testifying or otherwise providing information for the purposes of this chapter; or

(e) has solicited or has employed another to solicit for himself or

herself or for another professional treatment, examination or care of an injured employee with any claim under this chapter; or

(f) has refused to appear before, to testify, to submit to a deposition, or to answer upon request of, the chair, board, podiatry practice committee or any duly authorized officer of the state, any legal question or produce any relevant book or paper concerning his or her conduct under an authorization granted to him or her under the law, or

(g) has directly or indirectly requested, received or participated in the division, transference, assignment, rebating, splitting or refunding of a fee for, or has directly or indirectly requested, received or profited by means of a credit or other valuable consideration as a commission, discount or gratuity in connection with the treatment, or independent medical examination, of a workers' compensation claimant. Nothing contained in this paragraph shall prohibit such podiatrists who practice as partners, in groups or as a professional corporation from pooling fees and moneys received, either by the partnership, professional corporation or group by the individual members thereof, for professional services furnished by any individual professional member, or employee of such partnership, corporation or group, nor shall the professionals constituting the partnership, corporation, or group be prohibited from sharing, dividing or apportioning the fees and moneys received by them or by the partnership, corporation or group in accordance with a partnership or other agreement.

11. Any person who violates or attempts to violate, and any person who aids another to violate or attempts to induce him to violate the provisions of paragraph g of subdivision ten of this section shall be guilty of a misdemeanor.

12. Nothing in this section shall be construed as limiting in any respect the power or duty of the chairman to investigate instances of misconduct, either before or after investigation by the podiatry practice committee or to temporarily suspend the authorization of any podiatrist that he may believe to be guilty of such misconduct. The provisions of subdivision one of section thirteen-d of this article which are not inconsistent with the provisions of this section shall be

applicable as fully as if set forth herein.

13. Upon the referral which may be directive as to treatment of an authorized podiatrist physical therapy care may be rendered by a duly licensed physical therapist.

* NB Repealed January 1, 2028

*** § 13-1. Care and treatment of injured employees by duly licensed chiropractors.** 1. Where the term "chairman" is hereinafter used, it shall be deemed to mean the chair of the workers' compensation board of the state of New York.

2. An employee injured under circumstances which make such injury compensable under this article, when care is required for an injury which consists solely of a condition which may lawfully be treated by a chiropractor as defined in section sixty-five hundred fifty-one of the education law may select to treat him or her, any duly registered and licensed chiropractor of the state of New York, authorized by the chair to render chiropractic care as hereinafter provided. If the injury or condition is one which is outside the limits prescribed by the education law for chiropractic care and treatment, the said chiropractor must so advise the said injured employee and instruct him or her to consult a physician of said employee's choice for appropriate care and treatment. Such physician shall thenceforth have supervision of the treatment of said condition including the future treatment to be administered to the patient by the chiropractor. The chair shall prepare and establish a schedule for the state, or schedules limited to defined localities of charges and fees for chiropractic treatment and care, to be determined in accordance with and to be subject to change pursuant to rules promulgated by the chair. Before preparing such schedule for the state or schedules for limited localities the chair shall request the chiropractic practice committee to submit to him or her a report on the amount of remuneration deemed by such committee to be fair and adequate for the types of chiropractic care to be rendered under this chapter, but consideration shall be given to the view of other interested parties, the amounts payable by the employer for such treatment and

services shall be the fees and charges established by such schedule.

3. (a) No claim for chiropractic care or treatment shall be valid and enforceable as against the employer or employees unless within forty-eight hours following the first treatment the chiropractor giving such care or treatment furnishes to the employer and directly to the chair a preliminary notice of such injury and treatment, and within fifteen days thereafter a more complete report and subsequent thereto progress reports as requested in writing by the chair, board, employer or insurance carrier, at intervals of not less than three weeks apart or at less frequent intervals if requested on forms prescribed by the chair. The board may excuse the failure to give such notices within the designated periods when it finds it to be in the interest of justice to do so.

(b) Upon receipt of the notice provided for by paragraph (a) of this subdivision, the employer, the carrier, and the claimant each shall be entitled to have the claimant examined by a qualified chiropractor authorized by the chair in accordance with section thirteen-b and section one hundred thirty-seven of this chapter at a medical facility convenient to the claimant and in the presence of the claimant's chiropractor, and refusal by the claimant to submit to such independent medical examination at such time or times as may reasonably be necessary in the opinion of the board shall bar the claimant from recovering compensation, for any period during which he or she has refused to submit to such examination.

(c) Where it would place an unreasonable burden upon the employer or carrier to arrange for, or for the claimant to attend, an independent medical examination by an authorized chiropractor, the employer or carrier shall arrange for such examination to be performed by a qualified chiropractor in a medical facility convenient to the claimant.

(d) The independent chiropractic examiner shall provide such reports and shall submit to investigation as required by the chair.

(e) In order to qualify as admissible chiropractic evidence, for purposes of adjudicating any claim under this chapter, any report submitted to the board by an independent medical examiner licensed by the state of New York shall include the following:

(i) a signed statement certifying that the report is a full and

truthful representation of the independent chiropractic examiner's professional opinion with respect to the claimant's condition,

- (ii) such examiner's board issued authorization number,
- (iii) the name of the individual or entity requesting the examination,
- (iv) if applicable, the registration number as required by section thirteen-n of this article, and
- (v) such other information as the chair may require by regulation.

4. Fees for chiropractic services shall be payable only to a duly authorized chiropractor as defined in this section, or to the agent, executor or administrator of the estate of such chiropractor. No chiropractor rendering treatment to a compensation claimant shall collect or receive a fee from such claimant within this state, but shall have recourse for payment of services rendered only to the employer under the provisions of this section.

5. Whenever his attendance at a hearing is required the chiropractor of the injured employee shall be entitled to receive a fee from the employer in an amount to be fixed by the board, in addition to any fee payable under section eight thousand and one of the civil practice law and rules.

6. (a) The provisions of subdivisions one and three of section thirteen-g of this article with respect to the conditions under which a hospital, physician or self-employed physical or occupational therapist may request payment or arbitration of a bill, or under which an award may be made for payment of such bill, shall be applicable to bills rendered by a chiropractor for services rendered to an injured employee.

(b) If the parties fail to agree as to the chiropractic care rendered under this chapter to a claimant, and the amount of the disputed bill is one thousand dollars or less, or where the amount of the disputed bill exceeds one thousand dollars and the chiropractor expressly so requests, such value shall be decided by a single arbitrator process, pursuant to rules promulgated by the chair. The chair shall appoint a member in good standing of a recognized professional association representing chiropractors in the state of New York to determine the value of such disputed bill. Decisions rendered under the single arbitrator process

shall be conclusive upon the parties as to the value of the services in dispute.

(c) If the parties fail to agree as to the chiropractic care rendered under this chapter to a claimant, and the amount of the disputed bill exceeds one thousand dollars and the chiropractor does not expressly request a single arbitrator process in accordance with paragraph (b) of this subdivision, such value shall be decided by the chiropractic practice committee and the majority decision of such committee shall be conclusive upon the parties as to the value of the services rendered.

(d) The board or the chair may make an award not in excess of the established fee schedules for any such bill or part thereof which remains unpaid in the same manner as an award for bills rendered under subdivisions one and three of section thirteen-g of this article, and such award may be collected in like manner as an award of compensation. Where a chiropractor's bill has been determined to be due and owing in accordance with the provisions of this section the board shall include in the amount of the award interest of not more than one and one-half percent (1 1/2%) per month payable to the chiropractor in accordance with the rules and regulations promulgated by the board. The chair shall assess the sum of fifty dollars against the employer for each such award made by the board, which sum shall be paid into the state treasury.

(e) A provider initiating an arbitration, including a single arbitrator process, pursuant to this section shall not pay a fee to cover the costs related to the conduct of such arbitration.

7. Within the limits prescribed by the education law for chiropractic care and treatment, the report or testimony of an authorized chiropractor concerning the condition of an injured employee and treatment thereof shall be deemed competent evidence and the professional opinion of the chiropractor as to causal relation and as to required treatment shall be deemed competent but shall not be controlling. Nothing in this section shall be deemed to deprive any employer or insurance carrier of any right to medical examination or presentation of medical testimony now conferred by law.

8. The chairman shall promulgate rules governing the procedure to be followed by those rendering chiropractic care under this section, which

rules so far as practicable shall conform to the rules presently in effect with reference to medical care furnished to claimants in workmen's compensation. In connection with the promulgation of said rules the chairman may consult the chiropractic practice committee hereinafter provided and may take into consideration the view of other interested parties.

9. The chair shall appoint for and with jurisdiction in the entire state of New York a single chiropractic practice committee composed of three duly registered and licensed chiropractors of the state of New York. Each member of said committee shall receive compensation either on an annual basis or on a per diem basis to be fixed by the chair within amounts appropriated therefor. One of said chiropractic members shall be designated by the chair as a chair of said chiropractic practice committee. No member of said committee shall render chiropractic treatment under this section nor be employed or accept or participate in any fee from any insurance company authorized to write workers' compensation insurance in this state or from any self-insurer, whether such employment or fee relates to a workers' compensation claim or otherwise. The attorney general, upon request, shall advise and assist such committee.

10. The chiropractic practice committee shall investigate, hear and make findings with respect to all charges as to professional or other misconduct of any authorized chiropractor as herein provided under rules and procedure to be prescribed by the chair and shall report evidence of such misconduct, with their findings and recommendations with respect thereto, to the chair. The findings, decision and recommendation of such chiropractic practice committee shall be advisory to the chair only, and shall not be binding or conclusive upon him or her. The chair shall remove from the list of chiropractors authorized to render chiropractic care under this chapter or to conduct independent medical examinations in accordance with paragraph (b) of subdivision three of this section the name of any chiropractor who he or she shall find after reasonable investigation is disqualified because such chiropractor,

(a) has been guilty of professional or other misconduct or incompetency in connection with chiropractic services rendered under the

law, or

(b) has exceeded the limits of his or her professional competence in rendering chiropractic services under the law, or has made false statements regarding his or her qualifications in his or her application for authorization, or

(c) has failed to submit timely, full and truthful chiropractic reports of all his or her findings to the employer and directly to the chair of the board within the time limits provided in this section, or

(d) has knowingly made a false statement or representation as to a material fact in any medical report made pursuant to this chapter or in testifying or otherwise providing information for the purposes of this chapter, or

(e) has solicited or has employed another to solicit for himself or herself or for another professional treatment, examination or care of an injured employee with any claim under this chapter, or

(f) has refused to appear before, to testify, to submit to a deposition, or answer upon request of the chair, board, chiropractic practice committee or any duly authorized officer of the state, any legal question or produce any relevant book or paper concerning his or her conduct under an authorization granted to him or her under the law, or

(g) has directly or indirectly requested, received or participated in the division, transference, assignment, rebating, splitting or refunding of a fee for, or has directly or indirectly requested, received or profited by means of a credit or otherwise valuable consideration as a commission, discount or gratuity, in connection with the treatment, or independent medical examination, of a workers' compensation claimant. Nothing contained in this paragraph shall prohibit such chiropractors who practice as partners, in groups or as a professional corporation, or as a university faculty practice corporation from pooling fees and moneys received, either by the partnership, professional corporation, university faculty practice corporation or group by the individual members thereof, for professional services furnished by any individual professional member, or employee of such partnership, corporation or group, nor shall the professionals constituting the partnership, corporation, or group be prohibited from sharing, dividing or apportioning the fees and moneys received by them or by the partnership,

corporation or group in accordance with a partnership or other agreement.

11. Any person who violates or attempts to violate, and any person who aids another to violate or attempts to induce him to violate the provisions of paragraph (g) of subdivision ten of this section shall be guilty of a misdemeanor.

12. Nothing in this section shall be construed as limiting in any respect the power or duty of the chairman to investigate instances of misconduct, either before or after investigation by the chiropractic practice committee or to temporarily suspend the authorization of any chiropractor that he may believe to be guilty of such misconduct. The provisions of subdivision one of section thirteen-d of this article which are not inconsistent with the provisions of this section shall be applicable as fully as if set forth herein.

* NB Repealed January 1, 2028

*** § 13-m. Care and treatment of injured employees by duly licensed psychologists.** 1. Where the term "chairman" is hereinafter used, it shall be deemed to mean the chair of the workers' compensation board of the state of New York.

2. (a) An injured employee, injured under circumstances which make such injury compensable under this article, may lawfully be treated by a psychologist, duly registered and licensed by the state of New York, authorized by the chair to render psychological care pursuant to section thirteen-b of this article. Such services shall be within the scope of such psychologist's specialized training and qualifications as defined in article one hundred fifty-three of the education law.

(b) Medical bureaus, medical centers jointly operated by labor and management representatives, hospitals and health maintenance organizations, authorized to provide medical care pursuant to section thirteen-c of this article, may provide psychological services when required.

(c) A psychologist rendering service pursuant to this section shall

maintain records of the patient's psychological condition and treatment, and such records or reports shall be submitted to the chair on such forms and at such times as the chair may require.

3. The chair shall prepare and establish a schedule for the state or schedules limited to defined localities of charges and fees for psychological treatment and care, to be determined in accordance with and be subject to change pursuant to rules promulgated by the chair. Before preparing such schedule for the state or schedules for limited localities the chair shall request the psychology practice committee to submit to such chair a report on the amount of remuneration deemed by such committee to be fair and adequate for the types of psychological care to be rendered under this chapter, but consideration shall be given to the view of other interested parties. The amounts payable by the employer for such treatment and services shall be the fees and charges established by such schedule.

4. (a) No claim for psychological care or treatment shall be valid and enforceable as against the employer or employees unless within forty-eight hours following the first treatment the psychologist giving such care or treatment furnishes to the employer and directly to the chair a preliminary notice of such injury and treatment, and within fifteen days thereafter a more complete report and subsequent thereto progress reports as requested in writing by the chair, board, employer or insurance carrier, at intervals of not less than three weeks apart or at less frequent intervals if requested on forms prescribed by the chair. The board may excuse the failure to give such notices within the designated periods when it finds it to be in the interest of justice to do so.

(b) Upon receipt of the notice provided for by paragraph (a) of this subdivision, the employer, the carrier, and the claimant each shall be entitled to have the claimant examined by a qualified psychologist, authorized by the chair in accordance with section thirteen-b and section one hundred thirty-seven of this chapter, at a medical facility convenient to the claimant and in the presence of the claimant's psychologist, and refusal by the claimant to submit to such independent medical examination at such time or times as may reasonably be necessary

in the opinion of the board shall bar the claimant from recovering compensation, for any period during which he or she has refused to submit to such examination.

(c) Where it would place an unreasonable burden upon the employer or carrier to arrange for, or for the claimant to attend, an independent medical examination by an authorized psychologist, the employer or carrier shall arrange for such examination to be performed by a qualified psychologist in a medical facility convenient to the claimant.

(d) The independent psychological examiner licensed by the state of New York shall provide such reports and shall submit to investigation as required by the chair.

(e) In order to qualify as admissible medical evidence, for purposes of adjudicating any claim under this chapter, any report submitted to the board by an independent psychological examiner licensed by the state of New York shall include the following:

- (i) a signed statement certifying that the report is a full and truthful representation of the independent psychological examiner's professional opinion with respect to the claimant's condition,
- (ii) such examiner's board issued authorization number,
- (iii) the name of the individual or entity requesting the examination,
- (iv) if applicable, the registration number as required by section thirteen-n of this article, and
- (v) such other information as the chair may require by regulation.

5. Fees for psychological services shall be payable only to a duly authorized psychologist as licensed in article one hundred fifty-three of the education law, or to the agent, executor or administrator of the estate of such psychologist. No psychologist rendering treatment to a compensation claimant shall collect or receive a fee from such claimant within this state, but shall have recourse for payment of services rendered only to the employer under the provisions of this section.

6. Whenever his attendance at a hearing is required the psychologist of the injured employee shall be entitled to receive a fee from the employer in an amount to be fixed by the board, in addition to any fee payable under section eight thousand one of the civil practice law and rules.

7. (a) The provisions of subdivisions one and three of section thirteen-g of this article with respect to the conditions under which a hospital, physician or self-employed physical or occupational therapist may request payment or arbitration of a bill, or under which an award may be made for payment of such bill, shall be applicable to bills rendered by a psychologist for services rendered to an injured employee.

(b) If the parties fail to agree as to the psychological care rendered under this chapter to a claimant, and the amount of the disputed bill is one thousand dollars or less, or where the amount of the disputed bill exceeds one thousand dollars and the psychologist expressly so requests, such value shall be decided by a single arbitrator process, pursuant to rules promulgated by the chair. The chair shall appoint a member in good standing of a recognized professional association representing psychologists in the state of New York to determine the value of such disputed bill. Decisions rendered under the single arbitrator process shall be conclusive upon the parties as to the value of the services in dispute.

(c) If the parties fail to agree as to the psychological care rendered under this chapter to a claimant, and the amount of the disputed bill exceeds one thousand dollars and the psychologist does not expressly request a single arbitrator process in accordance with paragraph (b) of this subdivision, such value shall be decided by the psychology practice committee and the majority decision of such committee shall be conclusive upon the parties as to the value of the services rendered.

(d) The board or the chair may make an award not in excess of the established fee schedules for any such bill or part thereof which remains unpaid in the same manner as an award for bills rendered under subdivisions one and three of section thirteen-g of this article, and such award may be collected in like manner as an award of compensation. The chair shall assess the sum of fifty dollars against the employer for each such award made by the board, which sum shall be paid into the state treasury. Where a psychologist's bill has been determined to be due and owing in accordance with the provisions of this section the board shall include in the amount of the award interest of not more than one and one-half percent per month payable to the psychologist in accordance with the rules and regulations promulgated by the board.

(e) A provider initiating an arbitration, including a single arbitrator process, pursuant to this section shall not be required to pay a fee to cover the costs related to the conduct of such arbitration.

8. Within the limits prescribed by the education law for psychological care and treatment, the report or testimony of an authorized psychologist concerning the condition of an injured employee and treatment thereof shall be deemed competent evidence and the professional opinion of the psychologist as to causal relation and as to required treatment shall be deemed competent but shall not be controlling. Nothing in this section shall be deemed to deprive any employer or insurance carrier of any right to a medical examination or presentation of medical testimony now conferred by law.

9. The chairman shall promulgate rules governing the procedure to be followed by those rendering psychological care under this section, which rules so far as practicable shall conform to the rules presently in effect with reference to medical care furnished to claimants in workers' compensation. In connection with the promulgation of said rules the chairman may consult the psychology practice committee hereinafter provided and may take into consideration the view of other interested parties.

10. The chair shall appoint for and with jurisdiction in the entire state of New York a single psychology practice committee composed of three duly registered and licensed psychologists, at least one of whom shall be a member in good standing of the New York state psychological association recommended by the president of such organization. Each member of said committee shall receive compensation either on an annual basis or on a per diem basis to be fixed by the chair within amounts appropriated therefor. One of said psychologists shall be designated by the chair as a chair of said psychology practice committee. No member of said committee shall render psychological treatment under this section nor be an employer or accept or participate in any fee from any insurance company authorized to write workers' compensation insurance in this state or from any self-insurer, whether such employment or fee relates to a workers' compensation claim or otherwise. The attorney

general, upon request, shall advise and assist such committee.

11. The psychology practice committee shall investigate, hear and make findings with respect to all charges as to professional or other misconduct of any authorized psychologist as herein provided under rules and procedures to be prescribed by the chair and shall report evidence of such misconduct, with their findings and recommendations with respect thereto, to the chair. The findings, decision and recommendation of such psychology practice committee shall be advisory to the chair only, and shall not be binding or conclusive upon him or her. The chair shall remove from the list of psychologists authorized to render psychological care under this chapter or to conduct independent medical examinations in accordance with paragraph (b) of subdivision four of this section the name of any psychologist who he or she shall find after reasonable investigation is disqualified because such psychologist:

(a) has been guilty of professional or other misconduct or incompetency in connection with the rendering of psychological services, or

(b) has exceeded the limits of his or her professional competence in rendering psychological services under the law, or has made false statements regarding qualifications in the application for authorization, or

(c) has failed to submit timely, full and truthful psychological reports of all findings to the employer and directly to the chair of the board within the time limits provided in this section, or

(d) has knowingly made a false statement or representation as to a material fact in any medical report made pursuant to this chapter or in testifying or otherwise providing information for the purposes of this chapter, or

(e) has solicited or has employed another to solicit for himself/herself or for another professional treatment, examination or care of an injured employee with any claim under this chapter, or

(f) has refused to appear before, to testify, to submit to a deposition, or answer upon request of the chair, board, psychology practice committee or any duly authorized officer of the state, any legal question or produce any relevant book or paper concerning conduct under an authorization granted under law, or

(g) has directly or indirectly requested, received or participated in the division, transference, assignment, rebating, splitting or refunding of a fee for, or has directly or indirectly requested, received or profited by means of a credit or otherwise valuable consideration as a commission, discount or gratuity in connection with the treatment of a workers' compensation claimant.

12. Any person who violates or attempts to violate, and any person who aids another to violate or attempts to induce him to violate the provisions of paragraph (g) of subdivision eleven of this section shall be guilty of a misdemeanor.

13. Nothing in this section shall be construed as limiting in any respect the power or duty of the chairman to investigate instances of misconduct, either before or after investigation by the psychology practice committee, or to temporarily suspend the authorization of any psychologist believed to be guilty of such misconduct. The provisions of subdivision one of section thirteen-d of this article which are not inconsistent with the provisions of this section shall be applicable as if fully set forth herein.

14. Nothing contained in this section shall prohibit psychologists who practice as partners, in groups or as a professional corporation from pooling fees and moneys received, either by the partnership, professional corporation or group or by the individual members thereof, for professional services furnished by any individual professional member, or employee of such partnership, corporation or group, nor shall the professionals constituting the partnerships, corporations, or groups be prohibited from sharing, dividing or apportioning the fees and moneys received by them or by the partnership, corporation or group in accordance with a partnership or other agreement.

* NB Repealed January 1, 2028

§ 13-n. Mandatory registration of entities which derive income from independent medical examinations.

* 1. Any entity which derives income from independent medical

examinations performed in accordance with subdivision four of section thirteen-a, subdivision three of section thirteen-k, subdivision three of section thirteen-1 and subdivision four of section thirteen-m of this article, whether by employing or contracting with independent examiners to conduct such independent medical examinations or by acting as a referral service or otherwise facilitating such examinations, shall register with the chair by filing a statement of registration containing such information prescribed by the chair in regulation. A fee may be imposed in accordance with regulations promulgated by the chair. Any such fees collected shall be used for the purpose of administering this section.

* NB Effective until January 1, 2028

* 1. Any entity which derives income from independent medical examinations performed in accordance with subdivision four of section thirteen-a of this article and section one hundred thirty-seven of this chapter, whether by employing or contracting with independent examiners to conduct such independent medical examinations or by acting as a referral service or otherwise facilitating such examinations, shall register with the chair by filing a statement of registration containing such information prescribed by the chair in regulation. A fee may be imposed in accordance with regulations promulgated by the chair. Any such fees collected shall be used for the purpose of administering this section.

* NB Effective January 1, 2028

2. The chair shall assign a registration number to the entity upon registration. If an entity operates under more than one name, or in more than one location, the chair may assign a series of registration numbers which would differentiate each such sub-entity. In order to qualify as admissible medical evidence, for purposes of adjudicating any claim under this chapter, any report submitted to the board by an independent medical examiner who is employed by, or has contracted with, an entity as described in subdivision one of this section for the purpose of performing independent medical examinations, must include the registration number of such entity.

3. The chair, upon finding that an entity that derives income from

independent medical examinations has materially altered an independent medical examination report, or caused such a report to be materially altered, may revoke the registration of such entity, impose a penalty not exceeding ten thousand dollars and refer the matter to the attorney general for prosecution.

§ 13-o. Pharmaceutical fee schedule. The chair shall adopt a pharmaceutical fee schedule which shall establish maximum allowable fees for prescription medicines provided pursuant to this chapter. The schedule shall include a single dispensing fee. Nothing in the fee schedule shall preclude mail order supply of scheduled medicines, provided that the fees for such mail ordered medicines do not exceed the costs provided by such fee schedule. Any pharmacy providing prescription medicines shall provide the generic drug equivalent, if a generic equivalent is available, unless the prescribing physician specifically provides otherwise by prescription. The fee schedule may be modified on each succeeding April first, provided, however, that usual and customary fees may be charged for drugs that are not included in a then-current fee schedule, but are approved for use by the chair.

§ 13-p. Comprehensive prescription drug formulary. The chair shall establish a comprehensive prescription drug formulary on or before December thirty-first, two thousand seventeen. The prescription drug formulary shall include a tiered list of high-quality, cost-effective medications that are pre-approved to be prescribed and dispensed, as well as additional non-preferred drugs that can be prescribed with prior approval. Such prescription drug formulary, shall include but not be limited to implementation of a pharmacy reimbursement strategy, administration of a prescription drug rebate program for formulary drugs, a pre-approval program, drug utilization review, and limitations on the prescribing of compounded medications and compounded topical preparations. The board shall promulgate regulations to permit an interested party to submit a request to the medical director of the board to alter or amend the formulary to consider changing the status of a drug from non-preferred to preferred. Regulations may include a

provision for reasonable costs and fees associated with the review.

§ 14. Weekly wages basis of compensation. Except as otherwise provided in this chapter, the average weekly wages of the injured employee at the time of the injury shall be taken as the basis upon which to compute compensation or death benefits, and shall be determined as follows:

1. If the injured employee shall have worked in the employment in which he was working at the time of the accident, whether for the same employer or not, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred times the average daily wage or salary for a six-day worker, and two hundred sixty times the average daily wage or salary for a five-day worker, which he shall have earned in such employment during the days when so employed;

2. If the injured employee shall not have worked in such employment during substantially the whole of such year, his average annual earnings, if a six-day worker, shall consist of three hundred times the average daily wage or salary, and, if a five-day worker, two hundred and sixty times the average daily wage or salary, which an employee of the same class working substantially the whole of such immediately preceding year in the same or in a similar employment in the same or a neighboring place shall have earned in such employment during the days when so employed;

3. If either of the foregoing methods of arriving at the annual average earnings of an injured employee cannot reasonably and fairly be applied, such annual average earnings shall be such sum as, having regard to the previous earnings of the injured employee and of other employees of the same or most similar class, working in the same or most similar employment, or other employment as defined in this chapter, in the same or neighboring locality, shall reasonably represent the annual earning capacity of the injured employee in the employment in which he was working at the time of the accident, provided, however, his average annual earnings shall consist of not less than two hundred times the

average daily wage or salary which he shall have earned in such employment during the days when so employed, further provided, however, that if the injured employee shall have been in the military or naval service of the United States or of the state of New York within twelve months prior to his injury, and his average annual earnings cannot be fairly determined under subdivisions one and two, then the average annual earnings shall be determined by multiplying his average daily wage during the days so employed by not less than two hundred and forty;

4. The average weekly wages of an employee shall be one-fifty-second part of his average annual earnings;

5. If it be established that the injured employee was under the age of twenty-five when injured, and that under normal conditions his wages would be expected to increase, that fact may be considered in arriving at his average weekly wages.

6. If the injured employee is concurrently engaged in more than one employment at the time of injury, the employee's average weekly wages shall be calculated upon the basis of wages earned from all concurrent employments covered under this chapter. The employer in whose employment the employee was injured shall be liable for the benefits that would have been payable if the employee had had no other employment. Any additional benefits resulting from the increase in average weekly wages due to the employee's concurrent employments shall be payable in the first instance by the employer in whose employment the employee was injured and shall be reimbursed by the special disability fund created under subdivision eight of section fifteen of this article, but only if such claim is presented in accordance with subparagraph two of paragraph (h) of subdivision eight of section fifteen of this article. The employer in whose employment the employee was injured shall be liable for all medical costs.

7. The average weekly wages of a jockey, apprentice jockey or exercise person licensed under article two or four of the racing, pari-mutuel wagering and breeding law shall be computed based upon all of the earnings of such jockey, apprentice jockey or exercise person, including

those derived from outside of the state.

§ 14-a. Double compensation and death benefits when minors illegally employed. 1. Compensation, death benefits, and awards to the commissioner of taxation and finance in accordance with subdivision nine of section fifteen and section twenty-five-a, as provided in this article, shall be double the amount otherwise payable if the injured employee at the time of the accident is a minor employed, permitted or suffered to work in violation of any provision of the labor law or in violation of any rule heretofore or hereafter adopted by the board of standards and appeals pursuant to subdivision four of section one hundred thirty-three of said law.

An employer who knowingly permits or suffers a newspaper carrier to work in violation of section thirty-two hundred twenty-eight of the education law, shall be liable for the increased awards provided by this section.

2. The employer alone and not the insurance carrier shall be liable for the increased compensation, increased death benefits, or awards to the commissioner of taxation and finance provided for by this section. Any provision in an insurance policy undertaking to relieve an employer from such increased liability shall be void.

3. A person over eighteen years of age may apply for a certificate of age to the superintendent of schools or to an employment certifying officer. Upon such application a certificate of age, signed by the officer issuing it and containing the name, date of birth, address and signature of the applicant shall be issued to him if he furnishes evidence that he is over eighteen years of age such as is required for the issuance of an employment certificate. Such a certificate of age shall be conclusive evidence for an employer that the person has reached the age certified to therein, and the provisions of this section shall not apply to the employer of such person while the person is engaged in employment lawful for the age and sex as certified to in the certificate of age.

4. With respect to a jockey, apprentice jockey or exercise person licensed under article two or four of the racing, pari-mutuel wagering and breeding law, and at the election of the New York Jockey Injury Compensation Fund, Inc., with the approval of the New York state gaming commission, an employee of a licensed trainer or owner, who, pursuant to section two of this chapter, is an employee of all owners and trainers licensed or required to be licensed under article two or four of the racing, pari-mutuel wagering and breeding law and The New York Jockey Injury Compensation Fund, Inc., the owner or trainer for whom such jockey, apprentice jockey, exercise person or, if approved by the New York state gaming commission, employee of a licensed trainer or owner was performing services at the time of the accident shall be solely responsible for the double payments described in subdivision one of this section, to the extent that such payments exceed any amounts otherwise payable with respect to such jockey, apprentice jockey, exercise person or, if approved by the New York state gaming commission, employee of a licensed trainer or owner under any other section of this chapter, and the New York Jockey Injury Compensation Fund, Inc. shall have no responsibility for such excess payments, unless there shall be a failure of the responsible owner or trainer to pay such award within the time provided under this chapter. In the event of such failure to pay and the board requires the fund to pay the award on behalf of such owner or trainer who has been found to have violated this section, the fund shall be entitled to an award against such owner or trainer for the amount so paid which shall be collected in the same manner as an award of compensation.

5. With respect to a black car operator who, pursuant to section two of this chapter, is an employee of the New York black car operators' injury compensation fund, inc., the central dispatch facility for which the black car operator was performing services at the time of the accident shall be solely responsible for the double payments described in subdivision one of this section, to the extent that such payments exceed any amounts otherwise payable with respect to such black car operator under any other section of this chapter, and the New York black car operators' injury compensation fund, inc. shall have no

responsibility for such excess payments, unless there shall be a failure of the responsible central dispatch facility to pay such award within the time provided under this chapter. In the event of such failure to pay, the board may require the fund to pay the award on behalf of the central dispatch facility that is found to have violated this section. In such a case, the fund shall be entitled to an award against the central dispatch facility for the excess amount paid by the fund, which shall be collected in the same manner as an award of compensation.

§ 15. Schedule in case of disability. The following schedule of compensation is hereby established:

1. Permanent total disability. In case of total disability adjudged to be permanent sixty-six and two-thirds per centum of the average weekly wages shall be paid to the employee during the continuance of such total disability. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof shall, in the absence of conclusive proof to the contrary, constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts. Notwithstanding any other provision of this chapter, an injured employee disabled due to the loss or total loss of use of both eyes, or both hands, or both arms, or both feet, or both legs, or of any two thereof shall not suffer any diminution of his compensation by engaging in business or employment provided his earnings or wages, when combined with his compensation, shall not be in excess of the wage base on which the maximum weekly compensation benefit is computed under the law in effect at time of such earning; further provided, that if the combination exceeds such wage base, the compensation shall be diminished to an amount which, together with his earnings or wages, shall equal the wage base; and further provided that the application of this subdivision shall not result in reduction of compensation which an injured employee who is disabled due to the loss or total loss of use of both eyes, or both hands, or both arms, or both feet, or both legs or of any two thereof, would otherwise be entitled to under any other provision of this section.

2. Temporary total disability. In case of temporary total disability, sixty-six and two-thirds per centum of the average weekly wages shall be paid to the employee during the continuance thereof, except as otherwise provided in this chapter.

3. Permanent partial disability. In case of disability partial in character but permanent in quality the compensation shall be sixty-six and two-thirds per centum of the average weekly wages and shall be paid to the employee for the period named in this subdivision, as follows:

Member lost	Number of weeks' compensation
a. Arm	312
b. Leg	288
c. Hand	244
d. Foot	205
e. eye	160
f. Thumb	75
g. First finger	46
h. Great toe	38
i. Second finger	30
j. Third finger	25
k. Toe other than great toe	16
l. Fourth finger	15

m. Loss of hearing. Compensation for the complete loss of the hearing of one ear, for sixty weeks, for the loss of hearing of both ears, for one hundred and fifty weeks.

n. Phalanges. Compensation for the loss of more than one phalange of a digit shall be the same as for loss of the entire digit. Compensation for loss of the first phalange shall be one-half of the compensation for loss of the entire digit.

o. Amputated arm or leg. Compensation for an arm or a leg, if amputated at or above the wrist or ankle, shall be for the proportionate loss of the arm or leg.

p. Binocular vision or per centum of vision. Compensation for loss of binocular vision or for eighty per centum or more of the vision of an eye shall be the same as for loss of the eye.

q. Two or more digits. Compensation for loss or loss of use of two or more digits, or one or more phalanges of two or more digits, of a hand or foot may be proportioned to the loss of use of the hand or foot occasioned thereby but shall not exceed the compensation for loss of a hand or foot.

r. Total loss of use. Compensation for permanent total loss of use of a member shall be the same as for loss of the member.

s. Partial loss or partial loss of use. Compensation for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member. Compensation for permanent partial loss or loss of use of an eye shall be awarded on the basis of uncorrected loss of vision or corrected loss of vision resulting from an injury whichever is the greater.

t. Disfigurement. 1. The board may award proper and equitable compensation for serious facial or head disfigurement, not to exceed twenty thousand dollars, including a disfigurement continuous in length which is partially in the facial area and also extends into the neck region as described in paragraph two hereof.

2. The board, if in its opinion the earning capacity of an employee has been or may in the future be impaired, may award compensation for any serious disfigurement in the region above the sterno clavicular articulations anterior to and including the region of the sterno cleido mastoid muscles on either side, but no award under subdivisions one and two shall, in the aggregate, exceed twenty thousand dollars.

3. Notwithstanding any other provision hereof, two or more serious disfigurements, not continuous in length, resulting from the same injury, if partially in the facial area and partially in the neck region as described in paragraph two hereof, shall be deemed to be a facial

disfigurement.

u. Total or partial loss or loss of use of more than one member or parts of members. In any case in which there shall be a loss or loss of use of more than one member or parts of more than one member set forth in paragraphs a through t, inclusive, of this subdivision, but not amounting to permanent total disability, the board shall award compensation for the loss or loss of use of each such member or part thereof, which awards shall be fully payable in one lump sum upon the request of the injured employee.

v. Additional compensation for impairment of wage earning capacity in certain permanent partial disabilities. Notwithstanding any other provision of this subdivision, additional compensation shall be payable for impairment of wage earning capacity for any period after the termination of an award under paragraphs a, b, c, or d, of this subdivision for the loss or loss of use of fifty per centum or more of a member, provided such impairment of earning capacity shall be due solely thereto. Such additional compensation shall be determined in accordance with paragraph w of this subdivision. The additional compensation shall be reduced by fifty per centum of any amount of disability benefits which the disabled employee is receiving or entitled to receive for the same period under the social security act, and shall cease on the date the disabled employee receives or is entitled to receive old-age insurance benefits under the social security act. As soon as practicable after the injury, the worker shall be required to participate in a board approved rehabilitation program; or shall have demonstrated cooperation with efforts to institute such a board approved program and shall have been determined by the board not to be a feasible candidate for rehabilitation; such rehabilitation shall constitute treatment and care as provided in this chapter.

w. Other cases. In all other cases of permanent partial disability, the compensation shall be sixty-six and two-thirds percent of the difference between the injured employee's average weekly wages and his or her wage-earning capacity thereafter in the same employment or otherwise. Compensation under this paragraph shall be payable during

the continuance of such permanent partial disability, without the necessity for the claimant who is entitled to benefits at the time of classification to demonstrate ongoing attachment to the labor market, but subject to reconsideration of the degree of such impairment by the board on its own motion or upon application of any party in interest however, all compensation payable under this paragraph shall not exceed (i) five hundred twenty-five weeks in cases in which the loss of wage-earning capacity is greater than ninety-five percent; (ii) five hundred weeks in cases in which the loss of wage-earning capacity is greater than ninety percent but not more than ninety-five percent; (iii) four hundred seventy-five weeks in cases in which the loss of wage-earning capacity is greater than eighty-five percent but not more than ninety percent; (iv) four hundred fifty weeks in cases in which the loss of wage-earning capacity is greater than eighty percent but not more than eighty-five percent; (v) four hundred twenty-five weeks in cases in which the loss of wage-earning capacity is greater than seventy-five percent but not more than eighty percent; (vi) four hundred weeks in cases in which the loss of wage-earning capacity is greater than seventy percent but not more than seventy-five percent; (vii) three hundred seventy-five weeks in cases in which the loss of wage-earning capacity is greater than sixty percent but not more than seventy percent; (viii) three hundred fifty weeks in cases in which the loss of wage-earning capacity is greater than fifty percent but not more than sixty percent; (ix) three hundred weeks in cases in which the loss of wage-earning capacity is greater than forty percent but not more than fifty percent; (x) two hundred seventy-five weeks in cases in which the loss of wage-earning capacity is greater than thirty percent but not more than forty percent; (xi) two hundred fifty weeks in cases in which the loss of wage-earning capacity is greater than fifteen percent but not more than thirty percent; and (xii) two hundred twenty-five weeks in cases in which the loss of wage-earning capacity is fifteen percent or less. For a claimant with a date of accident or disablement after the effective date of the chapter of the laws of two thousand seventeen that amended this subdivision, where the carrier or employer has provided compensation pursuant to subdivision five of this section beyond one hundred thirty weeks from the date of accident or disablement, all subsequent weeks in which compensation was paid shall be considered to

be benefit weeks for purposes of this section, with the carrier or employer receiving credit for all such subsequent weeks against the amount of maximum benefit weeks when permanent partial disability under this section is determined. In the event of payment for intermittent temporary partial disability paid after one hundred thirty weeks from the date of accident or disablement, such time shall be reduced to a number of weeks, for which the carrier will receive a credit against the maximum benefit weeks. For a claimant with a date of accident or disablement after the effective date of the chapter of the laws of two thousand seventeen that amended this subdivision, when permanency is at issue, and a claimant has submitted medical evidence that he or she is not at maximum medical improvement, and the carrier has produced or has had a reasonable opportunity to produce an independent medical examination concerning maximum medical improvement, and the board has determined that the claimant is not yet at maximum medical improvement, the carrier shall not receive a credit for benefit weeks prior to a finding that the claimant has reached maximum medical improvement, at which time the carrier shall receive credit for any weeks of temporary disability paid to claimant after such finding against the maximum benefit weeks awarded under this subdivision. For those claimants classified as permanently partially disabled who no longer receive indemnity payments because they have surpassed their number of maximum benefit weeks, the following provisions will apply:

(1) There will be a presumption that medical services shall continue notwithstanding the completion of the time period for compensation set forth in this section and the burden of going forward and the burden of proof will lie with the carrier, self-insured employer or state insurance fund in any application before the board to discontinue or suspend such services. Medical services will continue during the pendency of any such application and any appeals thereto.

(2) The board is directed to promulgate regulations that establish an independent review and appeal by an outside agent or entity of the board's choosing of any administrative law judge's determination to discontinue or suspend medical services before a final determination of the board.

x. Impairment guidelines. The chair shall consult with representatives

of labor, business, medical providers, insurance carriers, and self-insured employers regarding revisions to permanency impairment guidelines, including permitting review and comment by such representatives' chosen medical advisors, and after consultation shall, in accordance with the state administrative procedure act, propose for public comment revised permanency guidelines concerning medical evaluation of impairment and the determination of permanency as set forth in paragraphs a through v of this subdivision by September first, two thousand seventeen, with such guidelines to be adopted by the chair by January first, two thousand eighteen. The permanency impairment guidelines shall be reflective of advances in modern medicine that enhance healing and result in better outcomes. In the event the chair fails to adopt such permanency guidelines to be effective by January first, two thousand eighteen, the chair shall adopt, by emergency regulation, permanency impairment guidelines. The permanency impairment guidelines adopted by emergency regulation shall be either the impairment guidelines proposed by the chair on September first, two thousand seventeen or the permanency impairment guidelines created by the consultant to the board and submitted to representatives of labor, business, medical providers, insurance carriers, and self-insured employers, as voted on in an emergency meeting of the board to be held on December twenty-ninth, two thousand seventeen. In the event the board is unable to reach a decision at such meeting, the chair shall select the permanency guidelines to be adopted by emergency regulations. Emergency regulations shall be in effect for ninety days or until such time as permanent regulations are adopted by the chair. As of January first, two thousand eighteen the 2012 permanency impairment guidelines pertaining to paragraphs a through v of subdivision three of section fifteen of this article are repealed, and shall have no effect. The board shall train adjudication and other staff to ensure timely and effective implementation.

4. Effect of award. An award made to a claimant under subdivision three shall in case of death arising from causes other than the injury be payable to and for the benefit of the persons following:

a. If there be a surviving spouse and no child of the deceased under

the age of eighteen years, to such spouse.

b. If there be a surviving spouse and surviving child or children of the deceased under the age of eighteen years, one-half shall be payable to the surviving spouse and the other half to the surviving child or children.

The board may in its discretion require the appointment of a guardian for the purpose of receiving the compensation of the minor child. In the absence of such a requirement by the board the appointment for such a purpose shall not be necessary.

c. If there be a surviving child or children of the deceased under the age of eighteen years, but no surviving spouse then to such child or children.

d. If there be no surviving spouse and no surviving child or children of the deceased under the age of eighteen years, then to such dependent or dependents as defined in section sixteen of this chapter, as directed by the board; and if there be no such dependents, then to the estate of such deceased in an amount not exceeding reasonable funeral expenses as provided in subdivision one of section sixteen of this chapter, or, if there be no estate, to the person or persons paying the funeral expenses of such deceased in an amount not exceeding reasonable funeral expenses as provided in subdivision one of section sixteen of this chapter.

An award for disability may be made after the death of the injured employee.

4-a. Protracted temporary total disability in connection with permanent partial disability. In case of temporary total disability and permanent partial disability both resulting from the same injury, if the temporary total disability continues for a longer period than the number of weeks set forth in the following schedule, the period of temporary total disability in excess of such number of weeks shall be added to the compensation period provided in subdivision three of this section: Arm, thirty-two weeks; leg, forty weeks; hand, thirty-two weeks; foot,

thirty-two weeks; ear, twenty-five weeks; eye, twenty weeks; thumb, twenty-four weeks; first finger, eighteen weeks; great toe, twelve weeks; second finger, twelve weeks; third finger, eight weeks; fourth finger, eight weeks; toe other than great toe, eight weeks.

In any case resulting in loss or partial loss of use of arm, leg, hand, foot, ear, eye, thumb, finger or toe, where the temporary total disability does not extend beyond the periods above mentioned for such injury, compensation shall be limited to the schedule contained in subdivision three.

5. Temporary partial disability. In case of temporary partial disability resulting in decrease of earning capacity, the compensation shall be two-thirds of the difference between the injured employee's average weekly wages before the accident and his wage earning capacity after the accident in the same or other employment.

5-a. Determination of wage earning capacity. The wage earning capacity of an injured employee in cases of partial disability shall be determined by his actual earnings, provided, however, that if he has no such actual earnings the board may in the interest of justice fix such wage earning capacity as shall be reasonable, but not in excess of seventy-five per centum of his former full time actual earnings, having due regard to the nature of his injury and his physical impairment.

5-b. Non-schedule adjustments. Notwithstanding any other provision of this chapter, in any case coming within the provisions of subdivisions three or five of this section, in which the right to compensation has been established and compensation has been paid for not less than three months, in which the continuance of disability and of future earning capacity cannot be ascertained with reasonable certainty, the board may, in the interest of justice, approve a non-schedule adjustment agreed to between the claimant and the employer or his insurance carrier. The board shall require, before approving any such agreement, that there be an examination of the claimant in accordance with section nineteen of this chapter, and such approval shall only be given when it is found that the adjustment is fair and in the best interest of the claimant.

The board may, in such case, order all future compensation to be paid in one or more lump sums or periodically, and any such adjustment shall be regarded as a closing of the claim unless the board find upon proof that there has been a change in condition or in the degree of disability of claimant not found in the medical evidence and, therefore, not contemplated at the time of the adjustment.

6. Maximum and minimum compensation for disability. (a) Compensation for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease that occurs, (1) on or after January first, nineteen hundred seventy-eight, shall not exceed one hundred twenty-five dollars per week, that occurs (2) on or after July first, nineteen hundred seventy-eight, shall not exceed one hundred eighty dollars per week, that occurs (3) on or after January first, nineteen hundred seventy-nine, shall not exceed two hundred fifteen dollars per week, that occurs (4) on or after July first, nineteen hundred eighty-three, shall not exceed two hundred fifty-five dollars per week, that occurs (5) on or after July first, nineteen hundred eighty-four, shall not exceed two hundred seventy-five dollars per week, that occurs (6) on or after July first, nineteen hundred eighty-five, shall not exceed three hundred dollars per week, that occurs (7) on or after July first, nineteen hundred ninety, shall not exceed three hundred forty dollars per week; and in the case of temporary total disability shall not be less than thirty dollars per week and in the case of permanent total disability shall not be less than twenty dollars per week except that if the employee's wages at the time of injury are less than thirty or twenty dollars per week respectively, he or she shall receive his or her full weekly wages. Compensation for permanent or temporary partial disability due to an accident or disablement resulting from an occupational disease that occurs (1) on or after January first, nineteen hundred seventy-eight, shall not exceed one hundred five dollars per week, that occurs (2) on or after July first, nineteen hundred eighty-three, shall not exceed one hundred twenty-five dollars per week, that occurs (3) on or after July first, nineteen hundred eighty-four, shall not exceed one hundred thirty-five dollars per week, that occurs (4) on or after July first, nineteen hundred eighty-five, shall not exceed one hundred fifty dollars per week, that

occurs (5) on or after July first, nineteen hundred ninety, shall not exceed two hundred eighty dollars per week; nor be less than twenty dollars per week; except that if the employee's wages at the time of injury are less than twenty dollars per week, he or she shall receive his or her full weekly wages. In no event shall compensation when combined with decreased earnings or earning capacity exceed the amount of wages which the employee was receiving at the time the injury occurred. Compensation for permanent or temporary partial disability, or for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease that occurs (1) on or after July first, nineteen hundred ninety-one and prior to July first, nineteen hundred ninety-two, shall not exceed three hundred fifty dollars per week; (2) on or after July first, nineteen hundred ninety-two, shall not exceed four hundred dollars per week; nor be less than forty dollars per week except that if the employee's wages at the time of injury are less than forty dollars per week, the employee shall receive his or her full wages. Compensation for permanent or temporary partial disability, or for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease that occurs (1) on or after July first, two thousand seven shall not exceed five hundred dollars per week, (2) on or after July first, two thousand eight shall not exceed five hundred fifty dollars per week, (3) on or after July first, two thousand nine shall not exceed six hundred dollars per week, and (4) on or after July first, two thousand ten, and on or after July first of each succeeding year, shall not exceed two-thirds of the New York state average weekly wage for the year in which it is reported. Compensation for permanent or temporary partial disability, or for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease that occurs on or after July first, two thousand seven shall not be less than one hundred dollars per week except that if the employee's wages at the time of injury are less than one hundred dollars per week, the employee shall receive his or her full wages. Compensation for permanent or temporary partial disability, or for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease that occurs on or after May first, two thousand thirteen shall not be less than one hundred fifty dollars per week

except that if the employee's wages at the time of injury are less than one hundred fifty dollars per week, the employee shall receive his or her full wages. Compensation for permanent or temporary partial disability, or for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease that occurs on or after January first, two thousand twenty-four and before January first, two thousand twenty-five shall not be less than two hundred seventy-five dollars per week except that if the employee's wages at the time of injury are less than two hundred seventy-five dollars per week, the employee shall receive his or her full wages. Compensation for permanent or temporary partial disability, or for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease that occurs on or after January first, two thousand twenty-five and before July first, two thousand twenty-six shall not be less than three hundred twenty-five dollars per week except that if the employee's wages at the time of injury are less than three hundred twenty-five dollars per week, the employee shall receive his or her full wages. Compensation for permanent or temporary partial disability, or for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease that occurs on or after July first, two thousand twenty-six and on or after July first of each succeeding year shall not be less than one-fifth of the New York state average weekly wage for the year in which it is reported except that if the employee's weekly wages are equal to or less than one-fifth of the New York state average weekly wage for the year in which it is reported, the employee shall receive his or her full wages. In no event shall compensation when combined with decreased earnings or earning capacity exceed the amount of wages the employee was receiving at the time the injury occurred. Compensation for permanent or temporary partial disability, or for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease or injury that occurred as a result of World Trade Center rescue activity by an employee of a private voluntary hospital, who passed a physical examination upon employment as a rescue worker that failed to reveal evidence of a condition that was the proximate cause of disablement or occupational disease or injury, shall not exceed three-quarters of a claimant's wage on September eleventh, two thousand

one. In no event shall compensation when combined with decreased earnings or earning capacity exceed the amount of wages the employee was receiving on September eleventh, two thousand one.

(b) Compensation for temporary total disability due to an accident or disablement resulting from an occupational disease that occurs on or after July first, nineteen hundred seventy-four, and prior to July first, nineteen hundred seventy-eight, shall not exceed one hundred twenty-five dollars per week nor be less than thirty dollars per week; except that if the employee's wages at the time of injury are less than thirty dollars per week, he shall receive his full weekly wages. Compensation for permanent total disability or for permanent or temporary partial disability due to an accident or disablement resulting from an occupational disease that occurs on or after July first, nineteen hundred seventy-four, and prior to January first, nineteen hundred seventy-eight, shall not exceed ninety-five dollars per week; nor be less than twenty dollars per week; except that if the employee's wages at the time of injury are less than twenty dollars per week, he shall receive his full weekly wages. In no event shall compensation when combined with decreased earnings or earning capacity exceed the amount of wages which the employee was receiving at the time the injury occurred.

(c) Compensation for temporary total disability due to an accident or disablement resulting from an occupational disease that occurs on or after July first, nineteen hundred seventy and prior to July first, nineteen hundred seventy-four, shall not exceed ninety-five dollars per week nor be less than thirty dollars per week; except that if the employee's wages at the time of injury are less than thirty dollars per week, he shall receive his full weekly wages. Compensation for permanent total disability or for permanent or temporary partial disability due to an accident or disablement resulting from an occupational disease that occurs on or after July first, nineteen hundred seventy and prior to July first, nineteen hundred seventy-four, shall not exceed eighty dollars per week; nor be less than twenty dollars per week; except that if the employee's wages at the time of injury are less than twenty dollars per week, he shall receive his full weekly wages. In no event shall compensation when combined with decreased earnings or earning capacity exceed the amount of wages which the employee was receiving at

the time the injury occurred.

(d) Compensation for temporary total disability due to an accident or disablement resulting from an occupational disease that occurs on or after July first, nineteen hundred sixty-eight, and prior to July first, nineteen hundred seventy, shall not exceed eighty-five dollars per week nor be less than thirty dollars per week; except that if the employee's wages at the time of injury are less than thirty dollars per week, he shall receive his full weekly wages. Compensation for permanent total disability or for permanent or temporary partial disability due to an accident or disablement resulting from an occupational disease that occurs on or after July first, nineteen hundred sixty-eight, and prior to July first, nineteen hundred seventy, shall not exceed seventy dollars per week; nor be less than twenty dollars per week; except that if the employee's wages at the time of injury are less than twenty dollars per week, he shall receive his full weekly wages. In no event shall compensation when combined with decreased earnings or earning capacity exceed the amount of wages which the employee was receiving at the time the injury occurred.

(e) Compensation for permanent or temporary partial disability, or for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease that occurs on or after July first, nineteen hundred sixty-five, and prior to July first, nineteen hundred sixty-eight, shall not exceed sixty dollars per week; nor be less than twenty dollars per week; except that if the employee's wages at the time of injury are less than twenty dollars per week, he shall receive his full weekly wages. In no event shall compensation when combined with decreased earnings or earning capacity exceed the amount of wages which the employee was receiving at the time the injury occurred.

(f) Compensation for permanent or temporary partial disability, or for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease that occurs on or after July first, nineteen hundred sixty-two and prior to July first nineteen hundred sixty-five, shall not exceed fifty-five dollars per week; nor be less than twenty dollars per week; except that if the employee's wages at the time of injury are less than twenty dollars per week, he shall receive his full weekly wages. In no event shall

compensation when combined with decreased earnings or earning capacity exceed the amount of wages which the employee was receiving at the time the injury occurred.

(g) Compensation for permanent or temporary partial disability, or for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease that occurs on or after July first, nineteen hundred sixty and prior to July first, nineteen hundred sixty-two, shall not exceed fifty dollars per week; nor be less than twenty dollars per week, except that if the employee's wages at the time of injury are less than twenty dollars per week, he shall receive his full weekly wages. In no event shall compensation when combined with decreased earnings or earning capacity exceed the amount of wages which the employee was receiving at the time the injury occurred.

(h) Compensation for permanent or temporary partial disability, or for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease that occurs on or after July first, nineteen hundred fifty-eight and prior to July first, nineteen hundred sixty, shall not exceed forty-five dollars per week; nor, except in cases of permanent total disability, be less than twenty dollars per week; except that if the employee's wages at the time of injury are less than twenty dollars per week, he shall receive his full weekly wages; further provided, that in each case of permanent total disability minimum compensation shall not be less than twenty dollars per week, except that where the employee's wages at the time of injury are less than twenty dollars per week he shall receive his full weekly wages. In no event shall compensation when combined with decreased earnings or earning capacity exceed the amount of wages which the employee was receiving at the time the injury occurred.

(i) Compensation for permanent or temporary partial disability, or for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease that occurs on or after July first, nineteen hundred fifty-four and prior to July first, nineteen hundred fifty-eight, shall not exceed thirty-six dollars per week; nor, except in cases of permanent total disability, be less than twelve dollars per week; except that if the employee's wages at the time of injury are less than twelve dollars per week, he shall receive his

full weekly wages; further provided, that in each case of permanent total disability minimum compensation shall not be less than fifteen dollars per week, except that where the employee's wages at the time of injury are less than fifteen dollars per week he shall receive his full weekly wages. In no event shall compensation when combined with decreased earnings or earning capacity exceed the amount of wages which the employee was receiving at the time the injury occurred.

(j) Compensation for permanent or temporary partial disability, or for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease that occurs on or after July first, nineteen hundred forty-eight and prior to July first, nineteen hundred fifty-four, shall not exceed thirty-two dollars per week and compensation for permanent or temporary partial disability, or for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease that occurs on or after June first, nineteen hundred forty-six, and prior to July first, nineteen hundred forty-eight, shall not exceed twenty-eight dollars per week; nor, except in cases of permanent total disability, be less than twelve dollars per week; except that if the employee's wages at the time of injury are less than twelve dollars per week, he shall receive his full weekly wages; further provided, that in each case of permanent total disability minimum compensation shall not be less than fifteen dollars per week, except that where the employee's wages at the time of injury are less than fifteen dollars per week, he shall receive his full weekly wages but in no event shall compensation when combined with decreased earnings or earning capacity exceed the amount of wages which the employee was receiving at the time the injury occurred; further provided, that compensation may be in excess of twenty-five dollars but shall not exceed twenty-eight dollars per week for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease that occurred on or after June first, nineteen hundred forty-four, and prior to July first, nineteen hundred forty-eight, and in each case of temporary total disability minimum compensation shall not be less than twelve dollars per week, except that where the employee's wages at the time of injury are less than twelve dollars per week, he shall receive his full weekly wages; and further provided that, because of existing conditions due to the war

compensation for permanent or temporary total disability may be in excess of twenty-five dollars but shall not exceed twenty-eight dollars per week for any period of disability arising out of claims accruing during the three year period commencing June first, nineteen hundred forty-four.

6-a. Reclassification of disabilities. Subject to the limitations set forth in sections twenty-five-a and one hundred twenty-three of this chapter, the board may, at any time, without regard to the date of accident, upon its own motion, or on application of any party in interest, reclassify a disability upon proof that there has been a change in condition, or that the previous classification was erroneous and not in the interest of justice.

7. Previous disability. The fact that an employee has suffered previous disability or received compensation therefor shall not preclude him from compensation for a later injury nor preclude compensation for death resulting therefrom; but in determining compensation for the later injury or death his average weekly wages shall be such sum as will reasonably represent his earning capacity at the time of the later injury, provided, however, that an employee who is suffering from a previous disability shall not receive compensation for a later injury in excess of the compensation allowed for such injury when considered by itself and not in conjunction with the previous disability except as hereinafter provided in subdivision eight of this section.

8. Disability following previous permanent physical impairment. (a) Declaration of policy and legislative intent. As a guide to the interpretation and application of this subdivision, the policy and intent of this legislature is declared to be as follows:

First: That every person in this state who works for a living is entitled to reasonable opportunity to maintain his independence and self-respect through self-support even after he/she has been physically handicapped by injury or disease;

Second: That any plan which will reasonably, equitably and practically

operate to break down hindrances and remove obstacles to the employment of partially disabled persons who (i) are honorably discharged from our armed forces, or (ii) have a qualifying condition, as defined in section one of the veterans' services law, and received a discharge other than bad conduct or dishonorable from such service, or (iii) are discharged LGBT veterans, as defined in section one of the veterans' services law, and received a discharge other than bad conduct or dishonorable from such service, or any other physically handicapped persons, is of vital importance to the state and its people and is of concern to this legislature;

Third: That it is the considered judgment of this legislature that the system embodied in this subdivision, which makes a logical and equitable adjustment of the liability under the workers' compensation law which an employer must assume in hiring employees, constitutes a practical and reasonable approach to a solution of the problem for the employment of physically handicapped persons.

Moreover, because of the insidious nature of slowly developing diseases such as silicosis and other dust diseases and because of the reluctance on the part of employers to employ persons previously exposed to silica or other harmful dust, means should also be provided whereby employers will be encouraged to employ and to continue the employment of such persons, by apportioning liability fairly between the employer and industry as a whole without at the same time removing any incentive for the prevention of harmful dust diseases.

(b) Definition. As used in this subdivision, "permanent physical impairment" means any permanent condition due to previous accident or disease or any congenital condition which is or is likely to be a hindrance or obstacle to employment.

(c) Permanent total disability after permanent partial disability. Notwithstanding the provisions of paragraph (d) of this subdivision, if an employee who has previously incurred permanent partial disability through the loss of one hand, one arm, one foot, one leg, or one eye, incurs permanent total disability through the loss of another member or organ, he/she shall be paid, in addition to the compensation for permanent partial disability provided in this section and after the

cessation of the payments for the prescribed period of weeks special additional compensation during the continuance of such total disability to the amount of sixty-six and two-thirds per centum of the average weekly wage earned by him/her at the time the total permanent disability was incurred. If such employee shall establish an earning capacity by employment he shall be paid during the period of such employment, instead of the additional compensation above provided, two-thirds of the difference between his average weekly wages at the time the total disability was incurred and his wage earning capacity as determined by his actual earnings in such employment, subject to the limitations in subdivision six of this section. Such additional compensation, and expense as in this subdivision provided, shall be paid out of the special disability fund and in the manner as hereinafter in this subdivision provided.

(d) If an employee of an employer who has secured the payment of compensation as required under the provisions of section fifty of this chapter, who had a total or partial loss or loss of use of one hand, one arm, one foot, one leg or one eye, or who has other permanent physical impairment incurs a subsequent disability by accident arising out of and in the course of his employment or an occupational disease arising therefrom, resulting in a permanent disability caused by both conditions that is materially and substantially greater than that which would have resulted from the subsequent injury or occupational disease alone, the employer or his insurance carrier shall in the first instance pay all awards of compensation and all medical expense provided by this chapter, but such employer or his insurance carrier, except as specifically provided in paragraph (ee) of this subdivision, shall be reimbursed from the special disability fund created by this subdivision for all compensation and medical benefits subsequent to those payable for the first one hundred four weeks of disability for claims where the date of accident or date of disablement occurred prior to August first, nineteen hundred ninety-four, and two hundred sixty weeks of disability for claims where the date of accident or date of disablement occurred on or after August first, nineteen hundred ninety-four, regardless of knowledge on the part of the employer as to the existence of such pre-existing permanent physical impairment.

Notwithstanding anything to the contrary in this chapter, there may be apportionment of liability for the special disability fund under this subdivision within a single claim by disposition between the fund, carriers, self-insurers or employers.

(e) If the subsequent injury of such an employee resulting from an accident arising out of and in the course of his employment or an occupational disease resulting therefrom, as set forth in paragraph (d) of this subdivision, shall result in the death of the employee and it shall be determined that either the injury or death would not have occurred except for such pre-existing permanent physical impairment, the employer or his insurance carrier shall in the first instance pay the funeral expenses and the death benefits prescribed by this chapter, but he or his insurance carrier, except as specifically provided in paragraph (ee) of this subdivision, shall be reimbursed from the special disability fund created by this subdivision for all death benefits payable in excess of one hundred four weeks of disability for claims where the date of accident or date of disablement occurred prior to August first, nineteen hundred ninety-four, and two hundred sixty weeks of disability for claims where the date of accident or date of disablement occurred on or after August first, nineteen hundred ninety-four, regardless of knowledge on the part of the employer as to the existence of such pre-existing permanent physical impairment.

(ee) If an employee of an employer who has secured the payment of compensation as required under the provisions of section fifty of this chapter is disabled from silicosis or other dust disease, or in the event of death, death was due to silicosis or other dust disease, and if such an employee has been subject to an injurious exposure in an employment defined under paragraph twenty-nine of subdivision two of section three of this chapter, the provisions of this subdivision shall apply except as hereinafter stated; and it shall not be required that the employee had, either at the time of hiring or during the employment, any previous physical condition or disability which may result in such disability or death. In all such cases the employer or his insurance carrier shall in the first instance pay all awards of compensation and all medical expense provided by this chapter; and in the event of death, the employer or his insurance carrier shall also in the first instance pay the funeral expenses and the death benefits prescribed by this

chapter; but such employer or his insurance carrier shall subject to the limitations of subparagraphs two and three of paragraph (h) of this subdivision be reimbursed from the special disability fund created by this subdivision for all compensation and medical benefits subsequent to those payable for the first one hundred four weeks of disability for claims where the date of accident or date of disablement occurred prior to August first, nineteen hundred ninety-four, and two hundred sixty weeks of disability for claims where the date of accident or date of disablement occurred on or after August first, nineteen hundred ninety-four, and, in the event of death, the employer or his insurance carrier shall be reimbursed from the special disability fund created by this subdivision for all death benefits payable in excess of one hundred four weeks for claims where the date of accident or date of disablement occurred prior to August first, nineteen hundred ninety-four, and two hundred sixty weeks for claims where the date of accident or date of disablement occurred on or after August first, nineteen hundred ninety-four; provided, however, that when total disability or death occurred after July first, nineteen hundred forty-seven, and prior to July first, nineteen hundred seventy-four, the employer or his insurance carrier shall be reimbursed from the special disability fund created by this subdivision for all compensation and medical benefits including funeral expenses and death benefits subsequent to those payable for the first two hundred sixty weeks of disability and death benefits combined; and further provided, however, that in the event of death due to silicosis or other dust disease on or after July first, nineteen hundred forty-seven, of such an employee who shall have been totally disabled from silicosis or other dust disease prior to such date, the employer or his insurance carrier shall be reimbursed from the special disability fund created by this subdivision for death benefits subsequent to those payable for the first one hundred four weeks.

The compensation of an employee who has heretofore been found to be totally and permanently disabled from silicosis or other dust disease and whose disablement occurred prior to July first, nineteen hundred forty-seven, shall be continued or resumed, as the case may be, after June first, nineteen hundred fifty-one, and payments shall be made during continuance of such disability at his/her regular weekly rate,

notwithstanding the fact that such compensation is in excess of the maximum provided for his/her case under former article four-a of this chapter; but such compensation in excess of the maximum so provided shall be paid from the special fund created by this subdivision.

(f) Any award under this subdivision shall be made against the employer or his or her insurance carrier, but if such employer or insurance carrier be entitled to reimbursement as provided in this subdivision, notice or claim of the right to such reimbursement shall be filed with the board in writing prior to the final determination that the resulting disability is permanent, but in no case more than one hundred four weeks after the date of disability or death or fifty-two weeks after the date that a claim for compensation is filed with the chair, whichever is later, or in the event of the reopening of a case theretofore closed, no later than the determination of permanency upon such reopening. In no event shall such a notice of claim be filed beyond the dates set forth in subparagraph two of paragraph (h) of this subdivision.

The employer or his or her insurance carrier shall in the first instance make the payments of compensation and medical expenses provided by this subdivision. Whenever for any reason payments are not made by the employer or his or her insurance carrier at any time after the payments have been made for the first one hundred four weeks for claims where the date of accident or date of disablement occurred prior to August first, nineteen hundred ninety-four, and two hundred sixty weeks for claims where the date of accident or date of disablement occurred on or after August first, nineteen hundred ninety-four, the payments of subsequent compensation and medical expenses shall be made out of the special disability fund by the commissioner of taxation and finance upon vouchers approved by the chair of the workers' compensation board. In case any payments prior to the expiration of the first one hundred four weeks for claims where the date of accident or date of disablement occurred prior to August first, nineteen hundred ninety-four, and two hundred sixty weeks for claims where the date of accident or date of disablement occurred on or after August first, nineteen hundred ninety-four are not made by the employer or his or her insurance carrier by reason of the insolvency of such carrier, the payments until the

expiration of one hundred four weeks for claims where the date of accident or date of disablement occurred prior to August first, nineteen hundred ninety-four, and two hundred sixty weeks for claims where the date of accident or date of disablement occurred on or after August first, nineteen hundred ninety-four shall be made out of the stock workers' compensation security fund created by the provisions of section one hundred seven of this chapter if the insolvent carrier be a stock company, or out of the mutual workers' compensation security fund created under the provisions of section one hundred nine-d of this chapter if the carrier be a mutual company. If any such payments are not made by an employer permitted to secure the payment of compensation pursuant to the provisions of subdivision three of section fifty of this chapter, the payments shall be made out of the proceeds of the sale of any securities deposited by the employer with the chair, upon vouchers approved by the chair, until such payments have been made for one hundred four weeks for claims where the date of accident or date of disablement occurred prior to August first, nineteen hundred ninety-four, and two hundred sixty weeks for claims where the date of accident or date of disablement occurred on or after August first, nineteen hundred ninety-four, from the date of disability, after which date they shall be made out of the special disability fund in the manner above provided.

In all cases in which awards have been made and charged against the special fund or injuries have occurred which would require payments to be made in accordance with the provisions of former subdivision eight of this section as it existed immediately prior to the time this subdivision, as hereby added, takes effect, the compensation so awarded or that shall be awarded in such cases shall continue to be paid out of the special disability fund by the commissioner of taxation and finance upon vouchers approved by the chair of the workers' compensation board, as though this subdivision had not been enacted.

(g) Upon the making of a determination that an employer or insurance carrier is entitled to reimbursement from the special disability fund in any case where the employer or insurance carrier has made payment into the aggregate trust fund, as provided in section twenty-seven of this chapter, or where payment of compensation has been commuted into one or

more lump sum payments, the employer or insurance carrier shall be reimbursed forthwith for the sums paid in excess of those payable for one hundred four weeks for claims where the date of accident or date of disablement occurred prior to August first, nineteen hundred ninety-four, two hundred sixty weeks for claims where the date of accident or date of disablement occurred on or after August first, nineteen hundred ninety-four or two hundred sixty weeks in a silicosis or other dust disease case as otherwise provided in paragraph (ee) of this subdivision, exclusive of administrative and loading charges paid pursuant to section twenty-seven, in accordance with the decision and order of the board. In all other cases such employer or insurance carrier shall, periodically every six months from the decision and order of the board, be reimbursed from such special disability fund for all compensation and medical expense in accordance with the provisions of paragraph (f) of this subdivision.

(h) Special disability fund. (1) The fund heretofore maintained and provided for by and pursuant to former subdivision eight of this section, is hereby continued and shall retain the liabilities heretofore charged or chargeable thereto under the provisions of such former subdivision eight of this section as it existed immediately prior to the time this subdivision, as hereby added, takes effect, and the liabilities chargeable thereto under the provisions of former subdivision eight-a of this section as added by chapter seven hundred forty-nine of the laws of nineteen hundred forty-four and repealed at the same time this subdivision, as heretofore added, takes effect, and payments therefrom on account of such liabilities shall continue to be made as provided herein. The said fund shall be known as the special disability fund and shall be available only for the purposes stated in this subdivision, and the assets thereof shall not at any time be appropriated or diverted to any other use or purpose.

(2) (A) No carrier or employer, or the state insurance fund, may file a claim for reimbursement from the special disability fund, for an injury or illness with a date of accident or date of disablement on or after July first, two thousand seven. No carrier or employer, or the state insurance fund, may file a claim for reimbursement from the special disability fund after July first, two thousand ten, and no written submissions or evidence in support of such a claim may be

submitted after that date.

(B) All requests for reimbursement from the special disability fund with a date of injury or date of disablement prior to July first, two thousand seven as to which the board has determined that the special disability fund is liable must be submitted to the special disability fund by the later of (i) one year after the expense has been paid, or (ii) one year from the effective date of this paragraph.

(3) Effective the first day of January, two thousand fourteen, and annually thereafter, the chair of the board shall collect from all affected employers (A) a sum equal to one hundred fifty per centum of the total expected disbursements made from the special disability fund during the year (not including any disbursements made on account of anticipated liabilities or waiver agreements funded by bond proceeds and related earnings), less the estimated amount of the net assets in such fund expected as of December thirty-first and (B) a sum sufficient to cover debt service, and associated costs (the "debt service assessment") to be paid during the calendar year by the dormitory authority, as calculated in accordance with subparagraph four of this paragraph. Such assessments shall be included in the assessment rate established pursuant to subdivision two of section one hundred fifty-one of this chapter. Such assessments shall be deposited with the commissioner of taxation and finance and transferred to the benefit of such fund following payment of debt service and associated costs, if any, pursuant to section one hundred fifty-one of this chapter.

(4) The chair and the commissioner of taxation and finance are authorized and directed to enter into a financing agreement with the dormitory authority, to be known as the "special disability fund financing agreement." Such agreement shall set forth the process for calculating the annual debt service of the bonds issued by the dormitory authority and any other associated costs. For purposes of this section, "associated costs" may include a coverage factor, reserve fund requirements, all costs of any nature incurred by the dormitory authority in connection with the special disability fund financing agreement or pursuant thereto, the operating costs of the waiver agreement management office, the costs of any independent audits undertaken under this section, and any other costs for the implementation of this subparagraph and the issuance of bonds by the

dormitory authority, including interest rate exchange payments, rebate payments, liquidity fees, credit provider fees, fiduciary fees, remarketing, dealer, auction agent and related fees and other similar bond-related expenses, unless otherwise funded. By January first of each year, the dormitory authority shall provide to the chair the calculation of the amount expected to be paid by the dormitory authority in debt service and associated costs for purposes of calculating the debt service assessment as set forth in subparagraph three of this paragraph. All monies received on account of any assessment under subparagraph three of this paragraph and this subparagraph shall be applied in accordance with this subparagraph and in accordance with the financing agreement until the financial obligations of the dormitory authority in respect to its contract with its bondholders are met and all associated costs payable to the dormitory authority have been paid, notwithstanding any other provision of law respecting secured transactions. This provision may be included by the dormitory authority in any contract of the dormitory authority with its bondholders.

The special disability fund financing agreement may restrict disbursements, investments, or rebates, and may prescribe a system of accounts applicable to the special disability fund, including custody of an account with a trust indenture trustee that may be prescribed by the dormitory authority as part of its contract with the bondholders. For purposes of this paragraph, the term "bonds" shall include notes issued in anticipation of the issuance of bonds, or notes issued pursuant to a commercial paper program.

(5) The commissioner of taxation and finance is hereby authorized to receive and credit to such special disability fund any sum or sums that may at any time be contributed to the state by the United States of America under any act of congress, or otherwise, to which the state may be or become entitled by reason of any payments made out of such fund.

(6) The commissioner of taxation and finance shall be the custodian of said fund and, unless otherwise provided for in the special disability fund financing agreement, shall invest any surplus or reserve moneys thereof in securities which constitute legal investments for savings banks under the laws of this state and in interest bearing certificates of deposit of a bank or trust company located and authorized to do

business in this state or of a national bank located in this state secured by a pledge of direct obligations of the United States or of the state of New York in an amount equal to the amount of such certificates of deposit, and may sell any of the securities or certificates of deposit in which such fund is invested if necessary for the proper administration or in the best interest of such fund. Disbursements from such fund as provided by this subdivision shall be made by the commissioner of taxation and finance upon vouchers signed by the chair of the board unless the financing agreement provides for some other means of authorizing such disbursements that is no less protective of the fund.

The commissioner of taxation and finance, as custodian of such fund, annually as soon as practicable after January first, shall furnish to the chair of the workers' compensation board a statement of the fund, setting forth the balance of moneys in the said fund as of the beginning of the calendar year, the income of the fund, the summary of payments out of the fund on account of reimbursements and other charges ordered to be paid by the board, and all other charges against the fund, and setting forth the balance of the fund remaining to its credit on December thirty-first. Such statement shall be open to public inspection in the office of the secretary of the board. The chair, not less than ninety days after the issuance of the dormitory authority's annual audit, shall furnish to the temporary president of the senate and the speaker of the assembly the following reports on the special disability fund: a revenue and operating expense statement; a financing plan; a report concerning the assets and liabilities; the number of waiver agreements entered into by the waiver agreement management office; the number of claimants remaining in the fund; the estimated current unfunded liability of the fund with respect to such claims; and a debt issuance report including but not limited to (i) pledged assessment revenue and securitization coverage, (ii) debt service maturities, (iii) interest rate exchange or similar agreements, and (iv) financing and issuance costs.

The commissioner of taxation and finance may establish within the special disability fund such accounts and sub-accounts as he or she

deems useful for the operation of the fund, or as necessary to segregate moneys within the fund, subject to the provisions of the financing agreement. The waiver agreement management office, as defined in section thirty-two of this article, shall make application to the chair on a quarterly basis for any administrative costs incurred by the office.

(i) When an application for apportionment of compensation is made under this subdivision, the chair of the workers' compensation board shall appoint an attorney to represent and defend such fund in such proceedings. Such attorney shall thereafter be given notice of all proceedings involving the rights or obligations of such fund. Such attorney may apply to the chair of the board for authority to hire such medical and other experts and to defray the expense thereof and of such witnesses as may be necessary to a proper defense of any claim, within an amount in the discretion of the chair and, if authorized, such amount shall be a charge against such special disability fund.

The provisions of this chapter with respect to procedure, except as may be otherwise provided in this subdivision, and the right of appeal shall be preserved to the claimant and to the employer or his insurance carrier and to such fund through its attorney as herein provided.

(j) The provisions of this subdivision, except as herein otherwise provided, shall not be applicable to any case where the accident causing the subsequent injury or death or the disablement or death from a subsequent occupational disease shall have occurred prior to the time this subdivision, as hereby added, takes effect, provided, however, that any rights that have accrued under former subdivision eight or eight-a of this section prior to the time this subdivision, as hereby added, takes effect shall continue to inure to the benefit of any persons affected thereby as though such subdivisions had not been repealed.

(k) The additional compensation required to be paid by an employer in the case of the injury of a minor illegally employed, in accordance with the provisions of subdivisions one and two of section fourteen-a of this chapter, shall not be reimbursable under the provisions of this subdivision.

(l) Notwithstanding anything to the contrary in this subdivision, when an employer or carrier shall have paid additional benefits to an employee pursuant to subdivision six of section fourteen of this article

as a result of the employee's increased average weekly wages from wages earned in concurrent employment, reimbursement for all such additional benefits shall be made to the employer or carrier from the special disability fund created by this subdivision. It shall not be required that the employee had, either at the time of hiring or during the employment, any previous physical condition or disability, nor shall it be required that the employee's disability be permanent in nature. Notice of the right to reimbursement shall be filed with the board in writing prior to the decision making an award, and reimbursement shall be made periodically, every six months from the decision of the board.

9. Expenses for rehabilitating injured employees. An employee, who as a result of injury is or may be expected to be totally or partially incapacitated for a remunerative occupation and who, under the direction of the state education department is being rendered fit to engage in a remunerative occupation, may receive additional compensation necessary for his rehabilitation, not more than thirty dollars per week of which may be expended for maintenance. Such expense and such of the administrative expenses of the state education department as are properly assignable to the expenses of rehabilitating employees entitled to compensation as a result of injuries under this chapter, shall be paid out of a special fund created in the following manner: The employer, or if insured, his insurance carrier, shall pay into the vocational rehabilitation fund for every case of injury causing death, in which there are no persons entitled to compensation, the sum of five hundred dollars where such injury occurred prior to July first, nineteen hundred sixty-three and the sum of one thousand dollars where such injury shall occur on or after July first, nineteen hundred sixty-three and the sum of two thousand dollars where such injury shall occur on or after September first, nineteen hundred seventy-eight. The commissioner of taxation and finance and the state comptroller shall be the joint custodians of this special fund and may invest any surplus moneys thereof in securities which constitute legal investments for savings banks under the laws of this state and in interest bearing certificates of deposit of a bank or trust company located and authorized to do business in this state or of a national bank located in this state secured by a pledge of direct obligations of the United States or of the

state of New York in an amount equal to the amount of such certificates of deposit. He may also sell any of the securities or certificates of deposit in which such fund is invested if necessary for the proper administration or in the best interests of such fund. The provisions of this paragraph shall not apply with respect to policies containing coverage pursuant to subdivision four-a of section one hundred sixty-seven of the insurance law relating to every policy providing comprehensive personal liability insurance on a one, two, three or four family owner-occupied dwelling.

Disbursements from the vocational rehabilitation fund for the additional compensation provided for by this section shall be paid by the commissioner of taxation and finance on warrants drawn by the state comptroller upon vouchers signed by the commissioner of education or the deputy commissioner of education provided that the compensation claim number of an injured employee undergoing vocational rehabilitation has been verified by the chairman.

Disbursements from the vocational rehabilitation fund for administrative expenses of the state education department shall be paid by the commissioner of taxation and finance on warrants drawn by the state comptroller upon vouchers signed by the commissioner of education or the deputy commissioner of education.

§ 15-a. Assessment on insolvent group self-insured trusts. The legislature finds that in lieu of the assessments under sections fifteen and one hundred fifty-one of this chapter that shall no longer be imposed on closed group self-insured trusts as a result of the chapter of the laws of two thousand eleven which added this section, the members of group self-insured trusts that were insolvent upon closing, and that fail to pay their obligations within the periods specified by this section, shall be subject to a one time assessment pursuant to this section. Within thirty days of January first, two thousand sixteen, all employers who were members of a closed group self-insured trust that was insolvent at the time the group was closed shall be subject to an assessment under this section, except for those employers that: (1) have

entered into a settlement agreement or payment plan with the board under which they have agreed to resolve all liabilities from the membership in such trust, and remain current in their payments; (2) are members of a group self-insurer that has transferred all of its liabilities transferred via a loss portfolio transfer; or (3) have paid all moneys billed them by the board at the time such assessment is due. For purposes of this section, insolvent means the inability of a private group self-insured trust to pay its outstanding lawful obligations under this chapter as they mature in the regular course of business, as may be shown by: (i) the self-insurer being underfunded as defined in subdivision three-a of section fifty of this chapter; and (ii) the sum of the group self-insured trust's assets, as defined by regulation of the chair, plus the available security deposit held by the chair pursuant to subdivision three-a of section fifty of this chapter and regulation of the chair, being less than the total cost of all of the group self-insured trust's anticipated workers' compensation liabilities, as defined by board regulations, that will accrue within the succeeding six months. The total of such assessment shall be determined by the percentage of the assessment levied on all employers under subdivision eight of section fifteen of this article in two thousand ten that was levied on group self-insured trusts multiplied by the total amount of the employer's unpaid pro rata share of any deficit owed by the closed group self-insured employer of which such employer was a member, as determined by the chair. The amount received on such assessment shall be used as an offset against the assessments imposed on other employers under subdivision eight of section fifteen of this article and section one hundred fifty-one of this chapter in the calendar year following the year in which it was received.

§ 16. Death benefits. If the injury causes death, the compensation shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:

1. Funeral expenses. The chair shall prepare and establish a schedule for the state or schedules limited to defined localities of maximum charges and fees for such funeral expenses, to be determined in

accordance with, and to be subject to change pursuant to, rules promulgated by the chair. Before preparing such schedule for the state or schedules for limited localities, the chair shall request the president of the New York state funeral directors' association to submit to the chair a report on the amount of remuneration deemed by such association to be fair and adequate for the types of funeral services rendered under this chapter, but consideration shall also be given to the views of other interested parties. The amounts payable by the employer for such services shall be the actual fees and charges up to the maximum established by such schedule. Provided, however, no such schedule of charges and fees shall apply where a firefighter dies from injuries received in the line of duty as a direct result of firefighting or where a police officer dies from injuries received in the line of duty as a direct result of law enforcement activities, where such funeral expenses are reasonable. If such funeral expenses shall have been paid by the claimants entitled to compensation under this section or by others, the funeral expenses awarded shall be made payable to such claimants or others, otherwise they shall be made payable to the undertaker who shall have provided burial. Funeral expenses shall be awarded in case of all injuries causing death including cases in which there are no persons entitled to other compensation under this chapter.

1-a. For the purpose of this section, (1) the term dependent blind or physically disabled as used herein in relation to dependent children shall be deemed to mean totally blind or physically disabled children whose disablement is total and permanent, (2) the term surviving spouse shall be deemed to mean the legal spouse but shall not include a spouse who has abandoned the deceased, and (3) the term abandoned shall be deemed to mean such an abandonment as would be sufficient under section two hundred of the domestic relations law to sustain a judgment of separation on that ground.

1-b. If there be a surviving spouse and no child of the deceased under the age of eighteen years and no child of any age dependent blind or physically disabled, and the death occurs on or after July first, nineteen hundred forty-eight, and prior to January first, nineteen hundred seventy-eight, to such spouse forty per centum of the average

wages of the deceased during widowhood or widowerhood with two years' compensation in one sum, upon remarriage; and where the death occurred prior to July first, nineteen hundred forty-eight, to such wife (or dependent husband) thirty per centum of such wages during widowhood (or dependent widowerhood) with two years' compensation in one sum, upon remarriage.

1-c. If there be a surviving spouse and no child of the deceased under the age of eighteen years or under the age of twenty-three years if enrolled and attending as a full time student in an accredited educational institution and such enrollment and full time attendance is certified by such institution and no child of any age dependent blind or physically disabled, and the death occurs on or after January first, nineteen hundred seventy-eight, to such spouse sixty-six and two-thirds per centum of the average wages of the deceased during widowhood or widowerhood with two years' compensation, in one sum, upon remarriage. Where the death occurs on or after January first, nineteen hundred seventy-eight, and the spouse is receiving the survivors insurance benefits under the social security act, the death benefit payable under this section shall be reduced in accordance with the provisions of table No. 1 below by five per centum of the spouse's share of the survivor's insurance benefits under the social security act for each ten dollars of deceased's average weekly wage in excess of one hundred dollars provided that in no case shall such reduction exceed fifty per centum of said spouse's share of the survivors insurance benefits under the social security act.

TABLE No. I

Offset provisions applicable in death benefits

where there is a sole surviving spouse

AVERAGE WEEKLY WAGE	PERCENTAGE OF SPOUSE'S SHARE OF SURVIVORS INSURANCE BENEFITS
over \$100 up to and including \$110	5
over \$110 up to and including \$120	10
over \$120 up to and including \$130	15
over \$130 up to and including \$140	20
over \$140 up to and including \$150	25

over \$150 up to and including \$160	30
over \$160 up to and including \$170	35
over \$170 up to and including \$180	40
over \$180 up to and including \$190	45
over \$190 up to and including \$200	50
over \$200	50

1-d. If there be a surviving spouse of an employee of a private voluntary hospital killed in a World Trade Center rescue, who passed a physical examination upon employment as a rescue worker that failed to reveal evidence of a condition that was the proximate cause of death, and no child of the deceased under the age of eighteen years, or under the age of twenty-three years if enrolled and attending as a full-time student in an accredited educational institution and such enrollment and full-time attendance is certified by such institution, and no child of any age dependent blind or physically disabled, to such spouse seventy-five per centum of the average wages of the deceased during widowhood or widowerhood, with two years' compensation, in one sum, upon remarriage. Where such death occurs, and the spouse is receiving the survivors insurance benefits under the social security act, the death benefit payable under this section shall be reduced in accordance with the provisions of table No. I in subdivision one-c of this section by five per centum of the spouse's share of the survivor's insurance benefits under the social security act for each ten dollars of deceased's average weekly wage in excess of one hundred dollars; provided that in no case shall such reduction exceed fifty per centum of such spouse's share of the survivors insurance benefits under the social security act.

2. If there be a surviving spouse and a surviving child or children of the deceased under the age of eighteen years or a surviving child or children of any age dependent blind or physically disabled, and the death occurs on or after July first, nineteen hundred forty-eight, and prior to January first, nineteen hundred seventy-eight, to such spouse thirty per centum of the average wages of the deceased during widowhood or widowerhood with two years' compensation in one sum, upon remarriage; and the additional amount of twenty per centum of such wages for each

such child until the age of eighteen years or until the removal of the dependency of the blind or physically disabled child or children; in case of the subsequent death or remarriage of such surviving spouse any surviving child of the deceased employee, at the time under eighteen years of age or dependent through mental or physical infirmity, shall have his compensation increased to thirty per centum of such wages, and the same shall be payable until he shall reach the age of eighteen years or until such dependent blind or physically disabled condition shall have been removed; provided that the total amount payable shall in no case exceed sixty-six and two-thirds per centum of such wages. Upon statutory termination of compensation payments to all such children, the compensation of the surviving spouse shall be increased to forty per centum of such wages with two years' compensation, at such rate, in one sum, upon remarriage.

If there be a surviving wife (or dependent husband) and any of the aforementioned surviving children, and the death occurred prior to July first, nineteen hundred forty-eight, to such wife (or dependent husband) thirty per centum of the average wages of the deceased during widowhood (or dependent widowerhood) with two years' compensation in one sum, upon remarriage; and the additional amount of ten per centum of such wages for each such child until eighteen years of age or until the removal of the dependency of the blind or physically disabled child or children; in case of the subsequent death or remarriage of such surviving wife (or dependent husband) any surviving child of the deceased shall have his compensation increased to fifteen per centum of such wages until he shall reach the age of eighteen years or until such dependent blind or physically disabled condition shall have been removed; provided that the total amount payable shall in no case exceed sixty-six and two-thirds per centum of such wages.

The board may in its discretion require the appointment of a guardian for the purpose of receiving the compensation of a minor child or a dependent blind or physically disabled child. In the absence of such a requirement by the board the appointment of a guardian for such purposes shall not be necessary.

2-a. If there be a surviving spouse and a surviving child under the age of eighteen years or under the age of twenty-three years if enrolled and attending as a full time student in an accredited educational institution and such enrollment and full time attendance is certified by such institution or a surviving child of any age dependent blind or physically disabled and the death occurs on or after January first, nineteen hundred seventy-eight, to such spouse thirty-six and two-thirds per centum of the average wages of the deceased during widowhood or widowerhood with two years' compensation in one sum, upon remarriage; and thirty per centum of such wages to such child under the age of eighteen years or under the age of twenty-three years if enrolled and attending as a full time student in an accredited educational institution and such enrollment and full time attendance is certified by such institution or a surviving child of any age dependent blind or physically disabled; in the case of the subsequent death of such surviving spouse the surviving child shall have his compensation increased to sixty-six and two-thirds per centum of such wages and the same shall be payable so long as he is under the age of eighteen years or under the age of twenty-three years if enrolled and attending as a full time student in an accredited educational institution and such enrollment and full time attendance is certified by such institution or a surviving child of any age dependent blind or physically disabled; upon statutory termination of compensation payable to such child, the compensation of the surviving spouse shall be increased to sixty-six and two-thirds per centum of such wages with two years' compensation, at such rate, in one sum, upon remarriage. Upon remarriage of such surviving spouse, the surviving child shall continue to receive thirty per centum of such wages. Where the death occurs on or after January first, nineteen hundred seventy-eight and the spouse is receiving survivors insurance benefits under the social security act, the death benefit payable under this section shall be reduced by five per centum of the spouse's share of the survivors insurance benefits under the social security act for each ten dollars of deceased's average weekly wage in excess of one hundred dollars provided that in no case shall such reduction exceed fifty per centum of said spouse's share of the survivors insurance benefits under the social security act as set forth in table No. I below.

TABLE No. I

Offset provisions applicable in death benefits
where there is a surviving spouse and one child

AVERAGE WEEKLY WAGE	PERCENTAGE OF SPOUSE'S SHARE OF SURVIVORS INSURANCE BENEFITS
over \$100 up to and including \$110	5
over \$110 up to and including \$120	10
over \$120 up to and including \$130	15
over \$130 up to and including \$140	20
over \$140 up to and including \$150	25
over \$150 up to and including \$160	30
over \$160 up to and including \$170	35
over \$170 up to and including \$180	40
over \$180 up to and including \$190	45
over \$190 up to and including \$200	50
over \$200	50

If there be a surviving spouse and two or more surviving children under the age of eighteen years or under the age of twenty-three years if enrolled and attending as a full time student in an accredited educational institution and such enrollment and full time attendance is certified by such institution or a surviving child or children of any age dependent blind or physically disabled and a death occurs on or after January first, nineteen hundred seventy-eight, to such spouse thirty-six and two-thirds per centum of the average wage of the deceased during widowhood or widowerhood with two years' compensation in one sum upon remarriage; and thirty per centum of such wages to such children under the age of eighteen years or under the age of twenty-three years if enrolled and attending as a full time student in an accredited educational institution and such enrollment and full time attendance is certified by such institution or a surviving child or children of any age dependent blind or physically disabled, share and share alike; in case of the subsequent death of such surviving spouse the surviving children shall have their compensation increased to sixty-six and two-thirds per centum of such wages and the aggregate sum shall be payable, share and share alike, so long as they are under the age of

eighteen years or under the age of twenty-three years if enrolled and attending as a full time student in an accredited educational institution and such enrollment and full time attendance is certified by such institution or a surviving child or children of any age dependent blind or physically disabled. Upon remarriage of such surviving spouse, if there be two surviving children each shall receive twenty-five per centum of such wages, and if there are surviving more than two children under the age of eighteen years or under the age of twenty-three if enrolled and attending as a full time student in an accredited educational institution and such enrollment and full time attendance is certified by such institution or a surviving child or children of any age dependent blind or physically disabled sixty-six and two-thirds per centum of such wages share and share alike. Upon statutory termination of compensation payable to such children, the compensation of the surviving spouse shall be increased to sixty-six and two-thirds per centum of such wages with two years' compensation, at such rate, in one sum, upon remarriage. Where the death occurs on or after January first, nineteen hundred seventy-eight, and the spouse is receiving survivors insurance benefits under the social security act, the death benefits payable under this section shall be reduced by five per centum of the spouse's share of the survivors insurance benefits under the social security act for each ten dollars of deceased's average weekly wage in excess of one hundred fifty dollars provided that in no case shall such reduction exceed fifty per centum of said spouse's share of the survivors insurance benefits under the social security act as set forth in table No. II below.

TABLE No. II

Offset provisions applicable in death benefits

where there is a surviving spouse and two or more children

AVERAGE WEEKLY WAGE	PERCENTAGE OF SPOUSE'S SHARE OF SURVIVORS INSURANCE BENEFITS
over \$150 up to and including \$160	5
over \$160 up to and including \$170	10
over \$170 up to and including \$180	15
over \$180 up to and including \$190	20
over \$190 up to and including \$200	25

over \$200 up to and including \$210	30
over \$210 up to and including \$220	35
over \$220 up to and including \$230	40
over \$230 up to and including \$240	45
over \$240 up to and including \$250	50
over \$250	50

2-b. If there be a surviving spouse of an employee of a private voluntary hospital killed in a World Trade Center rescue, who passed a physical examination upon employment as a rescue worker that failed to reveal evidence of a condition that was the proximate cause of death, and a surviving child under the age of eighteen years, or under the age of twenty-three years if enrolled and attending as a full-time student in an accredited educational institution and such enrollment and full-time attendance is certified by such institution, or a surviving child of any age dependent blind or physically disabled, to such spouse forty per centum of the average wages of the deceased during widowhood or widowerhood, with two years' compensation in one sum, upon remarriage; and thirty-five per centum of such wages to such child under the age of eighteen years, or under the age of twenty-three years if enrolled and attending as a full-time student in an accredited educational institution and such enrollment and full-time attendance is certified by such institution, or a surviving child of any age dependent blind or physically disabled; in the case of the subsequent death of such surviving spouse the surviving child shall have his or her compensation increased to seventy-five per centum of such wages and the same shall be payable so long as he or she is under the age of eighteen years, or under the age of twenty-three years if enrolled and attending as a full-time student in an accredited educational institution and such enrollment and full-time attendance is certified by such institution, or a surviving child of any age dependent blind or physically disabled; upon statutory termination of compensation payable to such child, the compensation of the surviving spouse shall be increased to seventy-five per centum of such wages with two years' compensation, at such rate, in one sum, upon remarriage. Upon remarriage of such surviving spouse, the surviving child shall continue to receive thirty-five per centum of such wages. Where such death occurs, and the spouse is receiving survivors

insurance benefits under the social security act, the death benefit payable under this section shall be reduced by five per centum of the spouse's share of the survivors insurance benefits under the social security act for each ten dollars of deceased's average weekly wage in excess of one hundred dollars; provided that in no case shall such reduction exceed fifty per centum of such spouse's share of the survivors insurance benefits under the social security act as set forth in table No. I in subdivision one-c of this section. If there be a surviving spouse of an employee of a private voluntary hospital killed in a World Trade Center rescue, who passed a physical examination upon employment as a rescue worker that failed to reveal evidence of a condition that was the proximate cause of death, and two or more surviving children under the age of eighteen years, or under the age of twenty-three years if enrolled and attending as a full-time student in an accredited educational institution and such enrollment and full-time attendance is certified by such institution, or a surviving child or children of any age dependent blind or physically disabled and a death occurs on or after September eleventh, two thousand one, to such spouse forty per centum of the average wage of the deceased during widowhood or widowerhood with two years' compensation in one sum upon remarriage; and thirty-five per centum of such wages to such children under the age of eighteen years, or under the age of twenty-three years if enrolled and attending as a full-time student in an accredited educational institution and such enrollment and full-time attendance is certified by such institution, or a surviving child or children of any age dependent blind or physically disabled, share and share alike; in case of the subsequent death of such surviving spouse the surviving children shall have their compensation increased to seventy-five per centum of such wages and the aggregate sum shall be payable, share and share alike, so long as they are under the age of eighteen years, or under the age of twenty-three years if enrolled and attending as a full-time student in an accredited educational institution and such enrollment and full-time attendance is certified by such institution, or a surviving child or children of any age dependent blind or physically disabled. Upon remarriage of such surviving spouse, if there be two surviving children each shall receive thirty-seven and one-half per centum of such wages, and if there are surviving more than two children under the age of

eighteen years, or under the age of twenty-three if enrolled and attending as a full-time student in an accredited educational institution and such enrollment and full-time attendance is certified by such institution, or a surviving child or children of any age dependant blind or physically disabled, seventy-five per centum of such wages share and share alike. Upon statutory termination of compensation payable to such children, the compensation of the surviving spouse shall be increased to seventy-five per centum of such wages with two years' compensation, at such rate, in one sum, upon remarriage. Where the death occurs on or after September eleventh, two thousand one, and the spouse is receiving survivors insurance benefits under the social security act, the death benefits payable under this section shall be reduced by five per centum of the spouse's share of the survivors insurance benefits under the social security act for each ten dollars of deceased's average weekly wage in excess of one hundred fifty dollars; provided that in no case shall such reduction exceed fifty per centum of said spouse's share of the survivors insurance benefits under the social security act as set forth in table No. II in subdivision two-a of this section.

3. If there be a surviving child or children of the deceased under the age of eighteen years or a dependent blind or physically disabled child or children of any age, but no surviving spouse then where the death occurs on or after July first, nineteen hundred forty-eight, and prior to January first, nineteen hundred seventy-eight, for the support of each such child until the age of eighteen years, or until the removal of the dependency of such blind or physically disabled child or children, thirty per centum of the wages of the deceased, and where the death occurred prior to July first, nineteen hundred forty-eight, for the support of each such child until the age of eighteen years, or until the removal of the dependency of such blind or physically disabled child or children, fifteen per centum of the wages of the deceased; provided that the aggregate shall in no case exceed sixty-six and two-thirds per centum of such wages.

3-a. If there be a surviving child or children of the deceased under the age of eighteen years or under the age of twenty-three years if enrolled and attending as a full time student in an accredited

educational institution and such enrollment and full time attendance is certified by such institution or a dependent blind or physically disabled child or children of any age, but no surviving spouse then where the death occurs on or after January first, nineteen hundred seventy-eight, for the support of such child or children until the age of eighteen years, or under the age of twenty-three years if enrolled and attending as a full time student in an accredited educational institution and such enrollment and full time attendance is certified by such institution or until the removal of the dependency of such blind or physically disabled child or children, sixty-six and two-thirds per centum of the wages of the deceased. Where there are two or more children, the compensation payable shall be divided among such children share and share alike.

3-b. If there be a surviving child or children, of an employee of a private voluntary hospital killed in a World Trade Center rescue, who passed a physical examination upon employment as a rescue worker that failed to reveal evidence of a condition that was the proximate cause of death, under the age of eighteen years, or under the age of twenty-three years if enrolled and attending as a full-time student in an accredited educational institution and such enrollment and full-time attendance is certified by such institution, or a dependent blind or physically disabled child, or children of any age, but no surviving spouse then, where such death occurs, for the support of each such child until the age of eighteen years, or under the age of twenty-three years if enrolled and attending as a full-time student in an accredited educational institution and such enrollment and full-time attendance is certified by such institution or until the removal of the dependency of such blind or physically disabled child or children, seventy-five per centum of the wages of the deceased. Where there are two or more children, the compensation payable shall be divided among such children share and share alike.

4. If there be no surviving spouse or child under the age of eighteen years, or dependent blind or physically disabled child of any age, or if the amount payable to surviving spouse and to children under the age of eighteen years or such dependent blind or physically disabled children

shall be less in the aggregate than sixty-six and two-thirds per centum of the average wages of the deceased, then where the death occurs on or after July first, nineteen hundred forty-eight, and prior to January first, nineteen hundred seventy-eight, for the support of grandchildren or brothers and sisters under the age of eighteen years, if dependent upon the deceased at the time of the accident, twenty-five per centum of such wages for the support of each such person until the age of eighteen years; and for the support of each parent, or grandparent, of the deceased if dependent upon him at the time of the accident, forty per centum of such wages during such dependency; and where the death occurred prior to July first, nineteen hundred forty-eight, to such dependent grandchildren or brothers and sisters, fifteen per centum of such wages until eighteen years of age, and to such dependent parent or grandparent, twenty-five per centum of such wages during dependency. But in no case shall the aggregate amount payable under this subdivision exceed the difference between sixty-six and two-thirds per centum of such wages, and the amount payable as hereinbefore provided to surviving spouse or for the support of surviving child or children.

4-a. If there be no surviving spouse or child under the age of eighteen years or under the age of twenty-three years if enrolled and attending as a full time student in an accredited educational institution and such enrollment and full time attendance is certified by such institution or dependent blind or physically disabled child of any age, then where the death occurs on or after January first, nineteen hundred seventy-eight, for the support of grandchildren or brothers and sisters if dependent upon the deceased at the time of the accident, under the age of eighteen years, or under the age of twenty-three years if enrolled and attending as a full time student in an accredited educational institution and such enrollment and full time attendance is certified by such institution, or blind or physically disabled grandchildren or brothers and sisters of any age, twenty-five per centum of such wages for the support of each such person until the age of eighteen years; or until the age of twenty-three years if enrolled and attending as a full time student in an accredited educational institution or until the removal of the dependency of such blind or physically disabled grandchildren or brothers and sisters, and such

enrollment and full time attendance is certified by such institution and for the support of each parent, or grandparent, of the deceased if dependent upon him or her at the time of the accident, forty per centum of such wages during such dependency. But in no case shall the aggregate amount payable under this subdivision exceed sixty-six and two-thirds per centum of such wages.

4-b. If there be no surviving spouse or child under the age of eighteen years or under the age of twenty-three years if enrolled and attending as a full time student in an accredited educational institution and such enrollment and full time attendance is certified by such institution or dependent blind or physically disabled child of any age or grandchildren or brothers and sisters if dependent upon the deceased at the time of the accident, under the age of eighteen years, or under the age of twenty-three years if enrolled and attending as a full time student in an accredited educational institution and such enrollment and full time attendance is certified by such institution or disabled blind or physically disabled grandchildren or brothers and sisters of any age, then a sum of fifty thousand dollars shall be paid to the deceased's surviving parents or if there be no surviving parents to the deceased's estate.

4-c. If there be no surviving spouse or child, or children of an employee of a private voluntary hospital killed in a World Trade Center rescue, who passed a physical examination upon employment as a rescue worker that failed to reveal evidence of a condition that was the proximate cause of death, under the age of eighteen years, or under the age of twenty-three years if enrolled and attending as a full-time student in an accredited educational institution and such enrollment and full-time attendance is certified by such institution, or dependent blind or physically disabled child of any age, then where the death occurs on or after September eleventh, two thousand one, for the support of grandchildren or brothers and sisters if dependent upon the deceased at the time of the accident, under the age of eighteen years, or under the age of twenty-three years if enrolled and attending as a full-time student in an accredited educational institution and such enrollment and full-time attendance is certified by such institution, or blind or

physically disabled grandchildren or brothers and sisters of any age, twenty-five per centum of such wages for the support of each such person until the age of eighteen years; or until the age of twenty-three years if enrolled and attending as a full-time student in an accredited educational institution, or until the removal of the dependency of such blind or physically disabled grandchildren or brothers and sisters, and such enrollment and full-time attendance is certified by such institution and for the support of each parent, or grandparent, of the deceased if dependent upon him or her at the time of the accident, forty per centum of such wages during such dependency. But in no case shall the aggregate amount payable under this subdivision exceed seventy-five per centum of such wages.

4-d. If there be no surviving spouse or child, or children of an employee of a private voluntary hospital killed in a World Trade Center rescue, who passed a physical examination upon employment as a rescue worker that failed to reveal evidence of a condition that was the proximate cause of death, under the age of eighteen years, or under the age of twenty-three years if enrolled and attending as a full-time student in an accredited educational institution and such enrollment and full-time attendance is certified by such institution, or dependent blind or physically disabled child of any age, or grandchildren or brothers and sisters if dependent upon the deceased at the time of the accident, under the age of eighteen years, or under the age of twenty-three years if enrolled and attending as a full-time student in an accredited educational institution and such enrollment and full-time attendance is certified by such institution, or disabled blind or physically disabled grandchildren or brothers and sisters of any age, then a sum of fifty thousand dollars shall be paid to the deceased's surviving parents or if there be no surviving parents to the deceased's estate.

5. Any excess of wages over: (1) seven hundred fifty dollars shall not be taken into account in computing compensation under this section in cases where the death occurs on or after July first, two thousand seven, (2) eight hundred twenty-five dollars shall not be taken into account in computing compensation under this section in cases where the death

occurs on or after July first, two thousand eight, (3) nine hundred dollars shall not be taken into account in computing compensation under this section in cases where the death occurs on or after July first, two thousand nine, and (4) where the death occurs on or after July first, two thousand ten, or when the death occurs on or after July first of each succeeding year, an amount equal to the New York state average weekly wage for the year in which it is reported shall not be taken into account in computing compensation under this section. Any excess of wages over five hundred ten dollars and five cents per week shall not be taken into account in computing compensation under this section in cases where the death occurs on or after July first, nineteen hundred ninety, nor shall any excess of wages over five hundred twenty-five dollars per week be taken into account in computing compensation pursuant to this section in cases where death occurs on or after July first, nineteen hundred ninety-one, nor shall any excess of wages over six hundred dollars per week be taken into account in computing compensation pursuant to this section in cases where death occurs on or after July first, nineteen hundred ninety-two with the exception that wages earned over six hundred dollars per week shall be taken into account in computing compensation under this section in cases involving an employee of a private voluntary hospital resulting from a World Trade Center rescue, who passed a physical examination upon employment as a rescue worker that failed to reveal evidence of a condition that was the proximate cause of death; nor shall any excess of wages over three hundred eighty-two dollars and fifty cents per week be taken into account in computing compensation under this section in cases where the death occurs on or after July first, nineteen hundred eighty-three, nor shall any excess of wages over four hundred twelve dollars and fifty cents per week be taken into account in computing compensation under this section in cases where the death occurs on or after July first, nineteen hundred eighty-four, nor shall any excess of wages over four hundred fifty dollars per week be taken into account in computing compensation under this section in cases where the death occurs on or after July first, nineteen hundred eighty-five; nor shall any excess of wages over one hundred eighty-seven dollars and fifty cents per week on or after January first, nineteen hundred seventy-eight or over two hundred seventy dollars per week on or after July first, nineteen

hundred seventy-eight or over three hundred twenty-two dollars and fifty cents per week on or after January first, nineteen hundred seventy-nine, and prior to July first, nineteen hundred eighty-three, be taken into account in computing compensation under this section nor shall any excess of wages over six hundred and seventeen dollars and fifty cents a month be taken into account in computing compensation under this section in cases where the death occurred on or after July first, nineteen hundred seventy-four, and prior to January first, nineteen hundred seventy-eight, nor shall any excess of wages over five hundred and twenty dollars a month be taken into account in computing compensation in cases where death occurred on or after July first, nineteen hundred seventy and prior to July first, nineteen hundred seventy-four, nor shall any excess of wages over four hundred and fifty-five dollars a month be taken into account in computing compensation in cases where death occurred on or after July first, nineteen hundred sixty-eight and prior to July first, nineteen hundred seventy, nor shall any excess of wages over three hundred and ninety dollars a month be taken into account in computing compensation in cases where death occurred on or after July first, nineteen hundred sixty-five and prior to July first, nineteen hundred sixty-eight, nor shall any excess of wages over three hundred and fifty-seven dollars and fifty cents a month be taken into account in computing compensation in cases where death occurred on or after July first, nineteen hundred sixty-two and prior to July first, nineteen hundred sixty-five, nor shall any excess of wages over three hundred and twenty-five dollars a month be taken into account in computing compensation in cases where death occurred on or after July first, nineteen hundred sixty and prior to July first, nineteen hundred sixty-two, nor shall any excess of wages over two hundred and ninety-two dollars and fifty cents a month be taken into account in computing compensation where death occurred on or after July first, nineteen hundred fifty-eight and prior to July first, nineteen hundred sixty, nor shall any excess of wages over two hundred and sixty dollars a month be taken into account in computing compensation where death occurred on or after July first, nineteen hundred fifty-four and prior to July first, nineteen hundred fifty-eight, nor shall any excess of wages over two hundred and twenty-seven dollars and fifty cents a month be taken into account in computing compensation where death occurred on or after July

first, nineteen hundred forty-eight and prior to July first, nineteen hundred fifty-four, nor shall any excess of wages over one hundred and eighty-two dollars a month be taken into account in computing compensation where the death occurred on or after June first, nineteen hundred forty-six and prior to July first, nineteen hundred forty-eight. When death occurred on or after July first, nineteen hundred forty-eight and prior to January first, nineteen hundred seventy-eight, computing compensation to the widow or widower and children of a deceased employee in no event shall wages be deemed to be less than one hundred and thirty dollars a month. All questions of dependency shall be determined as of the time of the accident. When death occurred on or after January first, nineteen hundred seventy-eight, in no event shall wages be deemed to be less than forty-five dollars a week in computing compensation to the widow or widower and/or children of the deceased employee.

6. If there be a person entitled to death benefits under the provisions of this section, who shall be under the age of eighteen years, and who shall be an incarcerated individual of any institution and a public charge upon the department of social services of the city of New York, or any other department or body, the benefits allowed hereunder shall be payable to the said department of public welfare of the city of New York or any other department or body to the extent of the reasonable charges for the care and maintenance, during the continuance as a public charge in said institution, of said beneficiary and until the said person shall have attained the age of eighteen years. Any sum or sums remaining after the said payment out of the benefits shall be distributed as provided by the other subdivisions of this section.

7. In computing the offsets under subdivisions one-c and two-a of this section any increase in survivors insurance benefits under social security that occurs after the date of death shall not be considered, and any such offset shall be equally applicable to the survivors insurance benefits under the social security act which are received retroactively but such offset shall not apply to increases of such benefits received retroactively.

§ 16-a. Death benefits due to diesel exposure. Where death is due in whole or part to any cancer resulting from a hazardous exposure to diesel exhaust, a claim for death benefits shall not be disallowed as barred by section eighteen or section twenty-eight of this article if such claim is filed within one year of the effective date of this section. Such claims may be filed after such period in accordance with section eighteen and section twenty-eight of this article.

§ 17. Noncitizens. Compensation under this chapter to noncitizens not residents or about to become nonresidents of the United States or Canada, shall be the same in amount as provided for residents, except that dependents in any foreign country shall be limited to surviving spouse and child or children, or, if there is no surviving spouse or child or children, to surviving father or mother whom the employee has supported, either wholly or in part, for the period of one year prior to the date of the accident.

§ 17-a. Limited English proficiency. 1. In accordance with section two hundred two-a of the executive law, the board shall provide translation of (a) all documents and forms published by the board that injured employees complete; (b) all board documents that provide general information to injured employees on the process of applying for workers' compensation benefits; and (c) all other vital documents as defined by subdivision five of section two hundred two-a of the executive law relevant to services offered by the agency.

2. The board shall provide interpretation services to injured employees with respect to its provision of services, information and/or benefits.

3. The board shall:

(a) develop a language access plan pursuant to subdivision three of section two hundred two-a of the executive law and submit such plan to the office of general services;

(b) publish the board's language access plan on the board's website;
and

(c) designate a language access coordinator who will work with the office of general services to ensure compliance with the requirements of this section and section two hundred two-a of the executive law.

4. The language access coordinator for the board shall monitor the board's compliance with this section by annually collecting data on the provision of language assistance services, the availability of translated materials, whether signage is properly posted, and any other relevant measures.

§ 18. Notice of injury or death. Notice of an injury or death for which compensation is payable under this chapter shall be given to the employer within thirty days after the accident causing such injury, and also in case of the death of the employee resulting from such injury, within thirty days after such death. Such notice may be given by any person claiming to be entitled to compensation, or by some one in his behalf. The notice shall be in writing, and contain the name and address of the employee, and state in ordinary language the time, place, nature and cause of the injury, and be signed by him or by a person on his behalf or, in case of death, by any one or more of his dependents, or by a person, on their behalf. It shall be given to the employer by delivering it to him or sending it by mail, by registered letter, addressed to the employer at his or its last known place of business; provided that, if the employer be a partnership then such notice may be so given to any one of the partners, and if the employer be a corporation, then such notice may be given to any agent or officer thereof upon whom legal process may be served, or any agent in charge of his business in the place where the injury occurred. The failure to give notice of injury or notice of death unless excused by the board either on the ground that notice for some sufficient reason could not have been given, or on the ground that the employer, or his or its agents in charge of the business in the place where the accident occurred or having immediate supervision of the employee to whom the accident happened, had knowledge of the accident or death, or on the ground that

the employer has not been prejudiced thereby, shall be a bar to any claim under this chapter, but the employer and the insurance carrier shall be deemed to have waived such notice unless the objection to the failure to give such notice or the insufficiency thereof, is raised before the board on the first hearing of the claim filed by such injured employee, or his or her dependents at which all parties in interest are present, or represented, and at which the claimant, or principal beneficiary, testifies.

§ 18-a. Notice: The New York Jockey Injury Compensation Fund, Inc.

Wherever in this chapter it shall be required that notice be given to an employer, except for claims involving section fourteen-a of the workers' compensation law such notice requirement shall be deemed satisfied by giving notice to the New York Jockey Injury Compensation Fund, Inc., in connection with an injury to a jockey, apprentice jockey or exercise person licensed under article two or four of the racing, pari-mutuel wagering and breeding law, and at the election of the New York Jockey Injury Compensation Fund, Inc., with the approval of the New York state gaming commission, an employee of a licensed trainer or owner, who, pursuant to section two of this chapter, is an employee of all owners and trainers licensed or required to be licensed under article two or four of the racing, pari-mutuel wagering and breeding law and of the fund. In a claim involving section fourteen-a of the workers' compensation law such required notice shall be given to the employing owner and/or trainer of the fund.

§ 18-b. Notice; the New York black car operators' injury compensation fund, inc. Whenever notice is required to be given to an employer pursuant to this chapter, such requirement shall be satisfied, with respect to an accident or injury to a black car operator, as defined in article six-F of the executive law, occurring on or after the fund liability date, as defined in such article, by giving such notice to the New York black car operators' injury compensation fund, inc., except that in the case of a claim arising under section fourteen-a of this article, notice must be given to the fund and to the central dispatch

facility, as defined in article six-F of the executive law, for which the black car operator was performing services at the time of the accident.

§ 18-c. Independent livery bases. 1. For purposes of this section, "covered services," "livery," "livery driver," "livery registrant," "livery base," "local taxi and limousine commission" and "responsible person" shall have the meanings set forth in article six-G of the executive law.

2. The board shall designate a livery base as an independent livery base, only if the base meets each of the following criteria:

(a) The base submits an affirmation sworn under penalty of perjury by an officer or director and such other individuals as the chair may direct, on such form as is provided by the board, which attests to the truth of such criteria as are set by the chair by regulation, or in the absence of such regulation attests to the truth of the following: (i) the base is not, directly or indirectly, including through any director or officer, the owner or registrant of any livery dispatched by the base; (ii) all livery drivers dispatched by the base provide and select their own clothing; (iii) all livery drivers dispatched by the base set their own hours and days of work; (iv) all livery drivers choose which dispatches or fares to accept, and no livery driver suffers any consequence by the livery base for failing to respond to its dispatch; (v) livery drivers dispatched by the base may enter into a contractual relationship with one or more other bases; (vi) no livery driver dispatched by the base receives an internal revenue service form W-2 from such base, or is subject to the withholding of any federal income taxes by the base; (vii) the base does not pay for the fuel or maintenance of any liveries; (viii) the base does not impose any fines and penalties on any livery drivers, except that it may decline to provide further dispatches for misconduct during any dispatch; and (ix) no livery driver is subject to being fired or discharged by the livery base. The base shall agree to provide the board with immediate notice of any inaccuracies in the affirmation, including any failure to adhere to any of the matters set forth on its affirmation.

(b) The board shall alter the criteria set forth in paragraph (a) of this subdivision to conform to any statutory definition for employer or independent contractor applicable to livery drivers.

(c) The livery shall provide the board and local taxi and limousine commission, and all livery registrants or drivers whose liveries may be dispatched by the livery base, with a copy of a written policy in plain language, in the primary language spoken by each registrant or driver, setting forth all matters to which it has attested on the affirmation provided for in paragraph (a) of this subdivision. The failure to distribute such a policy shall not have any legal consequence except in accordance with section one hundred sixty-hhh of the executive law.

(d) The base shall pay into the independent livery fund such payments as are directed by the independent livery driver benefit fund pursuant to article six-G of the executive law.

(e) The base may not owe any payments into the fund established under section twenty-six-a of this article, or otherwise owe any moneys under this chapter, unless it has an agreement with the board to repay the money owed, or to relieve it of the obligation to make any such payments.

(f) The base shall maintain such records as are provided for by regulation of the chair.

(g) The base shall permit the local taxi and limousine commission, the independent livery fund and any carrier providing compensation under this title for the independent livery fund to audit its books and records during regular business hours solely as necessary to determine compliance with this section, or to determine the amount owed to the fund.

(h) No responsible persons of the livery base may have been a responsible person of a base whose status as an independent livery base was revoked within the previous five years, or which has no agreement on moneys owed in as required by paragraph (e) of this subdivision, unless such criteria are waived in the discretion of the board.

3. The board may revoke any livery base's status as an independent livery base if it determines that the base is in violation of any of the criteria set forth in subdivision one of this section, or may suspend the livery base's status as an independent livery base pending the

base's compliance with any such criteria.

4. An independent livery base's obligations under this chapter regarding the securing and provision of workers' compensation benefits for any livery driver it dispatches shall be satisfied in full by compliance with the requirements imposed upon an independent livery base by this section and article six-G of the executive law. Insurance coverage directly procured by any independent livery base for the purpose of satisfying the requirements of this chapter with respect to employees of the central livery dispatch facility shall not include coverage of any livery driver to the extent that the livery driver is covered under coverage secured by the New York livery drivers' injury compensation fund pursuant to the requirements of article six-G of the executive law except as provided in that article.

5. Any livery base that is not an independent livery base shall be deemed an employer of any livery driver it dispatches for purposes of this article.

6. A livery base's designation as an employer or independent livery base in accordance with this section shall not be considered in any determination as to whether a livery base is an employer or independent contractor under any other provision of law. The livery base's designation under this section shall not be admissible in any court or administrative proceeding in this state, except any proceeding under this article or article six-G of the executive law, to demonstrate the base's status as an employer or independent contractor.

7. For all injuries or illnesses resulting to a livery driver arising out of covered services for an independent livery base, and for which compensation must be paid in accordance with section one hundred sixty-ddd of the executive law, the independent livery driver benefit fund shall be deemed the employer for all purposes of this chapter.

8. An independent livery driver that sustains injury as a result of the use or operation of an automobile during a dispatch by an independent livery base may obtain recovery in accordance with article

fifty-one of the insurance law, and shall not be entitled to workers' compensation benefits except as set forth in section one hundred sixty-ddd of the executive law.

9. An independent livery driver who submits a claim for recovery in accordance with article fifty-one of the insurance law pursuant to subdivision eight of this section shall be subject to local taxi and limousine commission rules prohibiting driving until he or she has recovered from his or her injury. Any authorized insurer required to accept such claims shall be entitled to apply the pre-authorized procedures, medical treatment guidelines and other applicable provisions of this article.

§ 19. Physical examination. An injured employee claiming or entitled to compensation shall submit to such physical examination as the chairman or the board may require. The place, or places, shall be reasonably convenient for him. No physician selected by the employer, carrier or employee shall be present at or participate in any manner in such examination, but such employer or carrier shall, upon request, be entitled to have the employee examined immediately thereafter and upon the same premises by a qualified physician or physicians in the presence of such physician as the employee may select, if any. Proceedings shall be suspended and no compensation shall be payable for any period during which the employee may refuse to submit to examination.

§ 19-a. Physicians not to accept fees from carriers. No physician or surgeon in the employ of the board for the purpose of making the examinations required by section nineteen of this chapter, shall, during such employment, be employed by or accept or participate in any fee from any insurance company authorized to write workmen's compensation insurance in this state or from any self-insurer, if such employment or fee relates to a workmen's compensation claim or otherwise except as herein provided. Any physician or surgeon so employed by the board who violates the provisions of this section shall be guilty of a misdemeanor.

The foregoing provisions of this section limiting and restricting the employment of physicians or surgeons in the employ of the board and their acceptance or participation in fees shall not be applicable to medical treatment rendered to their patients who are or may be claimants under article nine of this chapter, provided, however, that any such physician or surgeon shall be disqualified from testifying as a witness in any proceeding before the board or its referees in connection with such claims.

§ 19-b. Treatment by physicians in employ of board. No doctor, physician or surgeon in the employ of the board shall solicit or treat any claimant under this chapter, or own or operate any clinic, giving baking and massage, physio-therapy, or other treatment to such claimants. Such doctors, physicians and surgeons shall not recommend that a claimant be treated by any particular physician or surgeon, or receive baking and massage, physio-therapy or other treatment from any particular person, clinic or hospital. Any such physician or surgeon may recommend the necessary treatment needed and the board shall direct the employer or carrier to provide such treatment, but the board shall not designate a particular physician, surgeon, clinic or hospital to provide the treatment. The employer or carrier shall furnish the prescribed treatment and upon their failure so to do within five days after the direction is made, the claimant may secure the same at the expense of the employer or carrier. Any physician or surgeon so employed by the board who violates the provisions of this section shall be guilty of a misdemeanor.

The foregoing provisions of this section prohibiting physicians or surgeons in the employ of the board from recommending that a claimant be treated by any particular physician or surgeon shall not be applicable to recommendations for specialist care of their patients who are or may be claimants under article nine of this chapter.

§ 19-c. Actions against health services personnel; defense and

indemnification. The provisions of section seventeen of the public officers law shall apply to actions and proceedings, against physicians, nurses and other employees of the board whose duties involve medical examinations under this chapter and the volunteer firefighters' benefit law or other health services, arising out of emergency medical treatment given to board employees while at work or to claimants, their attorneys, licensed representatives, witnesses, employers, their representatives and representatives of carriers, while visiting the offices of the board or the hearing points at which proceedings are conducted or any other person properly on board premises.

§ 20. Determination of claims for compensation. 1. At any time after the expiration of the first seven days of disability on the part of an injured employee, or at any time after the employee's death, a claim for compensation may be presented to the employer or to the chair. The board shall have full power and authority to determine all questions in relation to the payment of claims presented to it for compensation under the provisions of this chapter. The chair or board shall make or cause to be made such investigation as it deems necessary, and upon application of either party, shall order a hearing, and within thirty days after a claim for compensation is submitted under this section, or such hearing closed, shall make or deny an award, determining such claim for compensation, and file the same in the office of the chair. Immediately after such filing the chair shall send to the parties a copy of the decision. Upon a hearing pursuant to this section either party may present evidence and be represented by counsel. The decision of the board shall be final as to all questions of fact, and, except as provided in section twenty-three of this article, as to all questions of law. Except as provided in section twenty-seven of this article, all awards of the board shall draw simple interest from thirty days after the making thereof at the rate provided in section five thousand four of the civil practice law and rules. Whenever a hearing or proceeding for the determination of a claim for compensation is begun before a referee, pursuant to the provisions of this chapter, such hearing or proceeding or any adjourned hearing thereon shall continue before the same referee until a final determination awarding or denying compensation, except in

the absence, inability or disqualification to act of such referee, or for other good cause, in which event such hearing or proceeding may be continued before another referee by order of the chair or board.

2. (a) Notwithstanding subdivision one of this section, any claim for compensation by (i) judges, conciliators, and managerial or confidential employees of the workers' compensation board and state insurance fund who are allocated to a grade M1 or above pursuant to section one hundred thirty of the civil service law, (ii) the chair, vice-chair and members of the workers' compensation board, and (iii) the executive director, deputy executive directors and members of the board of commissioners of the state insurance fund shall not be within the jurisdiction of the workers' compensation board but instead shall be determined by a neutral outside arbitration process as provided by regulations promulgated by the chair. Such claims shall be filed in the same manner as any other claim for compensation under this chapter.

(b) All issues and questions of law or fact pertaining to such claims shall be resolved by the arbitrator appointed pursuant to this paragraph. Arbitrators shall be appointed by the chair to adjudicate claims under this paragraph. Such arbitrators shall have the same powers and duties as those accorded referees under this chapter, including powers delegated by the chair. The provisions of this chapter shall be applicable to claims under this paragraph insofar as they are not inconsistent herewith.

(c) An award or decision by an arbitrator pursuant to this paragraph is deemed to be a final decision of the board except if review of such decision is sought as provided in paragraph (d) of this subdivision. No modification, rescission or review of such award or decision may be entertained by the board, notwithstanding any provision of this chapter to the contrary.

(d) Within thirty days after notice of the filing of an award or decision by an arbitrator, any party in interest may request review of the arbitrator's decision by a panel of three arbitrators in the same manner and to the same extent as the decision by a referee may be reviewed by the board pursuant to section twenty-three of this article. The arbitration panel shall consist of one arbitrator nominated by the chair, one arbitrator nominated by a recognized alternative dispute

resolution organization and one arbitrator nominated by an employee organization certified pursuant to article fourteen of the civil service law to represent the collective bargaining unit of the injured employee or, if the injured employee is not represented by a collective bargaining unit, by the recognized alternative dispute resolution organization. A party in interest may seek review of such award or decision of an arbitration panel only by taking appeal therefrom to the appellate division of the supreme court, third department and the court of appeals as provided for decisions of the board pursuant to section twenty-three of this chapter.

(e) The powers and jurisdiction of the arbitration panel established pursuant to this subdivision shall be continuing in the same manner and to the same extent as provided under this chapter to the board.

(f) All fees, costs and expenses of arbitration shall be borne by the board and the state insurance fund as administration expenses pursuant to sections eighty-eight and one hundred fifty-one of this chapter.

(g) Any claim for compensation by an officer or employee of the board or state insurance fund not required to be determined by a neutral outside arbitration process pursuant to paragraph (a) of this subdivision shall be determined initially by a referee with review of such determination available pursuant to section twenty-three of this chapter.

(h) For any claim for compensation by an officer or employee of the workers' compensation board or the state insurance fund whether or not such claim is required to be determined by a neutral outside arbitration process pursuant to paragraph (a) of this subdivision, the referee or arbitrator making the initial finding of fact concerning any medical issue present in the case shall develop the record with opinion evidence from an impartial specialist who is an expert in the appropriate medical specialty. Such impartial specialist shall be subject to cross-examination at the request of any party in interest.

(i) The state insurance fund shall administer the claim of any officer or employee of the state insurance fund at an office of the state insurance fund other than the office which was, at the time of injury, disablement or death of such officer or employee, his or her principal workplace.

(j) The chair shall promulgate regulations necessary to implement

this subdivision. Such regulations shall include provisions in relation to this subdivision for a single arbitrator to determine a claim in the first instance and a panel of three arbitrators to review such decision upon the application of any party in interest prior to judicial review. Such regulations shall also include all special procedures relating to the handling of claims of officers or employees of the workers' compensation board and the state insurance fund pursuant to paragraph (f) of this subdivision.

3. Notwithstanding any other provision of law to the contrary, a member of the workers' compensation board, a referee or any arbitrator in connection with the adjudication of any claim arising under this chapter shall recuse himself or herself on any ground a judge may be disqualified pursuant to section fourteen of the judiciary law.

§ 21. Presumptions. In any proceeding for the enforcement of a claim for compensation under this chapter, it shall be presumed in the absence of substantial evidence to the contrary

1. That the claim comes within the provision of this chapter;

2. That sufficient notice thereof was given;

3. That the injury was not occasioned by the willful intention of the injured employee to bring about the injury or death of himself or of another;

4. That the injury did not result solely from the intoxication of the injured employee while on duty.

5. That the contents of medical and surgical reports introduced in evidence by claimants for compensation shall constitute prima facie evidence of fact as to the matter contained therein.

§ 21-a. Temporary payment of compensation. * 1. Notwithstanding any

other provision of this chapter to the contrary, in any instance in which an employer is unsure of the extent of its liability for a claim for compensation by an injured employee pursuant to this chapter, such employer may initiate compensation payments and payments for prescribed medicine and continue such payments for one year, without prejudice and without admitting liability, in accordance with a notice of temporary payment of compensation, on a form prescribed by the board.

* NB Effective until January 1, 2027

* 1. Notwithstanding any other provision of this chapter to the contrary, in any instance in which an employer is unsure of the extent of its liability for a claim for compensation by an injured employee pursuant to this chapter, such employer may initiate compensation payments and payments for medical treatment and care, including prescribed medicine and continue such payments for one year, without prejudice and without admitting liability, in accordance with a notice of temporary payment of compensation, on a form prescribed by the board.

* NB Effective January 1, 2027

* 2. The notice of temporary payment of compensation authorized by subdivision one of this section shall be delivered to the injured employee and the board. Such notice shall notify the injured employee that the temporary payment of compensation and prescribed medicine shall not be deemed to be an admission of liability by the employer for the injury or injuries to the employee. The board, upon receipt of a notice of temporary payment of compensation, shall send a notice to the injured employee stating that:

(a) the board has received a notice of temporary payment of compensation relating to such injured employee;

(b) the payment of temporary compensation and prescribed medicine and the injured employee's acceptance of such temporary compensation and prescribed medicine shall not be an admission of liability by the employer, nor prejudice the claim of the injured employee;

(c) the payment of temporary compensation and prescribed medicine shall terminate on the elapse of: one year, or the employer's contesting of the injured employee's claim for compensation and prescribed medicine, or the board determination of the injured employee's claim, whichever is first; and

(d) the injured employee may be required to enter into an agreement

with the employer to ensure the continuation of payments of temporary compensation and prescribed medicine.

* NB Effective until January 1, 2027

* 2. The notice of temporary payment of compensation authorized by subdivision one of this section shall be delivered to the injured employee and the board. Such notice shall notify the injured employee that the temporary payment of compensation and medical treatment and care, including prescribed medicine shall not be deemed to be an admission of liability by the employer for the injury or injuries to the employee. The board, upon receipt of a notice of temporary payment of compensation, shall send a notice to the injured employee stating that:

(a) the board has received a notice of temporary payment of compensation relating to such injured employee;

(b) the payment of temporary compensation and medical treatment and care, including prescribed medicine and the injured employee's acceptance of such temporary compensation and medical treatment and care, including prescribed medicine shall not be an admission of liability by the employer, nor prejudice the claim of the injured employee;

(c) the payment of temporary compensation and medical treatment and care, including prescribed medicine shall terminate on the elapse of: one year, or the employer's contesting of the injured employee's claim for compensation and medical treatment and care, including prescribed medicine, or the board determination of the injured employee's claim, whichever is first; and

(d) the injured employee may be required to enter into an agreement with the employer to ensure the continuation of payments of temporary compensation and medical treatment and care, including prescribed medicine.

* NB Effective January 1, 2027

* 3. An employer may cease making temporary payments of compensation and prescribed medicine if such employer delivers within five days after the last payment, to the injured employee and the board, a notice of termination of temporary payments of compensation on a form prescribed by the board. Such notice shall inform the injured employee that the employer is ceasing temporary payment of compensation and prescribed medicine. Upon the cessation of temporary payments of compensation and

prescribed medicine, all parties to any action pursuant to this chapter shall retain all rights, defenses and obligations they would otherwise have pursuant to this chapter without regard for the temporary payment of compensation and prescribed medicine.

* NB Effective until January 1, 2027

* 3. An employer may cease making temporary payments of compensation and medical treatment and care, including prescribed medicine if such employer delivers within five days after the last payment, to the injured employee and the board, a notice of termination of temporary payments of compensation on a form prescribed by the board. Such notice shall inform the injured employee that the employer is ceasing temporary payment of compensation and medical treatment and care, including prescribed medicine. Upon the cessation of temporary payments of compensation and medical treatment and care, including prescribed medicine, all parties to any action pursuant to this chapter shall retain all rights, defenses and obligations they would otherwise have pursuant to this chapter without regard for the temporary payment of compensation and medical treatment and care, including prescribed medicine.

* NB Effective January 1, 2027

4. The failure of an employer to provide the notice of termination, pursuant to subdivision three of this section, within one year of the commencement of temporary payment of compensation shall be deemed to be an admission of liability by the employer and the notice of temporary payment of compensation shall be converted to a notice of compensation payable.

§ 22. Modification of awards, decisions or orders. Upon its own motion or upon the application of any party in interest, on the ground of a change in conditions or proof of erroneous wage rate, the board may at any time, subject to the limitations set forth in sections twenty-five-a and one hundred and twenty-three of this chapter, review any award, decision or order and, on such review, may make an award ending, diminishing or increasing the compensation previously awarded, subject to the maximum or minimum provided in this chapter, and shall

immediately send to the parties a copy of its decision, which shall include a statement of the facts which formed the basis of its action. No such review shall affect such award as regards any moneys already paid, except that an award increasing the compensation rate may be made effective from date of injury, and except that if any part of the compensation due or to become due is unpaid, an award decreasing the compensation rate may be made effective from the date of injury, and any payments made prior thereto in excess of such decreased rate shall be deducted from any unpaid compensation, in such manner and by such methods as may be determined by the board.

§ 23. Appeals. An award or decision of the board shall be final and conclusive upon all questions within its jurisdiction, as against the state fund or between the parties, unless reversed or modified on appeal therefrom as hereinafter provided. Any party may within thirty days after notice of the filing of an award or decision of a referee, file with the board an application in writing for a modification or rescission or review of such award or decision, as provided in this chapter. The board shall render its decision upon such application in writing and shall include in such decision a statement of the facts which formed the basis of its action on the issues raised before it on such application. Within thirty days after notice of the decision of the board upon such application has been served upon the parties, or within thirty days after notice of an administrative redetermination review decision by the chair pursuant to subdivision five of section fifty-two, section one hundred thirty-one or section one hundred forty-one-a of this chapter has been served upon any party in interest, an appeal may be taken therefrom to the appellate division of the supreme court, third department, by any party in interest, including an employer insured in the state fund; provided, however, that any party in interest may within thirty days after notice of the filing of the board panel's decision with the secretary of the board, make application in writing for review thereof by the full board. If the decision or determination was that of a panel of the board and there was a dissent from such decision or determination other than a dissent the sole basis of which is to refer the case to an impartial specialist, or if there was a decision or

determination by the panel which reduced the loss of wage earning capacity finding made by a compensation claims referee pursuant to subparagraph w of subdivision three of section fifteen of this article from a percentage at or above the percentage set forth in subdivision three of section thirty-five of this article whereby a claimant would be eligible to apply for an extreme hardship redetermination to a percentage below the threshold, the full board shall review and affirm, modify or rescind such decision or determination in the same manner as herein above provided for an award or decision of a referee. If the decision or determination was that of a unanimous panel of the board, or there was a dissent from such decision or determination the sole basis of which is to refer the case to an impartial specialist, the board may in its sole discretion review and affirm, modify or rescind such decision or determination in the same manner as herein above provided for an award or decision of a referee. Failure to apply for review by the full board shall not bar any party in interest from taking an appeal directly to the court as above provided. The board may also, in its discretion certify to such appellate division of the supreme court, questions of law involved in its decision. Such appeals and the question so certified shall be heard in a summary manner and shall have precedence over all other civil cases in such court. The board shall be deemed a party to every such appeal from its decision upon such application, and the chair shall be deemed a party to every such appeal from an administrative redetermination review decision pursuant to subdivision five of section fifty-two of this chapter. The attorney general shall represent the board and the chair thereon. An appeal may also be taken to the court of appeals in the same manner and subject to the same limitations not inconsistent herewith as is now provided in the civil practice law and rules. It shall not be necessary to file exceptions to the rulings of the board. An appeal to the appellate division of the supreme court, third department, or to the court of appeals, shall not operate as a stay of the payment of compensation required by the terms of the award or of the payment of the cost of such medical, dental, surgical, optometric or other attendance, treatment, devices, apparatus or other necessary items the employer is required to provide pursuant to section thirteen of this article which are found to be fair and reasonable. Where such award is modified or rescinded upon

appeal, the appellant shall be entitled to reimbursement in a sum equal to the compensation in dispute paid to the respondent in addition to a sum equal to the cost of such medical, dental, surgical, optometric or other attendance, treatment, devices, apparatus or other necessary items the employer is required to provide pursuant to section thirteen of this article paid by the appellant pending adjudication of the appeal. Such reimbursement shall be paid from administration expenses as provided in section one hundred fifty-one of this chapter upon audit and warrant of the comptroller upon vouchers approved by the chair. Where such award is subject to the provisions of section twenty-seven of this article, the appellant shall pay directly to the claimant all compensation as it becomes due during the pendency of the appeal, and upon affirmance shall be entitled to credit for such payments. Neither the chair, the board, the commissioners of the state insurance fund nor the claimant shall be required to file a bond upon an appeal to the court of appeals. Upon final determination of such an appeal, the board or chair, as the case may be, shall enter an order in accordance therewith. Whenever a notice of appeal is served or an application made to the board by the employer or insurance carrier for a modification or rescission or review of an award or decision, and the board shall find that such notice of appeal was served or such application was made for the purpose of delay or upon frivolous grounds, the board shall impose a penalty in the amount of five hundred dollars upon the employer or insurance carrier, which penalty shall be added to the compensation and paid to the claimant. The penalties provided herein shall be collected in like manner as compensation. A party against whom an award of compensation shall be made may appeal from a part of such award. In such a case the payment of such part of the award as is not appealed from shall not prejudice any rights of such party on appeal, nor be taken as an admission against such party. Any appeal by an employer from an administrative redetermination review decision pursuant to subdivision five of section fifty-two of this chapter shall in no way serve to relieve the employer from the obligation to timely pay compensation and benefits otherwise payable in accordance with the provisions of this chapter.

Nothing contained in this section shall be construed to inhibit the continuing jurisdiction of the board as provided in section one hundred

twenty-three of this chapter.

§ 23-a. Mistakes, defects and irregularities. 1. Notwithstanding anything contained in 12 NYCRR 300.13 (b) as or further defined in Subject Number 046-878 and Subject Number 046-940 issued by the board, a mistake, omission, defect and/or other irregularity in a cover sheet (currently known as form RB-89) accompanying an application for administrative review or a cover sheet (currently known as RB-89.2) accompanying an application for full board review shall not be grounds for denial of said application for administrative review or full board review.

2. Notwithstanding anything contained in 12 NYCRR 300.13 (b) or (c) as or further defined in Subject Number 046-878 and Subject Number 046-940 issued by the board, a mistake, omission, defect and/or other irregularity in a cover sheet (currently known as form RB-89.1) accompanying a rebuttal to an application for administrative review or a cover sheet (currently known as RB-89.3) accompanying a rebuttal to an application for full board review shall not be grounds for denial of said rebuttal to an application for administrative review or an application for full board review.

3. The board shall permit any such mistake, omission, defect and/or other irregularity to be corrected within twenty days of written notice by the board of such mistake, omission, defect and/or other irregularity or if a substantial right of either the party filing the application or the party filing the rebuttal is not prejudiced, such mistake, omission, defect and/or other irregularity shall be disregarded.

4. This section shall apply to any and all forms prescribed by the board with respect to said applications for board review or full board review or rebuttals to said applications subsequent to the effective date of this section.

§ 24. Costs and fees. 1. If the court before which any proceedings for

compensation or concerning an award of compensation have been brought, under this chapter, determine that such proceedings have not been so brought upon reasonable ground, it shall assess the cost of the proceedings upon the party who has so brought them.

2. Claims of attorneys and counselors-at-law for legal services in connection with any claim arising under this chapter, and claims for services or treatment rendered or supplies furnished pursuant to subdivision (b) of section thirteen of this article, shall not be enforceable unless approved by the board. A written fee application on a form prescribed by the board shall be filed for all legal fees in excess of one thousand dollars (\$1,000.00.) In the fee application the attorney shall set forth the calculation used to determine the fee and certify that the amount is in accordance with the following provisions. The form prescribed by the board shall not require a description of the services rendered or time records in conjunction with such written application. The attorney shall set forth on the record the same calculation and certification in all oral fee applications of one thousand dollars (\$1,000.00) or less. The board shall approve such written and submitted fee application in an amount commensurate with the services rendered and the amount of compensation awarded, having due regard for the financial state of the claimant in accordance with each applicable provision of the following schedule:

(a) When an award is made directing the continuation of weekly compensation benefits for temporary total or partial disability, the attorney's fee shall be one-third of one week's compensation.

(b) When an award is made that increases the amount of compensation awarded or paid for a previous period or periods of temporary total or temporary partial disability, the attorney's fee shall be fifteen percent of the increased compensation.

(c) When an award is made for schedule loss of use or permanent facial disfigurement pursuant to paragraphs a through t of subdivision three of section fifteen of this article, the attorney's fee shall be fifteen percent of the compensation due in excess of the employer or carrier's previous payments.

(d) When an award is made for permanent total disability pursuant to subdivision one of section fifteen of this article or permanent partial

disability pursuant to paragraph w of subdivision three of section fifteen of this article, the attorney's fee shall be equivalent to fifteen percent of the compensation due in excess of the employer or carrier's previous payments, plus a sum equivalent to fifteen weeks of compensation at the rate fixed by the board.

(e) When an award is made for death benefits pursuant to section sixteen of this article, the attorney's fee shall be equivalent to fifteen percent of the compensation due in excess of the employer or carrier's previous payments, plus a sum equivalent to fifteen weeks of compensation at the rate fixed by the board.

(f) When an award is made pursuant to section thirty-two of this article, the attorney's fee shall be fifteen percent of benefits to be paid by the employer or carrier under the approved agreement, except that benefits allocated for future medical expenses shall not be included in the calculation of the fee. However, if the attorney has previously been awarded a fee pursuant to this subdivision, any un-accrued balance of any attorney fees under the foregoing paragraphs shall be waived.

3. If a prior attorney has been substituted in a manner prescribed by the board, and has submitted a fee request, the board shall determine the amount of fees allocated to any prior attorney out of the total fees awarded.

4. When so approved, such claim or claims shall become a lien upon the compensation awarded, and upon any moneys ordered paid under an award by the board into the special funds provided for in subdivision nine of section fifteen and section twenty-five-a of this article, and any other section of this chapter, but shall be paid therefrom only in the manner fixed by the board. Any other person, firm or corporation who shall exact or receive fee or gratuity for any services rendered on behalf of a claimant except in an amount determined by the board, shall be guilty of a misdemeanor. Any person, firm or corporation who shall solicit the business of appearing before the board on behalf of a claimant, or who shall make it a business to solicit employment for a lawyer in connection with any claim for compensation under this chapter shall be guilty of a misdemeanor. In case an award is affirmed upon an appeal to

the appellate division, the same shall be payable with interest thereon from the date when said award was made by the board except as provided in section twenty-seven of this article.

§ 24-a. Representation before the workers' compensation board. 1. No person, firm or corporation, other than an attorney and counsellor-at-law, shall appear on behalf of any claimant or person entitled to the benefits of this chapter, before the board or any officer, agent or employee of the board assigned to conduct any hearing, investigation or inquiry relative to a claim for compensation or benefits under this chapter, unless he or she shall be a citizen of the United States or a noncitizen lawfully admitted for permanent residence in the United States, and shall have obtained from the board a license authorizing him or her to appear in matters or proceedings before the board. Such license shall be issued by the board in accordance with the rules established by it. Any person, firm or corporation violating the aforesaid provisions shall be guilty of a misdemeanor. The board, in its rules, shall provide for the issuance of licenses to representatives of charitable and welfare organizations, and to associations who employ a representative to appear for members of such association, upon certification of the proper officer of such association or organization, which licenses shall issue without charge; and may provide for a license without fee in the case of all other persons, firms or corporations in an amount to be fixed by said rules. The board shall have such tests of character and fitness with respect to applicants for licenses, and such rules governing the conduct of those licensed, as aforesaid, as it may deem necessary.

2. There shall be maintained in each office of the board a registry or list of persons to whom licenses have been issued as provided herein, which list shall be corrected as often as licenses are issued or revoked. Absence of a record of a license issued as herein provided shall be prima facie evidence that a person, firm or corporation is not licensed to represent claimants. Any such license may be revoked by the board, for cause, after a hearing before the board. No license hereunder shall be issued for a period longer than three years from the date of

its issuance.

3. Refusal by any person to whom a license has been issued authorizing him to appear on behalf of any claimant to answer, upon request of the board, or other duly authorized officer, board or committee of the state, any legal question or to produce any relevant book or paper concerning his conduct under such license, shall constitute adequate cause for revocation thereof.

4. Only an attorney, or a representative licensed in accordance with rules established by the board pursuant to subdivisions three-b and three-d of section fifty of this chapter, shall appear on behalf of an employer or an insurance carrier regarding a claim for compensation or any benefits under this chapter before the board or any officer, agent or employee of the board assigned to conduct any hearing relative to a claim for compensation or benefits under this chapter. The provisions of this subdivision shall not apply to a designated regular employee of a self-insured employer, or of an insurance carrier appearing on behalf of his or her employer, but the board may prohibit the appearance of any such employee for cause.

§ 25. Compensation, how payable. 1. When no controversy; penalties: failure to notify of cessation of payment; late payment of installment. (a) The compensation herein provided for shall be paid periodically and promptly in like manner as wages, and as it accrues, and directly to the person entitled thereto without waiting for an award by the board, including those cases previously established and closed by the board upon receipt of an application to reopen such case, except in those cases in which the right to compensation is controverted by the employer.

(b) The first payment of compensation shall become due on the fourteenth day of disability on which date or within four days thereafter all compensation then due shall be paid, and the compensation payable bi-weekly thereafter; but the board may determine that any payments may be made monthly or at any other period, as it may deem advisable. An award of compensation payable for permanent partial

disability under paragraphs a through t, inclusive, of subdivision three of section fifteen of this article, shall be payable in one lump sum, without commutation to present value upon the request of the injured employee.

(c) If the employer or insurance carrier does not controvert the injured worker's right to compensation such employer or insurance carrier shall, either on or before the eighteenth day after disability, or within ten days after the employer first has knowledge of the alleged accident, whichever period is the greater, begin paying compensation and shall immediately notify the chair in accordance with a form to be prescribed by him, that the payment of compensation has begun, accompanied by the further statement that the employer or insurance carrier, as the case may be, will notify the chair when the payment of compensation has been stopped.

(d) Whenever for any reason compensation payments cease, the employer or its insurance carrier shall within sixteen days thereafter, send to the chair a notice on a form prescribed by the chair that such payment has been stopped, which notice shall contain the name of the injured employee or his or her principle dependent, the date of accident, the date to which compensation has been paid and the whole amount of compensation paid. In case the employer or its insurance carrier fails so to notify the chair of the cessation of payments within sixteen days after the date on which compensation has been paid, the board may impose a penalty upon such employer or its insurance carrier in the amount of three hundred dollars, which shall be paid to the claimant. Such penalty shall be collected in like manner as an award of compensation.

(e) If the employer or insurance carrier shall fail to pay any installments of compensation within twenty-five days after the same become due, there shall be paid by the employer or, if insured, its insurance carrier, an additional amount of twenty percent of the compensation then due which shall accrue for the benefit of the injured worker or his or her dependents and shall be paid to him or her or them with the compensation, unless such delay or default is excused by the board upon the application of the employer or insurance carrier upon the ground that owing to conditions over which the employer or insurance carrier had no control, such payment could not be made. The employer in each such instance shall also be assessed the sum of three hundred

dollars, which shall be paid to the claimant.

(f) Whenever compensation is withheld solely because a controversy exists on the question of liability as between insurance carriers, surety companies, the special disability fund, the special fund for reopened cases, or an employer, the board may direct that any carrier, surety company, the special disability fund, the special fund for reopened cases shall immediately pay compensation and bills for medical care to the extent payable in accordance with sections thirteen-g, thirteen-k, thirteen-l and thirteen-m of this chapter, pending determination of such issue. Any such payment or payments shall not be deemed an admission against interest by the carrier, surety company, special disability fund or the special fund for reopened cases. After final determination, the parties shall make the necessary and proper reimbursement including the payment of simple interest at the rate established by section five thousand four of the civil practice law and rules in conformity with such determination.

2. Procedure when compensation controverted; penalties: late filing; controversy without just cause. (a) In case the employer decides to controvert the right to compensation, it shall, either on or before the eighteenth day after disability or within ten days after it has knowledge of the alleged accident, whichever period is the greater, file a notice with the chair, on a form prescribed by the chair, that compensation is not being paid, giving the name of the claimant, name of the employer, date of the alleged accident and the reason why compensation is not being paid. When a claim for compensation is filed with medical evidence of work related injury or illness, and the claimant is disabled and not working, and the claimant is otherwise entitled to compensation, and the employer is not making payment to the claimant as required herein, and the employer has not controverted the claim, and the efforts to resolve the issue with the carrier have not been successful, the claimant may request, in the format prescribed by the chair, a hearing to be held within forty-five days of the board's receipt of such request.

If the insurance carrier shall fail either to file notice of controversy or begin payment of compensation within the prescribed

period or within ten days after receipt of a copy of the notice required in section one hundred ten of this chapter, whichever period is the greater, the board may impose a penalty in the amount of three hundred dollars, which shall be in addition to all other penalties provided for in this chapter and shall be paid to the claimant. Such penalty shall be collected in like manner as an award of compensation.

(b) In the event the board shall notify an employer or his insurance carrier that a workers' compensation case has been indexed against such employer, and the employer or insurance carrier decides to controvert the right to compensation, a notice of controversy shall be filed with the chair within twenty-five days from the date of mailing of a notice that the case has been indexed. Failure to file the notice of controversy within the prescribed twenty-five day time limit shall bar the employer and its insurance carrier from pleading that the injured person was not at the time of the accident an employee of the employer, or that the employee did not sustain an accidental injury, or that the injury did not arise out of and in the course of the employment. However, the board, in the interest of justice, shall, upon the showing of good cause therefor, permit the filing or the amendment of a notice of controversy to raise an issue not theretofore raised because of mistake, inadvertence, omission, irregularity, defect or surprise, or based upon newly discovered evidence.

(c) If the board shall upon a hearing determine that objections to an award of compensation by the employer or insurance carrier were interposed without just cause, it shall state the grounds for such determination and shall require the employer or the insurance carrier to pay to the claimant, in addition to the amount presently due under the award, the sum of three hundred dollars.

2-a. Pre-hearing conference. (a) In any controverted case, upon receipt of the notice of controversy, the board shall schedule a pre-hearing conference before a referee or conciliator as soon as practicable but not to exceed forty-five days after receipt of notice of controversy and a medical report referencing an injury. The board shall give notice of the pre-hearing conference to all parties. A party may appear at such conference pro se, or by an attorney or licensed representative or other representative authorized by the board to appear

on behalf of such party.

(b) The purpose of the conference shall be to consider the following:

- (i) confirmation that all appropriate forms, including medical reports, have been submitted and a verification that all information on the forms is accurate;
- (ii) addition of any other necessary parties, where appropriate;
- (iii) simplification and limitation of factual and legal issues, where appropriate;
- (iv) presentation of a list of proposed witnesses, where appropriate;
- (v) scheduling the case for a hearing; and
- (vi) entering into a stipulation.

(c) The referee or conciliator may continue the conference and order the production of any necessary reports, including, where appropriate, an examination by a carrier's consultant. At the conclusion of the conference, the referee or conciliator may issue a written order. The referee or conciliator may, upon agreement of all parties, issue a decision which shall constitute a decision of the board for all purposes. If a claimant shall be unrepresented, a decision issued by a referee upon agreement of all parties at a pre-hearing conference shall not become final until it shall have reviewed and approved by the chair or a referee of the board designated by the chair. Such review by the chair or an employee of the board so designated shall occur no later than fourteen days from the date the proposed decision is submitted for review and approval. The unrepresented claimant shall have ten days from receipt of notice of such approval to withdraw from the agreement. If not withdrawn, such agreement shall constitute an award of the board for all purposes. Upon receipt of written notification of such withdrawal by the unrepresented claimant, the board shall rescind the decision made by the referee and restore the case to the regular hearing calendar process. Such decision shall constitute a decision of the board for the purposes of section twenty-three of this article.

(d) In cases where the claimant is represented by an attorney or a licensed representative, ten days before the conference, each party shall file a conference statement noting the specific issues in dispute, including the information required in paragraph (b) of this subdivision. Discovery shall close at the end of the pre-hearing conference. Evidence not disclosed or obtained thereafter shall not be admissible unless the

proponent of the evidence can demonstrate that it was not available or could not have been discovered by the exercise of due diligence prior to the conference. If a claimant is unrepresented, the carrier shall file such a statement.

(e) Proceedings in the pre-hearing part shall be conducted in accordance with the rules promulgated by the chair or the board.

2-b. Conciliation. (a) 1. There is hereby created within the board a conciliation process. The conciliation process will permit claims to be handled on a more expeditious and informal basis and provide a mechanism for claims to be addressed without undue controversy.

2. Conciliation may also address requests by hospitals, physicians or other health care providers for payment of bills rendered by them in any case, regardless of the expected duration of benefits, pursuant to sections thirteen-g, thirteen-k, thirteen-l and thirteen-m of this article, and regardless of the dollar amount of the bill.

(b) Each claim that is filed shall be reviewed for possible transfer for conciliation. Claims where the expected duration of benefits is fifty-two weeks or less shall be transferred for conciliation within thirty days of receipt of a carrier's response to notice of index required under this section, except uncontested claims where there have been only temporary or minor injuries and where board appearance by the claimant is unnecessary. Such minor and uncontested claims shall be handled through a motion calendar as prescribed by the rules and regulations promulgated pursuant to this section.

(c) Upon receipt of a claim for conciliation, a meeting shall be scheduled, if necessary, within thirty days with all concerned parties before a conciliation counsel.

(d) All information relative to the claim shall be made available to all parties no later than five days before the meeting. This information shall include, but not be limited to medical records, wage information, date of accident or injury and the amount of time lost from work as a result of such accident or injury.

(e) At such meeting the conciliation counsel shall promptly and prior to any other proceeding authorized under this section inform any claimant participating in the meeting without benefit of a counsel or

licensed representative of their right to have representation present, their right to a reasonable adjournment to procure representation, of their right to withdraw from any agreement at such meeting in accordance with subdivision (g) of this section and such other and further information as the chair may require to insure that an uncounselled claimant fully understands the conciliation process. After informing claimant in accordance with this subdivision, conciliation counsel shall request a written consent to participate in the conciliation process from claimant, and if such claimant declines to continue, shall immediately cease the conciliation process and cause the claim to be restored to the regular hearing calendar process.

(f) After reviewing all relevant information, conciliation counsel shall prepare a proposed decision which shall be sent to all parties. Any party may object to the proposed decision and request a hearing within thirty days of the receipt of the proposed decision. If no objection is made during such thirty day period the proposed decision shall constitute a final award of the board for all purposes except that it shall not be reviewable under sections twenty-two and twenty-three of this article. If any party objects to the proposed decision, the case shall be transferred to the regular hearing calendar process.

(g) If a claimant shall be unrepresented, the case shall not be agreed to until it shall have been reviewed and approved by the chair or a referee of the board designated by the chair. Such decision shall be rendered within fifteen days of receipt of the agreement from the conciliation bureau; provided, however, that a claimant shall have ten days from receipt of notice of such approval to withdraw from the agreement. If approved, such agreement shall constitute an award of the board for all purposes except that it shall not be reviewable under sections twenty-two and twenty-three of this article. Should the agreement be disapproved or should the claimant withdraw from the agreement as provided herein, the case shall be transferred to the regular hearing calendar process.

(h) After the proposed decision has become final, the carrier shall make payments of any award as required in the decision within ten days. If, however, the carrier does not make the payments as required in the decision within ten days of the date in which the proposed decision becomes final, the chair shall impose of a fine of five hundred dollars

for failure to live up to the terms of the decision upon verification that payment has not been timely made. Of that amount, three hundred dollars shall be made payable to the claimant and two hundred dollars shall be payable to the board for the operation and administration of this chapter.

(i) If, in any case which has been addressed by conciliation, the claimant requires additional medical care beyond that agreed to or requires benefit payments beyond that agreed to, the meeting, if necessary, shall be reconvened within thirty days from the receipt of information demonstrating the need for additional medical care or benefit payments. If it is determined that the claimant's condition may continue for a period of time which is more than six months, such case shall be reopened and transferred to the regular hearing calendar. If, however, it is determined, based on medical evidence, that the claimant's condition will improve in less than six months, the case shall remain in conciliation.

2-c. Collective bargaining; alternative dispute resolution. (a) For the purposes of employments classified under sections two hundred twenty, two hundred forty and two hundred forty-one of the labor law, an employer and a recognized or certified exclusive bargaining representative of its employees may include within their collective bargaining agreement provisions to establish an alternative dispute resolution system to resolve claims arising under this chapter.

Any collective bargaining agreement or agreement entered into by the employee and an employer which purports to preempt any provision of this chapter or in any way diminishes or changes rights and benefits provided under this chapter, except as expressly provided herein, shall be null, void and unenforceable.

(b) Except as specifically provided in this subdivision, nothing in this section or any collective bargaining agreement providing for an alternative dispute resolution system for the resolution of claims arising under this chapter shall preempt any provision of this chapter or in any way diminish or change any benefits to which an employee, or his or her dependents, or survivors may be entitled pursuant to the provisions of this chapter.

(c) The collective bargaining agreement may establish the following obligations and procedures:

(i) an alternative dispute resolution process to resolve claims arising under this chapter, which may include but is not limited to mediation or arbitration;

(ii) the use of an agreed managed care organization as defined in section one hundred twenty-six of this chapter or a list of authorized providers for medical treatment, which may be the exclusive source of all medical and related treatment provided under this chapter;

(iii) the use of an agreed list of authorized providers for the purpose of providing medical opinions and testimony, which may be the exclusive source of all such medical opinions and testimony under this chapter;

(iv) benefits for injured workers, their dependents or their survivors supplemental to those provided under this chapter;

(v) a light duty, modified job, or return to work program;

(vi) a vocational rehabilitation or retraining program; and

(vii) worker injury and illness prevention programs and procedures.

(d) The determination of an arbitrator or mediator pursuant to an alternative dispute resolution procedure pertaining to the resolution of claims arising under this chapter shall not be reviewable by the workers' compensation board, and the venue for any appeal shall be to a court of competent jurisdiction in accordance with section twenty-three of this chapter.

(e) (i) Determinations rendered as a result of an alternative dispute resolution procedure shall remain in force during a period in which the employer and a recognized or certified exclusive bargaining representative are renegotiating a collective bargaining agreement.

(ii) Upon the expiration of a collective bargaining agreement which contains a provision for an alternative dispute resolution procedure for workers' compensation claims, the resolution of claims relating to injuries sustained as a result of a work-related accident or occupational disease may, if the collective bargaining agreement so provides, be subject to the terms and conditions set forth in the expired collective bargaining agreement until the employer and a recognized or certified exclusive bargaining representative negotiate a new collective bargaining agreement.

(iii) Upon the termination of a collective bargaining agreement which is not subject to renegotiation, the employer and its employees shall become fully subject to the provisions of this chapter to the same extent as they were prior to the implementation of the collective bargaining agreement provided, however, that when a claim has been adjudicated under the alternative dispute resolution procedure, the claimant or employer to such claim or matter shall be estopped from raising identical issues before the board.

(f) Commencing January first, nineteen hundred ninety-six, and annually thereafter, a copy of the collective bargaining agreement shall be filed with the chair. The employer shall report the number of employees subject to the collective bargaining agreement. The chair or the chair's designee shall review the collective bargaining agreements for compliance with the provisions of this section, shall notify the parties to the agreement if the agreement is not in compliance, and shall recommend appropriate action to bring the agreement into compliance.

3. Hearings; procedure; penalty for late payment of award and for dilatory tactics or unjustified lack of preparedness of a carrier or employer. (a) The chairman may in the interest of justice at any time refer a case in which payments are being made as above to the board for a hearing, and shall immediately upon receipt of notice from the injured worker, from the employer, or from the insurance carrier that the employee's right to compensation is controverted, or that payments of compensation have stopped or been suspended, make such investigations, or cause such medical examinations to be made, or refer the case for such hearings, as will properly protect the rights of both parties, either as to any compensation then due or as to any compensation that may become due in the future for temporary or permanent disability, and shall promptly cause the resumption of payments in case the injured person is entitled thereto.

(b) Nothing herein shall limit the right of the board in a particular case to hold a hearing and make an award in accordance with other provisions of this chapter. No case shall be closed without notice to all parties interested and without giving to all such parties an opportunity to be heard.

(c) The board shall keep an accurate record of all hearings held. Whenever a hearing must be continued or adjourned because the carrier or employer has engaged in dilatory tactics or exhibited unjustified lack of preparedness, the board shall impose a penalty of twenty-five dollars to be paid to the fund created by subdivision two of section one hundred fifty-one of this chapter and shall in addition make an award of seventy-five dollars payable to the injured worker or his or her dependants. Dilatory tactics may include but shall not be limited to: failing to subpoena medical witnesses or to secure an order to show cause as directed by the referee, failing to bring proper files, failing to appear, failing to produce witnesses or documents after they have been requested by the referee or examiner or as directed by the hearing notice, unnecessarily protracting the production of evidence, or engaging in a pattern of delay which unduly delays resolution, except that no penalty shall be imposed nor award made under this subdivision if the carrier or employer produces evidence sufficient to excuse its conduct to the satisfaction of the referee.

(d) If, in any case, the issues have not been resolved within one year after such issues have been raised before the board, or if multiple claims arise from the same accident or occurrence, or if all parties agree to an expedited hearing, or if a notice of controversy is filed, or if the chair otherwise deems it necessary, the chair may order that the case be transferred to a special part for expedited hearings. Proceedings in such part shall be conducted in an expedited manner.

Cases in such special part shall be scheduled in such a manner so that, where appropriate, any and all outstanding issues may be addressed at one hearing. An adjourned case shall be rescheduled as soon as practicable, but no later than thirty days following such adjournment.

If a request for an adjournment is made by a carrier or employer which is not an emergency and is deemed to be frivolous by the chair, a penalty of one thousand dollars shall be imposed by the chair. If such employer or carrier is represented by an attorney or licensed representative who is not an employee of the carrier or employer, the attorney or licensed representative shall be responsible for the payment of such penalty. If a request for an adjournment is made by a claimant

who is represented by an attorney or a licensed representative which is not an emergency and is deemed to be frivolous by the chair, a penalty of five hundred dollars shall be imposed by the chair on the attorney or licensed representative. Such penalty shall be paid by the attorney or licensed representative and shall not come out of the claimant's award. No penalty shall be imposed on an unrepresented claimant who requests an adjournment.

(e) If the employer or its insurance carrier fails to file a notice or report requested or required by the board or chair or otherwise required within the specified time period or within ten days if no time period is specified, the board may impose a penalty in the amount of fifty dollars unless the employer or carrier produces evidence sufficient to excuse its conduct to the satisfaction of the board. Such penalty shall be in addition to all other penalties provided for in this chapter and shall be paid into the state treasury.

(f) If the employer or its insurance carrier shall fail to make payments of compensation according to the terms of the award within ten days or the uninsured employers' fund shall fail to make payments of compensation according to the terms of the award within thirty days after such ten day period except in case of an application to the board for a modification, rescission or review of such award, there shall be imposed a penalty equal to twenty percent of the unpaid compensation which shall be paid to the injured worker or his or her dependents, and there shall also be imposed an assessment of fifty dollars, which shall be paid into the state treasury.

(g) Notwithstanding any other provision in this chapter, the chair may by regulation elect to establish a performance standard concerning the subject of any penalty or assessment provision applicable to an insurance carrier or self-insured employer, where such penalty or assessment is remittable to the New York state treasury, or chair, but not to claimants or any other payee or fund, and impose a single penalty or assessment upon the failure to meet that promulgated standard, with notice to the carrier or self-insured employer. The penalty or assessment imposed in the aggregate shall be payable to the chair. Such aggregate penalty or assessment shall be based upon the number of violations as multiplied against the applicable penalty or assessment, but may be negotiated by the chair's designee in full satisfaction of

the penalty or assessment. A final agreement between the chair's designee and the carrier or self-insured employer may be submitted and approved subject to section thirty-two of this article, without notice to any claimant. Any aggregate penalty or assessment issued herein shall be issued administratively, and the board, and the chair may, by regulation, specify the method of review or redetermination, and the presentment of evidence and objections shall occur solely upon the documentation. The carrier or self-insured employer shall receive credit for any instances in which the aggregate penalty or assessment is inclusive of a penalty or assessment previously issued and paid in an individual claim or proceeding. A final determination is subject to review under section twenty-three of this article, except that no stay in payment of the penalty or assessment shall apply pending the outcome of the application for administrative review. Failure to pay the finally determined penalty or assessment, or the penalty or assessment agreed upon pursuant to section thirty-two of this article, within ten days of filing, shall result in the imposition of a twenty-percent penalty, payable to the chair. In the event of the carrier or self-insured employer instituting or continuing an issue without reasonable grounds, the provisions of subdivision three of section one hundred fourteen-a of this chapter shall be applicable. Aggregate penalties shall be borne exclusively by insurance carriers and licensed representatives pursuant to subdivision three-b of section fifty of this article and the costs shall not be passed to insured employers.

4. Advance payments of compensation; employer reimbursements; receipts for payment. (a) If the employer has made advance payments of compensation, or has made payments to an employee in like manner as wages during any period of disability, he shall be entitled to be reimbursed out of an unpaid instalment or instalments of compensation due, provided his claim for reimbursement is filed before award of compensation is made, or if insured, by the insurance carrier at the direction of the board, unless he shall file a waiver of reimbursement with the chairman, in which event compensation shall be paid to the claimant notwithstanding the advanced payments.

(b) An injured employee, or in case of death his dependents or personal representative, shall give receipts for payment of compensation

to the employer paying the same and such employer shall produce the same for inspection by the chairman, whenever required.

(c) If the employer or comptroller of the state or city of New York or trustees duly constituted under any welfare, pension or benefit plan, agreement or trust to which the injured employee is a party or of which he or she is a beneficiary, and which plan, agreement or trust shall provide that the injured employee shall not be entitled to or shall be limited in the amount of benefits or payments thereunder if he or she shall be entitled to benefits under this chapter, shall have advanced or paid benefits or payments thereunder to the injured employee during any period in which his or her right to benefits under this chapter was not determined, then and in such event such employer or comptroller of the state or city of New York or trustees shall be entitled to be reimbursed out of the unpaid instalment or instalments of compensation due, provided claim therefor is filed together with proof of the terms of said plan, agreement or trust and of the fact and amount of payment with the board before award of compensation is made. The New York city employees' retirement system shall provide to the board on a monthly basis a listing in an electronic format including the names and social security numbers of injured employees to whom benefit payments were paid or advanced by such system and whose benefit payments are limited by workers' compensation benefits awarded under this chapter. The board shall verify which injured employees have been awarded workers' compensation benefits and return the listing to the New York city employees' retirement system including, but not limited to, the following information relating to the award for each injured employee: date of accident, board case number, carrier identification number, carrier case number, beginning and ending dates of disability, payment interval, and payment amount. The board shall return the listing to the New York city employees' retirement system no later than fourteen days after its receipt.

4-a. Public employee welfare fund; wage replacement payment; lien. a. For the purposes of this subdivision, the following terms shall have the following meanings:

(i) "Public employer" shall mean the state, a municipal corporation, a local government agency or other political subdivision, a public

authority, a public benefit corporation, or any other political subdivision of the state.

(ii) "Public employee" shall mean all employees of a public employer.

(iii) "Public employee welfare fund" shall mean any trust fund or other fund established or maintained unilaterally or jointly by one or more labor organizations which represent the relevant public employees and/or one or more public employers whether directly or through trustees, to provide employee welfare benefits for public employees or their families or dependents, or for both, including, but not limited to, medical, surgical or hospital care or benefits, and benefits in the event of sickness, accident, disability, or death.

b. Where a public employee who is ineligible for benefits under section two hundred three or two hundred seven of this chapter by reason of his public employer's failure to voluntarily elect coverage under section two hundred twelve of this chapter, is disabled and has claimed or subsequently claims and is entitled to workers' compensation benefits under this article, and that public employee is covered by a public employee welfare fund which voluntarily provides a wage replacement benefit in the event of disability, the following provision shall apply:

Where such an employee receives a wage replacement benefit from such a public employee welfare fund in respect of the disability which forms the basis of the workers' compensation claim, the public employee welfare plan making such payment may, at any time before an award of workers' compensation benefits is made, file with the board a claim for reimbursement out of the proceeds of such award to the public employee for the period for which the wage replacement benefit was paid to the public employee under the rules of the public employee welfare fund, and shall have a lien against the award for reimbursement, provided that the insurance carrier or other entity liable for payment of the award receives, before such award is made, a copy of the claim for reimbursement from the public employee welfare fund which paid the wage replacement benefit, or provided that the board's decision and award directs such reimbursement.

5. Deposits for security; lump sum payments in certain cases. (a)

Whenever the chair may deem it advisable any employer or insurance carrier may be required to make a deposit with the chair to secure the prompt and convenient payment of such compensation, and the chair, shall have power to make payments therefrom upon any awards. The interest on all funds on deposit with the chair pursuant to this paragraph, may be transferred to the uninsured employers' fund whenever the chair shall determine that the net assets of the uninsured employers fund are less than two million dollars or the amount expended by that fund in the prior year whichever is greater.

(b) The board, whenever it shall so deem advisable, may commute such periodical payments to one or more lump sum payments to the injured employee, or, in case of death, his or her dependents, provided the same shall be in the interests of justice. Such commutation shall be made according to the method prescribed in section twenty-seven of this article.

6. At the request of a person legally responsible for a minor claimant, the board may, after a hearing, direct that payment be made to the legally responsible person, to be used for the benefit of such claimant. A person who is so designated shall report to the chairman annually with respect to the use of such payments. The chairman may require that a report be made more often than annually if there is reason to believe that the person receiving such payments is using the payments for purposes other than the benefit of the claimant. Should the chairman or the board find that the payee is using the payment for purposes other than the benefit of the claimant the board shall after a hearing revoke the payee's designation and appoint a new payee. The chairman shall take such action as is necessary to recover from the payee any funds improperly used.

7. Payments and awards to minors. All awards of compensation required to be made to minors under this chapter shall be paid to or for the benefit of such minors. The board may in its discretion require the appointment of a guardian, before making payments not otherwise directed to be paid by action of such board, where such award exceeds two hundred and fifty dollars. The board may, when such course seems advisable, direct that funds, payable to or for the benefit of a minor, be paid for

vocational training or maintenance of such minor supplementing payments made under subdivision nine of section fifteen of this chapter.

8. Rules. The board may adopt rules to carry out the provisions of this section, including provision for reports to the chairman by a guardian of the use of moneys paid to minors and reports to the chairman by a designated payee of compensation to a minor, in accordance with this section.

9. Direct deposit. (a) Compensation payments shall be required, upon the written request from an injured worker or a person entitled to a death benefit provided by this chapter, to be deposited directly in a bank for any purpose to an account in the name of such injured worker or person entitled to death benefits, and duly filed in accordance with such regulations. Each person eligible to receive payment of compensation or death benefits under this section shall be notified of the option to receive such payment in the form of direct deposit from the carrier or self-insured employer, such notice to be promulgated by the board. Such eligible person shall also be provided the means necessary to enroll in direct deposit pursuant to this paragraph in a manner specified by regulations of the board at the same time as notice is given pursuant to this paragraph.

(b) The board is hereby authorized to promulgate reasonable rules and regulations, as may be necessary, to administer the direct deposit of compensation payments. Such regulations shall permit the deposit of compensation payments to be split between multiple accounts by either a dollar amount or exact percentage, provided, however, such regulations may establish a minimum dollar amount and may limit the maximum number of partial deposits allowed.

(c) As used in this subdivision, the term "bank" includes any financial institution which is a member of the New York automated clearinghouse or any financial institution designated by the board.

(d) Notwithstanding any provision in this subdivision to the contrary, direct deposit of any compensation payment may not be made if such payment would be in violation of any federal or state law or regulation.

§ 25-a. Procedure and payment of compensation in certain claims; limitation of right to compensation. 1. Notwithstanding other provisions of this chapter, when an application for compensation is made by an employee or for death benefits in behalf of the dependents of a deceased employee, and the employer has secured the payment of compensation in accordance with section fifty of this chapter, (1) after a lapse of seven years from the date of the injury or death and claim for compensation previously has been disallowed or claim has been otherwise disposed of without an award of compensation, or (2) after a lapse of seven years from the date of the injury or death and also a lapse of three years from the date of the last payment of compensation, or (3) where death resulting from the injury shall occur after the time limited by the foregoing provisions of (1) or (2) shall have elapsed, subject to the provisions of section one hundred twenty-three of this chapter, testimony may be taken, either directly or through a referee and if an award is made it shall be against the special fund provided by this section. Such an application for compensation or death benefits must be made on a form prescribed by the chair for that purpose and must, if a change in condition is claimed, be accompanied by a verified medical or surgical report setting forth facts on which the board may order a hearing.

1-a. Any award which shall be made against such special fund after the effective date of this act upon such an application for compensation or death benefits shall not be retroactive for a period of disability or for death benefits longer than the two years immediately preceding the date of filing of such application. No application by a self-insured employer or an insurance carrier for transfer of liability of a claim to the fund for reopened cases shall be accepted by the board on or after the first day of January, two thousand fourteen except that the board may make a finding after such date pursuant to section twenty-three of this article upon a timely application for review.

2. Claims for further services or treatment rendered or supplies furnished as required by section thirteen hereof shall be paid from such fund when such service, treatment or supplies shall be authorized by the chairman. In cases where a surgical operation has previously been

authorized by the board pursuant to the provisions of subdivision five of section thirteen-a of this chapter, no further authorization therefor by the chairman under this section shall be required. The provisions of this chapter with respect to procedure and the right to appeal shall be preserved to the claimant and to the employer originally liable for the payment of compensation and to such fund through its representative as hereinafter provided.

3. Any awards so made shall be payable out of the special fund heretofore created for such purpose, which fund is hereby continued and shall be known as the fund for reopened cases. The employer, or, if insured, his insurance carrier shall pay into such fund, or, in the case of awards made on or after July first, nineteen hundred sixty-nine, either into such fund or the uninsured employers' fund under section twenty-six-a of this article in accordance with the provisions thereof, for every case of injury causing death for which there are no persons entitled to compensation the sum of three hundred dollars where such injury occurred prior to July first, nineteen hundred forty and the sum of one thousand dollars where such injury shall occur on or after said date and prior to April first, nineteen hundred forty-five, and the sum of fifteen hundred dollars where such injury shall occur on or after April first, nineteen hundred forty-five and prior to September first, nineteen hundred seventy-eight and the sum of three thousand dollars where such injury shall occur on or after September first, nineteen hundred seventy-eight, and in each case of death resulting from injury sustained on or after July first, nineteen hundred forty and prior to September first, nineteen hundred seventy-eight, where there are persons entitled to compensation but the total amount of such compensation is less than two thousand dollars exclusive of funeral benefits, the employer, or, if insured, his insurance carrier, shall pay into such fund, or, in the case of awards made on or after July first, nineteen hundred sixty-nine and prior to September first, nineteen hundred seventy-eight, either into such fund or the uninsured employers' fund under section twenty-six-a of this article in accordance with the provisions thereof, the difference between the sum of two thousand dollars and the compensation, exclusive of funeral benefits, and in each case of death resulting from injury sustained on or after September

first, nineteen hundred seventy-eight, the employer, or if insured, his insurance carrier shall pay into such fund or the uninsured employers' fund under section twenty-six-a of this article in accordance with the provisions thereof, the difference between the sum of five thousand dollars and the compensation, exclusive of funeral benefits actually paid to or for the dependents of the deceased employee together with any expense charge required by section twenty-seven of this article; provided, however, that where death shall occur subsequent to the periods limited by subdivision one of this section no payment into such special fund nor to the special fund provided by subdivision nine of section fifteen nor to the uninsured employers' fund provided by section twenty-six-a of this article shall be required. In addition to the assessments made against all insurance carriers for the expenses of administering this chapter provided for under the provisions of section one hundred fifty-one of this chapter, and the payments above provided, the employer, or, if insured, his insurance carrier, shall pay the sum of five dollars into said fund for each case in which an award is made pursuant to the provisions of paragraphs a to s inclusive of subdivision three of section fifteen of this chapter, by reason of injury sustained between July first, nineteen hundred forty and June thirtieth, nineteen hundred forty-two, both dates inclusive, and the sum of ten dollars for each such case by reason of injury sustained between July first, nineteen hundred forty-two and June thirtieth, nineteen hundred fifty, both dates inclusive, which payment shall be in addition to any payment of compensation to the injured employee as provided in this chapter.

There shall be maintained in the special fund at all times assets at least equal in value to the sum of (1) the value of awards charged against such fund, (2) the value of all claims that have been reopened by the board as a charge against such fund but as to which awards have not yet been made, (3) effective January first, nineteen hundred seventy-one, the value of total supplemental benefits to be paid from such fund as reimbursement pursuant to subdivision nine of this section, and (4) a reserve equal to ten per cent of the sum of items (1), (2) and (3) of this paragraph. Annually, as soon as practicable after January first in each year, the chair shall ascertain the condition of the fund and whenever the assets shall fall below the prescribed minimum as

herein provided the chair shall collect an amount sufficient to restore the fund to the prescribed minimum. Commencing on the first of January, two thousand fourteen, the amount collected from all employers required to obtain workers' compensation coverage to maintain the financial integrity of the fund may be paid over a period of time at the discretion of the chair based upon an analysis of the financial condition of the fund. Such payment as determined by the chair shall be included in the assessment rate established pursuant to subdivision two of section one hundred fifty-one of this chapter. The chair shall promulgate regulations to administer claims whose liability has been transferred to the fund for reopened cases. Such regulations may include exercise of the chair's authority to administer existing claims, to procure management for those claims, or to sell such liability. The chair may examine into the condition of the fund at any time on his or her own initiative or on request of the attorney of the fund.

The provisions of this subdivision shall not apply with respect to policies containing coverage pursuant to section thirty-four hundred twenty of the insurance law relating to every policy providing comprehensive personal liability insurance on a one, two, three or four family owner-occupied dwelling.

4. The commissioner of taxation and finance shall be the custodian of such special fund for reopened cases and shall invest any surplus monies thereof in securities which constitute legal investments for savings banks under the laws of this state and in interest bearing certificates of deposit of a bank or trust company located and authorized to do business in this state or of a national bank located in this state secured by a pledge of direct obligations of the United States or of the state of New York in an amount equal to the amount of such certificates of deposit, and may sell any of the securities or certificates of deposit in which such fund is invested, if necessary for the proper administration or in the best interest of such fund. Disbursements from such fund for compensation provided by this section shall be paid by the commissioner of taxation and finance upon vouchers signed by the chairman.

The commissioner of taxation and finance, as custodian of such fund, annually as soon as practicable after January first, shall furnish to the chairman a statement of the fund, setting forth the balance of monies in the said fund as of the beginning of the year, the income of the fund, a summary of payments out of the fund on account of compensation ordered to be paid by the board, medical and other expense, and all other charges against the fund, and setting forth the balance of the fund remaining to its credit on December thirty-first. Such statement shall be open to public inspection in the office of the chairman, and a copy thereof shall be transmitted by the chairman to the superintendent of financial services. The superintendent of financial services may examine into the condition of such fund at any time on his own initiative or on request of the chairman or representative of the fund. He shall verify the receipts and disbursements of the fund, and shall ascertain the liability of the fund upon all cases in which awards of compensation have been made and charged against said fund and shall render a report of such facts to the chairman. Such report shall also be open to public inspection in the office of the chairman.

5. For applications by self-insured employers or insurance carriers for transfer of liability for compensation to the fund for reopened cases under this section, received by the board prior to the first day of January, two thousand fourteen, the chair shall appoint an attorney in such proceedings to represent such fund in proceedings brought to enforce a claim against such fund. Such attorney may apply to the chair for authority to hire such medical or other experts and to defray the expense thereof and of such witnesses as are necessary to a proper defense of the application within an amount in the discretion of the chair and, if authorized, it shall be a charge against the special fund provided herein.

6. Notwithstanding any other provision of this chapter, no award of compensation or death benefits shall be made against said special fund or against an employer or an insurance carrier where application therefor is made after a lapse of eighteen years from the date of the injury or death and also a lapse of eight years from the date of the last payment of compensation.

7. For the purposes of this section the date of the last payment of compensation shall be deemed to mean the date of actual payment of the last installment of compensation previously awarded; provided, however, that where the case is disposed of by the payment of a lump sum, the date of last payment for the purpose of this section shall be considered as the date to which the amount paid in the lump sum settlement would extend if the award had been made on the date the lump sum payment was approved at the maximum compensation rate which is warranted by the employee's earning capacity as determined by the board under section fifteen of this chapter.

8. The provisions of this section shall not apply to any open case pending before the board on April twenty-fourth, nineteen hundred thirty-three or to any closed case in which an application for reopening was received prior to such date, or to awards for deficiency compensation made pursuant to section twenty-nine of this chapter, nor shall it apply during the pendency of an appeal provided for by section twenty-three of this chapter; provided, however, that such provisions shall be retroactive in effect except as to payments into the special fund provided for an employer or his insurance carrier, and except as otherwise herein provided.

9. (a) Notwithstanding any other provision of this chapter, every employee who is receiving workers' compensation under this chapter for a permanent and total disability resulting from an accidental injury or occupational disablement which occurred prior to January first, nineteen hundred seventy-nine and every widow or widower who is receiving death benefits under this chapter on account of the death of his or her spouse prior to January first, nineteen hundred seventy-nine shall receive supplemental benefits upon application therefor to the board, which shall be payable in the first instance by the employer or its insurance carrier in accordance with the provisions of this subdivision. These supplemental benefits shall commence on July first, nineteen hundred ninety and shall continue during the period of such permanent total disability or entitlement to death benefits.

(b) If such employee, widow or widower is receiving the statutory

maximum benefit in effect at the time of the accidental injury or death, the supplemental benefit shall be an amount which, when added to the regular benefit established for the case, shall equal the maximum weekly benefit in effect for a permanently totally disabled employee, widow or widower whose claim arose on January first, nineteen hundred seventy-nine.

(c) If such employee, widow or widower is receiving a weekly benefit which is less than the statutory maximum benefit which was in effect on the date of the accidental injury or death, the supplemental benefit shall be an amount equal to the difference between the regular benefit being received and a percentage of the maximum benefit in effect on January first, nineteen hundred seventy-nine, determined by multiplying the latter benefit by a fraction, the numerator of which is the regular benefit and the denominator of which is the statutory maximum benefit in effect at the time of the accidental injury or death.

(d) In the event the supplemental benefit computed under this subdivision amounts to less than five dollars, then the supplemental benefit allowed shall be a minimum of five dollars, less the amount, if any, by which the combination of such supplemental benefit and the regular benefit exceeds the maximum weekly benefit in effect for a permanently totally disabled employee, widow or widower whose claim arose on January first, nineteen hundred seventy-nine.

(e) The employer or his insurance carrier paying the supplemental benefits required under this subdivision shall claim reimbursement for each such case from the reopened cases fund under this section, commencing one year from the date of the first such payment and annually thereafter while such supplemental payments continued, on a form prescribed by the chairman.

(f) The special disability fund created under subdivision eight of section fifteen and the reopened cases fund created under section twenty-five-a and the aggregate trust fund created under section twenty-seven of this chapter shall be deemed to be insurance carriers for purposes of this subdivision, other than the payment of the assessment under the provisions of subdivision three of this section.

(g) Whenever payment of the supplemental benefits prescribed hereunder is not made by the insurance carrier by reason of the insolvency of such insurance carrier, or in the case of a self-insurer, by reason of the

insolvency of such self-insurer or the discontinuance of its operations, such payment shall be made directly out of the reopened cases fund under this section by the commissioner of taxation and finance upon vouchers approved by the chairman of the workmen's compensation board.

§ 25-b. Awards to non-residents: Non-resident compensation fund. 1.

There is hereby created a fund to be known as the non-resident compensation fund. Whenever an award is made to or on behalf of noncitizen dependents, non-residents of the United States, Canada or Newfoundland, or an award is made to a non-resident citizen of the United States, which calls for the payment of compensation or death benefits, or where there is outstanding an unpaid balance of compensation or death benefits payable to such non-resident, and it shall appear that the person or persons to whom the award has been made or any balance of such award is payable, would not have the full benefit or use or control of the money payable under such award, or where other special circumstances made it desirable that present payment of the award shall be withheld, the employer, or if insured, his insurance carrier, or any special fund liable for such payment, may, by order of the board, be required to pay to the comptroller of the state of New York all amounts then due or thereafter to become due under the terms of the award to such non-resident. The moneys so paid in shall be held by the comptroller in the non-residents compensation fund.

2. All computations for the commutation of any such award for payment into the said fund shall be made in accordance with the tables specified in section twenty-seven of this chapter.

3. The payment of the amount of any such award into the non-resident compensation fund shall constitute a complete discharge of the employer or insurance carrier from all liability for such award.

4. If at any time there shall be created by any act of the congress of the United States or by any lawful rule or regulation of the president any agency or fund for the safekeeping or custody of moneys belonging to or payable to any non-resident noncitizen, and if such act or rule shall

require the payment into such agency or fund of any moneys theretofore paid into the fund for foreign dependents, the board may make its findings and issue its order thereon directing the transfer of such moneys by the comptroller to such other agency or fund.

5. Any moneys so paid into such fund shall be held by the comptroller until the further order of the board. Whenever the board shall find that the reasons and conditions which made it desirable that payment into the fund be made have changed and that the cause for such withholding shall no longer exist, the board may make findings and issue its order thereon directing the payment without interest of the whole or any part thereof then due by the comptroller to the person or persons for whose benefit the award was made.

6. If the board, at any time, upon evidence presented to it, shall find that all or any part of the funds so deposited in such fund are not due and payable to the non-resident for whose benefit they were deposited, it shall direct the repayment of such amount so deposited, without interest, by the comptroller to the party required to make the deposit as aforesaid.

7. If no evidence shall be presented to the board of the present existence of any such non-resident within eight years from the date when the board has found that the precedent conditions set forth in paragraph one hereof have changed and that direct payments could be made to such person or persons if such person or persons are alive, it shall be presumed in the absence of substantial evidence to the contrary, that such person or persons are non-existent and the board shall thereupon order the payment without interest of the amount deposited for the benefit of such person or persons to the party required to make such deposit as aforesaid, provided however, that thereafter such employer, carrier or fund receiving such repayment shall continue to be liable for any compensation subsequently found by the board to be due, notwithstanding any other provisions of this chapter.

§ 26. Enforcement of payment in default. In case of default by the

employer in the payment of any compensation due under an award for the period of thirty days after payment is due and payable, or in case of failure or refusal by the employer to deposit with the chairman within ten days after demand the commuted or estimated value of the compensation payable under an award made in accordance with the provisions of section fourteen-a of this chapter as security for prompt and convenient payment of such compensation periodically as it accrues, or where the employer has failed to secure the payment of compensation to his employees as required by section fifty hereof and there is such default in payment for a period of ten days after same is due or there is default or refusal of such employer to deposit with the chairman within ten days after demand the commuted or estimated value of compensation not presently payable, as security for prompt and convenient payment of such compensation periodically as it accrues in accordance with the provisions of section twenty-five of this chapter, or in case of failure by an employer, within twenty days after it is due, to pay an assessment imposed by the chairman pursuant to subdivision five of section fifty-two of this chapter, the chairman in any such case or on the chairman's consent any party to an award may file with the county clerk for the county in which the injury occurred or the county in which the employer has his principal place of business, (1) a certified copy of the decision of the workmen's compensation board awarding compensation or ending, diminishing or increasing compensation previously awarded, from which no appeal has been taken within the time allowed therefor, or if an appeal has been taken by an employer who has not complied with the provisions of section fifty hereof, where he fails to deposit with the chairman the amount of the award as security for its payment within ten days after the same is due and payable, or (2) a certified copy of the demand for deposit of security, or (3) a certified copy of the chairman's order imposing, and the demand for payment of, such assessment, and thereupon judgment must be entered in the supreme court by the clerk of such county in conformity therewith immediately upon such filing. If the payment in default be an instalment, the board may declare the entire award due and judgment may be entered in accordance with the provisions of this section. Such judgment shall be entered in the same manner, have the same effect and be subject to the same proceedings as though rendered in a suit duly heard and determined

by the supreme court, except that no appeal may be taken therefrom. The court shall vacate or modify such judgment to conform to any later award or decision of the board upon presentation of a certified copy of such award or decision. The award may be so compromised by the board as in the discretion of the board may best serve the interest of the persons entitled to receive the compensation or benefits. Where an award has been made against the employer in accordance with the provisions of section fifteen, subdivision nine, or of section twenty-five-a, or of section twenty-six-a, such an award may be similarly compromised by the board, upon notice to a representative of the fund to which the award is payable, but if there be no representative of any such fund, notice shall be given to such representative as may be designated by the chairman of the board; and notwithstanding any other provision of law, such compromise shall be effective without the necessity of any approval by the state comptroller. Neither the chairman nor any party in interest shall be required to pay any fee to any public officer for filing or recording any paper or instrument or for issuing a transcript of any judgment executed in pursuance of this section. Whenever the term employer is used in this section it shall be deemed to include without limitation a contractor liable for the payment of compensation pursuant to section fifty-six of the workmen's compensation law.

§ 26-a. Procedure and payment of compensation in claims against uninsured defaulting employers. 1. (a) Notwithstanding any other provision of this chapter, when a claim for compensation is filed by an employee, or in case of death by the employee's dependents, and the employer has failed to secure the payment of compensation in accordance with section fifty of this chapter, to make deposit of security in accordance with section twenty-six of this chapter and to make payment of compensation into the fund created under this section according to the terms of any award including, without limitation, awards made pursuant to subdivision five of section thirteen-g, subdivision two of section thirteen-f, subdivision five of section thirteen-k, subdivision five of section thirteen-l and subdivision six of section thirteen-m of this article, payment of the award shall be promptly made from the fund created under this section in accordance with the terms thereof and the

provisions of subdivision three of this section. The employer shall be liable with the fund for payment of the award. Where the employer is a corporation the president, secretary and treasurer thereof shall also be personally, jointly and severally liable with the corporation for payment of the award. The employer shall pay the award into the fund, in accordance with the time limitations contained in section twenty-five of this article.

(b) No such award, however, for any service specified in subdivision five of section thirteen-a of this article requiring advance authorization of the employer in accordance with the provisions of such subdivision, shall be payable from the fund unless advance authorization therefor was secured from the representative of the fund or is determined by the board to be necessary. Notwithstanding any other provision under this section, awards made pursuant to section fourteen-a of this article shall not be the liability of the fund and shall not be payable therefrom nor shall payment of the present value of benefits be required to be paid into the aggregate trust fund pursuant to section twenty-seven of this article in any case in which the uninsured employers' fund is liable.

2. Uninsured employers' fund. (a) There is hereby created a fund which shall be known as the "uninsured employers' fund" to provide for the payment of awards against uninsured employers in accordance with the provisions of this section and shall be available only for the purposes stated in this subdivision, and the assets thereof shall not at any time be appropriated or directed to any other use or purpose, except as set forth in section fifty-a of this chapter.

(b) For the purpose of establishing and maintaining this fund, the board, upon rendering a decision with respect to any claim for compensation under this chapter that the employer liable therefor has failed to secure the payment of compensation with respect thereto in accordance with section fifty of this chapter, shall impose an assessment in the sum of one thousand dollars for each ten day period of non-compliance or a sum not in excess of two times the amount of the cost of compensation for its payroll for the period of such failure against the employer and direct its payment into the fund in connection with each such claim wherein injury shall have occurred on or after the

first of May, nineteen hundred fifty-nine, or in death cases where death as the result of injury shall have occurred on or after said date.

(c) If the employer shall fail to pay these assessments into the fund within ten days after date of mailing of notice thereof to him or her, such default shall constitute a default in payment of compensation due pursuant to the provisions of section twenty-six of this article and judgment therefor shall be entered in accordance therewith, all other provisions of said section to be deemed applicable with respect thereto, except to the extent that said provisions may be clearly inconsistent with the provisions of this section. All sums collected from an uninsured employer with respect to any claim for compensation referred to in this section but not payable from the fund, except fines collected from such employer pursuant to section fifty-two of this chapter whether such collection is made prior or subsequent to entry of judgment against such employer, shall be deemed in payment of an applicable first in satisfaction of any compensation and benefits due from such employer with respect to such claim and security demand, if any, in connection therewith and only when such obligations are satisfied in full shall the balance of said sums collected, if any, be deemed payment in satisfaction of and applicable to the assessments above prescribed in this section.

(d) All sums recovered from uninsured employers on judgments entered for failure to pay assessments as hereinbefore provided and for failure to pay compensation and benefits which were paid from the fund herein created, shall upon such recovery be paid into said fund.

(e) All awards made on or after July first, nineteen hundred sixty-nine for every case of injury causing death for which there are no persons entitled to compensation, and where there are persons entitled to compensation but the total amount of such compensation is less than two or five thousand dollars as the case may be exclusive of funeral benefits, pursuant to the provisions of subdivision three of section twenty-five-a of this article shall be paid into the uninsured employers' fund.

(f) As promptly as practicable after July first, nineteen hundred ninety-one and annually thereafter as soon as practicable after January first in each succeeding year, the chair shall ascertain the condition of the uninsured employers' fund. The chair shall transfer to the fund

out of the moneys collected pursuant to subdivision two of section one hundred fifty-one of this chapter an amount which will raise the net cash assets of the fund to the level of either the amount spent by the fund in the prior year, or the amount estimated to be expended by the fund in the succeeding year, whichever is greater, except that such requirement shall not apply between August first, two thousand eight and August first, two thousand fifteen to the extent that section fifty-a of this chapter permits the fund to be at a different level.

3. The commissioner of taxation and finance shall be the custodian of the uninsured employers' fund and shall invest any surplus moneys thereof in securities which constitute legal investments for savings banks under the laws of this state and in interest bearing certificates of deposit of a bank or trust company located and authorized to do business in this state or of a national bank located in this state secured by a pledge of direct obligations of the United States or of the state of New York, or in accordance with the provisions of section ninety-eight-a of the state finance law, in an amount equal to the amount of such certificates of deposit, and may sell any of the securities or certificates of deposit in which such fund is invested, if necessary for the proper administration or in the best interest of such fund. Disbursements from such fund as provided by this section shall be paid by the commissioner of taxation and finance upon vouchers signed by the chairman.

The commissioner of taxation and finance, as custodian of such fund, as soon as practicable after August first, nineteen hundred sixty-two and annually thereafter, shall furnish to the chairman of the board a statement of the fund, setting forth the balance of moneys in the said fund as of the time of the preceding statement, the income of the fund, a summary of payments out of the fund on account of compensation ordered to be paid therefrom by the board, medical and other expenses, and all other charges against the fund in the interim and setting forth the balance of the fund remaining to its credit as of the end of the period being reported. Such statement shall be open to public inspection in the office of the chairman, and a copy thereof shall be transmitted by the chairman to the superintendent of financial services. The superintendent

of financial services may examine into the condition of such fund at any time on his own initiative or on request of the chairman. He shall verify the receipts and disbursements of the fund, and shall ascertain the liability of the fund upon all cases in which awards of compensation have been made and charged against said fund and shall render a report of such facts to the chairman. Such report shall also be open to public inspection in the office of the chairman.

4. Upon notice to the representative of the fund, the board, if in its discretion it deems the interests of the fund will be best served thereby, may compromise the amount for which judgment has been entered against an employer pursuant to this section and the judgment entered may be modified accordingly. Such compromise shall be effective without the necessity of obtaining the approval of any other state official thereto, but shall not reduce the amount of benefits payable to or on behalf of any claimant under this section.

5. The chairman of the workmen's compensation board shall appoint an employee of the board who is an attorney at law duly admitted to practice in the state of New York to serve as the representative of the fund created under this section and shall assign to assist him in the discharge of his duties as such representative under the provisions of this section, such other employees of the board as the chairman deems necessary for this purpose. Such representative may apply to the chairman for authority to hire such medical and other experts and to defray the expense thereof and of such witnesses as are necessary to a proper defense of the claim within an amount in the discretion of the chairman and, if authorized, such amount shall be a charge against said fund. The representative of the fund may appear for and represent the interest of the fund in any case in court involving the rights of the fund against another not in the same employ as the employee who received benefits under this chapter and whose injury or death was caused by the negligence or wrong of such other.

6. Whenever it appears, in a claim for benefits under this chapter, that the employer may have failed to secure the payment of compensation in accordance with section fifty of this chapter, the fund shall be

given notice of all proceedings in the claim. In such event, the provisions of this chapter with respect to procedure, the right to be heard and the right to apply to the board for review of a referee's decision and to appeal to the courts shall be reserved to the claimant, to the uninsured employer, and to the fund. Upon the application of the representative of the fund for a modification or rescission or review of an award, the board may review any award, decision or order and, on such review, may affirm, reverse, or modify any decision or award as the law and the facts may require, or take such other action as may be in the interest of justice. An appeal to the appellate division of the supreme court, third department, or to the court of appeals shall not operate as a stay of the payments by the uninsured employer or by the fund of the compensation required by the terms of the award or of the payment of the doctor's bills found to be fair and reasonable. Where such award is reduced or rescinded upon appeal, the uninsured employer or the fund, whichever made payment, shall be entitled to reimbursement in a sum equal to the compensation in dispute paid by such party to the respondent pending adjudication of the appeal, and, if the claim for workers' compensation is disallowed, to a sum equal to the amount of the doctor's bills paid by such party pending adjudication of the appeal. Such reimbursement shall be paid from administration expenses as provided in section one hundred fifty-one of this chapter upon vouchers approved by the chair. To the extent of any reimbursement to the fund, the uninsured employer shall be entitled to reimbursement from the fund for payments made into the fund in accordance with subdivision one of this section.

6-a. In the event that the board is unable to determine the identity of the responsible insurance carrier for the employer within thirty days of the filing of a new claim, the board shall:

(a) appoint the uninsured employers' fund as the responsible party until such time as the identity of the responsible insurance carrier for the employer is determined. Upon such appointment, the uninsured employers' fund shall immediately commence payments and provide medical care in accordance with the provisions of this chapter;

(b) schedule a hearing to determine the identity of the responsible insurance carrier for the employer and to determine such claim for

compensation in accordance with the provisions of subdivision one of this section; and

(c) provide notice of such claim and hearing to the employer by certified mail, return receipt requested, with a direction that the employer provide proof of having insurance in effect as provided by section ten of this article.

7. All the rights, powers, and benefits of the employer under section twenty-nine of this chapter shall become the rights, powers and benefits of the fund in any case in which the fund has paid or is paying compensation to an injured employee or his dependents under this section. If the employer has also paid compensation to or on behalf of the injured employee or his dependents in such case any recovery by the fund pursuant to subdivision one of section twenty-nine shall first be applied to repayment of any awards paid by the fund to or on behalf of the injured employee or his dependents in such case, the balance then applied to any outstanding unsatisfied demand for security in said case and assessments imposed against the employer pursuant to the provisions of this section, the remainder, if any, to be returned to the employer. If the employer has also paid compensation to or on behalf of the injured employee or his dependents in such case, that portion, if any, of a recovery by the fund pursuant to subdivision two of section twenty-nine which is in excess of the total amount of compensation awarded to or on behalf of such injured employee or his dependents and the reasonable and necessary expenditures incurred in effecting such recovery shall be apportioned between the injured employee or his dependents and the fund in the manner provided in said subdivision two. The balance of said recovery shall first be applied to reimburse the fund for its reasonable and necessary expenditures in effecting such recovery and the remainder shall be applied to repayment of any award paid by the fund to or on behalf of the injured employee or his dependents in such case. If there still remains a balance it shall first be applied to the outstanding unsatisfied demand for security, if any, in said case and assessments, if any, imposed against the employer pursuant to the provisions of this section; the remainder, if any, to be returned to the employer.

7-a. Notwithstanding any other provision of section twenty-nine of this article to the contrary, a compromise by the claimant of his or her cause of action as set forth in said section twenty-nine of this article, in an amount less than the sum paid to or on behalf of the claimant from the uninsured employers' fund, shall be made only with the written consent of the chair.

8. The provisions of this section with respect to the liability of the uninsured employers' fund to pay awards against uninsured defaulting employers shall apply only to claims wherein the injury shall occur on or after the first day of October, nineteen hundred sixty-two, or wherein death shall occur as the result of an injury sustained on or after the aforesaid first day of October.

9. The chairman may make reasonable regulations for the processing and payment of compensation out of the uninsured employers' fund.

10. The liability of the chairman, the commissioner of taxation and finance, the fund and the state of New York with respect to payment of any compensation, benefits, expenses, fees or disbursements properly chargeable against the uninsured employers' fund shall be limited to the assets in said fund and they shall not otherwise in any way or manner be liable for the making of any such payment.

11. All assessments payable pursuant to the provisions of this section shall be liens against the assets of the employer liable therefor without limit of amount, subordinate, however, to claims for unpaid wages and prior recorded liens.

12. Whenever the term employer is used in this section it shall be deemed to include without limitation a contractor liable for the payment of compensation pursuant to section fifty-six of the workmen's compensation law.

13. Notwithstanding any other provision of this chapter, in any case of injury or death to the president, secretary, treasurer or any other officer charged with the obligation of obtaining workers' compensation

insurance, of a corporation, any awards of compensation or medical expenses payable to or on behalf of such officer or to his surviving spouse, children and dependents as defined by section sixteen of this article made against the corporation as an uninsured employer solely because of the injury or death of such officer, shall in no event be the liability of the uninsured employers' fund and shall not be payable therefrom.

14. Notwithstanding any other provision of this chapter, in any case of injury or death to a self-employed person or to a partner of a partnership as defined in section ten of the partnership law, any awards of compensation or medical expenses payable to or on behalf of such self-employed person or partner of a partnership or to his surviving spouse, children and dependents as defined by section sixteen of this article made against the self-employed person or partnership as an uninsured employer solely because of the injury or death of such self-employed person or partner, shall in no event be the liability of the uninsured employers' fund and shall not be payable therefrom.

§ 27. Depositing future payments in the aggregate trust fund. 1. All payments made into the fund pursuant to the provisions of this section shall constitute an indivisible and aggregate trust fund except as hereinafter provided.

2. If an award under this chapter requires payment of death benefits or other compensation by an insurance carrier or employer in periodical payments, the board may, in its discretion, at any time, any provision of this chapter to the contrary notwithstanding, compute and permit or require to be paid into the aggregate trust fund an amount equal to the present value of all unpaid death benefits or other compensation in cases in which awards are made for total permanent or permanent partial disability for a period of one hundred and four weeks or more, for which liability exists, together with such additional sum as the board may deem necessary for a proportionate payment of expenses of administering the fund so created, including the cost of the actuarial computation by or on behalf of the board of the present value of the award, and for the

purposes of this section such cases shall be known as discretionary type cases. If any such award made on or after July first, nineteen hundred thirty-five, requires payment for total permanent disability resulting from the loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof, or for permanent partial disability resulting from loss of an arm, leg, hand, foot or eye, or of death benefits by an insurance carrier which is a stock corporation or mutual association, or if any such award made on or after July first, two thousand seven requires payment for permanent partial disability under paragraph w of subdivision three of section fifteen of this article by an insurance carrier which is a stock corporation or mutual association, which for the purposes of this section shall be known as mandatory type cases, the board shall immediately compute the present value thereof and require payment of such amount into the aggregate trust fund, together with such additional sum as the board may deem necessary for a proportionate payment of expenses of administering such trust fund including the cost of the actuarial computation by or on behalf of the board of the present value of the award provided, however, that where an employer or his insurance carrier is found to be entitled to reimbursement from the special disability fund of subdivision eight of section fifteen, the computation of the present value of the award and the requirement for payment of such amount into the said trust fund shall not be mandatory and such cases shall be deemed to be discretionary type cases; further provided that where an employee entitled to compensation under this chapter be injured or killed by the negligence or wrong of another not in the same employ, the computation of the present value and the requirement for payment of such amount into the said trust fund shall be held in abeyance until (1) six months have elapsed from the award of compensation, or in any event not more than one year after the date of the accident, if the injured employee, or in case of death, his personal representatives, spouse, parents, dependents or next of kin, or anyone otherwise entitled to recover damages at common law or otherwise, on account of such injury or death, have failed to commence such action, (2) the termination of any such action brought by the injured employee, or in case of death, his personal representatives, spouse, parents, dependents or next of kin, or anyone otherwise entitled to recover damages, at common law or otherwise, on

account of such injury or death, under the provisions of section twenty-nine of this article.

3. Upon payment by an employer or insurance carrier into the aggregate trust fund of an amount equal to the present value of all unpaid death benefits or other compensation under any such award together with such additional sum as the board may deem necessary for a proportionate payment of expenses of administering such trust fund including the cost of the actuarial computation by or on behalf of the board of the present value of the award, such employer or insurance carrier shall be discharged from any further liability for payment of such death benefits or other compensation, and payment of the same as provided by this chapter shall be assumed by the fund so created.

4. In the event of a review or appeal of any such award the value of which has not been paid into the aggregate trust fund, if the amount of award is modified or changed, the employer or insurance carrier shall pay directly to the claimant compensation due to the date as of which the present value of future benefits is payable into such fund, and to the said fund the present value of future benefits, but if the original award is affirmed, the employer or insurance carrier shall pay to such fund the present value of the award computed as of the effective date of the original award and simple interest on such amount at the industry standard rate, as determined by the superintendent of financial services by regulation, computed from the date of the original award to the date that payment is made into such fund, plus simple interest at the rate provided in section five thousand four of the civil practice law and rules, on past due payments of compensation to the date of the affirmance of such award, which past due payment and interest shall be made directly to the claimant. The foregoing provision shall apply in the event of such review or appeal regardless of whether the widow or widower or other parties in interest have died or the widow or widower remarried subsequent to the date as of which the present value of the original award was computed. If any award, the present value of which has been paid into the aggregate trust fund, is subsequently modified or changed by the board for any reason other than because of subsequent death or remarriage, the amount equal to the present value of the unpaid

death benefits or other compensation at the effective date of such modification or change shall be computed on the basis both of the original award and of the modified or changed award. If such amount is greater on the basis of the original award, the difference shall be paid by said trust fund to the employer or insurance carrier minus the cost, if any, of the actuarial computation made by or on behalf of the board. If such amount is greater on the basis of the modified or changed award, the difference shall be paid to said trust fund by such employer or insurance carrier in addition to the cost, if any, of the actuarial computation made by or on behalf of the board. In the case of an accident, occurring on or subsequent to July first, nineteen hundred thirty-nine, where the present value of an award for permanent total or permanent partial disability other than award for a definite number of weeks has been paid into the aggregate trust fund, if an award is made for death resulting from the injury causing the said disability, the employer or insurance carrier which paid the present value of said disability award into such fund shall be entitled to the difference between the amount paid into such fund and the sum disbursed from such fund to the injured employee prior to his or her death, plus simple interest on such difference at the industry standard rate. In the case of an accident occurring on or subsequent to July first, nineteen hundred thirty-nine, where the present value of an award for permanent partial disability for a definite number of weeks has been paid into the aggregate trust fund, if the injured employee dies prior to the end of such definite number of weeks, the employer or insurance carrier which made the said payment into such fund shall be entitled to the present value of the unexpended disability benefits not payable to beneficiaries computed on the basis of annuities certain with interest at the industry standard rate, minus however the cost, if any, of the actuarial computation made by or on behalf of the board. In the case of a claim for the death of an employee resulting from an accident occurring on or subsequent to January first, two thousand one, the present value of an award paid into the aggregate trust fund shall be calculated based on the assumption that any child while under the age of twenty-three years will be enrolled and attending as a full time student in an accredited educational institution and would thereby be entitled to benefits for all periods while under the age of twenty-three years. After all such

children reach the age of twenty-three, the aggregate trust fund shall refund to the carrier which paid such present value into such fund the portion of such present value representing benefits for which such children were not actually entitled because they were not enrolled and attending as a full time student in an accredited educational institution plus simple interest on such difference at the industry standard rate.

5. All computations made by the board shall be upon the basis of the survivorship annuitants table of mortality, the remarriage tables of the Dutch Royal Insurance Institution and interest at three and one-half per centum per annum on claims based on accidents occurring up to and including June thirtieth, nineteen hundred thirty-nine, at three per centum per annum on claims based on accidents occurring from July first, nineteen hundred thirty-nine up to and including August thirty-first, nineteen hundred eighty-three, at six per centum per annum on claims based on accidents occurring from September first, nineteen hundred eighty-three up to and including December thirty-first, two thousand and at the industry standard rate on claims based on accidents occurring thereafter, except (a) that computations of present values of death benefits required to be paid into the aggregate trust fund by an insurance carrier which is a stock corporation or a mutual association shall be based, in the case of a dependent parent, grandparent, blind or physically disabled child or spouse, upon said table of mortality disregarding possible change in or termination of dependency, with interest at three and one-half per centum per annum on claims based on accidents occurring up to and including June thirtieth, nineteen hundred thirty-nine, at three per centum per annum on claims based on accidents occurring from July first, nineteen hundred thirty-nine up to and including August thirty-first, nineteen hundred eighty-three, at six per centum per annum on claims based on accidents occurring from September first, nineteen hundred eighty-three up to and including December thirty-first, two thousand and at the industry standard rate on claims based on accidents occurring thereafter and (b) that computations of present values of permanent partial disability benefits awarded for a definite number of weeks shall be on the basis of annuities certain with interest at three and one-half per centum per annum on claims based on

accidents occurring up to and including June thirtieth, nineteen hundred thirty-nine, at three per centum per annum on claims based on accidents occurring from July first, nineteen hundred thirty-nine up to and including August thirty-first, nineteen hundred eighty-three, at six per centum per annum on claims based on accidents occurring from September first, nineteen hundred eighty-three up to and including December thirty-first, two thousand and at the industry standard rate on claims based on accidents occurring thereafter.

6. Such aggregate trust fund shall be kept separate and apart from all other moneys of the state insurance fund, and shall not be liable for any losses or expenses of administration of the state insurance fund other than the expenses involved in the administration of such trust fund including the cost, if any, of the actuarial computations made on behalf of the board, nor shall the state insurance fund be charged with the losses or expenses of the aggregate trust fund beyond the amount of such trust fund. Any portion of such aggregate trust fund may, by order of the commissioners of the state insurance fund, approved by the superintendent of financial services, be invested in or loaned on the pledge of the same securities as provided in section eighty-seven of this chapter for the investment of the state insurance fund, and the commissioners may, upon like approval of the superintendent of financial services, also sell any such securities. Any securities belonging to the aggregate trust fund may be loaned by the commissioners of the state insurance fund, with the approval of the superintendent of financial services, under a security loan agreement as provided by section eighty-seven of this chapter for securities belonging to the state insurance fund.

7. For the purpose of securing the solvency of the aggregate trust fund, there shall be required, in addition to the payments hereinbefore provided for, a payment on each award, as follows:

(a) In the mandatory type cases based on an accident occurring on or subsequent to July first, nineteen hundred forty-one up to and including June thirtieth, nineteen hundred forty-three an amount equal to six per centum of the present value of each such case paid into such fund;

(b) In the mandatory type cases based on an accident occurring on or

subsequent to July first, nineteen hundred forty-three an amount equal to ten per centum of the present value of each such case paid into such fund;

(c) In the discretionary type cases based on an accident occurring up to and including June thirtieth, nineteen hundred thirty-nine an amount equal to sixteen per centum of the present value of each such case paid into such fund;

(d) In the discretionary type cases based on an accident occurring on or subsequent to July first, nineteen hundred thirty-nine an amount equal to ten per centum of the present value of each such case paid into such fund.

Such additional payments shall be required until the surplus of the fund equals or exceeds one per centum of the total outstanding loss reserves as shown by three successive annual reports of the fund to the superintendent of financial services and such additional payment shall be required as a payment upon each award based on an accident occurring prior to July first next succeeding the third such annual report, but not as a payment upon any award based on an accident occurring on or after said July first; provided, however, that if and when the surplus of the fund as shown by any annual report thereafter shall be less than one per centum of the total outstanding loss reserves, then the additional payments as provided in paragraphs (a), (b), (c) and (d) of this subdivision shall be resumed and shall be payable upon any award based on an accident occurring on or after July first next succeeding the close of the year for which such annual report is made. Thereafter, the suspension or resumption of additional payments as required by this subdivision shall be governed by the foregoing provisions. Such loss reserves shall be computed based upon the tables specified in subdivision five of this section and interest at a standard to be determined by the superintendent of financial services by regulation.

8. In the case of a claim concerning which the aggregate trust fund enters a waiver agreement pursuant to section thirty-two of this article, the insurance carrier, as defined in subdivision twelve of section two of this chapter, which paid the present value of the award for such claim, shall not be entitled to a refund of any portion of the

present value of such award.

§ 27-a. Investments in obligations of designated public benefit corporations; indemnifications. 1. The aggregate trust fund, and all state officers with responsibility for the custody or investment of such fund or of its assets, are authorized and directed to take any and all actions necessary or appropriate to cause such fund to make purchases, in accordance with a schedule to be established, subject to amendment from time to time, by the state director of the budget in the aggregate principal amount of seventy-five million dollars, of obligations of the state of New York and of any one or more of the following public benefit corporations: the New York state housing finance agency, including, but not limited to, obligations secured by second mortgages on housing projects insured by the Federal government or an agency thereof, the New York state medical care facilities finance agency, the dormitory authority and the New York state environmental facilities corporation. The schedule of obligations to be purchased pursuant to this section may include, but shall not be limited to, short term obligations of the housing finance agency for purposes of providing a bridge loan for the financing of housing projects, in anticipation of the receipt of proceeds from Federal mortgage insurance on such housing projects or such other proceeds as may become available. Such schedule may be amended from time to time to provide for the renewal, refunding, redemption or repayment of notes purchased by the aggregate trust fund in accordance with the schedule, or for the conversion of such notes into bonds or other long term obligations, provided that at no time shall the total aggregate amount of obligations held by the aggregate trust fund pursuant to the provisions of this section exceed seventy-five million dollars. The terms and conditions of such obligations, including the times of purchase and maturities thereof and the rates of interest thereon, shall be determined by the state comptroller in the case of state obligations or by the public benefit corporation issuing the obligations, provided such terms and obligations are found to be fair and reasonable by the state superintendent of financial services.

2. Notwithstanding any general or special provision of law to the contrary, in order to obtain the monies necessary to purchase the obligations required by subdivision one of this section, the commissioners of the state insurance fund, in accordance with rules and regulations adopted by such commissioners, shall have the right (i) to borrow an amount not exceeding the obligation incurred by the aggregate trust fund pursuant to this section, and to pledge as collateral therefor such assets as they may deem advisable, (ii) to sell any fund assets under an agreement or option for the repurchase thereof from monies or assets in the fund or (iii) to sell fund assets on such terms and conditions as are found to be fair and reasonable by the state superintendent of financial services.

3. It is hereby found and declared that any and all obligations of the state of New York, the New York state housing finance agency, the New York state medical care facilities finance agency, the dormitory authority and the New York state environmental facilities corporation, are reasonable, prudent, proper and legal investments for the aggregate trust fund and for all state officers with responsibility for the custody or investment of such fund or of its assets.

4. Notwithstanding any other provision of law, no state officer with responsibility for the custody or investment of the aggregate trust fund or of its assets, or for the approval of the sale or investment of such assets, nor any investment advisor, attorney, accountant or actuary who shall have been employed by or shall have advised such officer, shall incur or suffer any liability whatsoever to any person by reason of actions taken pursuant to the authorization and direction of subdivision one or two of this section. Any action which could have been brought against any aforementioned state officer, investment advisor, attorney, accountant or actuary, except for the provisions of this subdivision, may be brought against the aggregate trust fund.

5. a. Notwithstanding any other provision of law, including the provisions of section seventeen of the public officers law, the aggregate trust fund and the state, jointly and severally, shall save harmless and indemnify each and every state officer with responsibility

for the custody or investment of such fund or of its assets or for the approval of the sale or investment of such assets, and any investment advisor, attorney, accountant or actuary who shall have been employed by or who shall have advised such officer, and the state shall save harmless and indemnify the aggregate trust fund, from any and all financial loss and expense arising out of or in connection with any claim, demand, suit, action, proceeding or judgment for alleged negligence, gross negligence, waste or breach of fiduciary duty, or incapacity of any kind by reason of any transaction pursuant to the authorization and direction of subdivision one or two of this section, provided that such officer, investment advisor, attorney, accountant or actuary shall, within five days after the date on which he is personally served with, or receives actual notice of, any summons, complaint, process, notice, demand, claim or pleading, give notice thereof to such fund or the attorney general. Upon such notice the aggregate trust fund and the attorney general shall, if so requested, assume control of the representation of such officer or investment advisor, attorney, accountant or actuary, in connection with such claim, demand, suit, action or proceeding. Each person so represented shall cooperate fully with the fund and the attorney general or any other person designated to assume such defense in respect of such representation or defense.

b. Notwithstanding any provision of law to the contrary, the state shall also save harmless and indemnify the aggregate trust fund for any and all financial loss and expense arising out of or in connection with any claim, demand, suit, action, proceeding or judgment rendered thereupon against such fund pursuant to subdivision four hereof, provided that such fund shall, within five days after the date on which it is served with, or receives actual notice of, any summons, complaint, process, notice, demand, claim or pleading, give notice thereof to the attorney general. Upon such notice the attorney general shall assume control of the representation of such fund in connection with such claim, demand, suit, action or proceeding. The fund shall cooperate fully with the attorney general or any other person designated to assume such defense in respect of such representation or defense.

§ 27-b. Amortization of gains or losses. Gains or losses realized by the aggregate trust fund as a result of transactions made pursuant to subdivision two of section twenty-seven-a, or section twenty-seven-c of this chapter, shall be transferred to a special asset account to be known as the deferred charge on account of security transactions and shall be amortized within such account on a basis which matches as nearly as possible all gains or losses so realized against any increase or decrease in income resulting from the reinvestment of the proceeds of such transactions, provided that the period of amortization of the gain or loss resulting from the disposition of each investment shall not be longer than the unexpired period from the date of such disposition to the maturity of the investment so disposed of, or on such other basis as the superintendent of financial services may authorize in his discretion.

§ 27-c. Appropriations to the aggregate trust fund. 1. Notwithstanding any other provision of law, the aggregate trust fund, hereinafter referred to as the fund, and all state officers with responsibility for the custody or investment of such fund or of its assets, shall annually, no later than November first in each year, submit to the director of the budget a request for an appropriation of one hundred sixty million dollars. The governor shall include such amount in a budget bill for the next state fiscal year. The state comptroller shall encumber the amount so appropriated before the end of the fiscal year for which any such appropriation is made. If for any fiscal year commencing on or after April first, nineteen hundred eighty-three, the governor fails to submit a budget bill containing an appropriation in the amount requested by the fund or the legislature fails to appropriate the amount in a budget bill submitted by the governor for such fiscal year, the amount appropriated for and encumbered during the preceding fiscal year shall be payable forthwith to the fund on the first day of July of such year in the manner prescribed by law, provided, however, that such amount shall not exceed the amount of moneys transferred to the general fund by the fund pursuant to the provisions of chapter fifty-five of the laws of nineteen hundred eighty-two and chapter seven of the laws of nineteen hundred

eighty-nine.

2. Notwithstanding any other provision of law, the fund and all state officers with responsibility for the custody or investment of such fund or of its assets shall annually, no later than November first in each year, submit to the director of the budget the fund's additional request for an appropriation of sixty million dollars and the governor shall include such additional amount in a budget bill for the next state fiscal year. The state comptroller shall encumber the amount so appropriated before the end of the fiscal year for which any such appropriation is made. If for any fiscal year commencing on or after April first, nineteen hundred ninety the governor fails to submit a budget bill containing an appropriation in the amount requested by the fund or the legislature fails to appropriate the amount in a budget bill submitted by the governor for such fiscal year, the amount appropriated for and encumbered during the preceding fiscal year shall be payable forthwith to the fund on the first day of July of such year in the manner prescribed by law, provided, however, that such amount shall not exceed the amount of moneys transferred to the general fund by the fund pursuant to the provisions of a chapter of the laws of nineteen hundred eighty-nine.

3. It is hereby found and declared that any appropriation made as provided for in subdivision one or two of this section shall be deemed an admitted asset of the aggregate trust fund, and that any transfer of moneys by the fund to the general fund in accordance with the provisions of chapter fifty-five of the laws of nineteen hundred eighty-two, chapter seven of the laws of nineteen hundred eighty-nine or a chapter of the laws of nineteen hundred eighty-nine is deemed a proper and prudent legal undertaking for any state officer with the responsibility for the custody or the investment of the assets of the fund, notwithstanding any other provision of law to the contrary.

§ 28. Limitation of right to compensation. The right to claim compensation under this chapter shall be barred, except as hereinafter provided, unless within two years after the accident, or if death

results therefrom within two years after such death, a claim for compensation shall be filed with the chairman, but the employer and insurance carrier shall be deemed to have waived the bar of the statute unless the objection to the failure to file the claim within two years is raised on the first hearing on such claim at which all parties in interest are present. The right of an employee to claim compensation under this chapter for disablement caused by any occupational disease including but not limited to compressed air illness or its sequelae, silicosis or other dust disease, latent or delayed pathological bone, blood or lung changes or malignancies due to occupational exposure to or contact with arsenic, benzol, beryllium, zirconium, cadmium, chrome, lead or fluorine or to exposure to x-rays, radium, ionizing radiation, radio-active substances, or any other chemical compound shall not be barred by the failure of the employee to file a claim within such period of two years, provided such claim shall be filed after such period of two years and within two years after disablement and after the claimant knew or should have known that the disease is or was due to the nature of the employment. No case in which an advance payment is made to an employee or to his dependents in case of death shall be barred by the failure of the employee or his dependents to file a claim, and the board may at any time order a hearing on any such case in the same manner as though a claim for compensation had been filed.

§ 29. Remedies of employees; subrogation. 1. If an employee entitled to compensation under this chapter be injured or killed by the negligence or wrong of another not in the same employ, such injured employee, or in case of death, his dependents, need not elect whether to take compensation and medical benefits under this chapter or to pursue his remedy against such other but may take such compensation and medical benefits and at any time either prior thereto or within six months after the awarding of compensation or within nine months after the enactment of a law or laws creating, establishing or affording a new or additional remedy or remedies, pursue his remedy against such other subject to the provisions of this chapter. If such injured employee, or in case of death, his dependents, take or intend to take compensation, and medical benefits in the case of an employee, under this chapter and desire to

bring action against such other, such action must be commenced not later than six months after the awarding of compensation or not later than nine months after the enactment of such law or laws creating, establishing or affording a new or additional remedy or remedies and in any event before the expiration of one year from the date such action accrues. In such case, the state insurance fund, if compensation be payable therefrom, and otherwise the person, association, corporation or insurance carrier liable for the payment of such compensation, as the case may be, shall have a lien on the proceeds of any recovery from such other, whether by judgment, settlement or otherwise, after the deduction of the reasonable and necessary expenditures, including attorney's fees, incurred in effecting such recovery, to the extent of the total amount of compensation awarded under or provided or estimated by this chapter for such case and the expenses for medical treatment paid or to be paid by it and to such extent such recovery shall be deemed for the benefit of such fund, person, association, corporation or carrier. Should the employee or his dependents secure a recovery from such other, whether by judgment, settlement or otherwise, such employee or dependents may apply on notice to such lienor to the court in which the third party action was instituted, or to a court of competent jurisdiction if no action was instituted, for an order apportioning the reasonable and necessary expenditures, including attorneys' fees, incurred in effecting such recovery. Such expenditures shall be equitably apportioned by the court between the employee or his dependents and the lienor. Notice of the commencement of such action shall be given within thirty days thereafter to the chairman, the employer and the insurance carrier upon a form prescribed by the chairman. Any of the foregoing providers of compensation and/or medical benefits which has recovered a lien pursuant to the provisions hereof against the recovery of a person injured on or after February first, nineteen hundred seventy-four and before July first, nineteen hundred seventy-eight, through the use or operation of a motor vehicle in this state, shall notify such person by certified mail in a manner to be approved by the chairman and the superintendent of financial services of the responsibility of an "insurer" (as defined in subsection (g) of section five thousand one hundred two of the insurance law), to reimburse such person under such circumstances to the extent that the recovered lien represent first party benefits as defined in

article fifty-one of the insurance law.

1-a. Notwithstanding any other provision of this chapter, the state insurance fund, if compensation and/or medical benefits be payable therefrom, or otherwise the person, association, corporation, insurance carrier or statutory fund liable for the payment of such compensation and/or medical benefits shall not have a lien on the proceeds of any recovery received pursuant to subsection (a) of section five thousand one hundred four of the insurance law, whether by judgment, settlement or otherwise for compensation and/or medical benefits paid which were in lieu of first party benefits which another insurer would have otherwise been obligated to pay under article fifty-one of the insurance law. The sole remedy of any of the foregoing providers to recover the payments specified in the preceding sentence shall be pursuant to the settlement procedures contained in section five thousand one hundred five of the insurance law.

1-b. Notwithstanding any other provision of this chapter to the contrary, the state insurance fund, if compensation and/or medical benefits be payable therefrom, or otherwise the person, association, corporation, insurance carrier or statutory fund liable for the payment of such compensation and/or medical benefits: (a) shall not have a lien on the proceeds of any award from the September eleventh victim compensation fund of two thousand one established pursuant to title IV of the federal air transportation safety and system stabilization act, public law 107-42, as amended; and (b) shall not terminate or reduce such compensation and/or medical benefits based upon the submission of a claim for an award from such federal fund, and/or the waiver or compromise of any cause of action resulting from such submission.

2. If such injured employee, or in case of death, his dependents, has taken compensation under this chapter but has failed to commence action against such other within the time limited therefor by subdivision one, such failure shall operate as an assignment of the cause of action against such other to the state for the benefit of the state insurance fund, if compensation be payable therefrom, and otherwise to the person, association, corporation, or insurance carrier liable for the payment of

such compensation. Except as hereinafter provided, the failure of the injured employee or his dependents to commence an action pursuant to the provisions of subdivision one of this section, shall not operate as an assignment of the cause of action as provided herein, unless the insurance carrier shall have notified the claimant in writing by personal service or by certified or registered mail, return receipt requested, at least thirty days prior to the expiration of the time limited for the commencement of an action by subdivision one, that such failure to commence such action shall operate as an assignment of whatever cause of action may exist to such insurance carrier. If the insurance carrier shall fail to give such notice, the time limited for the commencement of an action by subdivision one shall be extended until thirty days after the insurance carrier shall have notified the claimant in writing that failure to commence an action within thirty days after the mailing of such notice shall operate as an assignment of the cause of action to such carrier, and in the event the claimant fails to commence such action within thirty days after the mailing of such notice, such failure shall operate as an assignment of such cause of action to such carrier. If such fund, person, association, corporation or carrier, as such an assignee, recover from such other, either by judgment, settlement or otherwise, a sum in excess of the total amount of compensation awarded to such injured employee or his dependents and the expenses for medical treatment paid by it, together with the reasonable and necessary expenditures incurred in effecting such recovery, it shall forthwith pay to such injured employee or his dependents, as the case may be, two-thirds of such excess, and to the extent of two-thirds of any such excess such recovery shall be deemed for the benefit of such employee or his dependents. When the compensation awarded requires periodical payments the number of which cannot be determined at the time of such award, the board shall, when the injury or death was caused by the negligence or wrong of another not in the same employ, estimate the probable total amount thereof upon the basis of the survivorship annuitants table of mortality, the remarriage tables of the Dutch Royal Insurance Institution and such facts as it may deem pertinent, and such estimate shall be deemed the amount of the compensation awarded in such case, for the purpose of computing the amount of such excess recovery, subject to the modification thereof as

hereinafter provided. If any of the foregoing providers, having paid benefits under this chapter to an injured employee, who is also a "covered person" (as defined in subsection (j) of section five thousand one hundred two of the insurance law), and who was injured in a motor vehicle accident in this state on and after February first, nineteen hundred seventy-four and before July first, nineteen hundred seventy-eight, maintains an action, as assignee, against such third party, who is also a "covered person", and recovers, whether by judgment, settlement or otherwise, it shall advise the injured employee, by certified mail, in a manner to be approved by the chairman and the superintendent of financial services, of the responsibility of an "insurer" (as defined in subsection (g) of section five thousand one hundred two of the insurance law) to further compensate such injured employee.

2-a. Notwithstanding any other provisions of this chapter, the failure of a "covered person" (as defined in subsection (j) of section five thousand one hundred two of the insurance law), who has taken compensation and/or medical benefits under this chapter for injuries arising out of the use or operation of a motor vehicle in this state, to commence an action against such other within the time limited therefor by subdivision one of this section shall not operate as an assignment of the cause of action to the provider thereof for their recovery when such benefits were paid in lieu of first party benefits which another insurer would have otherwise been obligated to pay under article fifty-one of the insurance law, unless such other is not a "covered person". The sole remedy of any of the foregoing providers to recover the payments specified in the preceding sentence when the other party is a "covered person" shall be pursuant to the settlement procedures contained in section five thousand one hundred five of the insurance law.

3. In the event of a modification of an award increasing the compensation previously awarded or in the event that the total amount of periodical payments made pursuant to an award under which the number of such payments could not be determined at the time of the award, shall exceed the total thereof as estimated by the board, the principal of any of such excess recovery theretofore paid to such injured employee or his

dependents shall be credited against such increase or such excess. In the event of a modification of an award ending or diminishing the compensation previously awarded or in the event that the total amount of periodical payments made pursuant to an award under which the number of such payments could not be determined at the time of the award, shall be less than the total thereof as estimated by the board, such fund, person, association, corporation or carrier shall forthwith pay to such injured employee or his dependents, as the case may be, any additional amount of such excess recovery to which such injured employee or his dependents may be entitled by reason of such modification or such deficiency, determined as hereinbefore provided.

4. If such injured employee, or in case of death, his dependents, proceed against such other, the state insurance fund, person, association, corporation, or insurance carrier, as the case may be, shall contribute only the deficiency, if any, between the amount of the recovery against such other person actually collected, and the compensation provided or estimated by this chapter for such case.

5. In case of the payment of an award to the commissioner of taxation and finance in accordance with subdivisions eight and nine of section fifteen and in accordance with section twenty-five-a such payment shall operate to give to the employer or insurance carrier liable for the award a cause of action for the amount of such payment together with the reasonable funeral expenses and the expense of medical treatment which shall be in addition to any cause of action by the legal representatives of the deceased. Such a cause of action assigned to the state may be prosecuted or compromised in the name of the state insurance fund by the commissioners of the state insurance fund. A compromise of any such cause of action by the employee or his dependents at an amount less than the compensation provided for by this chapter shall be made only with the written approval of the commissioners of the state insurance fund or such officer thereof designated by them, if the deficiency of compensation would be payable from the state insurance fund, and otherwise with the written approval of the person, association, corporation, or insurance carrier liable to pay the same. However, written approval of the commissioners of the state insurance fund or

such officer thereof designated by them or written approval of the person, association, corporation, or the insurance carrier need not be obtained if the employee or his dependents obtain a compromise order from a justice of the court in which the third-party action was pending. The papers upon an application to compromise and settle such a claim shall consist of the petition, the affidavit of the attorney, and the affidavit of one or more physicians.

The petition shall contain the following:

- a. The name and residence of the petitioner if the employee, or petitioner's relationship to the deceased;
- b. The date of accident and a general description thereof;
- c. The nature and extent of the damages sustained, including the name of the physician or physicians attending or consulting in the treatment and the medical expenses incurred, the period of disability resulting from the accident, the total amount of wages lost thereby, and the present physical condition;
- d. The terms of the attorney's retainer and of the proposed settlement and petitioner's approval thereof; and
- e. Whether any previous application for the settlement of the claim has been made, and if so, the time and the court or justice thereof and the disposition made of same.

The affidavit of the attorney shall set forth by whom, on what date and under what terms he was retained, the services rendered by him, his fee if the settlement is approved, the acts complained of, the terms of the proposed settlement with a statement of his reasons for recommending the same, and shall state that he has not become concerned in the application or its subject matter at the instance of such defendant directly or indirectly and that he has not received and is not to receive any compensation from such defendant directly or indirectly.

The affidavit of the physician in a claim arising from personal injury to the employee, shall set forth his connection with the case; the period covered by the treatment and the nature, duration and extent of the injuries; the date of his last examination and the condition of the employee at that time; whether or not the employee is still suffering any disability or inconvenience as the result of the injury, giving the details thereof; whether or not the accident has left the employee with any permanent disability, defect, scar or impairment; the cost of the treatment and whether or not he expects to be paid or has been paid by the defendant or by anyone acting on the defendant's behalf. Where the affidavit as to the present condition is not made by the attending physician, the latter's affidavit setting forth the character of the injuries and treatment should also be attached, or the failure to obtain it explained. Where the employee was confined to a hospital, the court may require the production of hospital records.

A copy of the papers to be used on the application to compromise and settle the claim must be served as directed by the court or in the same manner as provided in the civil practice law and rules for a notice of motion upon the commissioners of the state insurance fund or such officer thereof designated by them or upon the person, association, corporation, or insurance carrier, whose written approval would have been required to compromise such cause of action by the employee or his dependents. This notice shall afford them the opportunity to submit affidavits and to be heard by the court on the application.

If the third-party action is on trial at the time the offer of settlement which is acceptable to the plaintiff, is made and either such written approval or order as provided in this subdivision is required, the action may be marked settled subject to the securing of such written approval or such order. If such written approval or such order is not subsequently secured within three months the action shall be restored to the head of the trial day calendar.

6. The right to compensation or benefits under this chapter, shall be the exclusive remedy to an employee, or in case of death his or her dependents, when such employee is injured or killed by the negligence or

wrong of another in the same employ, the employer's insurer or any collective bargaining agent of the employer's employees or any employee, of such insurer or such collective bargaining agent (while acting within the scope of his or her employment). The limitation of liability of an employer set forth in section eleven of this article for the injury or death of an employee shall be applicable to another in the same employ, the employer's insurer, any collective bargaining agent of the employer's employees or any employee of the employer's insurer or such collective bargaining agent (while acting within the scope of his or her employment). The option to maintain an action in the courts for damages based on the employer's failure to secure compensation for injured employees and their dependents as set forth in section eleven of this article shall not be construed to include the right to maintain an action against another in the same employ, the employer's insurer, any collective bargaining agent of the employer's employees or any employee of the employer's insurer or such collective bargaining agent (while acting within the scope of his or her employment).

*** § 30. Revenues or benefits from other sources not to affect compensation.** No benefits, savings or insurance of the injured employee, independent of the provisions of this chapter, shall be considered in determining the compensation or benefits to be paid under this chapter, except that (1) in case of the death of an employee of the state, a municipal corporation or any other political subdivision of the state, any benefit payable under a pension system or any other statutory benefit which is not sustained or provided for in whole or in part by the contribution of the employee, may be applied toward the payment of the death benefit provided by this chapter; (2) in case of an award of compensation to a paid firefighter of a fire company or fire department of a city of less than one million population, or town, village or fire district any salary or wages paid to, or the cost of any medical treatment and hospital care provided for, such paid firefighter under and pursuant to the provisions of section two hundred seven-a of the general municipal law shall be credited against any award of compensation to such paid firefighter under this chapter where the injury occurred or disablement arose on or after May first, nineteen

hundred fifty-one; and (3) in case of an award of compensation to a member of a police force of any county, city of less than one million population, town or village, or of any district, agency, board, body or commission thereof, any salary or wages paid to, or the cost of any medical treatment or hospital care provided for, such member under and pursuant to the provisions of section two hundred seven-c of the general municipal law shall be credited against any award of compensation to such member under this chapter where the injury occurred or the disablement arose on or after May first, nineteen hundred sixty-three.

* NB Effective until the first day of the calendar month following receipt by the comptroller of the election by The Long Island Rail Road Company

* § 30. Revenues or benefits from other sources not to affect compensation. No benefits, savings or insurance of the injured employee, independent of the provisions of this chapter, shall be considered in determining the compensation or benefits to be paid under this chapter, except that (1) in case of the death of an employee of the state, a municipal corporation, any other political subdivision of the state, including for this purpose The Long Island Rail Road Company, any benefit payable under a pension system or any other statutory benefit which is not sustained or provided for in whole or in part by the contribution of the employee, may be applied toward the payment of the death benefit provided by this chapter; (2) in case of an award of compensation to a paid firefighter of a fire company or fire department of a city of less than one million population, or town, village or fire district any salary or wages paid to, or the cost of any medical treatment and hospital care provided for, such paid firefighter under and pursuant to the provisions of section two hundred seven-a of the general municipal law shall be credited against any award of compensation to such paid firefighter under this chapter where the injury occurred or disablement arose on or after May first, nineteen hundred fifty-one; and (3) in case of an award of compensation to a member of a police force of any county, city of less than one million population, town or village, any district, agency, board, body or commission thereof, or of The Long Island Rail Road Company, any salary or wages paid to, or the cost of any medical treatment or hospital care provided for, such member under and pursuant to the provisions of

section two hundred seven-c of the general municipal law shall be credited against any award of compensation to such member under this chapter where the injury occurred or the disablement arose on or after May first, nineteen hundred sixty-three, or in the case of The Long Island Rail Road Company, on or after the date this section is effective with respect to members of its police force.

* NB Effective the first day of the calendar month following receipt by the comptroller of the election by The Long Island Rail Road Company

§ 31. Agreement for contribution by employee void. No agreement by an employee to pay any portion of the premium paid by his employer to the state insurance fund or to contribute to a benefit fund or department maintained by such employer or to the cost of mutual insurance or other insurance, maintained for or carried for the purpose of providing compensation as herein required, shall be valid, and any employer who makes a deduction for such purpose from the wages or salary of any employee entitled to the benefits of this chapter shall be guilty of a misdemeanor.

§ 32. Waiver agreements. No agreement or release except as otherwise provided in this chapter by an employee to waive his right to compensation under this chapter shall be valid.

(a) Whenever a claim has been filed, the claimant or the deceased claimant's dependents and the employer, its carrier, the special disability fund as set forth in subdivision (e) of this section, or the aggregate trust fund, if the board has directed that the present value of any unpaid compensation be paid into such fund pursuant to section twenty-seven of this article, may enter into an agreement settling upon and determining the compensation and other benefits due to the claimant or his or her dependents. The agreement shall not bind the parties to it, unless it is approved by the board. Such agreements, when so approved, notwithstanding any other provisions, shall be final and conclusive upon the claimant, the claimant's dependents, the employer, its insurance carrier, the aggregate trust fund and the special disability fund. Every insurance carrier as defined in subdivision

twelve of section two of this chapter shall offer each claimant the opportunity to enter into an agreement settling upon and determining the compensation and other benefits due, in the case of disability, within two years after the date the claim was indexed by the board or six months after the claimant is classified with a permanent disability, whichever is later, and in the case of death, within six months after entitlement to benefits is established for all beneficiaries. The offer made by the insurance carrier shall clearly state what portion of the offer is (i) for compensation as defined in subdivision six of section two of this chapter, if any; (ii) for medical benefits, including prescription medicine, if any; and (iii) for the fee of the attorney or licensed representative, if any. If a claimant is represented by an attorney or licensed representative, the insurance carrier shall present such offer to such legal representative. If a claimant is not represented by an attorney or a licensed representative, the insurance carrier shall, in addition to the offer to enter into a settlement agreement, provide the claimant with a statement of his or her rights, obligations and potential liability if the offer is accepted.

(b) The agreement shall be approved by the board in a decision duly filed and served unless:

(1) the board finds the proposed agreement unfair, unconscionable, or improper as a matter of law;

(2) the board finds that the proposed agreement is the result of an intentional misrepresentation of material fact; or,

(3) within ten days of submitting the agreement one of the interested parties requests that the board disapprove the agreement.

(c) A decision duly filed and served approving an agreement submitted to the board shall not be subject to review pursuant to section twenty-three of this article. However, a decision duly filed and served disapproving an agreement submitted to the board is subject to review pursuant to section twenty-three of this article. If the board disapproves of an agreement it shall duly file and serve a notice of decision setting aside the proposed agreement.

(d) An agreement for compensation and other benefits covered by this chapter may be modified at anytime by agreement of all interested parties provided it is approved by the board.

(e) The chair shall establish an office under his or her supervision

to be known as the "waiver agreement management office," to negotiate and seek board approval for waiver agreements on behalf of the special disability fund. The office shall operate in accordance with guidelines or directives that the chair may issue, as approved by the special disability fund advisory committee, or in the absence of such guidelines or directives, using such discounting factors as the office determines are in the financial interest of the special disability fund. The waiver agreement management office on behalf of the special disability fund may enter into a waiver agreement with a claimant only when the special disability fund has been found liable by the board to reimburse the claimant's employer, insurance carrier or the state insurance fund. Notwithstanding any other provisions of law, no consultation or approval of any employer, insurance carrier, self-insurer or the state insurance fund shall be required before such office may enter into any waiver agreement, or before the board may approve such waiver agreement. The chair may, in his or her discretion, and as approved by the special disability fund advisory committee, terminate the operation of the waiver agreement management office, if he or she believes it no longer serves the interest of the special disability fund.

(f) A claimant's executed waiver agreement with the waiver agreement management office shall be final and conclusive upon the claimant, the claimant's dependents, and any employer, self-insurer, insurance carrier, the state insurance fund and the special disability fund as to all claims by the claimant, and as to any claim or request for reimbursement from the special disability fund for payments not yet made. The waiver agreement management office shall give written notice to any employer, insurance carrier or the state insurance fund entitled to receive reimbursement from the special disability fund in regard to any claimant, of any waiver agreement signed by the office with such claimant within fourteen days of submitting the waiver agreement to the board for approval.

(g) Nothing in this section shall prohibit any insurance carrier, employer, the state insurance fund, or the waiver agreement management office on behalf of the special disability fund from jointly entering into a waiver agreement with a claimant, by which the joint signatories may apportion responsibility for making any payments required under the agreement. The agreement shall set forth the obligations of the

signatories to make such payments, and shall identify, as to each obligation thereunder: (1) the signatory that has the legal obligation to carry out that provision, or (2) that all signatories are jointly and severally liable under the provision.

(h) Neither the establishment of the waiver agreement management office, nor any action taken by that office, shall serve as grounds for the board's disapproval of any waiver agreement to which the office is not a party, or otherwise permit any party to withdraw from such a waiver agreement.

(i) (1) The waiver agreement management office may contract with an insurance carrier, self-insured employer, state insurance fund or any third party to assume liability for, manage, administer, or settle claims on its behalf, so long as (A) such contract is approved by the special disability fund advisory committee and (B) such party shall agree to be subject to any guidelines or directives as the chair may issue.

(2) The chair may, with approval of the special disability fund advisory committee and on such terms as the committee deems appropriate, procure one or more private entities to assume the liability for and manage, administer, or settle all or a portion of the claims in the special disability fund including, without limitation, by obtaining "an assumption of workers' compensation liability insurance policy" as defined in subdivision three of section fifty of this chapter. Any such policy shall expressly provide and, notwithstanding any other provision of law, operate to release from any further liability (i) the special disability fund and (ii) the insurance carrier, including as the case may be the state insurance fund, originally liable for any claim covered by the assumption of workers' compensation liability insurance policy securing such further and future contingent liability as may arise from any such claim, including from prior injuries to employees and be incurred by reason of any change in the condition of such employees for payment of additional compensation. Notwithstanding any other provisions of law, no consultation or approval of any employer, insurance carrier, self-insurer or the state insurance fund shall be required before such office may enter into any such policy of waiver agreement, or before the board may approve such waiver agreement. Any such procurement shall be conducted in accordance with state finance law, except as otherwise set

forth below. The chair shall not award any contract that has not been approved by the special disability fund advisory committee.

Notwithstanding the foregoing, the chair of the workers' compensation board may, if approved by the special disability fund advisory committee, and on such terms as the committee deems appropriate:

(A) waive any informality in a bid, and either reject all bids and again advertise for bids, or interview at least two responsible qualified bidders and negotiate and enter into a contract with one or more of such bidders; or

(B) group claims to be assigned, in whole or in part, based on the insurance carrier, self-insured employer or state insurance fund that is receiving or will receive reimbursement on those claims from the second disability fund. Such grouping shall be permissible notwithstanding that any insurance carrier may have greater access to information, or may be able to provide better terms, in regard to claims so grouped.

(3) Any policy executed by the chair pursuant to this section shall be in the form of an assumption of workers' compensation liability insurance policy securing such further and future contingent liability as may arise from any claim covered by such policy, including prior injuries to workers and be incurred by reason of any change in the condition of such workers warranting the board making subsequent awards for payment of additional compensation. Such policy shall be in a form approved by the superintendent of financial services and issued by the state insurance fund or any insurance company licensed to issue this class of insurance in this state, or deemed acceptable as an issuer upon application by the chair to the superintendent as specified in subdivision three of section fifty of this chapter. In the event that such policy is issued by an insurance company other than the state insurance fund, then said policy shall be deemed of the kind specified in paragraph fifteen of subsection (a) of section one thousand one hundred thirteen of the insurance law and covered by the workers' compensation security fund as created and governed by article six-a of this chapter. Such policy shall only be issued for a single complete premium paid in advance and in an amount deemed acceptable by the chair and the superintendent of financial services. When issued such policy shall be noncancellable without recourse for any cause during the continuance of the liability secured and so covered.

(4) Notwithstanding any other provision of this article, the waiver agreement management office may request in writing any information relevant to its entry into or management of waiver agreements from (A) any insurance carrier, employer, or the state insurance fund, if that entity has submitted a claim for reimbursement from the special disability fund as to the claimant to whom the information relates; or (B) the special funds conservation committee. The party to whom the request is made shall provide the requested information within fourteen days of the request, unless before that date it files an objection with the board to any information which is subject to a recognized privilege or whose production is otherwise barred by law. The objecting party shall provide the requested information within five business days of the board's rejection of its objection.

(5) No carrier, self-insured employer or the state insurance fund shall assume the liability for, or management, administration or settlement of any claims under this section on which it holds reserves, beyond such reserves as are permitted by regulation of the superintendent of financial services for purposes of this provision. No carrier may assume liability for any claims in the special disability fund under this paragraph unless the carrier maintains, on a stand alone basis, separate from its parent or any affiliated entities, an interactive financial strength rating from a nationally recognized statistical rating organization that is considered secure or deemed acceptable by the special disability fund advisory committee.

(6) The director of the budget shall notify in writing the chairs of the senate finance committee and the assembly ways and means committee of any plans to transfer all or a portion of the portfolio of claims determined to be eligible for reimbursement from the special disability fund or to enter into an assumption of workers' compensation liability insurance policy, not less than forty-five days prior to the commencement of such process. At any time borrowing is anticipated to settle claims, the chief executive officer of the dormitory authority of the state of New York and the director of the budget shall provide a report to the chairs of the senate finance committee and the assembly ways and means committee on a planned bond sale of the authority and such report shall include, but not be limited to: (A) the maximum amount of bonds expected to be sold by the authority in connection with a sale

agreement; (B) the expected maximum interest rate and maturity date of such bonds; (C) the expected amount of the bonds that will be fixed and/or variable interest rate; (D) the estimated costs of issuance; (E) the estimated level or levels of reserve fund or funds, if any; (F) the estimated cost of bond issuance, if any; (G) the anticipated use or uses of the proceeds; (H) the maximum expected net proceeds that will be paid to the state as a result of the issuance of such bonds; and (I) the process to be used to select parties to the transaction. Any such expectations and estimates in the report shall not be deemed a substantive limitation on the authority of the dormitory authority of the state of New York.

§ 32-a. Waivers of specific coverage prohibited. All employers doing business in this state shall ensure that their employees working in New York state are insured for all protections required under this chapter. Waivers of coverage shall not be available to out of state employers.

§ 33. Assignments; exemptions. Compensation or benefits due under this chapter shall not be assigned, released or commuted except as provided by this chapter, and shall be exempt from all claims of creditors and from levy, execution and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived provided, however, that compensation or benefits other than payments pursuant to section thirteen of this chapter shall be subject to application to an income execution or order for support enforcement pursuant to section fifty-two hundred forty-one or fifty-two hundred forty-two of the civil practice law and rules. Compensation and benefits shall be paid only to employees or their dependents, except as hereinafter in this chapter provided. In the case of the death of an injured employee to whom there was due at the time of his or her death any compensation under the provisions of this chapter, the amount of such compensation shall be payable to the surviving spouse, if there be one, or, if none, to the surviving child or children of the deceased under the age of eighteen years, and if there be no surviving spouse or children, then to the dependents of such deceased employee or to any of them as the board may

direct, and if there be no surviving spouse, children or dependents of such deceased employee, then to his estate. An award for disability may be made after the death of the injured employee.

§ 34. Preferences. Compensation shall be a lien against the assets of the carrier of employer without limit of amount subordinate, however, to claims for unpaid wages and prior recorded liens. The provisions of this section shall not apply to the state insurance fund with respect to those liabilities and obligations assumed by the state pursuant to section eighty-seven-d of this chapter or as the result of any insuring agreement between the state insurance fund and the department of civil service pursuant to section eighty-eight-c of this chapter. In such instances compensation shall be alien against the assets of the state as the employer.

§ 35. Safety net. 1. Return to work. (a) The commissioner of labor will issue a report to the governor, the speaker of the assembly, the majority leader of the senate, and the chairs of the labor, ways and means and finance committees of the assembly and senate on or before December first, two thousand seven, making recommendations as to how to assure that workers categorized by the board as permanently partially disabled return to gainful employment to the greatest extent practicable. Such commissioner will consider administrative and legislative remedies, and shall include estimates of cost in the report. The report shall examine best practices and the laws of other jurisdictions, as well as any relevant programs authorized by New York law. The report shall additionally examine return to work practices as implemented by carriers, the state insurance fund, employers, and the board. It shall also examine the relationship of vocational rehabilitation to ultimate return to work.

(b) The commissioner of labor will be assisted by an advisory council constituted of six persons appointed by the governor as follows:

(i) a representative of organized labor appointed upon recommendation of the New York State American Federation of Labor-Congress of Industrial Organizations;

- (ii) a representative of the business community appointed upon recommendation of the Business Council of New York State, Incorporated;
- (iii) one person upon recommendation of the majority leader of the senate;
- (iv) one person upon recommendation of the speaker of the assembly;
- and
- (v) two other persons in the governor's discretion.

2. Total industrial disability. No provision of this article shall in any way be read to derogate or impair current or future claimants' existing rights to apply at any time to obtain the status of total industrial disability under current case law.

3. Extreme hardship redetermination. In cases where the loss of wage-earning capacity is greater than seventy-five percent, a claimant may request, within the year prior to the scheduled exhaustion of indemnity benefits under paragraph w of subdivision three of section fifteen of this article, that the board reclassify the claimant to permanent total disability or total industrial disability due to factors reflecting extreme hardship.

4. Annual safety net reporting. The board, in conjunction with the commissioner of labor and the superintendent of financial services, shall track all claimants who have been awarded permanent partial disability status and report annually on December first, beginning in two thousand eight, to the governor, the speaker of the assembly, the majority leader of the senate, and the chairs of the labor, ways and means and finance committees of the assembly and senate:

- (i) The number of said claimants who have:
 - (1) returned to gainful employment;
 - (2) been recategorized as being totally industrially disabled;
 - (3) remain subject to duration limitations set forth in paragraph w of subdivision three of section fifteen of this article; and
 - (4) not returned to work, and whose indemnity payments have expired.
- (ii) The additional steps the commissioner contemplates are necessary to minimize the number of workers who have neither returned to work nor been recategorized from permanent partial disability.

ARTICLE 3
Occupational Diseases

- Section 37. Definitions.
- 38. Disablement treated as accident.
 - 39. Right to compensation.
 - 41. Examining physicians.
 - 42. Date of disablement.
 - 44. Liability of employer.
 - 44-a. Liability of employer; silicosis or other dust diseases.
 - 44-b. Liability of employer; compressed air illness.
 - 45. Notice to employers.
 - 46. Information; penalty.
 - 47. Presumption as to the cause of disease.
 - 48. Diseases which are accidents.

§ 37. Definitions. Whenever used in this article: 1. "Disability" means the state of being disabled from earning full wages at the work at which the employee was last employed.

2. "Disablement" means the act of becoming so disabled as defined in subdivision one.

§ 38. Disablement treated as accident. The disablement of an employee resulting from an occupational disease described in subdivision two of section three shall be treated as the happening of an accident within the meaning of this chapter and the procedure and practice provided in this chapter shall apply to all proceedings under this article, except where specifically otherwise provided herein.

§ 39. Right to compensation. If an employee is disabled or dies and his disability or death is caused by one of the diseases mentioned in subdivision two of section three, and the disease is due to the nature

of the corresponding employment as described in such subdivision in which such employee was engaged and was contracted therein, he or his dependents shall be entitled to compensation for the duration of his disablement or for his death in accordance with the provisions of articles two and three of this chapter, provided, however, that if it shall be determined that an employee so disabled is able to earn wages at another occupation which shall be neither unhealthful nor injurious, and such wages do not equal his full wages prior to the date of his disablement, the compensation payable shall be computed pursuant to the provisions of article two of this chapter.

§ 41. Examining physicians. The chairman shall appoint one or more physicians whose duty it shall be to examine any claimant under this article and to make a report in such form as the chairman may require.

§ 42. Date of disablement. For the purposes of this article the date of disablement shall be such date as the board may determine on the hearing on the claim.

§ 44. Liability of employer. The total compensation due shall be recoverable from the employer who last employed the employee in the employment to the nature of which the disease was due and in which it was contracted. If, however, such disease, except silicosis or other dust disease and compressed air illness or its sequelae, was contracted while such employee was in the employment of a prior employer, the employer who is made liable for the total compensation as provided by this section, may appeal to the board for an apportionment of such compensation among the several employers who since the contraction of such disease shall have employed such employee in the employment to the nature of which the disease was due. Such apportionment shall be proportioned to the time such employee was employed in the service of such employers, and shall be determined only after a hearing, notice of the time and place of which shall have been given to every employer alleged to be liable for any portion of such compensation. If the board

finds that any portion of such compensation is payable by an employer prior to the employer who is made liable for the total compensation as provided by this section, it shall make an award accordingly in favor of the last employer, and such award may be enforced in the same manner as an award for compensation.

§ 44-a. Liability of employer; silicosis or other dust diseases. The employer in whose employment an employee was last exposed to an injurious dust hazard shall be liable for the payments required by this chapter when disability or death of the employee shall be due to silicosis or other dust disease.

§ 44-b. Liability of employer; compressed air illness. With respect to claims filed after July first, nineteen hundred sixty-one, for compensation on account of disability or death resulting from compressed air illness or its sequelae, the employer who is made liable for the total compensation as provided by section forty-four of this article, shall not be entitled to an apportionment of such compensation among prior employers.

§ 45. Notice to employers. The employer to whom notice of death or disability is to be given, or against whom claim is to be made by the employee, shall be the employer who last employed the employee in the employment to the nature of which the disease was due and such notice and claim shall be deemed seasonable as against prior employers. The requirements as to notice as to occupational disease and death resulting therefrom shall be the same as required in section eighteen of this chapter, except that the notice shall be given to the employer within two years after the disablement or after the claimant knew or should have known that the disease is due to the nature of the employment, whichever is the later date.

§ 46. Information; penalty. The employee or his dependents, if so

requested, shall furnish the last employer or the board with such information as to the names and addresses of all his other employers during the said twelve months, as he or they may possess; and if such information is not furnished, or is not sufficient to enable such last employer to take proceedings against a prior employer under section forty-four, unless it be established that the disease actually was contracted while the employee was in his employment, such last employer shall not be liable to pay compensation, or, if such information is not furnished or is not sufficient to enable such last employer to take proceedings against other employers under section forty-four, such last employer shall be liable only for such part of the total compensation as under the particular circumstances the board may deem just; but a false statement in the information furnished as aforesaid shall not impair the workman's rights unless the last employer is prejudiced thereby.

§ 47. Presumption as to the cause of disease. If the employee, at or immediately before the date of disablement, was employed in any process mentioned in the second column of the schedule of diseases in subdivision two of section three of this chapter, and his or her disease is the disease in the first column of such schedule set opposite the description of the process, the disease presumptively shall be deemed to have been due to the nature of that employment. Any exposure to the hazards of compressed air after July first, nineteen hundred forty-six shall be presumed, in the absence of substantial evidence to the contrary, to be injurious exposure. Any exposure to the hazards of harmful dust in this state for a period of sixty days after September first, nineteen hundred thirty-five, shall be presumed, in the absence of substantial evidence to the contrary, to be an injurious exposure. With respect to any state or local correction officer as defined in subdivision twenty-five of section 2.10 of the criminal procedure law, safety and security officer employed by the office of mental health, security hospital treatment assistant employed by the office of mental health, any uniformed court officer or court clerk of the unified court system having the powers of peace officer, the court reporter or the court interpreter, an exposure to the blood or bodily fluid of an individual, incarcerated, confined or otherwise, during the course of

his or her employment that is reported in writing to such correction officer's, safety and security officer's, security hospital treatment assistant's, uniformed court officer's, court clerk's, court reporter's or court interpreter's employer within twenty-four hours of such exposure, shall be presumed, in the absence of substantial evidence to the contrary, to be an injurious exposure if, subsequent to such exposure, such correction officer, safety and security officer, security hospital treatment assistant, uniformed court officer, court clerk, court reporter or court interpreter is diagnosed with a blood-borne disease, including, but not limited to hepatitis C.

§ 48. Diseases which are accidents. Nothing in this article shall affect the rights of an employee to recover compensation in respect to a disease to which this article does not apply if the disease is an accidental personal injury within the meaning of subdivision seven of section two of this chapter.

ARTICLE 3-A

OCCUPATIONAL LOSS OF HEARING

Section 49-aa. Declaration of purpose.

49-bb. Waiting period; date of disablement; payment of compensation.

49-cc. Right to compensation.

49-dd. Posthumous schedule awards.

49-ee. Liability of employer; preplacement examinations and notice to prior employers; apportionment of liability between employers.

49-ff. Minimum exposure required.

49-gg. Determination of damage risk criteria and standards for the measurement of occupational loss of hearing.

49-hh. Standards.

§ 49-aa. Declaration of purpose. The compensability of claims for loss of hearing resulting from exposure to industrial noise has created a

problem in this state which is a matter of grave concern to the legislature. The legislature, therefore, finds and declares that the public interest can best be served by providing that compensation for occupational loss of hearing shall be paid only as provided in this article and subject to the conditions and limitations hereinafter set forth.

§ 49-bb. Waiting period; date of disablement; payment of compensation.

Notwithstanding any other inconsistent provisions of this chapter, compensation for occupational loss of hearing shall become due and payable at the employee's choice three months after (1) removal from exposure to harmful noise in employment (removal from exposure to harmful noise in employment for the three month waiting period may be achieved by use of effective ear protection devices provided at the expense of the employer) or (2) separation from work for the last employer in whose employment the employee was at anytime during such employment exposed to harmful noise. The last day of such period of removal from such exposure or of separation from such work shall be the date of disablement. Such disablement shall be treated as the happening of an accident within the meaning of this chapter and the procedure and practice provided in the chapter shall apply to all proceedings as set forth in this article except where specifically otherwise provided herein. A claim for loss of hearing under this article shall not be barred by the failure of the employee or the employee's dependents to file a claim within the two year period prescribed by section twenty-eight of this chapter, provided such claim shall be filed after such two year period within ninety days after knowledge that the loss of hearing is or was due to the nature of the employment. An employee whose disablement and knowledge of disablement occurred prior to October first, nineteen hundred eighty shall have six months from such date to file a claim. The former average wage on which the compensation rate payable shall be based shall be determined, as provided in sections fourteen and fourteen-a of this chapter, by the wages earned by the employee during the year prior to the employee's last day of work in the last employment in which the employee was exposed to harmful noise.

§ 49-cc. Right to compensation. If an employee becomes disabled from occupational loss of hearing he shall be entitled to compensation in accordance with the provisions of subdivision three of section fifteen of this chapter. No employee shall in the aggregate receive greater compensation from any or all employers than that provided in subdivision three of section fifteen for total loss of hearing. Notwithstanding the provisions of paragraph c of subdivision four of section twenty-five of this chapter awards for occupational loss of hearing shall be paid in addition to, and shall not be deducted from, benefits payable to an employee under any welfare plan, pension plan, agreement or trust to which such employee is a party or of which he is a beneficiary.

§ 49-dd. Posthumous schedule awards. If an employee shall die before he shall have been removed from exposure to harmful noise for a period of at least three consecutive months as hereinbefore provided, an award may be made payable in accordance with the provisions of subdivision four of section fifteen of this chapter and such award shall not be barred by the fact that the deceased shall not have been removed from harmful noise for a period of at least three consecutive months. In such case the extent and degree of the employee's occupational loss of hearing, and the award, if any, to be paid for such loss under subdivision three of section fifteen of this chapter, shall be determined upon the submission of proper proof of the occupational loss of hearing sustained by the deceased employee. The date of disablement shall be the date of the employee's death.

§ 49-ee. Liability of employer; preplacement examinations and notice to prior employers; apportionment of liability between employers. 1. The last employer in whose employment the employee was exposed to harmful noise shall, except as herein provided, be liable for the payment of the total compensation due the employee for his loss of hearing caused by all of his employments in which he was exposed to harmful noise and the employee shall not be required to give notice to, or to file any claim against, any of his prior employers in whose employment he was exposed

to harmful noise.

2. If an employer makes a pre-placement examination which shows that the employee has a pre-existing loss of hearing which may be due to a prior employment or employments in which he was exposed to harmful noise, such employer shall promptly, and in any event within ninety days after such preplacement examination, give notice to the prior employer or employers in writing of the result of such pre-placement examination. Such notice shall advise the prior employer or employers that they may be required, if a claim is filed and an award to the employee is subsequently made, to reimburse the succeeding employer for that portion of the award which was due to the loss caused by their prior employment, provided, however, that no liability shall attach to any prior employer in whose employment the last preceding harmful exposure shall have occurred more than three years prior to the date of mailing such notice to the prior employer or employers, and provided further that in no event shall any employer, including the last employer, be liable for the payment of any claim that would otherwise, and regardless of the date of disablement fixed herein, be barred by any of the limitations contained in sections twenty-eight and forty of this chapter. A copy of this notice shall also be sent to the employee. Upon receipt of such notice the prior employer or employers shall have the right to a competent examination as to the nature and extent of the employee's loss of hearing, and such examination shall not be invalid because the employee has not been removed from harmful exposure for a period of at least three consecutive months.

3. All issues as to the nature and extent of the employee's ultimate loss of hearing due to his occupation, the total amount of compensation, if any, due the employee, the liability for contribution, if any, of the prior employer or employers who were given notice by the last employer as hereinbefore provided, the amount of the contribution, if any, to be paid by such prior employer or employers, and the liability, if any, of the last employer and the amount of compensation, if any, to be paid by such last employer, shall be determined only after the employee shall have been removed from harmful exposure for a period of at least three consecutive months, whether working for one or more employers, and after

his disablement as set forth in section forty-nine-bb of this article. If, upon the filing of any claim, the last employer decides to controvert the right to compensation upon any ground he shall file a notice of controversy with the chairman as provided in section twenty-five of this chapter. If, upon the filing of any claim, any prior employer who was given notice as hereinbefore provided decides to controvert the liability for contribution he shall promptly inform the last employer and the workers' compensation board in writing so that such issue may be determined together with, and at the same time as, the employee's claim for compensation against the last employer. If the last employer in whose employment there was an exposure to harmful noise does not give the employee a replacement examination, or does not give notice as provided herein to the prior employer or employers, then such last employer, except as herein provided, shall be liable for the employee's entire occupational loss of hearing without the right to reimbursement from the prior employer or employers.

§ 49-ff. Minimum exposure required. No employee or his dependents, shall, in the absence of substantial evidence to the contrary, be entitled to an award for occupational loss of hearing unless the employee shall have been employed in an employment in which he was exposed to harmful noise for a period of at least ninety days in this state.

§ 49-gg. Determination of damage risk criteria and standards for the measurement of occupational loss of hearing. The chairman of the workers' compensation board is authorized and empowered to, and shall, appoint and consult with a committee or committees of not less than three nor more than nine outstanding expert consultants familiar with the various aspects of the problem of industrial noise and occupational loss of hearing for the purpose of developing their recommendations as to the most reliable and acceptable damage risk criteria and standards for the measurement and determination of occupational loss of hearing. Such recommendations shall include but shall not be limited to the subjects of (a) what industrial noise levels may cause occupational loss

of hearing, (b) frequencies to be used in measuring industrial hearing loss, (c) the point below which there is no hearing disability and the point above which the inability to hear shall be deemed total, (d) the use of a monaural or binaural method of computing the percentage loss of hearing, (e) proper deductions for presbycusis and other non-industrial causes of deafness and being hard of hearing, and (f) the number of examinations needed to evaluate industrial hearing loss and the fairest method of determining the loss from the results of successive examinations. The committee or committees of expert consultants so appointed by the chairman shall meet and confer with representatives of the workers' compensation board and with representatives of employers and employees, and shall thereafter report their findings and recommendations to the workers' compensation board. The workers' compensation board, after giving due consideration to such findings and recommendations, is authorized to adopt reasonable rules, not inconsistent with the provisions of this chapter including without limitation section forty-nine-hh of this article, and the labor law, prescribing damage risk criteria and standards for the measurement and determination of occupational loss of hearing. Pending the formulation and adoption by the workers' compensation board of such rules, claims for occupational loss of hearing shall be determined upon the basis of the tentative standards and criteria contained in the report, dated December, nineteen hundred fifty-three of the committee appointed by the workers' compensation board and entitled "Report of the Committee of Consultants on Occupational Loss of Hearing."

§ 49-hh. Standards. Any standards for the measurement and determination of occupational hearing loss adopted by the board pursuant to section forty-nine-gg of this article shall conform with the standards recommended by the American Academy of Otolaryngology accepted by the American Medical Association.

ARTICLE 4

SECURITY FOR COMPENSATION

Section 50. Security for payment of compensation.

- 50-a. Self-insurer offset fund.
- 50-b. Task force on group self-insurance.
- 50-c. Self-insured bonds.
- 51. Posting of notice regarding compensation.
- 52. Effect of failure to secure compensation.
- 53. Release from liability.
- 54. The insurance contract.
- 54-a. Security where coverage is in issue.
- 54-b. Enforcement on failure to pay award or judgment.
- 55. Acceptance of premium by carrier an estoppel.
- 56. Subcontractors.
- 57. Restriction on issue of permits and the entering into contracts unless compensation is secured.
- 58. Payment of compensation to persons providing housekeeping or nursing services.

§ 50. Security for payment of compensation. An employer shall secure compensation to his employees in one or more of the following ways:

1. By insuring and keeping insured the payment of such compensation in the state fund, or
2. By insuring and keeping insured the payment of such compensation with any stock corporation, mutual corporation or reciprocal insurer authorized to transact the business of workers' compensation insurance in this state through a policy issued under the law of this state.
3. By furnishing satisfactory proof to the chair of his financial ability to pay such compensation for himself, or to pay such compensation on behalf of a group of employers in accordance with subdivision ten of this section, in which case the chair shall require the deposit with the chair of such securities as the chair may deem necessary of the kind prescribed in subdivisions one, two, three, four and five, and subparagraph (a) of paragraph three of subdivision seven of section two hundred thirty-five of the banking law, or the deposit of cash, or the filing of irrevocable letters of credit issued by a

qualified banking institution as defined by rules promulgated by the chair or the filing of a bond of a surety company authorized to transact business in this state, in an amount to be determined by the chair, or the posting and filing as aforesaid of a combination of such securities, cash, irrevocable letters of credit and surety bond in an amount to be determined by the chair, to secure his liability to pay the compensation provided in this chapter. Any such surety bond must be approved as to form by the chair. If an employer or group of employers posts and files a combination of securities, cash, irrevocable letters of credit and surety bond as aforesaid, and if it becomes necessary to use the same to pay the compensation provided in this chapter, the chair shall first use such securities or cash or irrevocable letters of credit and, when the full amount thereof has been exhausted, he shall then require the surety to pay forthwith to the chair all or any part of the penal sum of the bond for that purpose. The chair may also require an agreement on the part of the employer or group of employers to pay any awards commuted under section twenty-seven of this chapter, into the special fund of the state fund, as a condition of his being allowed to remain uninsured pursuant to this section. The chair shall have the authority to deny the application of an employer or group of employers to pay such compensation for himself or to revoke his consent furnished, under this section at any time, for good cause shown. The employer or group of employers qualifying under this subdivision shall be known as a self-insurer.

If for any reason the status of an employer or group of employers under this subdivision is terminated, the securities or the surety bond, or the securities, cash, or irrevocable letters of credit and surety bond, on deposit referred to herein shall remain in the custody of the chair for such time as the chair may deem proper and warranted under the circumstances. In lieu thereof, and at the discretion of the chair, the employer, his or her heirs or assigns or others carrying on or liquidating such business, may execute an assumption of workers' compensation liability insurance policy as described herein. Separately, the chair may execute an assumption of workers' compensation liability insurance policy as described herein on behalf of the special funds created under the provisions of subdivisions eight and nine of section

fifteen and section twenty-five-a of this chapter, and notwithstanding any provision to the contrary the chair may execute an assumption of workers' compensation liability insurance policy on behalf of the uninsured employers' fund. An assumption of workers' compensation liability policy referred to herein shall secure such further and future contingent liability as may directly or indirectly arise from prior injuries to workers and be incurred by reason of any change in condition of such workers warranting the board making subsequent awards for payment of additional compensation. Such policy shall be in a form approved by the superintendent of financial services and issued by the state fund or any insurance company licensed to issue this class of insurance in this state or, upon application by the chair, any other insurance company deemed by the superintendent of financial services to be an acceptable issuer. In the event that such policy is issued by an insurance company other than the state fund, then said policy shall be deemed of the kind specified in paragraph fifteen of subsection (a) of section one thousand one hundred thirteen of the insurance law and covered by the workers' compensation security fund as created and governed by article six-A of this chapter. It shall only be issued for a single complete premium payment in advance and in an amount deemed acceptable by the chair and the superintendent of financial services. In lieu of the applicable premium charge ordinarily required to be imposed by a carrier, said premium shall include a surcharge in an amount to be determined by the chair to: (i) satisfy all assessment liability due and owing to the board and/or the chair under this chapter; and (ii) satisfy all future assessment liability under this section, and which surcharge shall be adjusted from time to time to reflect any changes to the assessment of group self-insured employers, including any changes enacted by the chapter of the laws of two thousand eleven amending sections fifteen and one hundred fifty-one of this chapter. Said surcharge shall be payable to the board simultaneous to the execution of the assumption of workers' compensation liability insurance policy. However, the payment of said surcharge does not relieve the carrier from any other liability, including liability owed to the superintendent of financial services pursuant to article six-A of this chapter. When issued such policy shall be non-cancellable without recourse for any cause during the continuance of the liability secured and so covered.

3-a. Group self-insurance. (1) Definitions. As used in this chapter the term "employers" shall include: (a) employers with related activity in a given industry which shall include municipal corporations as that term is defined in sections two and six-n of the general municipal law, employing persons who perform work in connection with the given industry, (b) an incorporated or unincorporated association or associations consisting exclusively of such employers provided they employ persons who perform such related work in the given industry, and (c) a combination of employers as described in subparagraph (a) hereof and an association or associations of employers as described in subparagraph (b) hereof.

(2) (a) Any group consisting exclusively of such employers may adopt a plan for self-insurance, as a group, for the payment of compensation under this chapter to their employees, except that no new groups may adopt such a plan, and no group not composed solely of public entities set forth in subparagraph (a-1) of this paragraph may insure any liabilities for any employers on and after January first, two thousand twelve, except as provided for in paragraph ten of this subdivision. Under such plan the group shall assume the liability of all the employers within the group and pay all compensation for which the said employers are liable under this chapter, except that in the case of public group self-insurers as defined in subparagraph (a-1) of this paragraph no proof of financial ability or deposit of securities or cash need be made in compliance with this subdivision. The group qualifying under this subdivision shall be known as a group self-insurer and the employers participating therein and covered thereby shall be known as members.

(a-1) Any group consisting exclusively of public corporations as defined in section sixty-six of the general construction law, county self-insurance plans established under article five of this chapter, boards of cooperative educational services and consortia established by boards of cooperative educational services, and any other entity defined as a public entity under paragraph fifty-one of subsection (a) of section one hundred seven of the insurance law except the state of New York, may adopt a plan for self-insurance, as a group, for the payment of compensation under this chapter to their employees. Such a group

shall be known as a "public group self-insurer". A county self-insurance plan established under article five of this chapter is not itself a public group self-insurer and is not itself subject to the requirements of this section, but may join a public group self-insurer and, if it does so, shall assume all of the obligations of its participants to the public group self-insurer. A public group self-insurer shall comply with all of the requirements of this subdivision, including any obligations imposed upon a group administrator, but is not required to secure the services of a group administrator or obtain a license authorizing it to act as a group self-insurer administrator, to furnish satisfactory proof to the chair of its financial ability to pay compensation from its revenues, their source and assurance of continuance, to pay a license fee, or to deposit securities, post a bond or provide other security, except as specifically provided in this subdivision.

(b) Where such plan is adopted the group self-insurer shall furnish satisfactory proof to the chair of its financial ability to pay such compensation for the members in the industry covered by it, its revenues, their source and assurance of continuance. The chair shall require the deposit with the chair of such securities as may be deemed necessary of the kind prescribed in subdivisions one, two, three, four and five, and subparagraph (a) of paragraph three of subdivision seven of section two hundred thirty-five of the banking law or the deposit of cash or the filing of irrevocable letters of credit issued by a qualified banking institution as defined by rules promulgated by the chair or the filing of a bond of a surety company authorized to transact business in this state, in an amount to be determined to secure its liability to pay the compensation of each employer as above provided. Such surety bond must be approved as to form by the chair. The chair shall require each group self-insurer to provide regular reports no less than annually, which shall include but not be limited to audited financial statements, actuarial opinions and payroll information containing proof that it is fully funded. Such reports shall also include a contribution year analysis detailing contributions and expenses associated with each specific contribution year. For purposes of this paragraph, proof that a group self-insurer is fully funded shall at a minimum include proof of unrestricted cash and investments permitted by regulation of the chair of at least one hundred percent of

the total liabilities, including the estimate presented in the actuarial opinion submitted by the group self-insurer in accordance with this chapter. The chair by regulation, may set further financial standards for group self-insurers. Any group self-insurer that fails to show that it is fully funded shall be deemed underfunded, and must submit a plan for achieving fully funded status which may include a deficit assessment on members of such group self-insurer which shall be subject to approval or modification by the chair. The amount of such under-funding, as measured by the actuarial opinion or assumption of loss policy quotation submitted by the group, shall be considered unfunded claims as set forth in subdivision two of section sixteen hundred eighty-q of the public authorities law as added by section 35 of Part GG of chapter 57 of the laws of 2013.

(c) The chair shall evaluate, no less than once every three years, a group self-insurer's compliance with the financial and regulatory requirements for self-insurance. The chair may engage any qualified person or organization to assist with such evaluation and any costs incurred by the chair shall be borne by the group self-insurer under examination. Failure to submit to such independent review or to pay such costs, upon demand of the chair, shall be sufficient grounds to terminate coverage of the group self-insurer.

(d) The chair may require reports to be prepared by an auditor, actuary or other consultant, selected by the board or, at the chair's discretion, by the group self-insurer from a list which shall be pre-approved by the chair to determine whether the group self-insurer meets the financial criteria for self-insurance. All actuaries so selected shall be fellows or associates of the casualty actuarial society.

(e) The chair may also require that any and all agreements, contracts and other pertinent documents relating to the organization of the members in the group self-insurer shall be filed with the chair.

(f) The chair shall have the authority to revoke consent furnished under this section at any time for good cause shown.

(g) Prior to the requested effective date of the participating agreement, a group self-insurer shall notify the chair on a prescribed form of a new group self-insurer member and file (1) a member application and (2) a copy of the properly executed prescribed

participation agreement wherein the member acknowledges their joint and several obligation for their period of membership. The board shall, on a form promulgated by the chair, provide notice of the member's rights and responsibilities as a group self-insurer member, including the member's assumption of joint and several liability, and require the member to return a signed copy to the chair as a condition of membership.

(h) Any member terminating membership in a group self-insurer after less than four years in such group self-insurer, and any member in a group self-insurer that has defaulted, shall be precluded from obtaining prospective coverage from any group self-insurer for a period of at least three years from the effective date of termination.

(3) A member's participation in a group self-insurer shall not relieve it of its liability for compensation prescribed by this chapter except by the payment thereof by the group self-insurer or by itself. Each member shall be responsible, jointly and severally, for all liabilities of the group self-insurer provided for by this chapter occurring during its respective period of membership, and such liability shall attach to any recipient of a conveyance of assets made in violation of subdivision (a) of section two hundred seventy-four of the debtor and creditor law. As between the employee and the group self-insurer, notice to or knowledge of the occurrence of the injury on the part of the member shall be deemed notice or knowledge, as the case may be, on the part of the group self-insurer; jurisdiction of the member shall, for the purpose of this chapter, be jurisdiction of the group self-insurer and such group self-insurer shall in all things be bound by and subject to the orders, findings, decisions or awards rendered against the participating member for the payment of compensation under the provisions of this chapter. The insolvency or bankruptcy of a participating member shall not relieve the group self-insurer from the payment of compensation for injuries or death sustained by an employee during the time the member was a participant in such group self-insurer. Notice of termination of a participating member shall not be effective until at least ten days after notice of such termination, on a prescribed form, has been either filed in the office of the chair or sent by certified or registered letter, return receipt requested, and also served in like manner upon the member. In the event such termination is due to a member's failure to pay required contributions,

such member's termination shall not be rescinded more than three times.

(3-a) If the chair determines that a public group self-insurer has become insolvent, the chair shall pay the compensation and benefits that would otherwise have been required to be paid by the members of the public group self-insurer from administration expenses as provided in section one hundred fifty-one of this chapter upon audit and warrant of the comptroller and upon vouchers approved by the chair, which payments shall be considered expenses of administration. For purposes of this paragraph, a public group self-insurer is insolvent when the value of the public group self-insurer's assets is less than the total costs of the workers' compensation liabilities that it is anticipated the public group self-insurer will be required to pay within the succeeding six months or that the compensation and benefits provided by this chapter may be unpaid by reason of the default of a public group self-insurer. Upon the insolvency of a public group self-insurer, each member shall assume responsibility for the continued administration and payment of all claims against it, provided however that the public group self-insurer shall, within thirty days, turn its assets over to the chair and the chair shall assume the administration and cost of the claims of the public group self-insurer for a period not to exceed one year. During the period of chair administration of claims, each member of the public group self-insurer shall secure the services of a licensed claims administrator and the chair shall segregate the claims obligations of the insolvent public group self-insurer by member, and, if necessary segregate an adequate claim reserve for any claims of defunct or insolvent members of the insolvent public group self-insurer. Not later than one year from the assumption of the administration of the claims of the public group self-insurer, each member of the insolvent public group self-insurer shall resume administration of its own claims and the chair shall return to each member whatever pro rata share of the public group self-insurer's assets remain after the period of chair administration. The chair shall be reimbursed for any payment made under this paragraph by the public group self-insurer itself and, if the public group self-insurer is unable to reimburse the chair fully for payments made by the chair, then by the member of the public group self-insurer against which the claim is asserted. Further, nothing herein shall preclude the chair from directing that an underfunded

public group self-insurer levy an assessment on its members as part of a plan for achieving fully funded status which may include a deficit assessment on members of such group self-insurer which shall be subject to approval or modification by the chair. No member shall be liable for any obligations of the public group self-insurer or any obligations of any member of the public group self-insurer. The chair shall require any member that has pending claims but has failed to secure the services of a licensed claims administrator to resume administration of the claims to pay to the chair any expenses the chair incurs in administering and paying those claims.

(4) Each group self-insurer, in its application for self-insurance, shall set forth the names and addresses of each of its officers, directors, trustees, third party administrator and group administrator. Notice of any change in the officers, directors, trustees, third party administrator or group administrator shall be given to the chair within ten days thereof. No officer, director, trustee, employee, third party administrator or group administrator of the group self-insurer may represent or participate directly or indirectly on behalf of an injured worker or his dependents in any workers' compensation proceeding. All employees of members participating in group self-insurance shall be and are deemed to be included under the group self-insurance plan.

(5) (a) Each group self-insurer shall secure the services of a group administrator to be responsible for assisting the group self-insurer in complying with the provisions of this section and the rules and regulations promulgated hereunder, and for coordinating services including but not limited to claims processing, loss control, legal, accounting and actuarial services. No person, firm or corporation shall coordinate such services or otherwise carry out the tasks of a group administrator as provided in this subdivision or in the regulations issued pursuant thereto on behalf of a group self-insurer unless such person shall have obtained from the chair a license authorizing it to act as a group self-insurer administrator, which license may be revoked for good cause. The chair shall promulgate regulations setting forth any additional qualifications for such license, governing the conduct and compensation of group self-insurer administrators, and setting a license fee in an amount not less than five thousand dollars per year for such license for each group self-insurer the administrator administers. Each

administrator shall post a bond in the amount of five hundred thousand dollars for each group self-insurer administered or such other amount as may be set by the chair based on the cost and availability of such bond, from which the chair may recover any recoveries or penalties against the administrator under this section. Nothing in this section shall relieve the trustees of a group self-insurer of any fiduciary obligation they hold to the other members of such group self-insurer.

(b) A group administrator that knowingly and with intent to mislead makes a material misrepresentation of a material fact in soliciting members in a group self-insurer shall be guilty of a class E felony. Additionally, the chair may impose a civil penalty of up to ten thousand dollars for each such violation.

(c) A group administrator, actuary or accountant that knowingly makes a material misrepresentation of a material fact concerning the financial status of any group self-insurer to the chair or board, or in its annual report to members of the group self-insurer, shall be guilty of a class E felony. The chair may impose a civil penalty of up to twenty thousand dollars for each such violation. A second and subsequent violation of this paragraph shall be a class D felony. The chair may recover in a civil action any damages resulting from such misrepresentations, including the value of any amount assessed against any entities that are not members of the defaulted self-insurer that resulted from any such misrepresentation.

(d) (1) A group administrator shall provide an annual written report to all members of the group self-insurer and to the board which shall include:

- a. the members of the group self-insurer;
- b. the group administrator and trustees;
- c. the results of the most recent financial audit;

d. the percentage of total liabilities held by the self-insurer in unrestricted cash and investments permitted by regulation as determined in accordance with subparagraph (b) of paragraph two of this subdivision;

e. the number and amount of rate deviations provided to members during the prior year and whether the recipient of any such deviation was a trustee; and

f. such other information as the chair may direct.

The group administrator shall provide a copy of the most recent financial audit to any group self-insurer member upon written request.

(2) The chair shall make available to the public, on its website and in writing upon request:

a. the identity of all group self-insurers that have provided workers' compensation under this subdivision in the prior three years;

b. the group administrator of each such group self-insurer;

c. the financial condition of all group self-insurers as determined by the board in the last financial audit and the board's regulatory definition of assets; and

d. such other information as the chair may direct, but which shall not include any confidential or proprietary information.

The board may direct the disclosure of any non-proprietary information regarding any group self-insurer, including whether a member is a member thereof, to any claimant upon a showing of need.

(e) (1) The chair may condition the issuance or continuation of a license under this subdivision upon the presentation by a group administrator of such information as the board requests, at any time chosen by the chair or at regular intervals, including but not limited to the annual financial statements of the group administrator detailing the compensation the administrator and its substantially owned affiliated entities, as defined in section two of this chapter, have received or shall receive from the group self-insurer or its members, and the method by which such compensation has been or will be calculated. The chair may issue regulations governing the method of

calculating compensation which a group administrator may receive, including restrictions on the process by which such compensation may be set.

(2) The chair may revoke the license of any group administrator that receives compensation in violation of such regulations, and may impose a penalty of up to two times any compensation so received.

(f) (1) No officer or director of, or person holding five percent or more ownership interest in, a group administrator shall within two years of serving in such capacity or holding such ownership interest, serve in any capacity or hold any ownership interest in a workers' compensation carrier that provides or solicits the provision of compensation under this title for any employer that is or was a member of such group self-insurer. No officer or director of, or person holding five percent or more ownership interest in a group administrator shall serve in such capacity or hold such ownership interest in a carrier that provides or solicits excess coverage for any group self-insurer administered by such administrator.

(2) The chair may impose a civil penalty of up to ten thousand dollars for each violation of this paragraph.

(g) Each group self-insurer shall submit to the chair copies of any agreement or contract with an entity that serves or will serve as its group administrator, accountant, actuary or third party administrator at least thirty days prior to becoming effective, and the effectiveness of such contract shall be conditioned on the absence of an objection by the board during the thirty day period. Contracts that shall be subject to such objection shall include any contract in violation of regulation; and any contract that does not provide reasonable cancellation or renewal terms, including any contract that requires an affirmative act by the trustees of the group self-insurer to prevent automatic renewal, or that does not permit cancellation for negligence, violation of law, or other good cause.

(6) (a) Group self-insurers must file with the board, as soon as practicable but no later than sixty days prior to the start of the fund year a rating plan which is supported by an actuarial rate study prepared by an independent, qualified actuary that is a fellow or associate of the casualty actuarial society, that clearly identifies the actuary's indicated rate assumptions therein. The rating plan must apply

consistently to all members, and must provide for a common renewal date for all group self-insurer members. The rates filed can be adjusted based on an experience modification calculated for every member in accordance with the experience rating plan promulgated by the workers' compensation rating board. Experience modification formulas must be applied identically to all members. Other rate deviations may be permissible provided a plan has been approved by the board. Such deviations shall not be in excess of ten percent of the actuary's indicated rate unless otherwise approved by the board for a fully funded group self-insurer, and shall in no event result in amounts less than the actuary's overall indicated rate. The chair by regulation may set further rate plan and actuarial reporting standards.

(b) If the chair has cause to believe that a group self-insurer's contribution rates including experience modifications do not conform to the requirements of this part then he or she may require the submission of a report identifying the contributions paid by each of the members for the preceding year, the projected contributions for each group self-insurer member for the current fiscal year, and the manner in which such contributions were calculated. If, after review by the chair, the group self-insurer's contribution rates are deemed to be detrimental to its solvency, the chair may mandate that the group self-insurer modify such rates as the chair directs. The chair may impose a penalty of up to five thousand dollars for each violation of this subparagraph. A group self-insurer's failure to adhere to the rating structure determined by the board shall constitute good cause for termination.

(7) (a) If for any reason, the status of a group self-insurer under this subdivision is terminated, including by operation of law on and after January first, two thousand twelve, the securities or cash or the surety bond on deposit referred to herein shall remain in the custody of the chair for such time as the chair may deem proper and warranted. In lieu thereof, and at the discretion of the chair, the group self-insurer, its heirs or assigns or others carrying on or liquidating such group self-insurer, including the chair on the group self-insurer's behalf, may execute an assumption of workers' compensation liability insurance policy securing such further and future contingent liability as may arise from prior injuries to workers and be incurred by reason of any change in the condition of such workers warranting the board making

subsequent awards for payment of additional compensation. Such policy shall be in a form approved by the superintendent of financial services and issued by the state fund or any insurance company licensed to issue this class of insurance in this state. In the event that such policy is issued by an insurance company other than the state fund, then said policy shall be deemed of the kind specified in paragraph fifteen of subsection (a) of section one thousand one hundred thirteen of the insurance law and covered by the workers' compensation security fund as created and governed by article six-A of this chapter. It shall only be issued for a single complete premium payment in advance by the group self-insurer and in an amount deemed acceptable by the chair and the superintendent of financial services. In lieu of the applicable premium charge ordinarily required to be imposed by a carrier, said premium shall include a surcharge in an amount to be determined by the chair to: (i) satisfy all assessment liability due and owing to the board and/or the chair under this chapter; and (ii) satisfy all future assessment liability under this section, and which surcharge shall be adjusted from time to time to reflect any changes to the assessment of group self-insured employers, including any changes enacted by the chapter of the laws of two thousand eleven amending sections fifteen and one hundred fifty-one of this chapter. Said surcharge shall be payable to the board simultaneous to the execution of the assumption of workers' compensation liability insurance policy. However, the payment of said surcharge does not relieve the carrier from any other liability, including liability owed to the superintendent of financial services pursuant to article six-A of this chapter. When issued such policy shall be noncancellable without recourse for any cause during the continuance of the liability secured and so covered.

(b) The chair shall levy an interim assessment on the members of a defaulted group self-insurer within one hundred twenty days of such default or of the effective date of the chapter of the laws of two thousand eight which amended this subdivision, whichever is later, and against the members of any other terminated group self-insurer when necessary, for such an amount as he or she determines to be necessary to discharge all liabilities of the group self-insurer, including the reasonable cost of liquidation such as claims administration costs, actuarial and accounting services, and the value of future assessments

on members of such group self-insurer as they are known at the time of the assessment. The chair may impose subsequent and further deficit assessments, or return funds to members, to adjust the moneys collected to reflect the time of participation, and percent of group self-insurer liabilities for such time. The time limitations included in the first sentence of this subparagraph do not apply to the imposition of any subsequent and further deficit assessments that exceed the interim assessment made by the chair against members of a defaulted group insurer or members of any other terminated group self-insurer.

Notwithstanding any such action by the chair, each member of the group self-insurer shall remain jointly and severally responsible for all liabilities provided by this chapter including but not limited to outstanding and estimated future liabilities and assessments. Further, separate and apart from, and in addition to a member's joint and several liability and notwithstanding any payments made by any other members of the group self-insurer pursuant to this subparagraph, in the event that a member neglects or fails to pay an assessment levied pursuant to this subparagraph, the member shall be deemed in default in the payment of compensation. Such defaulting member is subject to the enforcement provisions of section twenty-six of this chapter for the payment of all compensation relative to awards due and owing on claims filed by the employees of such member that have neither been paid by the member or the group self-insurer. Nothing in this paragraph shall prevent the chair from offering payment plans or settling claims against members of any group self-insurer as necessary to facilitate collection.

(c) Upon the assumption of the assets and liabilities of a group self-insurer by the chair or his or her designee pursuant to regulation of the chair, all records, documents and files of whatever nature, pertaining to the group self-insurer, be they in the possession of the group self-insurer or a third party, and all remaining assets of the group self-insurer, shall become the property of the chair. All custodians of such records and/or funds shall turn over to the chair or his designee all such original records upon demand.

(8) All the provisions of this chapter relating to self-insurance and the rules and regulations promulgated thereunder shall be deemed applicable to group self-insurance. The chair shall implement the provisions of this subdivision by promulgating rules and regulations but

no such rules or regulations shall be necessary for any provision of this subdivision to be effective. The chair may impose a civil penalty of up to ten thousand dollars for each violation against any group self-insurer that violates any provision of this subdivision or of any regulation issued pursuant thereto for which a civil penalty is not specified.

(10) (a) A non-municipal group of employers may make application to the chair to qualify jointly as a self-insurer, provided:

(1) The members of the group secure the services of an administrator, who shall carry out the responsibilities of such an administrator as set forth in subdivision five of this section, and who shall be subject to the restrictions and penalties applicable to an administrator under this section;

(2) The members of the group, through the administrator, (a) jointly deposit sufficient securities in accordance with subdivision three of this section or in a trust governed in accordance with Part 126 of title 11 of the New York code of rules and regulations to secure the liability of the members of the group to pay for all existing claims obligations, provided such deposit shall be made by November first, two thousand eleven, (b) jointly deposit sufficient securities in accordance with subdivision three of this section or in a trust governed in accordance with Part 126 of title 11 of the New York code of rules and regulations to secure all anticipated present and future claims of the members of the group, by November first, two thousand fourteen, provided annual deposits are made in accordance with a schedule set by the chair on or before November first of each year, and provided that the deposit shall be deemed an asset of the group for the purpose of determining its funding status, and (c) by November first, two thousand eleven and thereafter, shall maintain funds sufficient for all other liabilities besides claims in a trust governed in accordance with Part 126 of title 11 of the New York code of rules and regulations, of which the board shall be the sole beneficiary, and the terms of the trust agreement, and the trustee, shall be approved by the chair in his or her sole discretion, and provided that any group self-insurer that does not hold such funds in a trust that meets the terms of this paragraph shall post them with the board;

(3) The group has been authorized by the chair to self-insure in

accordance with this subdivision prior to the effective date of this paragraph;

(4) The group's members or participant employers either (a) are parties to collective bargaining agreements with the same unions; or (b) fall within a limited number of payroll classifications, as set by the chair, after giving due consideration to the risks associated with any group of employers self-insuring. However, employers that were active prior to the effective date of this section and whose classification codes do not meet the limitations on payroll classification codes or are not parties to collective bargaining agreements with the same unions will be permitted to remain in the trust provided (a) they continue to meet the other terms and conditions of the trust; and (b) any new members shall be subject to the limitations on the number of payroll classifications; and provided further, the chair shall revoke such permission in the event the trust violates paragraph six of this subdivision relating to filing of a rating plan;

(5) The group was fully funded for three out of the previous five years and at least ninety percent funded for one other year out of the previous five years, as determined by the chair following a financial review, and the group self-insurer has sufficient funds to meet its liabilities;

(6) The group has a safety program acceptable to the chair; and

(7) The group is subject to such other limitations and requirements of this subdivision unless waived by the chair and to regulations of the chair.

(b) The members of any such group shall enter into an agreement among themselves and with the group's administrator which shall, at a minimum:

(1) Indicate that each of the members of the group is jointly and severally liable for any liabilities of the group; and

(2) Provide for the collection of additional funds from group members in the event the deposit with the board is insufficient to meet the liabilities of the group.

(11) Former group self-insurer. Any group self-insurer that has ceased to self-insure, or has ceased to self-insure any new liabilities after January first, two thousand twelve in accordance with paragraph two of this subdivision, shall remain subject to all the provisions of this subdivision and the regulations issued pursuant thereto and any

assessments provided for by this section until such time as the group self-insurer no longer possesses any liabilities.

(12) Any non-municipal group of employers authorized to self-insure under paragraph ten of this section on or after January first, two thousand twelve shall be deemed a "private self-insurer" for purposes of the assessments set forth in sections fifteen and one hundred fifty-one of this chapter.

3-b. (a) Except as provided in subdivision three-d of this section, no person, firm or corporation, other than an attorney and counsellor-at-law, shall solicit the business of representing, or engage in representing self-insurers or group self-insurers, as defined in subdivisions three and three-a of this section, before the board or any officer, agent or employee of the board assigned to conduct any hearing, investigation or inquiry relative to a claim for compensation or benefits under this chapter, unless he or she shall be a citizen of the United States or a noncitizen lawfully admitted for permanent residence in the United States, or a corporation organized under the laws of the state of New York, and shall have obtained from the board a license authorizing him or her to appear in matters or proceedings before the board. Such license shall be issued by the board in accordance with the rules established by it. Any person, firm or corporation violating the aforesaid provisions shall be guilty of a misdemeanor. The chair may impose a civil penalty of up to one thousand dollars for each violation against any representative licensed in accordance with this section that violates any provision of this section or of any regulation issued pursuant thereto, in addition to any other sanctions provided for under this chapter.

(b) The board, in its rules, may provide for the issuance of licenses to persons, firms or corporations, upon such proof of character and fitness as it may deem necessary, without annual license fee, and for the giving of a bond running to the people of the state of New York, conditioned upon the faithful performance of all duties required of such person, firm or corporation, and in an amount to be fixed by the board in its rules. Such bond shall be approved by the board as to form and sufficiency and shall be filed with it.

(c) There shall be maintained in each office of the board a registry

or list of all persons to whom licenses have been issued, as provided herein, which list shall be corrected as often as licenses are issued or revoked. Absence of record of the license issued, as herein provided, shall be prima facie evidence that a person, firm or corporation is not licensed to represent self-insurers.

(d) Any such license may be revoked by the board for cause after a hearing before it.

(e) No license shall be issued hereunder for a period longer than three years from the date of its issuance. The provisions of this section shall not apply to a regular employee of a self-insured employer or to the state insurance fund acting in accordance with an insuring agreement with the state as authorized pursuant to the provisions of section eighty-eight-c of this chapter.

3-c. Notwithstanding any provision in this chapter or in any general, special or local law contained, all cash and securities deposited with the chairman by an employer who is a party or a wholly owned subsidiary of a party to a plan heretofore or hereafter adopted under article seven of the public service law by the transit commission-- metropolitan division of the department of public service, and who is, or at the time of the consummation of such plan was, a self-insurer under this chapter, may be withdrawn upon, or at any time after, the consummation of such plan as hereinafter provided. All cash and securities deposited by any such employer with and held by the chairman may be withdrawn upon, or at any time after, the consummation of such plan where any city which is a party thereto and which is a self-insurer under this chapter assumes all liabilities of or claims against such employer under this chapter, as follows: (a), where such plan provides that such city shall acquire, or that such employer or his assigns shall retain, all the right and interest of such employer in the deposited cash and securities, the chairman shall surrender and deliver such cash and securities to such city or to such employer or his assigns, as the case may be, upon its demand, and (b), where such plan provides that such city and such employer, or his assigns, shall each retain some right and interest in such cash and securities, the chairman shall surrender and deliver such cash and securities to such city and to such employer or his assigns upon their joint demand as shall be specified therein.

3-d. The state insurance fund, an insurance company duly authorized or licensed to write workers' compensation insurance in this state, a subsidiary or an affiliate of such an insurance company, or a licensed or authorized adjusting company or association may apply for a license from the board to solicit the business of representing and engage in representing self-insurers, as defined in subdivision three of this section, before the board or any officer, agent or employee of the board assigned to conduct any hearing, investigation or inquiry relative to a claim for compensation or benefits under this chapter. Any corporation formed solely for the purpose of engaging in the activities described by this subdivision shall be formed under the laws of the state of New York.

The state insurance fund, an insurance company, its subsidiary or affiliate, or such adjusting company or association shall designate those employees who are to appear in matters or proceedings before the board on behalf of self-insurers. Such employees shall obtain an authorization from the board. Upon application to the board for such authorization all such employees who, on the effective date of this subdivision, have been appearing in matters or proceedings before the board on behalf of insurers for a period of at least two years shall automatically receive a temporary authorization from the board. Such temporary authorization shall remain in effect until the applicant employee has been granted or denied final authorization by the board. The board in its rules shall provide for the issuance of authorizations to such employees and other designated employees. If the board, in its rules, provides for the issuance of authorization to persons, firms or corporations under subdivision three-b of this section upon such proof of character and fitness as it may deem necessary, the same proof of character and fitness shall be required for an authorization issued under this subdivision.

The state insurance fund, an insurance company duly authorized or licensed to write workers' compensation insurance in this state, a subsidiary or an affiliate of such an insurance company, or a licensed or authorized adjusting company or association shall apply to the board

for the issuance of a license upon such proof of character and fitness as the board may deem necessary. Such proof of character and fitness shall be the same as that required by the board of persons, firms or corporations under subdivision three-b of this section. If the board charges a fee for a license issued under subdivision three-b of this section, the same amount shall be charged for a license issued under this subdivision. If the board requires for the giving of a bond running to the people of the state of New York, conditioned upon the faithful performance of all duties required of such person, firm, or corporation licensed under subdivision three-b of this section, the same shall be required for a license under this subdivision. Such bond shall be approved by the board as to form and sufficiency and shall be filed with it. All license and authorization fees collected under the provisions of this subdivision shall be paid into the state treasury. Any person, insurance company, its subsidiary or affiliate, or adjusting company or association which violates the aforesaid provisions of this paragraph shall be guilty of a misdemeanor.

There shall be maintained in each office of the board a registry list of all persons to whom authorizations and licenses have been issued as provided herein, which list shall be corrected as often as authorizations and licenses are issued or revoked. Absence of record of the authorization or license issued, as herein provided, shall be prima facie evidence that a person, firm or corporation is not authorized or licensed to represent self-insurers. Any such authorization or license may be revoked by the board for cause after a hearing before it. No authorization or license shall be issued hereunder for a period longer than three years from the date of its issuance.

The board shall make rules pertaining to when conflicts of interest arise in individual cases which shall apply to those who are licensed or authorized to represent self-insurers under subdivision three-b of this section or under this subdivision.

The provisions of article twenty-four of the insurance law, insofar as applicable, shall apply to the state insurance fund, insurance companies, their subsidiaries and affiliates or adjusting companies or

associations in their activities representing self-insurers before the board.

3-e. (a) The state insurance fund and any other insurer that issues policies of workers' compensation insurance shall offer at the option of the policyholder a deductible for benefits payable under a workers' compensation policy with an annual premium of twelve thousand dollars or more, if in the opinion of the state insurance fund or such other insurer the policyholder meets the eligibility requirements of paragraph (b) of this subdivision.

(b) A policyholder is eligible for a policy deductible for any renewal period of the policy if such policyholder has paid the entire billed premium on the policy for all policy periods within forty-five days of each billing for the past three years. A policyholder will continue to be eligible for a deductible provided that no part of any premium is more than forty-five days overdue from the date billed or reimbursement for any deductible amount is unpaid by the policyholder to such insurer. The state insurance fund or any other insurer that has issued a policy with a deductible may revoke the policyholder's entitlement to a deductible if the policyholder fails to reimburse any deductible amounts, or pay any billed premium, within forty-five days after such reimbursement or premium payment has become due. Upon such revocation of a policyholder's entitlement to a deductible, the policyholder shall be entitled to cancel such policy and such policyholder will forfeit eligibility for entitlement to a deductible as provided above.

(c) Deductibles shall be offered by the state insurance fund or any other insurer in writing to eligible policyholders at the beginning of policy periods, in the amounts of one hundred dollars, two hundred dollars, three hundred dollars, four hundred dollars and five hundred dollars, and thereafter, in increments of five hundred dollars up to a maximum of two thousand five hundred dollars per occurrence. The eligible policyholder shall select, in writing, only one deductible amount which shall be binding on such policyholder throughout the policy period.

(d) If the policyholder selects a deductible under paragraph (c) of this subdivision, workers' compensation benefits payable under the policy shall be paid by the state insurance fund or other insurer liable

under the policy to the person or provider entitled to such benefits without regard to any deductible applied to such policy. Upon payment of benefits on a claim up to or exceeding the deductible amount, the state insurance fund or other insurer shall be entitled to bill the policyholder for reimbursement up to the deductible amount. A policyholder's failure to pay billed deductible reimbursement amounts to the state insurance fund or other insurer under this paragraph shall be treated in the same manner as non-payment of premium and render the policy cancelable in accordance with the provisions of subdivision five of section fifty-four of this article. The deductibles paid by the insured employer during any one year period of the policy of insurance shall not exceed the annual premium for such policy of insurance.

(e) Premium reductions, in accordance with methodology approved by the superintendent of financial services shall be applied to any policy written with a deductible. Such premium reductions shall be determined before the application of any experience modification premium surcharge or premium discount.

(f) The New York workers' compensation rating board shall file for appropriate premium discounts subject to the approval of the superintendent of financial services.

(g) The state insurance fund and any other insurer may, at its option, offer a deductible in an amount specified in paragraph (c) of this subdivision to any policyholder who is not otherwise eligible for a deductible under this subdivision. A public group self-insurer may offer a deductible in accordance with paragraph (h) of this subdivision.

(h) A public group self-insurer which has been providing workers' compensation and employers' liability coverage for not less than five years and is operated as a self-administered not-for-profit corporation governed by a board not less than two-thirds of the members of which are representatives of members of the public group self-insurer, and all of the officers of which are representatives of members of the public group self-insurer may, upon a determination by the chair that the methodology used by the public group self-insurer in creating its deductible rating plan is supported by an actuarial analysis prepared by an independent, qualified actuary who is a member of the casualty actuarial society that clearly identifies the actuary's rate assumptions, and subject to underwriting by the public group self-insurer, offer as part of the

policy or by endorsement, deductibles optional to the member, not subject to the foregoing monetary limits, consistent with the following:

(1) claimants' rights are properly protected, and claimants' benefits are paid without regard to any such deductible;

(2) appropriate premium reductions reflect the type and level of any deductible approved by the chair and selected by the member;

(3) premium reductions for deductibles are determined before application of any experience modification, premium surcharge, or premium discount;

(4) recognition is given to member's characteristics, including size, financial capabilities, nature of activities, and number of employees;

(5) if the member selects a deductible, the member is liable to the public group self-insurer for the deductible amount in regard to benefits paid for compensable claims;

(6) the public group self-insurer pays all of the deductible amount, applicable to a compensable claim, to the person or provider entitled to benefits and then seeks reimbursement from the member for the applicable deductible amount;

(7) a failure by the member to reimburse deductible amounts to the public group self-insurer is treated in the same manner as nonpayment of the member's contribution;

(8) the public group self-insurer shall be fully-funded as defined in subparagraph (b) of paragraph two of subdivision three-a of this section and if, after offering deductible policies, the public group self-insurer ceases to be fully funded as so defined, the public group self-insurer may not permit any new member to elect the deductible option until the public group self-insurer becomes fully funded;

(9) the public group self-insurer may add no more than seven new deductible members in any one contribution year;

(10) the aggregate contributions for all new members selecting the deductible option in any one year may not exceed ten percent of the total contributions of all of the public group self-insurer's members for the immediately prior year;

(11) if the member was self-insured prior to joining the public group self-insurer, the member's deductible amount during the member's first year of membership in the public group self-insurer may not exceed the amount of the member's reinsurance retention level immediately before

joining the public group self-insurer;

(12) each member which has elected the deductible option shall: (i) maintain in a dedicated account held by the public group self-insurer an amount actuarially determined to be sufficient to pay the portion of each compensation claim that is within the deductible amount for the succeeding three months; and (ii) maintain in its own dedicated reserve account or in its own undesignated fund balance, the actuarially-determined amount that the member will be required to pay for all of the member's claims below the deductible amount; and

(13) the public group self-insurer shall provide to all members of the public group self-insurer an annual statement identifying the contributions provided by and the reserves attributable to the members which have elected a deductible and must provide to each member of the public group self-insurer which has elected the deductible option an annual actuarial analysis of the member's open claims, stating the amounts the public group self-insurer anticipates that the member will be required to pay for the life of each claim.

4. a. A county, city, village, town, school district, fire district or other political subdivision of the state may secure compensation to its employees in accordance with subdivision one, two or three-a of this section, and a public corporation as defined in subdivision one of section sixty of this chapter may also secure such compensation in accordance with article five of this chapter. If compensation is not so secured, a county, city, village, town, school district, fire district or other political subdivision shall be deemed to have elected to secure compensation pursuant to subdivision three of this section and, in such case, no proof of financial ability or deposit of securities or cash need be made in compliance with such subdivision. All other requirements prescribed by this chapter for employers so electing shall be complied with and notice of such election shall be filed with the chair. For failure to file such notice of election, prescribed in form by the chair, within ten days after the election was made, the treasurer or other financial officer shall be liable to pay to the chair the sum of one hundred dollars as a penalty, to be transferred to the state treasury.

b. The treasurer or other fiscal officer of a self-insuring county, city, village, town, school district, fire district or other political subdivision shall, upon presentation of an award of compensation forthwith begin payment of it to the person entitled thereto in accordance with this chapter.

c. The governing board of a county, city, village, town, school district, fire district or other political subdivision may authorize the treasurer or other fiscal officer of such municipal corporation, district or political subdivision, as the case may be, to pay the compensation provided for in this chapter to the person entitled thereto without waiting for an award in any case in the manner provided in section twenty-five of this chapter. The amount of such compensation payable prior to an award pursuant to such authorization shall constitute a settled claim within the meaning of the local finance law.

d. A contract of insurance issued to a county or a town in accordance with subdivision one or two of this section and in force on or after the first day of March, nineteen hundred sixty-three, in relation to fire districts and on or after the first day of January, in the year in which this paragraph as hereby amended becomes effective in relation to ambulance districts shall contain a provision reading as follows: "This contract does not provide (1) any coverage under the Workers' Compensation Law or the Volunteer Firefighters' Benefit Law or the Volunteer Ambulance Workers' Benefit Law for which any fire district or ambulance district would be liable under such laws, (2) any workers' compensation benefits for fire or ambulance district officers and employees for which any fire district or ambulance district would be liable under the Workers' Compensation Law, or (3) any volunteer firefighters' or ambulance workers' benefits for any volunteer firefighters or volunteer ambulance workers under the Volunteer Firefighters' Benefit Law or the Volunteer Ambulance Workers' Benefit Law".

e. If for any reason the status of a county, city, village, town, school district, fire district or other political subdivision of state is terminated, at the discretion of the chair, the county, city,

village, town, school district, fire district or other political subdivision of state, may execute an assumption of workers' compensation liability insurance policy securing such further and future contingent liability as may arise from prior injuries to workers and be incurred by reason of any change in the condition of such workers warranting the board making subsequent awards for payment of additional compensation. Such policy shall be in a form approved by the superintendent of financial services and shall be issued by the state fund or any insurance company licensed to issue this class of policy in this state. In the event that such policy is issued by an insurance company other than the state fund, then said policy shall be deemed to be insurance of the kind specified in paragraph fifteen of subsection (a) of section one thousand one hundred thirteen of the insurance law and covered by the workers' compensation security fund as created and governed by article six-A of this chapter. It shall only be issued for a single complete premium payment in advance by the county, city, village, town, school district, fire district or other political subdivision of state and in an amount deemed acceptable by the chair and the superintendent of financial services. In lieu of the applicable premium charge ordinarily required to be imposed by a carrier, said premium shall include a surcharge in an amount to be determined by the chair to satisfy all assessment liability due and owing to the board and/or the chair under this chapter. Said surcharge shall be payable to the board simultaneous to the execution of the assumption of workers' compensation liability insurance policy. However, the payment of said surcharge does not relieve the carrier from any other liability, including liability owed to the superintendent of financial services pursuant to article six-A of this chapter. When issued such policy shall be non-cancellable without recourse for any cause during the continuance of the liability secured and so covered.

5. Self-insurance. "Self-insurance," as used herein, shall be deemed to be the system of securing compensation as provided in subdivisions three, three-a and four of this section, and article five of this chapter.

a. The chair shall administer all matters relating to self-insurance

under this chapter. All penalties set forth in subdivisions three and three-a of this section shall be paid into the fund for uninsured employers provided for in section twenty-six-a of this chapter.

b. Advisory committee for individual self-insurance. (1) To advise the chair, there shall be an advisory committee for individual self-insurance, which shall be called the advisory committee for self-insurance and consist of the chair and ten additional members appointed by the chair. Three of such members shall be named from the manufacturing and trade group of self-insurance, three from the transportation, public utilities and construction group, and one member shall be a self-insurer selected at large by the chairman, who shall be vice-chairman of the advisory committee. The chair shall be chair of the advisory committee; the secretary of the board shall act as secretary of the advisory committee. Any member appointed to such advisory committee shall be a self-insurer or an officer of a self-insurer or a person who on account of his or her employment or affiliation can be classed as a management representative of a self-insurer. The members of the advisory committee for self-insurance in office at the time this subdivision takes effect, shall be and they are hereby continued in office as such for the remainder of the terms for which they were appointed respectively.

The members of the advisory committee for self-insurance next appointed, except to fill a vacancy created otherwise than by expiration of term, shall be appointed for terms of three years, except that of the three additional members to be appointed after May first, two thousand eight, one such member shall be appointed for an initial term of one year, one such member shall be appointed for an initial term of two years, and one such member shall be appointed for an initial term of three years. No member shall be appointed to the advisory committee for individual self-insurance if he or she has been convicted of a crime under this chapter or has been subject to criminal or civil penalties under this subdivision. Vacancies shall be filled for the unexpired term by appointment by the chair. Members shall continue in office until their successors are appointed; in the event that no appointment is made within three months after a vacancy exists or after the expiration of

the term of a member, the remaining members may fill the vacancy by a majority vote. If a member shall be absent from two consecutive regular meetings without adequate excuse his or her place may be declared vacant by the chair. Members of such advisory committee shall serve without pay, but shall be entitled to their reasonable and necessary traveling and other expenses incurred in connection with their duties. Regular meetings of the advisory committee shall be held twice a year, on dates to be fixed by the chair. In addition, special meetings shall be held if called by the chair or any five members of the committee. Such advisory committee shall have access to all self-insurance records except those restricted by the chair or those whose disclosure is restricted under section one hundred ten-a of this chapter, and shall have the power to require the presence before it of any employee of the board or any self-insurer as reasonable and related to matters within the purview of the committee. Information obtained by members of the advisory committee shall be deemed confidential unless disclosed by order of the committee. It shall be the duty of the advisory committee to advise the chair on all matters relating to self-insurance, particularly in respect to rules governing self-insurance, the deposit or withdrawal of securities, the standards for permitting employers to self-insure under this section, the appropriate amount of security or payments that self-insured employers must provide, and on such other matters as the chair shall request. The chair shall detail to such advisory committee such stenographic or other assistance as may be necessary. Minutes shall be kept of the meetings of the advisory committee and shall be provided within forty-five days of such meeting to the governor and legislature, including the chairs of the assembly and senate committees on insurance and labor.

c. (1) The chair and the department of audit and control as soon as practicable after May first, nineteen hundred sixty, and annually thereafter, as soon as practicable after April first in each succeeding year, shall ascertain the total amount of net expenses, including (a) administrative expenses, which shall include the direct costs of personal services, the cost of maintenance and operation, the cost of retirement contributions made and workers' compensation premiums paid by the State for or on account of personnel, rentals for space occupied in

state owned or state leased buildings, and (b) all direct or indirect costs incurred by the board during the preceding fiscal year in carrying out the provisions of subdivision three and three-a of this section. Such expenses shall be adjusted annually to reflect any change in circumstances, and shall be assessed against all private self-insured employers, including for this purpose active and terminated group self-insurers, active individual self-insured employers, and individual self-insured employers who have ceased to exercise the privilege of self-insurance.

(2) Such expenses shall be assessed against all self-insurers including for this purpose employers who have ceased to exercise the privilege of self-insurance. The basis of apportionment of the assessment against each self-insurer shall be a sum equal to that proportion of the amount which the indemnity payment for each self-insurer bore to the total indemnity payments for all self-insurers for the calendar year which ended within the preceding state fiscal year. All such assessments when collected shall be deposited into a fund which shall be used to reimburse the appropriations theretofore made by the state for the payment of the expenses of administering this chapter.

(3) Pure premium for assessments made prior to January first, two thousand nine against individual and group self-insurers who ceased to self-insure shall be based on payroll at the time the individual or group self-insurer has ceased to self-insure, reduced by a factor reflecting the reduction in the group or individual self-insurer's self-insurance liabilities since ceasing to self-insure.

d. The chair may from time to time request the superintendent of financial services for assistance, and the superintendent of financial services is hereby authorized to render such assistance upon request of the chair, as may be necessary to insure the financial ability of such group self-insurers to pay all liabilities provided by this chapter.

e. Notwithstanding the provisions of paragraph c of this subdivision, the chair shall require that partial payments for expenses of the fiscal year beginning April first, nineteen hundred eighty-three, and for each fiscal year thereafter shall be made on March tenth of the preceding fiscal year and on June tenth, September tenth, and December tenth of

each year, or on such other dates as the director of the budget may prescribe, by each self-insurer. Provided, however, that the payment due March tenth, nineteen hundred eighty-three for the fiscal year beginning April first, nineteen hundred eighty-three shall not be required to be paid until June tenth, nineteen hundred eighty-three. Each such payment shall be a sum equal to twenty-five per centum of the annual expenses assessed upon each self-insurer, as estimated by the chair. The balance of assessments for the fiscal year beginning April first, nineteen hundred seventy-three and each fiscal year thereafter, shall be paid upon determination of the actual amount due in accordance with the provisions of paragraph c of this subdivision. Any overpayment of annual assessments resulting from the requirements of this paragraph shall be refunded or at the option of the chair shall be applied as a credit against the assessment of the succeeding fiscal year. The requirements of this subdivision shall not apply to those self-insurers whose estimated annual assessment for the fiscal year is less than one hundred dollars and such self-insurers shall make a single payment of the estimated annual assessment on or before September thirtieth of the fiscal year.

f. Whenever the chair shall determine that the compensation and benefits provided by this chapter may be unpaid by reason of the default of an insolvent private self-insured employer, including a private group self-insurer, the chair shall pay such compensation and benefits from administration expenses as provided in section one hundred fifty-one of this chapter upon audit and warrant of the comptroller upon vouchers approved by the chair. Such payments shall be considered expenses of administration. The chair shall be reimbursed therefor from the surety bond, cash or securities held or, if such surety bond, securities or cash is insufficient, by the employer, its receiver, liquidator, rehabilitator or trustee in bankruptcy. All moneys reimbursed to the chair or recovered by the chair in an action or proceeding to secure such reimbursement shall forthwith be applied as a credit against the expenses on which the assessment levied upon all private self-insured employers, in accordance with paragraphs c and e of this subdivision, is calculated.

g. Whenever the chair shall determine that the compensation and benefits provided by this chapter may be unpaid by reason of the default of an insolvent private self-insured employer, including a private group self-insurer, the chair shall levy an assessment against all private self-insured employers, including private group self-insurers, in accordance with paragraphs c and e of this subdivision to assure prompt payment of such compensation and benefits. Whenever compensation and benefits are unpaid by reason of such default, the chair shall promptly pay such compensation and benefits from administration expenses as provided in section one hundred fifty-one of this chapter upon audit and warrant of the comptroller upon vouchers approved by the chair. Nothing in this paragraph shall preclude the chair from recovering the moneys it expends from its administrative expenses against the defaulted individual self-insurer, or the members of the defaulted group self-insurer, as otherwise permitted by this chapter.

6. Any policy of insurance purchased pursuant to the provisions of this subdivision six as in effect prior to the first day of March, nineteen hundred fifty-seven, shall be cancelled prior to, or as of, the twenty-eighth day of February, nineteen hundred fifty-seven.

The cost of such insurance shall be apportioned by the clerk of the board of supervisors of the county to each such city, village, fire district, fire protection district, fire alarm district, and territory outside such municipal corporations and districts, in the proportion that the agreed population bears to the entire population of the group. Refunds, dividends and discounts in relation to such insurance shall be distributed or credited according to the same apportionment. Upon notification by the clerk of the board of supervisors, the chief fiscal officer of each such city, village or fire district shall pay to the county treasurer, from moneys available or made available, the amount apportioned to such city, village or district. Upon like notification, the supervisor of each town in which a fire protection district or fire alarm district is located in whole or in part, or in which outside territory is located, shall pay to the county treasurer the amount apportioned for such district, in whole or in part, or territory, as the case may be, using moneys raised or made available for the purposes of

fire protection in such district or outside territory, or if there be no such moneys or insufficient moneys, using funds of the town available or made available, which funds shall be a charge upon such district or territory for which the town shall be reimbursed. The county treasurer shall pay the cost of such insurance with such moneys, or if any apportioned share has not been paid, the county treasurer shall advance the amount necessary from moneys of the general fund upon resolution of the board of supervisors. Any such advance shall be repaid as soon as moneys are available therefor. If any apportioned share remains unpaid, the county may recover the same by action at law. If any member of the group shall fail to pay its apportioned share within thirty days after notice that such amount has become due and payable, the chairman of the board of supervisors may terminate the participation of such member in the group by notice by mail to such member on a date specified in the notice, and a copy of such notice shall be filed by the chairman of the board of supervisors with the insurance carrier, who shall notify the chairman of the workmen's compensation board of the termination of coverage in the same manner as provided for cancellation of policy under subdivision five of section fifty-four of this chapter.

If any participating fire protection district or fire alarm district includes territory in more than one town, whether or not in more than one county, the amount of cost of insurance, refund, dividend or discount apportioned to such district shall be apportioned in the proportion that the population of the district within each such town bears to the population of the entire district. The figure used for population in such case shall be the one stated in the agreement.

7. Any policy of insurance purchased pursuant to the provisions of this subdivision seven as in effect prior to the first day of March, nineteen hundred fifty-seven, shall be cancelled prior to, or as of, the close of the twenty-eighth day of February, nineteen hundred fifty-seven. The cost of such insurance shall be a town charge and shall be levied and collected in the same manner as other town charges only in the territory of such town outside of any villages and fire districts not covered by such a policy.

8. The requirements of section ten of this chapter regarding the provision of workers' compensation insurance as to owners and trainers governed by the racing, pari-mutuel wagering and breeding law who are employers under section two of this chapter are satisfied in full by compliance with the requirements imposed upon owners and trainers by section two hundred twenty-one of the racing, pari-mutuel wagering and breeding law, provided that in the event double compensation, death benefits, or awards are payable with respect to an injured employee under section fourteen-a of this chapter, the owner or trainer for whom the injured jockey, apprentice jockey or exercise person licensed under article two or four of the racing, pari-mutuel wagering and breeding law, and at the election of the New York Jockey Injury Compensation Fund, Inc., with the approval of the New York state gaming commission, employee of a licensed trainer or owner, is performing services as a jockey, apprentice jockey or exercise person so licensed at the time of the accident or, if approved by the New York state gaming commission, an employee of a licensed trainer or owner shall bear the sole responsibility for the amount payable pursuant to such section fourteen-a in excess of the amount otherwise payable under this chapter, unless there shall be a failure of the responsible owner or trainer to pay such award within the time provided under this chapter. In the event of such failure to pay and the board requires the fund to pay the award on behalf of such owner or trainer who has been found to have violated section fourteen-a of this chapter, the fund shall be entitled to an award against such owner or trainer for the amount so paid which shall be collected in the same manner as an award of compensation. Coverage directly procured by any owner or trainer for the purpose of satisfying the requirements of this chapter with respect to employees of the owner or trainer shall not include coverage on any jockey, apprentice jockey or exercise person licensed under article two or four of the racing, pari-mutuel wagering and breeding law, and at the election of the New York Jockey Injury Compensation Fund, Inc., with the approval of the New York state gaming commission, any employee of a licensed trainer or owner, to the extent that such jockey, apprentice jockey, exercise person or, if approved by the New York state gaming commission, employee of a licensed trainer or owner is also covered under coverage procured by The New York Jockey Injury Compensation Fund, Inc. pursuant to the

requirements of section two hundred twenty-one of the racing, pari-mutuel wagering and breeding law, and to that extent, coverage procured by the fund pursuant to the requirements of the racing, pari-mutuel wagering and breeding law shall be considered primary.

9. The requirements of sections ten and eleven of this chapter regarding the securing and provision of workers' compensation benefits as to a central dispatch facility, as defined in article six-F of the executive law, are satisfied in full by compliance with the requirements imposed upon such central dispatch facility by such article. Insurance coverage directly procured by any central dispatch facility for the purpose of satisfying the requirements of this chapter with respect to employees of the central dispatch facility shall not include coverage of any black car operator to the extent that the black car operator is also covered under coverage secured by the New York black car operators' injury compensation fund, inc. pursuant to the requirements of article six-F of the executive law, and to that extent, coverage secured by the fund pursuant to the requirements of article six-F of the executive law shall be considered primary.

10. An individual self-insured employer or group self-insurer who fails to file or maintain the security deposit required by the chair will be deemed to have failed to secure compensation for the amount not deposited, and shall be liable for all penalties for such failure provided for under this title.

11. If at any time an individual self-insured employer or member of a group self-insurer intentionally and materially understates or conceals payroll, or intentionally and materially misrepresents or conceals employee duties or if the employer intentionally or materially misstates payroll or claims information for the purposes of determining employer contributions as provided for under subdivisions three and three-a of this section, such employer shall be deemed to have failed to secure compensation and shall be subject to sanctions applicable under section fifty-two of this article in addition to any other sanctions available under law.

12. The chair, with the approval of the director of the budget, may request the issuance of bonds by the dormitory authority for one or more of the purposes authorized by section sixteen hundred eighty-q of the public authorities law and by a self-insured bond financing agreement authorized by section fifty-c of this article. The net proceeds of such bonds shall be deposited into the self-insurer offset fund or as otherwise provided by the applicable self-insured bond financing agreement.

§ 50-a. Self-insurer offset fund. 1. The chair shall maintain a fund to be known as the self-insurer offset fund and such fund shall be held in the sole custody of the chair. The chair may transfer the money in such fund to the administrative account as necessary to effectuate the purpose of this section. The chair shall use the money in the fund to pay unmet claims for self-insurers.

2. At any time prior to April first, two thousand eleven, the chair may withdraw funds from the uninsured employers fund provided for under section twenty-six-a of this chapter, up to such amount as the chair determines is sufficient to fund any anticipated additional expenses of such fund, taking into account anticipated available revenues, but in no event to exceed seventy-five million dollars in the aggregate. Such funds shall be deposited into the self-insurer offset fund, and used in accordance with subdivision one of this section. As consistent with this section, the chair may set the timing of such withdrawals in its discretion.

3. Beginning in two thousand fifteen, and each year thereafter, the chair shall add to the total of each annual assessment made under paragraph g of subdivision five of section fifty of this article the sum of up to three million dollars, to be allocated to private group and individual self-insurers in accordance with such paragraph. The chair shall assess additional funds under this paragraph as necessary to insure that there are sufficient funds in the fund for uninsured employers to meet its liabilities, or if necessary in accordance with section one hundred fifty-one of this chapter. Such funds as are

collected pursuant to this subdivision shall be deposited into the uninsured employer fund until all funds withdrawn therefrom under subdivision one of this section are returned with interest calculated at an annual rate equal to the rate of return on funds in the fund for uninsured employers from the prior year.

4. To the extent provided by the self-insurer bond financing agreement the chair may request the dormitory authority to transfer bond proceeds into such account for the purposes outlined in the bond financing agreement.

5. At such time as the board is not obligated to pay any unmet claims of a self-insurer, the fund created under this section shall be closed, and any money remaining in the fund shall be deposited into the uninsured employer fund.

§ 50-b. Task force on group self-insurance. There is established the task force on group self-insurance whose membership shall consist of the chair or his or her designee, the superintendent of financial services or his or her designee, the commissioner of labor or his or her designee, and twelve members to be appointed by the governor as follows: two upon nomination of the speaker of the assembly, two upon nomination of the temporary president of the senate, one upon nomination by the president of the New York state American federation of labor-congress of industrial organizations, one upon the nomination of the business council of New York state, one who is a representative of an individual self-insurer or representative of an organization that represents individual self-insurers, one who is a trustee or administrator of a group self-insurer or representative of an organization that represents group self-insurers, one who is a representative of an organization that represents workers' compensation claimants, and three others without limitation. The governor shall appoint the chair of the task force. The task force shall report to the governor, the speaker of the assembly and the temporary president of the senate on or before February first, two thousand nine making recommendations concerning:

1. the prevention of future defaults by group self-insurers;
2. regulation of group self-insurers and its impact and effectiveness;
3. payment of claims insured by defaulted group self-insurers;
4. the long term viability of group self-insurers; and
5. such other topics related to group self-insurance as the task force may deem necessary.

§ 50-c. Self-insured bonds. 1. The chair, with the commissioner of taxation and finance, is authorized to enter into a financing agreement with the dormitory authority, to be known as the "self-insured bond financing agreement". Such agreement shall set forth the process for calculating the annual debt service of bonds issued by the dormitory authority and any other associated costs in connection with the self-insurer offset fund, as set forth in section sixteen hundred eighty-q of the public authorities law. For purposes of this section, "associated costs" may include a coverage factor, reserve fund requirements, all costs of any nature incurred by the dormitory authority in connection with the self-insured bond financing agreement or pursuant thereto, the costs of any independent audits undertaken under this section, and any other costs for the implementation of this subdivision and the issuance of bonds by the dormitory authority, including interest rate exchange payments, rebate payments, liquidity fees, credit provider fees, fiduciary fees, remarketing, dealer, auction agent and related fees and other similar bond-related expenses, unless otherwise funded. By September first of each year, the dormitory authority shall provide to the chair the calculation of the amount expected to be paid by the dormitory authority in debt service and associated costs for purposes of calculating the assessments for the debt service portion of the assessment provided for under this chapter. All monies received on account of such assessments shall be applied in accordance with this chapter and with the self-insured bond financing agreement until the financial obligations of the dormitory authority in

respect to its contract with its bondholders are met and all associated costs payable to or by the dormitory authority have been paid, notwithstanding any other provision of law respecting secured transactions. This provision may be included by the dormitory authority in any contract of the dormitory authority with its bondholders. The self-insured bond financing agreement may restrict disbursements, investments, or rebates, and may prescribe a system of accounts applicable to the self-insurer offset fund as consistent with the provisions of this chapter governing such fund, including custody of funds and accounts with a trustee that may be prescribed by the dormitory authority as part of its contract with the bondholders. For purposes of this subdivision, the term "bonds" shall include notes issued in anticipation of the issuance of bonds, or notes issued pursuant to a commercial paper program.

2. The chair is hereby authorized to receive and credit to the self-insurer offset fund any sum or sums that may at any time be contributed to the state by the United States of America under any act of Congress, or otherwise, to which the state may be or become entitled by reason of any payments made out of such fund.

3. Notwithstanding any other law to the contrary, the chair shall be the custodian of the self-insurer offset fund and, unless otherwise provided for in the self-insured bond financing agreement, the commissioner of taxation and finance shall invest any surplus or reserve moneys thereof in securities which constitute legal investments for savings banks under the laws of this state and in interest bearing certificates of deposit of a bank or trust company located and authorized to do business in this state or of a national bank located in this state secured by a pledge of direct obligations of the United States or of the state of New York in an amount equal to the amount of such certificates of deposit, and may sell any of the securities or certificates of deposit in which such fund is invested if necessary for the proper administration or in the best interest of such fund. Disbursements from such fund as provided by this subdivision shall be made by the commissioner of taxation and finance unless the self-insured bond financing agreement provides for some other means of authorizing

such disbursements that is no less protective of the fund. The commissioner of taxation and finance as soon as practicable after January first of each year, shall furnish to the chair a statement of the fund, setting forth the balance of moneys in the said fund as of the beginning of the calendar year, the income of the fund, the summary of payments out of the fund on account of reimbursements and other charges ordered to be paid by the board, and all other charges against the fund and setting forth the balance of the fund remaining to its credit on the prior December thirty-first of each year. Such statement shall be open to public inspection in the office of the secretary of the board. The chair shall include in the reports to the governor, the speaker of the assembly and the temporary president of the senate as required by section nine of part G of chapter fifty-seven of the laws of two thousand eleven, a summary of the status of the bonding program authorized by this section. The commissioner of taxation and finance may establish within the self-insurer offset fund such accounts and sub-accounts as he or she deems useful for the operation of the fund, or as necessary to segregate moneys within the fund, subject to the provisions of the self-insured bond financing agreement and of this chapter.

§ 51. Posting of notice regarding compensation. Every employer who has complied with section fifty of this article shall post and maintain in a conspicuous place or places in and about his place or places of business typewritten or printed in English and Spanish notices in form prescribed by the chairman, stating the fact that he has complied with all the rules and regulations of the chairman and the board and that he has secured the payment of compensation to his employees and their dependents in accordance with the provisions of this chapter, but failure to post such notice as herein provided shall not in any way affect the exclusiveness of the remedy provided for by section eleven of this chapter. Every employer who owns or operates automotive or horse-drawn vehicles and has no minimum staff of regular employees required to report for work at an established place of business maintained by such employer and every employer who is engaged in the business of moving household goods or furniture shall post such notices

in each and every vehicle owned or operated by him. Failure to post or maintain such notice in any of said vehicles shall constitute presumptive evidence that such employer has failed to secure the payment of compensation. The chairman may require any employer to furnish a written statement at any time showing the stock corporation, mutual corporation or reciprocal insurer in which such employer is insured or the manner in which such employer has complied with any provision of this chapter. Failure for a period of ten days to furnish such written statement shall constitute presumptive evidence that such employer has neglected or failed in respect of any of the matters so required. Any employer who fails to comply with the provisions of this section shall be required to pay to the board a fine of five hundred dollars for each violation, in addition to any other penalties imposed by law to be deposited into the uninsured employers' fund.

§ 52. Effect of failure to secure compensation. 1. (a) Failure to secure the payment of compensation for five or less employees within a twelve month period shall constitute a misdemeanor, and is punishable by a fine of not less than one thousand nor more than five thousand dollars. Failure to secure the payment of compensation for more than five employees within a twelve month period shall constitute a class E felony, and is punishable by a fine of not less than five thousand dollars nor more than fifty thousand dollars in addition to any other penalties otherwise provided by law. It shall be an affirmative defense to any criminal prosecution under this section that the employer took reasonable steps to secure compensation.

(b) Where any person has previously been convicted of a failure to secure the payment of compensation within the preceding five years, upon conviction for a subsequent violation such person shall be guilty of a class D felony, and fined not less than ten thousand nor more than fifty thousand dollars in addition to any other penalties including fines otherwise provided by law.

(c) Where the employer is a corporation, the president, secretary and treasurer thereof shall be liable for failure to secure the payment of compensation under this section. It shall be an affirmative defense to any action against any officer of a corporation under this section that

the officer took reasonable steps to ensure that the corporation secured compensation, that proper internal procedures were in effect to do so, and that proper internal controls existed to monitor compliance with said procedures.

(d) If at any time an employer intentionally and materially understates or conceals payroll, or intentionally and materially misrepresents or conceals employee duties so as to avoid proper classification for calculation of premium paid to secure compensation, or intentionally and materially misrepresents or conceals information pertinent to the calculation of premium paid to secure compensation, such employer shall be deemed to have failed to secure compensation and shall be subject to the sanctions applicable to this section.

(e) A stop-work order issued because an employer is deemed to have failed to secure compensation under section one hundred forty-one-a of this chapter shall have no effect upon an employer's or carrier's duty to provide benefits under this chapter or upon any of the employer's or carrier's rights and defenses.

2. All fines imposed under this chapter, except as herein otherwise provided, shall be paid directly and immediately by the officer collecting the same to the chairman, and shall be paid by him into the uninsured employers' fund created under section twenty-six-a of this chapter, provided, however, that all such fines collected by justices of towns and villages shall be paid to the state comptroller in accordance with the provisions of section twenty-seven of the town law and section 4-410 of the village law respectively.

3. In any prosecution hereunder the failure of the employer to file with the chairman, within ten days after demand, a statement subscribed by the employer and affirmed by him as true under the penalties of perjury showing specifically (a) the name of the stock company, mutual corporation or reciprocal insurer in which such employer is insured and the number and the date of issuance and term of such policy of insurance, or (b) that the said employer is insured with the state fund in which case he shall give the number of such policy of insurance, the date of issuance and term thereof, or (c) that the said employer has been authorized to do business as a self-insurer pursuant to section

fifty of this article, giving the date of said authorization, or (d) a legal reason, if any, why said employer is not required to secure compensation, shall constitute prima facie evidence that the employer has failed to secure compensation as herein required. The statement to be filed herein shall be subscribed by the employer or if the employer is a corporation by one of the officers herein named in which he shall state that he has read such statement subscribed by him and knows the contents thereof and that same is true of his own knowledge.

4. If, however, there has been an accident and the board shall have made an award against the employer as a non-insured employer, the making of such award, except in a case where the employer had secured compensation insurance which was in effect at the time of the accident but the carrier later became insolvent, shall constitute prima facie evidence of an employment by the employer of an employee in an occupation in which the said employer was required to carry compensation and of the failure of the employer to secure the payment of workers' compensation on the date of the accident involved in said award. A certified copy of such award shall be received as competent evidence of the making thereof in any criminal prosecution hereunder.

5. The chair, upon finding that an employer has failed for a period of not less than ten consecutive days to make the provision for payment of compensation required by section fifty of this article, may impose upon such employer, in addition to all other penalties, fines or assessments provided for in this chapter, a penalty of up to two thousand dollars for each ten day period of non-compliance or a sum not in excess of two times the cost of compensation for its payroll for the period of such failure, which sum shall be paid into the uninsured employers' fund created under section twenty-six-a of this chapter. When an employer fails to provide business records sufficient to enable the chair to determine the employer's payroll for the period requested for the calculation of the penalty provided in this section, the imputed weekly payroll for each employee, corporate officer, sole proprietor, or partner shall be the New York state average weekly wage, multiplied by 1.5. Where the employer is a corporation, the president, secretary and treasurer thereof shall be liable for the penalty. If the employer shall

within thirty days after notice of the imposition of a penalty by the chair pursuant to this subdivision make an application in affidavit form for a redetermination review of such penalty the chair shall make a decision in writing on the issues raised on such application.

§ 53. Release from liability. An employer securing the payment of compensation by contributing premiums to the state fund shall thereby become relieved from all liability for personal injuries or death sustained by his employees, and the persons entitled to compensation under this chapter shall have recourse therefor only to the state fund and not to the employer. An employer shall not otherwise be relieved from the liability for compensation prescribed by this chapter except by the payment thereof by himself or his insurance carrier. The provisions of this section shall not apply to the state of New York, as an employer except to the extent that the fund has provided insurance coverage on an actuarially sound basis to the state pursuant to the provisions of section eighty-eight-c of this chapter. To the extent that the fund has not provided insurance coverage on an actuarially sound basis pursuant to section eighty-eight-c of this chapter, any state employee or other person entitled to compensation under this chapter as a consequence of personal injuries or death of a state employee shall have direct recourse therefor only to the state.

§ 54. The insurance contract. 1. Right of recourse to the insurance carrier. Every policy of insurance covering the liability of the employer for compensation shall be issued by one or more stock companies, mutual corporations or reciprocal insurers authorized to transact workers' compensation insurance in this state. In the case of a policy with multiple insurers, such insurers shall share one hundred percent of the liabilities by subscription, and one of the insurers shall serve as the lead insurer for notice and cancellation purposes. Such a policy shall contain a provision setting forth the right of the chair to enforce in the name of the people of the state of New York for the benefit of the person entitled to the compensation insured by the policy either by filing a separate application or by making the

insurance carrier a party to the original application, the liability of the insurance carrier in whole or in part for the payment of such compensation; provided, however, that payment in whole or in part of such compensation by either the employer or the insurance carrier shall to the extent thereof be a bar to the recovery against the other of the amount so paid.

2. Knowledge and jurisdiction of the employer extended to cover the insurance carrier. Every such policy shall contain a provision that, as between the employee and the insurance carrier, the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the insurance carrier, or if more than one insurer, the lead carrier; that jurisdiction of the employer shall, for the purpose of this chapter, be jurisdiction of the lead insurance carrier and that such insurance carrier shall in all things be bound by and subject to the orders, findings, decisions or awards rendered against the employer for the payment of compensation under the provisions of this chapter.

3. Insolvency of employer does not release the insurance carrier. Every such policy shall contain a provision to the effect that the insolvency or bankruptcy of the employer shall not relieve the insurance carrier from the payment of compensation for injuries or death sustained by an employee during the life of such policy.

4. Limitation of indemnity agreements. Every contract or agreement of an employer the purpose of which is to indemnify him from loss or damage on account of the injury of an employee by accidental means, or on account of the negligence of such employer or his officer, agent or servant, shall be absolutely void unless it shall also cover liability for the payment of the compensation and for the payment into the special funds provided for by this chapter. Every such contract or agreement of insurance issued by an insurance carrier covering the liability of an employer for the payment of the compensation and for the payment into the special funds provided by this chapter shall be deemed to include all employees of the employer employed at or in connection with the business of the employer carried on, maintained, or operated at the

location or locations set forth in such contract or agreement and employees for whose injuries a contractor may become liable under the provisions of section fifty-six of this chapter. Any employee or employees or class of employees not enumerated in section three, subdivision one, group one to seventeen inclusive, of this chapter, employed by a municipal corporation or political subdivision of the state, may by the terms of the contract or agreement be expressly excluded therefrom.

5. (a) Cancellation and termination of insurance contracts. No contract of insurance issued by an insurance carrier against liability arising under this chapter shall be cancelled within the time limited in such contract for its expiration unless notice is given as required by this section. When cancellation is due to non-payment of premiums and assessments, such cancellation shall not be effective until at least ten days after a notice of cancellation of such contract, on a date specified in such notice, shall be filed in the office of the chair and also served on the employer. When cancellation is due to any reason other than non-payment of premiums and assessments, such cancellation shall not be effective until at least thirty days after a notice of cancellation of such contract, on a date specified in such notice, shall be filed in the office of the chair and also served on the employer; provided, however, in either case, that if the employer has secured insurance with another insurance carrier which becomes effective prior to the expiration of the time stated in such notice, the cancellation shall be effective as of the date of such other coverage. No insurer shall refuse to renew any policy insuring against liability arising under this chapter unless at least thirty days prior to its expiration notice of intention not to renew has been filed in the office of the chair and also served on the employer.

Such notice shall be served on the employer by delivering it to him, her or it or by sending it by mail, by certified or registered letter, return receipt requested, addressed to the employer at his, her or its last known place of business; provided that, if the employer be a partnership, then such notice may be so given to any of one of the partners, and if the employer be a corporation then the notice may be

given to any agent or officer of the corporation upon whom legal process may be served; and further provided that an employer may designate any person or entity at any address to receive such notice including the designation of one person or entity to receive notice on behalf of multiple entities insured under one insurance policy and that service of notice at the address so designated upon the person or entity so designated by delivery or by mail, by certified or registered letter, return receipt requested, shall satisfy the notice requirement of this section. Provided, however, the right to cancellation of a policy of insurance in the state fund shall be exercised only for non-payment of premiums and assessments or as provided in section ninety-four of this chapter.

The provisions of this subdivision shall not apply with respect to policies containing coverage pursuant to subsection (j) of section three thousand four hundred twenty of the insurance law relating to every policy providing comprehensive personal liability insurance on a one, two, three or four family owner-occupied dwelling.

In the event such cancellation or termination notice is not filed with the chair within the required time period, the chair shall impose a penalty in the amount of up to five hundred dollars for each ten-day period the insurance carrier or state insurance fund failed to file the notification. All penalties collected pursuant to this subdivision shall be deposited in the uninsured employers' fund.

(b) Conditional renewal for carriers under common control. A contract of insurance shall remain in full force and effect subject to the same rates as the expiring contract of insurance rates, unless written notice is mailed or delivered by the insurance carrier to the employer, at the address shown on the policy, and to such employer's authorized agent or broker, indicating the insurance carrier's intention to condition renewal upon issuance of a policy that supersedes a policy previously issued by another insurance carrier under common control that will result in an increased premium in excess of ten percent (exclusive of any premium increase generated as a result of increased loss costs filed and approved in accordance with subsection (e) of section two thousand three hundred five of the insurance law, increased exposure units, or as

a result of experience rating, contractor credit adjustment program, merit rating, retrospective rating or audit or removal or reduction of a drug free credit, managed care credit, or deductible. Such notice shall be mailed or delivered at least thirty days in advance of the expiration date of the policy, and shall set forth the amount of the premium increase (or, where such amount cannot reasonably be determined as of the time the notice is provided due to failure of the policyholder to provide to the insurance carrier the information necessary to determine the premium, a reasonable estimate of the premium increase based upon the information available to the insurance carrier at that time). Nothing in this subdivision shall require the insurance carrier to provide such notice when the employer, an agent or broker authorized by the employer, or another insurance carrier of the employer has mailed or delivered written notice that the policy has been replaced or is no longer desired.

5-a. Issuance, amendment, endorsement or reinstatement of insurance contracts. a. Any insurance carrier or the state insurance fund who issues, reinstates, amends or endorses any contract of insurance or rider thereto covering the liability of an employer for compensation under this chapter shall file notification in the office of the chair within thirty days after such issuance, reinstatement, amendment, or endorsement of the contract. Such notice shall be filed in the manner and form prescribed by the chair.

b. In the event notice required under this subdivision is not filed with the chair within the thirty-day time period, or notice is not provided by a group self-insured trust pursuant to regulation promulgated by the board regarding notification of the trust's commencement or termination of coverage for any employer, the chair may impose a penalty of up to five hundred dollars for each ten-day period the insurance carrier or state insurance fund or group self-insurance trust failed to file the notification. All penalties collected pursuant to this subdivision shall be deposited in the uninsured employers' fund.

c. The provisions of this subdivision shall not apply with respect to insurance policies containing coverage pursuant to subsection (j) of

section three thousand four hundred twenty of the insurance law relating to every policy providing comprehensive personal liability insurance on a one, two, three or four family owner-occupied dwelling.

6. a. Insurance of officers of corporations. Every executive officer of a corporation shall be deemed to be included in the compensation insurance contract or covered under a certificate of self-insurance unless that person is an unsalaried executive officer of a not-for-profit corporation or unincorporated association and such corporation or association elects to exclude that person from the coverage of this chapter. Such election to exclude such person shall be made in writing on a form prescribed by the chair and filed with the insurance carrier. Such election shall be effective with respect to all of the policies issued to the corporation or association by such insurance carrier as long as it shall continuously insure the corporation or association, provided that written notice of the continuation of the election to exclude any or all executive officers is given to the corporation or association with each renewal notice of the policy. If such election is revoked, it shall be in writing on a form prescribed by the chair, and shall be filed with the chair and the insurance carrier. Such revocation shall not be effective until thirty days after such filing. Any executive officer whose corporation or association files an election not to be included under this chapter shall be deemed not to be an employee within the intent of this chapter; however, if not excluded, such officers and their dependents shall be entitled to compensation as provided by this chapter.

b. An executive officer of any corporation who at all times during the period involved owns all of the issued and outstanding stock of the corporation and holds all of the offices pursuant to paragraph (e) of section seven hundred fifteen of the business corporation law and who is the executive officer of a corporation having other persons who are employees required to be covered under this chapter shall be deemed to be included in the compensation insurance contract or covered under a certificate of self-insurance unless the officer elects to be excluded from the coverage of this chapter. Such election shall be made by the corporation filing a notice that the corporation elects to exclude the

executive officer of such corporation named in the notice from coverage of this chapter. Such election shall be filed with the insurance carrier or the chair in the case of self-insurance upon a form prescribed by the chair of the workers' compensation board. Such election shall be effective with respect to all policies issued to such corporation by such insurance carrier as long as it shall continuously insure the corporation and shall be final and binding upon the executive officer named in the notice until revoked by the corporation in accordance with paragraph a of this subdivision.

(c) An executive officer of any corporation who at all times during the period involved owns all of the issued and outstanding stock of the corporation and holds all of the offices pursuant to paragraph (e) of section seven hundred fifteen of the business corporation law and who is the executive officer of a corporation that has no other persons who are employees required to be covered under this chapter shall be deemed to be excluded from coverage under this chapter unless such officer elects to be covered. Such coverage may be effected by obtaining an insurance policy or in the case of self-insurance by the corporation submitting a form prescribed by the chair of the workers' compensation board, giving notice that the corporation elects to bring the executive officer of such corporation named in the notice within the coverage of this chapter.

d. Any two executive officers of a corporation who at all times during the period involved between them own all of the issued and outstanding stock of the corporation and hold all such offices, provided, however that each officer must own at least one share of stock, who are the executive officers of such corporation having other persons who are employees required to be covered under this chapter shall be deemed to be included in the compensation insurance contract or covered under a certificate of self-insurance unless one or both the officers elect to be excluded from the coverage of this chapter. Such election shall be made by any such corporation filing a form prescribed by the chair of the workers' compensation board with the insurance carrier or the chair in the case of self-insurance giving notice that the corporation elects to exclude one or both of the executive officers of such corporation named in the notice from the coverage of this chapter. Such election

shall be effective with respect to all policies issued to such corporation by such insurance carrier as long as it shall continuously insure the corporation and shall be final and binding upon the executive officers as named in the notice until revoked by the corporation. If such election is revoked, it shall be in writing on a form prescribed by the chair and shall be filed with the chair and the insurance carrier. Such revocation shall not be effective until thirty days after such filing.

e. Any two executive officers of a corporation who at all times during the period involved between them own all of the issued and outstanding stock of such corporation and hold all such offices, provided, however that each officer must own at least one share of stock, who are the executive officers of such corporation that has no other persons who are employees required to be covered under this chapter shall be deemed to be excluded from coverage under this chapter unless one or both officers elect to be covered. Such coverage may be effected by obtaining an insurance policy or, in the case of self-insurance, by the corporation submitting a form prescribed by the chair of the workers' compensation board, giving notice that the corporation elects to bring one or both executive officers of such corporation named in the notice within coverage of this chapter.

f. Notwithstanding the provisions of paragraph a of this subdivision or any other provision of this chapter, any executive officer of a religious, charitable or educational corporation and the officers of a municipal corporation, and officers of any post or chapter of organizations of veterans of any war of the United States may be brought within the coverage of the insurance contract as if they were employees by any such corporation filing with the insurance carrier, upon a form prescribed by the chair of the workers' compensation board, a notice that the corporation elects to bring one or more executive officers of such corporation named in the notice within the coverage of this chapter. Such election shall be effective with respect to all policies issued to such corporation by such insurance carrier as long as it shall continuously insure the corporation. If such election is revoked, it shall be in writing on a form prescribed by the chair and filed with the

chair and with the insurance carrier and a copy thereof furnished to each officer as to whom such revocation is applicable, upon a form prescribed by the chair. Such revocation shall not be effective until thirty days after such filing. The estimation of the wage values of executive officers within the coverage of the insurance contract shall be reasonable and separately stated and added to the valuation of the payrolls upon which the premium is computed.

g. The executive officers brought within the coverage of the insurance contract, and the dependents of any such executive officers, including executive officers of religious, charitable or educational corporations and officers of municipal corporations, and officers of any post or chapter of organizations of veterans of any war of the United States that have elected to bring their officers within the coverage of the policy, shall have the same rights and remedies as any employee and shall be entitled to compensation and medical care as provided by this chapter, and the insurance carrier shall be liable therefor and for payments into the special funds provided in this chapter as in the case of an employee. The executive officers who may be brought within the coverage of an insurance contract shall include an officer of a corporation who at all times during the period involved between them owns all of the issued and outstanding stock of the corporation and holds all of the offices pursuant to paragraph (e) of section seven hundred fifteen of the business corporation law or two executive officers of a corporation who at all times during the period involved between them own all of the issued and outstanding stock of such corporation and hold all such offices and who is the executive officer or who are the executive officers of a corporation that has no other persons who are employees required to be covered under this chapter.

h. Any officer or officers, elective or appointive, of a municipal corporation or other political subdivision of the state complying with the provisions of group nineteen of subdivision one of section three of this chapter shall be deemed executive officers subject to the provisions of this subdivision.

6-a. Insurance contracts with fire or ambulance districts.

Notwithstanding any other provision of this section or of this chapter, any insurance contract to secure workers' compensation for a fire or ambulance district pursuant to subdivision one or subdivision two of section fifty of this chapter issued to take effect on or after July first, nineteen hundred sixty, in relation to a fire district and January first, in the year next succeeding the year in which this subdivision as hereby amended becomes effective, in relation to an ambulance district or any such contract renewed to continue in effect on or after such dates, shall provide workers' compensation coverage for all fire or ambulance district officers, whether elective or appointive, and all fire or ambulance district employees, whether or not they are compensated for their services, unless the board of fire or ambulance commissioners of the fire district or ambulance district by resolution elects not to provide such coverage for any one or more of such officers or employees, or class thereof. Such election not to provide such coverage shall be effective with respect to all such insurance contracts thereafter issued to such fire or ambulance district by any insurance carrier until revoked in whole or in part by resolution of the board of fire or ambulance commissioners of the fire or ambulance district. Such election not to provide such coverage shall not become effective until thirty days after a copy of such resolution has been filed with the chairman of the workers' compensation board and with the insurance carrier and a copy thereof is furnished to each officer and employee as to whom such revocation is applicable. The chairman of the workers' compensation board shall prescribe the form of such resolution. The provisions of this subdivision shall not be applicable in cases where the injury arises out of and in the course of duty as a volunteer firefighter or a volunteer ambulance worker or as a civil defense volunteer and where the computation of benefits would be made under the provisions of the volunteer firefighters' benefit law or the volunteer ambulance workers' benefit law or under article ten of this chapter.

7. Limitation of the issuance of policies by a foreign insurance company. No policy or contract of insurance issued by a foreign stock corporation or mutual association authorized to transact the business of workers' compensation insurance in this state, except a corporation organized under the laws of a state or country outside of the United

States and domiciled in this state, covering or intended to cover the liability of an employer to his employees under this chapter, shall be accepted as a compliance with subdivision two of section fifty of this chapter, unless such foreign stock corporation or mutual association shall have filed with the superintendent of financial services a bond or undertaking with good and sufficient sureties to the people of the state of New York, and conditioned upon the payment in full of any and all compensation and benefits as provided in this chapter to any and all persons entitled thereto under any such policy or contract of insurance. Such bond shall be approved as to form by the attorney-general and as to sufficiency by the superintendent of financial services. The amount of such bond shall be such sum as may reasonably represent twenty-five per centum of the outstanding reserves for compensation losses on policies issued by such foreign stock corporation or mutual association upon risks located in the state of New York as determined by law or by the requirements of the superintendent of financial services, provided, however, that the amount of such bond shall in no case be less than twenty-five thousand dollars nor more than one million dollars. Such bond shall be renewed annually. Every such bond shall contain a provision authorizing the attorney-general upon the certificate of the superintendent of financial services that there has been default in the payment of compensation for thirty days or that the bonded company has become insolvent to enforce such bond in the name of the people of the state of New York for the benefit of any and all persons entitled to the compensation assured by any policy issued by such foreign stock corporation or mutual association or otherwise entitled to any benefits under such policy. In lieu of the bond required to be given hereunder any such foreign stock corporation or mutual association may deposit with the superintendent of financial services securities of the kind prescribed in section one thousand three hundred eighteen of the insurance law in an amount equal to twenty-five per centum of the outstanding reserves for compensation losses on policies issued by such foreign stock corporation or mutual association upon risks located in the state of New York, but not less than twenty-five thousand dollars nor more than one million dollars. In computing the amount of such securities they shall be valued as determined by the superintendent of financial services in valuing the assets of insurance companies. Such

securities shall be held by the superintendent of financial services as a special deposit and as express security for the payment of such compensation or benefits and may be sold by the said superintendent without notice in the event that there has been default in the payment of compensation for thirty days or that the depositing company has become insolvent. The income thereon shall be collected by the superintendent of financial services and, prior to any default in the payment of such compensation or benefits, shall be paid over by him to the stock corporation or mutual association depositing the same.

However, no such bond or undertaking shall be required to be filed after July first, nineteen hundred thirty-eight, by any carrier making payment to the stock or mutual funds respectively established by sections one hundred seven and one hundred nine-d of this chapter.

8. A self-employed person, a partner of a partnership as defined in section ten of the partnership law but not including a limited partner, a partner of a registered limited liability partnership as defined in section two of the partnership law, a member of a limited liability company as defined in subdivision (m) of section one hundred two of the limited liability company law or a member of a professional service limited liability company as defined in subdivision (f) of section one thousand two hundred one of the limited liability company law, having other persons who are employees required to be covered under this chapter may be included in the compensation insurance contract or covered under a certificate of self-insurance. Such election shall be made by any such partnership, sole proprietorship, registered limited liability partnership, limited liability company or professional service limited liability company filing with the insurance carrier or the chair in the case of self-insurance upon a form prescribed by the chair, a notice that the partnership, sole proprietorship, registered limited liability partnership, limited liability company or professional service limited liability company elects to include the partner, partners, the self-employed person or member named in the notice in the coverage of this chapter. Such election shall be effective with respect to all policies issued to such partnership, sole proprietorship, registered limited liability partnership, limited liability company or professional

service limited liability company by such insurance carrier as long as it shall continuously insure the employees of the partnership, sole proprietorship, registered limited liability partnership, limited liability company or professional service limited liability company. Such election shall be final and binding upon the partner, self-employed person or member named in the notice until revoked by the partnership, sole proprietorship, registered limited liability partnership, limited liability company or professional service limited liability company. A self-employed person, a partner of a partnership, a partner of a registered limited liability partnership, a member of a limited liability company or a member of a professional service limited liability company having no other persons who are employees required to be covered under this chapter shall be deemed to be excluded from coverage under this chapter unless he or she elects to be covered. Such coverage may be effected by obtaining an insurance policy.

The self-employed persons, partners of a partnership, partners of a registered limited liability partnership, members of a limited liability company or members of a professional service limited liability company brought within the coverage of the insurance contract, and the dependents of any such self-employed persons, partners of a partnership, partners of a registered limited liability partnership, members of a limited liability company or members of a professional service limited liability company shall have the same rights and remedies as any employee or his or her dependents and shall be entitled to compensation and medical care as provided by this chapter, and the insurance carrier shall be liable therefor and for payments into the special funds provided in this chapter as in the case of an employee.

§ 54-a. Security where coverage is in issue. Where the issue of policy coverage is raised by a carrier in any hearing or proceeding before the board, and an appeal by the carrier, or the making of an application for review is made, although an award is made to a claimant therein against the employer and carrier, the chairman may, nevertheless, require the employer to deposit the amount of said award or furnish such security therefor as may be deemed satisfactory by said chairman. If the employer

shall fail to make such deposit or give such security, the award may be enforced promptly against said employer by the entry of judgment by and in the name of the chairman, for and in behalf of such claimant in accordance with the provisions of section twenty-six hereof. In the event that the award made as against the carrier is finally affirmed, the employer shall be entitled to the return of said security deposited or, if the said award has been paid, to an award by way of reimbursement against the said carrier for the amount of money paid upon the award or judgment entered thereon to the claimant. If the award against the carrier is finally reversed on appeal, then the carrier is relieved of liability and not otherwise.

§ 54-b. Enforcement on failure to pay award or judgment. In case of default by a carrier or self-insured employer in the payment of any compensation due under an award for the period of thirty days after payment is due and payable, or in the case of failure by a carrier or self-insured employer to make full payment of an award for medical care or supplies issued by the board or the chair pursuant to section thirteen-g of this chapter, the chair in any such case or on the chair's consent any party to an award may file with the county clerk for the county in which the injury occurred or the county in which the carrier or self-insured employer has his or her principal place of business, (1) a certified copy of the decision of the board awarding compensation or ending, diminishing or increasing compensation previously awarded, from which no appeal has been taken within the time allowed therefor, or if an appeal has been taken by a carrier or self-insured employer who has not complied with the provisions of section fifty of this article, where he or she fails to deposit with the chair the amount of the award as security for its payment within ten days after the same is due and payable, or (2) a certified copy of the award for medical care or supplies issued pursuant to section thirteen-g of this chapter, and thereupon judgment must be entered in the supreme court by the clerk of such county in conformity therewith immediately upon such filing. If the payment in default be an installment, the board may declare the entire award due and judgment may be entered in accordance with the provisions of this section. Such judgment shall be entered in the same manner, have

the same effect and be subject to the same proceedings as though rendered in a suit duly heard and determined by the supreme court, except that no appeal may be taken therefrom. The court shall vacate or modify such judgment to conform to any later award or decision of the board upon presentation of a certified copy of such award or decision. The award may be so compromised by the board as in the discretion of the board may best serve the interest of the persons entitled to receive the compensation or benefits. Where an award has been made against a carrier or self-insured employer in accordance with the provisions of subdivision nine of section fifteen, or of section twenty-five-a of this chapter, such an award may be similarly compromised by the board, upon notice to a representative of the fund to which the award is payable, but if there be no representative of any such fund, notice shall be given to such representative as may be designated by the chair of the board; and notwithstanding any other provision of law, such compromise shall be effective without the necessity of any approval by the state comptroller. Neither the chair nor any party in interest shall be required to pay any fee to any public officer for filing or recording any paper or instrument or for issuing a transcript of any judgment executed in pursuance of this section. The carrier or self-insured employer shall be liable for all costs and attorneys fees necessary to enforce the award. For the purposes of this section, the term "carrier" shall include the state insurance fund and any stock corporation, mutual corporation or reciprocal insurer authorized to transact the business of workers' compensation insurance in this state.

§ 55. Acceptance of premium by carrier an estoppel. Acceptance of a premium on a policy securing to an employee compensation, either alone or in connection with other insurance, shall estop the carrier so accepting from pleading that the employment of such employee is not a hazardous employment or the employment is not carried on for pecuniary gain.

§ 56. Subcontractors. A contractor, the subject of whose contract is, involves or includes a hazardous employment, who subcontracts all or any

part of such contract shall, in any case of injury or death to any employee, arising out of and in the course of such hazardous employment, be liable for and pay compensation to such employee or persons entitled to compensation on the death of such employee, and in any such case of injury or death where the employer of such employee would be required to make payments into the special funds provided by subdivisions eight and nine of section fifteen and subdivision three of section twenty-five-a, the contractor or, if insured, his insurance carrier shall be liable for and pay into such special funds the amounts required by such subdivisions eight and nine of section fifteen and subdivision three of section twenty-five-a to be paid by such employer; unless the subcontractor primarily liable for such compensation or payments into such special funds has secured compensation therefor as provided in this chapter.

Any contractor, or his insurance carrier, who shall, under the provisions of this section, become liable for such compensation or payments into such special funds may recover the amount of such compensation paid or payments made into such special funds from the subcontractor primarily liable therefor. The claim for such recovery shall constitute a lien against any moneys due or to become due to the subcontractor from such contractor. Such claim for recovery, however, shall not affect the right of such employee or persons entitled to compensation on the death of such employee or the chairman from recovering such compensation or payments into such special funds from the contractor or his insurance carrier.

Notwithstanding any other provision of this chapter, in any case of injury or death to an executive officer of any corporation who at all times during the period involved owns all of the issued and outstanding stock of the corporation and holds all of the offices pursuant to paragraph (e) of section seven hundred fifteen of the business corporation law or to a self-employed person or to a partner of a partnership as defined in section ten of the partnership law, the contractor or, if insured, his insurance carrier shall not be liable for the payment of compensation or medical expenses to or on behalf of such executive officer, self-employed person or partner of a partnership or

to his surviving spouse, children and dependents as defined by section sixteen of this chapter solely because of the injury or death of such executive officer, self-employed person or partner.

Notwithstanding any other provision of this chapter, in any case of injury or death of any one of two executive officers of any corporation who at all times during the period involved between them own all of the issued and outstanding stock of such corporation and hold all of such offices pursuant to paragraph (e) of section seven hundred fifteen of the business corporation law provided, however, that each officer must own at least one share of stock, the contractor or, if insured, his insurance carrier shall not be liable for the payment of compensation or medical expenses to or on behalf of such executive officers or to their surviving spouse, children and dependents as defined by section sixteen of this chapter solely because of the injury or death of any such executive officers.

An owner of timber other than farm lands, who contracts with another to carry on or perform work or service in connection therewith, which work or service is, involves or includes a hazardous employment, shall for the purposes of this section be deemed a contractor, and such other a subcontractor.

§ 57. Restriction on issue of permits and the entering into contracts unless compensation is secured. 1. The head of a state or municipal department, board, commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in a hazardous employment defined by this chapter, and notwithstanding any general or special statute requiring or authorizing the issue of such permits, shall not issue such permit unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that compensation for all employees has been secured as provided by this chapter. Nothing herein, however, shall be construed as creating any liability on the part of such state or municipal department, board, commission or office to pay any compensation to any such employee if so employed.

2. The head of a state or municipal department, board, commission or office authorized or required by law to enter into any contract for or in connection with any work involving the employment of employees in a hazardous employment defined by this chapter, notwithstanding any general or special statute requiring or authorizing any such contract, shall not enter into any such contract unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that compensation for all employees has been secured as provided by this chapter.

§ 58. Payment of compensation to persons providing housekeeping or nursing services. An employer under the workmen's compensation law, or the insurance carrier under the policy of workmen's compensation insurance covering such employer, or any other person or organization including the state, a municipal corporation or other political subdivision of the state which provides housekeeping, or nursing services to an injured employee or recipient of social services assistance or which arranges for such services by authorizing the hiring of an employee for such purposes and which supplies funds for the payment of such employee's wages, notwithstanding any general or special statute requiring or authorizing such housekeeping or nursing services, shall be liable for the payment of compensation to the person performing such housekeeping or nursing services as provided by this chapter. Nothing in this section shall create an employer-employee relationship when such relationship does not otherwise exist.

ARTICLE 5

COUNTY SELF-INSURANCE PLAN

- Section 60. Definitions.
- 61. Continuance of existing plans; establishment of new plans.
- 62. Participants.
- 63. Liability of county.
- 64. Administration of plan.
- 65. Rules and regulations.

- 66. Apportionment of costs.
- 67. Annual estimate; payments by participants.
- 68. Advances to county self-insurance fund.
- 69. Reserve.
- 70. Excess or catastrophe insurance; public group self-insurance plans.
- 71. Accrual of liabilities.
- 72. Annual report.
- 73. Abandonment of plan.
- 74. Manner of adoption of local laws.
- 75. Transition provisions.
- 75-a. (Enacted without section heading).

§ 60. Definitions. As used in this article, the following terms shall mean and include:

1. "Public corporation." A corporation as defined in section three of the general corporation law, except that a public benefit corporation shall not be deemed a public corporation for the purposes of this article unless it operates in a territory coterminous with the county or a tax district or districts within the county.

1-a. "Contract agency", "contract association". A not-for-profit corporation or association which provides services exclusively to a single county on a contractual basis and receives at least eighty-five percent of its funding from the local, state or federal government.

2. "Municipal corporation," "district corporation" and "public benefit corporation." A municipal corporation, district corporation and public benefit corporation, respectively, as defined in section three of the general corporation law.

3. "Plans." The plan of self-insurance provided for in this article.

4. "Committee." The committee appointed pursuant to section sixty-four of this chapter to administer the plan.

5. "Administrator." The administrator appointed pursuant to section sixty-four of this chapter to administer the plan.

6. "Participant." A public corporation participating in a plan.

7. "Liability." The liability of a participant to pay compensation, assessments and all other obligations imposed by or pursuant to this chapter, the volunteer firefighters' benefit law, and the volunteer ambulance workers' benefit law except as otherwise provided in section sixty-one of this chapter.

8. "Reserve." The self-insurance reserve provided for in section sixty-nine of this chapter.

§ 61. Continuance of existing plans; establishment of new plans. 1. Plans of mutual self-insurance heretofore adopted by boards of supervisors of counties pursuant to former subdivision three-a of section fifty of this chapter, are hereby continued; provided, however, that the board of supervisors of a county must provide by local law for the continuation of the plan and for the administration thereof pursuant to this article on or before July thirty-first, nineteen hundred fifty-six, or such plan shall be deemed abandoned as of October thirty-first, nineteen hundred fifty-six, subject to the provisions of subdivision two of section seventy-five of this chapter. All such plans not so abandoned shall be operated pursuant to the provisions of this article and local laws adopted pursuant thereto.

2. The board of supervisors of a county may by local law establish the plan of self-insurance provided for in this article.

3. A local law establishing a plan pursuant to this article may, notwithstanding the provisions of paragraph f of subdivision one of section eleven of the municipal home rule law, provide that the provisions of subdivision three of section sixty-three of this article, as amended from time to time, shall not be applicable to the plan in

that county and, if such plan is established, the term "liability", as used in this article, shall not include any compensation, assessments or other obligations under the volunteer firefighters' benefit law and the provisions of subdivision three of section sixty-three of this article, as amended from time to time, shall not be applicable in relation to such plan.

4. If a plan has been continued pursuant to this article, the board of supervisors may, notwithstanding the provisions of paragraph f of subdivision one of section eleven of the municipal home rule law, adopt a local law on or before the first day of August in any year to provide that the provisions of subdivision three of section sixty-three of this article, as amended from time to time, shall not be applicable to the plan in that county after the thirty-first day of December in such year, except as to liabilities existing on such latter date, and, if such a local law is adopted, the term "liability", as used in this article, shall not include any compensation, assessments or other obligations under the volunteer firefighters' benefit law, and the provisions of subdivision three of section sixty-three of this article shall not be applicable in relation to such plan, after the thirty-first day of December in such year, except as to, and in connection with, liabilities existing on such thirty-first day of December.

5. If a local law has been adopted pursuant to either subdivision three or subdivision four of this section, the board of supervisors may, notwithstanding the provisions of paragraph f of subdivision one of section eleven of the municipal home rule law, adopt a local law on or before the first day of August in any year to provide that the provisions of subdivision three of section sixty-three of this chapter, as amended from time to time, shall be applicable to the plan in that county after the thirty-first day of December in such year, and, if such a local law is adopted, the term "liability", as used in this article shall include any compensation, assessments, or other obligations under the volunteer firefighters' benefit law, the volunteer ambulance workers' benefit law, and the provisions of subdivision three of section sixty-three of this chapter shall be applicable in relation to such plan, after the thirty-first day of December in such year, and, further,

the provisions of section sixty-seven of this chapter shall be applicable on and after the first day of August in such year in relation to such plan.

6. Notwithstanding the provisions of paragraph f of subdivision one of section eleven of the municipal home rule law, the board of supervisors of a county may by local law amend the definition of "liability", as defined in subdivision seven of section sixty of this article, to exclude any liability under paragraph m of subdivision one of section five of the volunteer firefighters' benefit law.

§ 62. Participants. Each plan shall have at least two municipal corporations as participants. The county shall be one of the participants in a plan. Any contract agency or contract association with the approval of the county government and any other public corporation may by resolution of its governing body elect to become a participant in a plan established in the county, or, in the case of a public corporation or contract agency or contract association located in more than one county, in a plan established in one of such counties; provided, however, that the rules and regulations adopted pursuant to section sixty-five of this chapter may exclude from participation in a plan any type of public corporation or contract agency or contract association other than the county and cities, towns and villages.

§ 63. Liability of county. 1. In the case of plans established pursuant to former subdivision three-a of section fifty of this chapter and continued pursuant to the provisions of section sixty-one of this chapter, payments with respect to (a) the liability of participants arising on and after January first, nineteen hundred fifty-seven, and (b) the joint liability of the participants imposed pursuant to such former subdivision three-a of section fifty of this chapter, shall be made by the county.

2. When a plan is established pursuant to this article, payments with respect to the liability of participants arising on and after the

effective date of the plan shall be made by the county.

3. Where a town participates in a plan, in addition to payments with respect to the liability of the town, the county shall make payments with respect to that portion of the liability of all villages, fire districts, fire protection districts and fire alarm districts within such town and all territory within such town outside cities, villages, fire districts, fire protection districts and fire alarm districts arising out of the death of or injury to volunteer firefighters; provided, however, that the county shall not be obligated to make such payments in the case of a village, fire district, fire protection district or fire alarm district, located in more than one town unless the town board of each town containing part of the village or district by resolution elects to become a participant in the plan. Participation in a plan by a village or fire district shall make the county liable for such payments where the town or towns in which such village or fire district is located are not participants in the plan. The term "injury", as used in this subdivision, means "injury" as defined in subdivision four of section three of the volunteer firefighters' benefit law, as amended from time to time. If a county has elected to establish a self-insurance plan for itself, it may elect to extend coverage under such plan to voluntary ambulance companies upon the same terms and conditions as such coverage applies to volunteer firefighters.

4. The expenditure of county funds for payments authorized or required by this article is hereby declared to be for a county purpose.

5. For the purposes of this article, officers and employees of a soil conservation district located wholly within a county shall be deemed employees of the county in which such district is located.

6. Notwithstanding the foregoing provisions of this section, each participant alone shall be obligated to pay the increased liability provided for by section fourteen-a of this chapter.

7. Notwithstanding any other provision of this chapter, each participant in a plan continued or established pursuant to this article

shall be deemed to have duly taken such action, as would have otherwise been required by this chapter, to elect to bring all of its employees, or officers, elected or appointed or otherwise, not enumerated in section three, subdivision one, groups one to seventeen inclusive, of this chapter, within the coverage of this chapter hereafter, notwithstanding the definitions of the terms "employment", "employer", or "employee" in subdivisions three, four and five of section two of this chapter, and each participant which has any group, as defined by order of the New York state civil defense commission, of civil defense volunteers not enumerated in section three, subdivision one, group seventeen, who are personnel of a volunteer agency of the local office of such participant, as defined in the state defense emergency act, shall be deemed to have duly taken such separate and distinct action of its legislative or other governmental body, as would otherwise have been required by this chapter, to bring such group of civil defense volunteers within the coverage of this chapter hereafter as to their authorized civil defense services to the extent not covered under article ten of this chapter, and hereafter all such officers and employees and such civil defense volunteers of a participant in a plan continued or established pursuant to this article shall be within the coverage of this chapter to the same extent as if all appropriate action had been taken pursuant to section three, subdivision one, group nineteen, or any other applicable provision, of this chapter; provided, however, in relation to such officers and employees of the participant, or any class or group of such officers and employees of the participant or for such civil defense volunteers who are personnel of the participant, a participant may (1) elect not to provide such coverage, (2) elect to provide such coverage in a manner provided in section fifty of this chapter other than under article five thereof, (3) elect to revoke an election made under either "(1)" or "(2)" above and adopt the other of such elections, or (4) elect to revoke an election made under either "(1)" "(2)" or "(3)" above and have such coverage provided under the plan as if no election had been made hereunder. Any such election shall become effective when adopted if it is filed with the chairman of the workmen's compensation board and with the committee or administrator of the plan within ten days after adoption, otherwise it shall become effective when filed with both the chairman of the workmen's

compensation board and the committee or administrator of the plan. The chairman of the workmen's compensation board may prescribe the form or forms of any such election. Notwithstanding the provisions of section three, subdivision one, group nineteen, of this chapter, if the county elects to exclude one or more groups of such civil defense volunteers of the county's office of civil defense, then the plan shall not be liable for coverage under this chapter for such civil defense volunteers so excluded, but this shall not preclude a town or a village in such county or a city participating in the consolidated county office of civil defense of such county from bringing the members of such group or groups of duly enrolled civil defense volunteers who are residents of and are enrolled from such town, village or city within the coverage of this chapter during any period when the county has so excluded, but in any such case the compensation shall be secured in a manner provided in section fifty of this chapter other than under article five thereof. This subdivision shall not affect the coverage of officers and employees and civil defense volunteers for whom mandatory coverage is provided under this chapter.

8. Except as provided in subdivision three or nine of this section in relation to volunteer firefighters and volunteer ambulance workers, participation in a plan by a town shall not make the county liable for payments of compensation under this chapter in relation to the officers and employees of a fire or ambulance district located in whole or in part in such town. Except as provided in subdivision three of this section in relation to volunteer firefighters or subdivision nine of this section in relation to volunteer ambulance workers, the county shall be liable for payments of compensation under this chapter in relation to the officers and employees of a fire or ambulance district only in cases where the fire or ambulance district is a participant in the plan.

9. Where a town participates in a plan, in addition to payments with respect to the liability of the town, the county shall make payments with respect to that portion of the liability of all villages, ambulance districts, within such town and all territory within such town outside cities, villages, ambulance districts, arising out of the death of or

injury to volunteer ambulance workers; provided, however, that the county shall not be obligated to make such payments in the case of a village, ambulance district, located in more than one town unless the town board of each town containing part of the village or district by resolution elects to become a participant in the plan. Participation in a plan by a village or ambulance district shall make the county liable for such payments where the town or towns in which such village or ambulance district is located are not participants in the plan. The term "injury", as used in this subdivision, means "injury" as defined in subdivision four of section three of the volunteer ambulance workers' benefit law, as amended from time to time.

§ 64. Administration of plan. 1. The board of supervisors shall by local law provide for the administration of the plan, such plan to be administered by either a committee or an administrator. Any county officer or employee or other person may be appointed to such committee or act as administrator, or be appointed or employed by such committee or administrator. The committee or administrator may employ, subject to the approval of the board of supervisors, such persons as may be deemed necessary for the operation of the plan, and may contract for necessary actuarial, or other expert or professional services. Members of the committee or the administrator, and all other officers and employees of the plan, shall receive such salary or other remuneration, payable from moneys of the plan, as shall be fixed by the board of supervisors. Notwithstanding the provisions of any other law, a county officer or employee, other than a member of the board of supervisors, in addition to his salary as such officer or employee, may be compensated as a member of such committee, as such administrator, or as an officer or employee of the plan.

2. The county treasurer shall be the custodian of all moneys of the plan. Such moneys shall be accounted for as a separate fund to be known as the county self-insurance fund, and shall be deposited in a bank or trust company designated in the manner provided by law as a depository of moneys of the county. Disbursements of such moneys, except for payment of fixed salaries, shall be made only upon order of the

committee or administrator, as the case may be. Compensation may be paid upon such order to persons entitled thereto in the manner provided in section twenty-five of this chapter. The amount of compensation payable prior to an award pursuant to such order shall constitute a settled claim within the meaning of the local finance law. Books, records and papers of the plan shall be subject to examination and audit as provided in section two hundred ten of the county law.

3. The county attorney shall be legal advisor to the plan and it shall be his duty to represent the plan in all controversies. In addition, the county attorney may engage subject to the approval of the board of supervisors, counsel in respect to any particular subject matter, proceeding or litigation, in which event the expense of engaging such special counsel shall be charged as an administrative expense of the plan.

§ 65. Rules and regulations. 1. The board of supervisors shall by local law adopt rules and regulations not inconsistent with law for the fair and equitable administration and operation of the plan. Such rules and regulations may provide standards and conditions with respect, but not limited, to (a) entry and withdrawal of participants, (b) medical examinations, (c) safety programs, (d) reports by participants and (e) cooperation by participants, provided, however, that such rules and regulations, or failure to adopt the same, shall not prevent withdrawal of a participant from the plan upon the condition that such participant shall pay, in a lump sum or in installments, an equitable share of the outstanding liabilities of the plan as of the date of withdrawal. Any payments required upon entry to or withdrawal from a plan may be financed, in whole or in part, by any municipal corporation or district corporation by the issuance of bonds or capital notes pursuant to the local finance law.

2. Such rules and regulations may also provide that for any violation thereof or of this chapter, a participant may be expelled from the plan or be charged with a penalty. Any such penalty shall be collected at the same time and in the same manner as other charges against participants

as provided in section sixty-seven of this chapter, or in such other manner as may be provided in such rules and regulations. A participant liable for the payment of a penalty may by action of its governing body elect to recover the amount thereof from the public officer or employee whose act or failure to act resulted in the imposition of such penalty. In such event, the amount of the penalty may be withheld from the salary or other remuneration payable to such officer or employee.

§ 66. Apportionment of costs. 1. The total of the several amounts set forth in the annual estimate prepared pursuant to section sixty-seven of this chapter shall be apportioned to each participant in the proportion that the full valuation of its taxable real property bears to the aggregate full valuation of all participants; provided, however, that the rules and regulations adopted pursuant to section sixty-five of this chapter may provide that apportionments to a class of participants shall be based on a percentage of full valuation rather than on entire full valuation.

2. The full valuation of taxable real property shall be determined by the use of state equalization rates established pursuant to article two-a of the tax law. The full valuation of a public benefit corporation shall be the same as the full valuation of taxable real property of the tax district or districts within which it operates.

§ 67. Annual estimate; payments by participants. 1. The committee or administrator shall annually, not later than the fifteenth day of August, file with the board of supervisors an estimate of the several amounts necessary for the ensuing calendar year (a) to meet the payments with respect to the liability of participants required to be made by the county pursuant to section sixty-three of this chapter, (b) to pay the administrative expenses of the plan, (c) to repay any amounts advanced to the plan and (d) to provide for contributions to the reserve, if any. The committee or administrator shall then determine the share of such amounts chargeable to each participant in the manner prescribed by section sixty-six of this chapter. A list of the amount of the share

payable by each participant shall be furnished to the county treasurer. The committee or administrator shall notify each participant in writing not later than September first of the amount of such share. Each participant shall pay the county treasurer the amount so specified in such notice not later than thirty days after the commencement of such participant's next fiscal year. All amounts so received shall be credited to the county self-insurance fund. If any such amount shall not be paid within the time limit, the same shall be recovered by an action brought by the county or such amount shall be certified by the county treasurer to the board of supervisors for inclusion in the next succeeding tax levy, if any, against property taxable by the participant responsible therefor.

2. Notwithstanding the foregoing provisions of this section, the board of supervisors may by local law provide, in lieu of collecting the amounts apportioned to participants, or a class thereof, as provided in subdivision one of this section, that each such participant's share of such amounts shall be collected by inclusion in the next succeeding tax levy against property taxable by the participant responsible therefor. When collected such amounts shall be paid over to the county treasurer and by him credited to the county self-insurance fund.

§ 68. Advances to county self-insurance fund. If at any time there are insufficient moneys in the county self-insurance fund, exclusive of the reserve, to operate the plan, the county treasurer shall advance to such fund such amount from the general fund of the county, as shall be requested by the committee or administrator and approved by resolution of the board of supervisors. Any such advance shall be repaid as soon as moneys are available therefor, but in no event later than the close of the calendar year succeeding the calendar year in which the advance was made. However, any such advance may be repaid not later than the close of the second calendar year succeeding the calendar year in which such advance was made, when made during such calendar year at a time subsequent to the preparation of the estimate by the committee or administrator for the succeeding calendar year.

§ 69. Reserve. 1. The board of supervisors in connection with a plan may by local law establish a self-insurance reserve. Such local law shall prescribe the maximum amount which may be contributed to any such reserve.

2. The committee or administrator may at any time in its or his discretion expend moneys in such reserve to pay any liability of the plan.

3. The committee or administrator may direct the county treasurer to invest moneys in any such reserve in the manner prescribed by section eleven of the general municipal law.

4. In the event of abandonment of a plan, all moneys remaining in such reserve in excess of an amount sufficient to satisfy all accrued and contingent liabilities, shall be refunded to the participants in such manner as may be provided by local law adopted by the board of supervisors.

§ 70. Excess or catastrophe insurance; public group self-insurance plans. 1. The committee or administrator, subject to the approval of the board of supervisors, may on behalf of the plan purchase excess or catastrophe insurance. The cost of such insurance shall be an administrative expense of the plan.

2. The committee or administrator, subject to the approval of the board of supervisors, may on behalf of the plan join a public group self-insurer established under subdivision three-a of section fifty of this chapter. Notwithstanding any other provision of this chapter, when the committee or administrator contracts on behalf of the plan to join a public group self-insurer:

a. the public group self-insurer, the county and each participant shall remain liable in the manner provided in the plan for claims made prior to the date on which the plan joins the public group self-insurer;

and

b. the committee or administrator shall establish, before the plan joins the public group self-insurer, a method, which may be amended annually thereafter, by which to apportion among the participants in the plan the cost of its membership in the public group self-insurer and all claims made after the date on which the plan joins the public group self-insurer, and each participant in the plan shall pay its respective share of the cost to the county treasurer, who shall pay the public group self-insurer on behalf of all plan participants.

§ 71. Accrual of liabilities. 1. Notwithstanding any other provision of this article, a county may by local law provide for the operation of a plan on an accrued liability basis whereby amounts charged to participants shall be based on the estimated total liability of participants actuarially computed, arising each year. A county also may by local law provide for the operation of a plan on an experience rating basis, whereby amounts charged to participants shall be based either partially or totally on the past liability of participants. Once adopted, an accrued liability basis or an experience rating basis shall not thereafter be discontinued.

2. If a county elects to operate its plan on an experience rating basis, the chief elected official of such county shall create and appoint a labor-management safety committee. The purposes of the committee shall be to educate public employees of the plan participants in proper health and safety procedures in the work places of the participants, and to design such additional programs as may be appropriate to the development of a safe working environment in participants' facilities and job sites. The committee shall accomplish these purposes by establishing and maintaining such employee safety and health programs as it deems appropriate and by publicizing the availability of such programs. The purposes and powers of the committee may be expanded by the county by adopting rules and regulations pursuant to section sixty-five of this chapter.

3. The committee, which shall be appointed by the chief elected official, shall be comprised of an equal number of employer and employee representatives consisting of not less than three nor more than five representatives each of the employer and of the employees, respectively. The participants in the plan shall submit to the chief elected official a list of candidates for the labor-management safety committee. In cases in which employee organizations recognized or certified to represent employees of the participants pursuant to article fourteen of the civil service law exist, such recognized or certified employee organizations shall submit a list of employee candidates for the labor-management safety committee to the chief elected official. The chief elected official shall create the committee from the lists of candidates so submitted. The chief elected official, or person designated by him, shall act as the chairperson of the committee, but shall not be entitled to vote on any committee business. The members of the committee shall serve without salary, but shall be entitled to reimbursement for reasonable and necessary expenses incurred in the performance of their official duties pursuant to this section. The committee shall meet at least four times a year, with at least one meeting in each calendar quarter. The chairperson shall designate the dates of the meeting, and shall give at least ten days written notice to each committee member of each meeting. The costs and expenses of the committee and its health and safety programs shall be an administrative expense of the plan.

4. A recognized or certified employee organization may file a grievance in writing with the chief elected official of the county alleging that the county is not complying with subdivision two or three of this section. The grievance shall designate in detail the particulars in which the employee organization alleges the county has failed to comply with either or both such subdivisions. The chief elected official shall answer the grievance in writing within fifteen days of its filing.

5. If such answer is unsatisfactory to the employee organization, or is not received by the employee organization within fifteen calendar days, then the employee organization may submit the grievance to arbitration. In such event the employee organization shall request in writing a list of three arbitrators from the nearest regional office of

the American arbitration association. The association shall compile and send a copy of such list to each party. Each party shall rank the arbitrators in order of decreasing preference from one to three and shall return the marked list within ten calendar days of receipt to the regional office of the American arbitration association from which the list was requested. Such office shall then determine the arbitrator most acceptable to both parties.

6. The arbitrator selected shall hear arguments from both parties and from such additional witnesses as the arbitrator deems necessary to assist in rendering a decision. Within thirty days of such hearing the arbitrator shall render a decision which shall be final and binding on both parties.

§ 72. Annual report. The county treasurer shall annually make a financial report of the plan to the state comptroller as of the close of the calendar year. Such reports shall be in such form and contain such information as may be prescribed by the state comptroller. All reports shall be duly verified and shall be filed with the state comptroller within sixty days after the close of the calendar year. A copy of such report shall within the same time be transmitted to the clerk of the board of supervisors and to each participant in the plan.

§ 73. Abandonment of plan. The board of supervisors of a county may by local law provide for the abandonment of a plan, effective as of the close of the calendar year then in progress. Such plan, however, shall continue to operate thereafter until all liabilities of the plan incurred prior to such effective date shall have been satisfied and all advances to the county self-insurance fund shall have been repaid. Such local law shall provide a method for the distribution of any assets of the plan remaining after all such liabilities have been satisfied. The provisions of this section shall not apply to any plan abandoned pursuant to section sixty-one of this chapter. At the discretion of the chair, the board of supervisors of a county may execute an assumption of workers' compensation liability insurance policy securing such further

and future contingent liability as may arise from prior injuries to workers and be incurred by reason of any change in the condition of such workers warranting the board making subsequent awards for payment of additional compensation. Such policy shall be in a form approved by the superintendent of financial services and shall be issued by the state fund or any insurance company licensed to issue this class of insurance in this state. In the event that such policy is issued by an insurance company other than the state fund, then said policy shall be deemed to be of the kind specified in paragraph fifteen of subsection (a) of section one thousand one hundred thirteen of the insurance law and covered by the workers' compensation security fund as created and governed by article six-A of this chapter. It shall only be issued for a single complete premium payment in advance by the county, city, village, town, school district, fire district or other political subdivision of state and in an amount deemed acceptable by the chair and the superintendent of financial services. In lieu of the applicable premium charge ordinarily required to be imposed by a carrier, said premium shall include a surcharge in an amount to be determined by the chair to satisfy all assessment liability due and owing to the board and/or the chair under this chapter. Said surcharge shall be payable to the board simultaneous to the execution of the assumption of workers' compensation liability insurance policy. However, the payment of said surcharge does not relieve the carrier from any other liability, including liability owed to the superintendent of financial services pursuant to article six-A of this chapter. When issued such policy shall be non-cancellable without recourse for any cause during the continuance of the liability secured and so covered.

§ 74. Manner of adoption of local laws. A local law authorized by this article shall be adopted in the manner prescribed in the municipal home rule law, or, in the case of a county operating under an alternative form of county government, in the manner provided for such county for the adoption of local laws. Notwithstanding any general, special or local law, a local law adopted pursuant to this article shall not be subject to a mandatory or permissive referendum.

§ 75. Transition provisions. 1. Existing plans continued.

a. Notwithstanding the effective date of this article, plans heretofore established pursuant to former subdivision three-a of section fifty of this chapter and not abandoned pursuant to the provisions of section sixty-one of this chapter, shall continue to operate subject to the provisions of such subdivision through December thirty-first, nineteen hundred fifty-six, with the same force and effect as if such subdivision had not been repealed; provided, however, that no apportionment shall be made thereunder during the year nineteen hundred fifty-six, and provided further, that unless a committee or administrator is appointed pursuant to the provisions of section sixty-four of this chapter prior to August first, nineteen hundred fifty-six, the committee managing the plan pursuant to former subdivision three-a of section fifty of this chapter shall prepare the estimate and make the apportionments provided for in paragraph b of this subdivision.

b. The committee or administrator shall, during the month of August, nineteen hundred fifty-six, prepare an estimate of the several amounts necessary for the operation of the plan under this article for the year nineteen hundred fifty-seven as provided in section sixty-seven of this chapter, except that such estimate shall not provide for the repayment of any advances made by the county. The committee or administrator shall then determine the share of such amounts chargeable to each participant in the manner prescribed by section sixty-six of this chapter. The amounts so apportioned shall be collected in the same manner and at the same time as provided in section sixty-seven of this chapter.

c. Except in the county of Wayne, the committee or administrator shall, during the month of January, nineteen hundred fifty-seven, determine the total amount due the county for advances made to the plan prior to January first, nineteen hundred fifty-seven. All moneys of the plan as of December thirty-first, nineteen hundred fifty-six, shall be applied to the repayment of all such advances. If such moneys shall be insufficient for such purpose, such an amount as may be necessary to

repay the balance of such advances shall be apportioned to each participant in the plan as of such date in the manner provided in former subdivision three-a of section fifty of this chapter. Each such participant shall be notified in writing not later than the fifteenth day of February, nineteen hundred fifty-seven, of the amount so apportioned as such participant's share. Each such participant shall pay the county treasurer such amount by October first, nineteen hundred fifty-seven. If not paid on or before such date, such amount shall be recovered by an action brought by the county or such amount shall be collected by inclusion in the next succeeding tax levy, if any, against property taxable by the participant responsible therefor. Any such participant may provide all or part of such amount by the issuance of bonds or capital notes pursuant to the local finance law. All repayments of advances shall be credited by the county treasurer to the fund from which such advances were made.

d. Any moneys of the plan as of December thirty-first, nineteen hundred fifty-six, remaining after the repayment of all advances as provided in paragraph c of this subdivision, shall be applied to the payment of liabilities or may be credited to a reserve established pursuant to section sixty-nine of this chapter.

2. Existing plans abandoned. a. Notwithstanding the effective date of this article, plans heretofore established pursuant to former subdivision three-a of section fifty of this chapter which are deemed abandoned under the provisions of section sixty-one of this chapter, shall continue to operate subject to the provisions of such former subdivision through October thirty-first, nineteen hundred fifty-six, with the same force and effect as if such former subdivision had not been repealed; provided, however, that a committee appointed as provided in such former subdivision shall continue in existence until such time as all joint liabilities of the participants have been satisfied.

b. During the month of November nineteen hundred fifty-six, such committee shall determine (1) the amount necessary to repay all advances from the county and (2) the amount, actuarially computed, necessary to satisfy all outstanding joint liabilities of the participants. The

committee shall then determine the share of such amounts chargeable to each participant in the plan in the manner prescribed by former subdivision three-a of section fifty of this chapter. The amounts so apportioned shall be collected in the same manner and at the same time as provided in such former subdivision. All moneys collected pursuant to this subdivision, after the repayment of advances, shall be accounted for by the county treasurer in the workmen's compensation mutual fund. Disbursements from such fund shall be made upon the order of the committee.

c. If at any time thereafter there shall be insufficient funds to meet such liabilities, the committee shall in like manner apportion and cause to be collected from each participant in the plan as of the date of abandonment, the amount necessary to satisfy such liabilities. The equalized valuations used as a basis for any such apportionment shall be those existing as of the date of abandonment.

§ 75-a. In a county which has established the office of county auditor the board of supervisors may by resolution place all duties of administration upon such auditor. This provision shall apply to all such plans whether established under this article or under former subdivision three-a of section fifty of this act.

ARTICLE 6

State Insurance Fund.

- | | |
|-------------|---|
| Section 76. | Creation of state fund. |
| 77. | Administration. |
| 78. | Salaries and expenses. |
| 79. | Meetings. |
| 80. | Seal. |
| 81. | Offices, lands, leaseholds and buildings. |
| 82. | Powers and duties. |
| 83. | Rules. |
| 84. | General attorney. |
| 85. | Commissioner of taxation and finance custodian of fund. |

- 86. Catastrophe surplus and reserves for workers' compensation.
- 86-a. Catastrophe surplus and reserves for disability benefits.
- 87. Investment of surplus or reserve.
- 87-a. Investment in obligations of the municipal assistance corporation for the city of New York; indemnification.
- 87-b. Investments in obligations of the city of Yonkers; indemnification.
- 87-bb. Investments in obligations of the city of Yonkers; indemnification (1984).
- 87-c. Investments in obligations of designated public benefit corporations; indemnifications.
- 87-d. Contractual obligations as evidence of indebtedness upon reimbursement of reserves.
- 87-e. Amortization of gains or losses.
- 87-f. Appropriations to the state insurance fund.
- 87-g. Advances to the urban development corporation.
- 87-h. Investments of the state insurance fund.
- 87-i. New York state insurance fund MWBE asset management and financial institution strategy.
- 88. Administration expenses.
- 88*2. Administration expenses.
- 88-a. Payments from special or administrative funds.
- 88-b. Coverage of employees in state-supported educational institutions.
- 88-c. Coverage of state employees.
- 89. Rates for workers' compensation.
- 90. Dividends.
- 91. Groups for accident prevention.
- 92. Payment of premiums.
- 93. Collection of premium in case of default.
- 94. Withdrawal from fund.
- 95. Record and audit of payrolls.
- 96. Penalties for fraudulent practices.
- 97. Inspections.
- 98. Disclosures prohibited.
- 99. Reports of state insurance fund.

100. Insurance against liability to volunteer firefighters and ambulance workers.

§ 76. Creation of state fund. 1. There is hereby continued in the department of labor a fund known as "the state insurance fund", for the purpose of insuring employers against liability for personal injuries or death sustained by their employees, including liability other than liability assumed by contract imposed upon employers by reason of a suit or claim brought against the employer by another to recover the amount of damages obtained from such other by an employee of the employer for injuries or in case of death by his dependents for death sustained by such employee arising out of and in the course of his employment and to pay such damages, and of assuring to the persons entitled thereto the compensation and benefits provided by this chapter or by any act providing for compensation now or hereafter enacted by the congress of the United States of America if such liability is incident to an employment carried on in this state, and every such payment shall constitute an element of loss for the purpose of establishing premium rates. Such fund shall consist of all premiums received and paid into the fund, of property and securities acquired by and through the use of moneys belonging to the fund and of interest earned upon moneys belonging to the fund and deposited or invested as herein provided. Such fund shall be applicable to the payment of losses sustained on account of insurance, to the payment of expenses in the manner provided in this chapter and to the payment of premiums for reinsurance in any insurance corporation of the whole or any part of any policy obligations.

1-a. a. The purposes of the state insurance fund are hereby enlarged to permit it to enter agreements with insurers licensed to write workers' compensation insurance in states outside New York to issue policies to state insurance fund policyholders covering those policyholders' obligations to secure the payment of workers' compensation benefits under the laws of states other than New York. The state insurance fund shall also be authorized to receive premiums into its workers' compensation fund for policies written under such agreements and to pay from such fund: (i) reimbursement of all losses

and loss adjustment expenses under such policies; and (ii) fees and other costs, including but not limited to those for claims services, relating to such agreements. An agreement under this subdivision shall not include the provision of claims services for any claim under this chapter.

b. For a policyholder to be eligible for insurance in states other than New York provided through agreements entered into under this subdivision, either: (i) the policyholder's workers' compensation premiums with the state insurance fund covering its employees under this chapter must be greater than the premiums charged to cover the policyholder's obligations to pay workers' compensation benefits in all states, in the aggregate, other than New York when covered under such agreements; or (ii) the payroll for the policyholder's operations in New York must be greater than the policyholder's payroll in all states, in the aggregate, other than New York when covered under such agreements for the prior policy period. For determining eligibility, "premiums" mean estimated premiums as determined by the state insurance fund at the beginning of the policy period. In addition, for a policyholder to be eligible for insurance in states other than New York through the state insurance fund, the policyholder must meet the state insurance fund's underwriting criteria for other states coverage as specified by rules of the commissioners.

2. The purposes of the state insurance fund herein created are hereby enlarged to provide insurance for the payment of the benefits required by section two hundred four of this chapter including benefits for family leave. A separate fund is hereby created within the state insurance fund, which shall be known as the "disability benefits fund", and which shall consist of all premiums received and paid into said fund on account of such insurance, all securities acquired by and through the use of moneys belonging to said fund and of interest earned upon moneys belonging to said fund and deposited or invested as herein provided. Said disability benefits fund shall be applicable to the payment of benefits, expenses and assessments on account of insurance written pursuant to article nine of this chapter. Premiums for policies providing disability and family leave benefits in accordance with this

article shall be calculated in accordance with applicable provisions of the insurance law, including subsection (n) of section four thousand two hundred thirty-five of such law. The state insurance fund shall have authority to discount or surcharge on established premium rates based on sound actuarial principles.

2-b. The purposes of the state insurance fund created in this section are hereby enlarged to provide for the insurance by the state insurance fund of the payment of the benefits required by section one hundred sixty-ddd of the executive law.

3. The respective assets and liabilities of the workers' compensation and disability benefits funds provided in this section shall be and remain separate except that advances may be made from either fund for the payment of benefits and for administrative expenses, subject to annual reimbursement.

Whenever used in this article the terms "state insurance fund", "state fund" and "fund" shall be deemed to include both the workers' compensation fund and the disability benefits fund unless the context otherwise indicates.

4. The purposes of such state insurance fund are hereby further enlarged to permit it to furnish to self-insurers, as defined in subdivision three of section fifty of this chapter, representation and services of the nature specified in paragraph five of subsection (a) of section one thousand six hundred one of the insurance law and subdivision three-d of section fifty of this chapter.

5. No monies of the state insurance fund shall be transferred to any other fund, nor shall any such monies be applied to the making of any payment for any purpose other than the purposes set forth in this article.

§ 77. Administration. The state insurance fund shall be administered by the commissioners of the state insurance fund, of whom there shall be

ten. The commissioner of labor shall, in addition, be a commissioner of such fund by virtue of his or her office. The commissioners shall elect annually from the appointive members a chair and a vice-chair who shall act as chair in the absence of the chair. The commissioner of labor may designate a deputy commissioner to act in his or her place and stead as a commissioner of such fund. The commissioners shall be appointed by the governor, by and with the advice and consent of the senate. One commissioner shall be appointed by the governor upon recommendation by the New York State American Federation of Labor-Congress of Industrial Organizations, and one commissioner shall be appointed by the governor upon recommendation of the Business Council of the State of New York. They shall be policyholders insured in the state insurance fund. The commissioners shall be appointed for terms of three years each. They shall serve until their successors are appointed and have qualified. Vacancies shall be filled for the unexpired terms. Each commissioner shall before entering upon his or her duties, take and subscribe the constitutional oath of office which shall be filed in the office of the secretary of state.

§ 78. Salaries and expenses. The commissioners shall not receive a salary or other compensation, but shall receive their actual and necessary traveling and other expenses incurred in connection with their attendance upon meetings or the business of the fund, which shall be paid out of the fund upon the warrant of the chairman of the commissioners or of the vice-chairman.

§ 79. Meetings. The commissioners shall meet at least once in each month, except the month of August, and at such other times as they may determine or the business of the fund may require. Special meetings may be called by the industrial commissioner upon five days' notice, and may also be called by any two commissioners upon like notice. Minutes shall be kept of all regular and special meetings, and shall show the names of the commissioners attending, and each matter brought before the commissioners for their consideration together with the vote of each commissioner thereon. The secretary shall be the custodian of the

minutes and records thereof, and shall perform such other duties and have such other administrative powers as may be assigned to him by the commissioners.

§ 80. Seal. The commissioners shall adopt a seal and shall require it to be used for the authentication of records and documents as may be necessary and proper.

§ 81. Offices, lands, leaseholds and buildings. The commissioners, any law to the contrary notwithstanding, (a) may lease, sub-lease, rent or otherwise hire, on behalf of and in the sole name of the state insurance fund and under such terms and conditions and for such period or periods not in excess of ninety-nine years as in the judgment of the commissioners may seem to the best interests of the fund, suitable premises in the city of New York and in the city of Albany, and maintain offices therein, and may in the same manner establish and maintain other offices at such places in the state as may be required to properly and conveniently transact the business of the fund and (b) the commissioners may in the name of the state insurance fund, subject to the approval of the superintendent of financial services as provided in section eighty-seven of this article, out of its surplus, (1) acquire by purchase or acquire by gift or devise and hold and convey land with or without buildings or improvements thereon, or acquire by purchase, sub-lease, assignment, transfer, gift, devise or in any other manner and hold and convey any lease, sub-lease or leasehold of real property and for any term of years not in excess of ninety-nine years, and (2) construct a new building or buildings on such land or leasehold or reconstruct or operate and maintain existing buildings, as the case may be, with facilities and appurtenances to provide suitable office space for the convenient transaction of the business of the state insurance fund; and (c) notwithstanding the provisions of any general, special or local law, the commissioners are authorized to rent any available space in such premises, buildings or property not required by the state insurance fund to private tenants or to public agencies, with or without leases, upon such terms and rentals as the commissioners deem to be for

the best interests of the state insurance fund. The commissioners may manage and operate such properties or leaseholds either by forces and equipment of the fund or, with the approval of the director of the budget, by contracting for the management and operation of such properties or leaseholds with any person, firm or corporation that they shall select and that is engaged in such business but no such contract shall be made for a period in excess of five years, or by a combination of such methods. The commissioners may, from time to time, enter into agreements modifying any lease or leasehold made or acquired as above provided. The obligation of the state insurance fund or any lease made, modified or acquired or on any contract entered into pursuant to this section shall not be limited by any provisions of section eighty-eight of this article or of section one hundred sixty-one-a of the state finance law. The commissioners may sue and be sued in the name of the state insurance fund in any form of action or proceeding on all matters relating to ownership, management, operation and control of any such land and buildings or leaseholds and on all matters relating to its rights and obligations under any lease, sub-lease, renting or hiring of any such land and buildings and to its possession thereof and removal therefrom.

§ 82. Powers and duties. 1. The commissioners shall appoint an executive director, a general attorney, a secretary for terms of nine years each. Vacancies in such positions shall be filled for the unexpired terms. The commissioners shall also appoint, and may remove, four deputy executive directors and an actuary. The foregoing appointments shall be in the exempt class of the civil service. The actuary shall be responsible directly to the commissioners. They shall also appoint, and may remove, such number of assistant directors as may in their judgment be required for the proper and expeditious conduct of the business of the fund. In the absence of the executive director the deputy executive director named for that purpose by the commissioners shall perform the duties of the executive director. The commissioners shall prescribe the duties of all administrative officers of the fund, except as they may otherwise be prescribed by law.

2. The executive director shall, subject to the direction of the commissioners, be responsible for the direction and operation of the state fund. He shall appoint, and may remove, all officers and employees of the fund, other than those required to be appointed by the commissioners, and shall prescribe their duties. He may within the limits of the budget fix salaries, and may promote employees and may transfer employees from their positions to other positions in the fund, and may abolish or consolidate positions subject to the civil service law and rules, and all removals shall be made pursuant to such rules and laws, it being the purpose and intent of this provision that the state fund shall at all times be administered with due regard to the requirements of its business affairs and its obligations under its contracts and policies in force.

3. The commissioners shall consider at all times the condition of the fund and examine into its reserves, investments and all other matters relating to its administration. They shall have access to all records and books of account, and may require the personal appearance before them and require information from any officer or employee of the fund. Information obtained by them from officers and employees of the fund and from its records with respect to the business affairs of any employer insured in the fund shall be deemed confidential unless ordered disclosed by order of the commissioners.

4. The executive director shall submit to the commissioners an annual estimate of the amounts required for salaries and for the maintenance and expenses of the fund for the next ensuing calendar year. The commissioners shall thereupon consider such estimate, and may modify or approve such estimate. There may not be expended for the state insurance fund more than the total amount specified in such budget, except as authorized by the commissioner.

5. All statistics and other documentary matter filed with the state fund, except where the further retention of such statistics and other documentary matter is made necessary by requirements of law, may be destroyed by the commissioners after the expiration of six years from the filing thereof.

§ 83. Rules. The commissioner shall adopt rules for the conduct of the business of the state fund, and may from time to time alter, amend or repeal any rule therefore adopted. At least six affirmative votes shall be required for the adoption of any rule, or the amendment or repeal of any rule. No rule, and no resolution proposing to alter, amend or repeal any rule, shall be effective unless approved by the commissioner of labor. If the commissioner of labor fails to act upon any such rule or resolution within thirty days after it is communicated to him or her, such rule or resolution shall be deemed to have been approved.

The rules of the commissioners shall provide for the conduct of the business of the state insurance fund, including the issuance of policies and their terms and conditions, the fixing of premium rates, the keeping of records, auditing of payrolls, and the billing and collection of premiums therefor, the inspection of risks and the setting of the standards of safety, the adjustment and payment of claims and awards, and the investigation of all matters relating thereto, the medical examination of persons claiming compensation and the furnishing and supervision of medical and surgical treatment to persons injured as set forth in this chapter, the conduct of the legal business of the fund and the enforcement of the subrogated rights of the fund against third parties, the investment of the surplus and reserves of the fund, and the collection and analysis of statistics of payrolls, premiums, losses and expenses and the actuarial consideration thereof.

§ 84. General attorney. There shall be a general attorney of the state fund. He shall have such legal and other assistants as may be required, within the limits set forth in the budget.

It shall be the duty of the general attorney to advise the commissioners and the management of the fund upon all matters of law arising in connection with any contract or policy of insurance issued by the fund, and upon any claim or award of compensation. He shall appear as the attorney of record in all suits and other proceedings to which

the state fund or the commissioners thereof are parties. He shall conduct all appeals on behalf of employers insured in the fund and on behalf of the fund itself, except where there is a divergence of interest between the employer and the fund, in which case he shall appear on behalf of the fund alone. He shall prosecute all claims against third parties under the subrogated rights of the state fund, in accordance with the provisions of section twenty-nine of this chapter. He shall have the right, subject to the approval of the commissioners, to employ special counsel in matters involving special difficulty, and to provide for the payment of their compensation and expenses out of the state fund.

§ 85. Commissioner of taxation and finance custodian of fund. The commissioner of taxation and finance shall be the custodian of the state insurance fund; and all disbursements therefrom shall be paid by him upon drafts signed by the executive director, deputy executive director or an assistant director authorized for that purpose by the commissioners or by checks signed by one of such officers and by the commissioner of taxation and finance. He may deposit any portion of the state fund not needed for immediate use, in the manner and subject to all the provisions of law respecting the deposit of other state funds by him. Interest earned by such portion of the state insurance fund deposited by him, shall be collected by him and placed to the credit of the fund.

§ 86. Catastrophe surplus and reserves for workers' compensation. Ten per centum of the premiums collected from employers insured in the fund for workers' compensation shall be set aside for the creation of a surplus until such surplus shall amount to the sum of one hundred thousand dollars, and thereafter five per centum of such premiums, until such time as in the judgment of the commissioners such surplus shall be sufficiently large to cover the catastrophe hazard. Thereafter the contribution to such surplus may be reduced or discontinued conditional upon constant maintenance of a sufficient surplus to cover the catastrophe hazard. Reserves shall be set up and maintained adequate to

meet anticipated losses and carry all claims and policies to maturity, which reserves shall be computed to reflect the present values, at five percent interest per annum, of the determined and estimated unpaid losses, and other requirements computed in accordance with such rules as shall be approved by the superintendent of financial services.

§ 86-a. Catastrophe surplus and reserves for disability benefits.

Subject to such rules as shall be approved by the superintendent of financial services, there shall be set aside out of the premiums paid into the disability benefits fund an amount sufficient to provide against catastrophe and epidemics and reserves to meet anticipated losses and carry all claims to maturity.

§ 87. Investment of surplus or reserve. 1. Any of the reserve funds belonging to the state insurance fund, by order of the commissioners, approved by the superintendent of financial services, may be invested in the types of securities described in subdivisions one, two, three, four, five, six, eleven, twelve, twelve-a, thirteen, fourteen, fifteen, nineteen, twenty, twenty-one, twenty-one-a, twenty-four, twenty-four-a, twenty-four-b, twenty-four-c and twenty-five of section two hundred thirty-five of the banking law or in paragraph two of subsection (a) of section one thousand four hundred four of the insurance law except that up to five percent of such reserve funds may be invested in the securities of any solvent American institution as described in such paragraph irrespective of the rating of such institution's obligations or other similar qualitative standards described therein.

2. Any of the surplus funds belonging to the state insurance fund, by order of the commissioners, approved by the superintendent of financial services, may be invested in the types of securities described in subdivisions one, two, three, four, five, six, eleven, twelve, twelve-a, thirteen, fourteen, fifteen, nineteen, twenty, twenty-one, twenty-one-a, twenty-four, twenty-four-a, twenty-four-b, twenty-four-c and twenty-five of section two hundred thirty-five of the banking law or, up to fifty percent of surplus funds, in the types of securities or investments

described in paragraphs two, three, eight and ten of subsection (a) of section one thousand four hundred four of the insurance law, except that up to ten percent of surplus funds may be invested in the securities of any solvent American institution as described in such paragraphs irrespective of the rating of such institution's obligations or other similar qualitative standards described therein, and up to fifteen percent of surplus funds in securities or investments which do not otherwise qualify for investment under this section as shall be made with the care, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims as provided for the state insurance fund under this article, but shall not include any direct derivative instrument or derivative transaction except for hedging purposes. Notwithstanding any other provision in this subdivision, the aggregate amount that the state insurance fund may invest in the types of securities or investments described in paragraphs three, eight and ten of subsection (a) of section one thousand four hundred four of the insurance law and as a prudent person acting in a like capacity would invest as provided in this subdivision shall not exceed fifty percent of such surplus funds.

3. Any of the surplus or reserve funds belonging to the state insurance fund, upon like approval of the superintendent of financial services, may be loaned on the pledge of any such securities. The commissioners, upon like approval of the superintendent of financial services, may also sell any of such securities or investments.

4. (a) Any securities belonging to the state insurance fund may, by order of the commissioners, approved by the superintendent of financial services, be loaned under a security loan agreement, as defined in paragraph (b) of this subdivision, entered into with a registered broker-dealer, or a New York state or national bank or trust company, with the custodial bank of the state insurance fund or another person or entity, approved by the commissioner of taxation and finance, which specializes in security loan transactions acting as the agent in arranging such agreement. The commissioners shall monitor the market

value of the loaned securities daily. In no event shall the commissioners allow the value of the collateral posted to fall below the market value of the loaned securities.

(b) For purposes of this section, "security loan agreement" shall mean a written contract, the terms of which have been approved by the commissioner of taxation and finance, whereby the state insurance fund (the lender) agrees to lend securities to a broker-dealer, bank or trust company described in paragraph (a) of this subdivision (the borrower) for a period not to exceed one year. However, such agreement shall be subject to the following limitations: (i) the lender must retain the right to collect from the borrower all dividends, interest, premiums, rights, and any other distributions to which the lender would otherwise have been entitled; (ii) the lender may waive the right to vote the securities during the term of such agreement; (iii) the lender must retain the right to terminate such agreement upon not more than five business days' notice; (iv) the borrower shall provide as collateral to the lender cash or direct obligations of the United States of America or any agency or instrumentality thereof or obligations fully guaranteed by the United States of America that are eligible for investment by the state insurance fund under subdivision one of this section, provided that such obligations may in no event consist of derivative securities; and (v) such agreement shall provide for payment of additional collateral on a daily basis, or at such time as the value of the loaned securities increases to agreed upon ratios.

5. All such securities or evidences of indebtedness shall be placed in the hands of the commissioner of taxation and finance who shall be the custodian thereof. He or she shall collect the principal and interest thereof, when due, and pay the same into the state insurance fund. The commissioner of taxation and finance shall pay all vouchers drawn on the state insurance fund for the making of such investments when signed by the chair of the commissioners, the executive director or a deputy executive director of the state insurance fund upon delivery of such securities or evidences of indebtedness to him or her, when there is attached to such vouchers the approval of the state superintendent of financial services.

6. For the purposes of this section, the term "reserves" does not include the estimated value of future discretionary payments that may be made by the state insurance fund under section ninety of this article.

7. Notwithstanding any provision in this section, the surplus and reserve funds of the state insurance fund shall not be invested in any investment that has been found by the superintendent of financial services to be against public policy or in any investment prohibited by the provisions of paragraph six of subsection (a) of section one thousand four hundred four of the insurance law or by the provisions of paragraph one, two, three, four, six, eight, nine or ten of subsection (a) of section one thousand four hundred seven of the insurance law.

§ 87-a. Investment in obligations of the municipal assistance corporation for the city of New York; indemnification. 1. The state insurance fund, and all state officers with responsibility for the custody or investment thereof, are authorized and directed to take any and all actions necessary or appropriate to cause such fund to make purchases as soon as possible, in accordance with a schedule to be established by the New York state emergency financial control board, but in no event later than December first, nineteen hundred seventy-five, of bonds of the municipal assistance corporation for the city of New York in the aggregate principal amount of one hundred million dollars, provided, however, that at the date of any such purchase the city of New York has not defaulted in the payment of any of its outstanding bonds or notes. The terms and conditions of such bonds, including the rates of interest thereon, shall be determined by the municipal assistance corporation for the city of New York, after consultation with the commissioners of the fund, provided such terms and conditions are found to be fair and reasonable by the New York state emergency financial control board.

2. It is hereby found and declared that obligations of the municipal assistance corporation for the city of New York are reasonable, prudent, proper and legal investments for the state insurance fund or for any state officer with custody or responsibility for the investment of the

assets thereof.

3. Notwithstanding any other provision of law, including the provisions of section seventeen of the public officers law, no state officer with custody or responsibility for the investment of the assets thereof shall incur or suffer any liability whatsoever to any person beneficially interested in such system by reason of actions taken pursuant to the authorization and direction of subdivision one and such fund shall save harmless and indemnify all such officers and any investment advisors from financial loss arising out of any claim, demand, suit, action or judgment for alleged negligence, waste or breach of fiduciary duty by reason of any investment of any monies of the state insurance fund in obligations of the municipal assistance corporation for the city of New York provided that such person shall, within five days after the date on which he is served with any summons, complaint, process, notice, demand, claim or pleading, deliver the original or a true copy thereof to the legal advisor of such system. Upon such delivery the legal advisor of the state insurance fund may assume control of the representation of such person in connection with such claim, demand, suit, action or proceeding. Such person shall cooperate fully with the legal advisor of the system or any other person designated to assume such defense in respect of such representation or defense.

4. In order to obtain the funds necessary to purchase the bonds required by this chapter, the commissioners of the state insurance fund in accordance with rules and regulations adopted by such commissioners shall have the right to borrow an amount not exceeding the obligation incurred by such fund pursuant to this chapter and to pledge as collateral therefor such assets as they may deem advisable.

§ 87-b. Investments in obligations of the city of Yonkers; indemnification. 1. The state insurance fund, and all state officers with responsibility for the custody or investment thereof, are authorized and directed to take any and all actions necessary or appropriate to cause such fund to make purchases as soon as possible,

but in no event later than December first, nineteen hundred seventy-five, of obligations of the city of Yonkers in the aggregate principal amount of fifteen million dollars, provided, however, that at the date of any such purchase the city of Yonkers has not defaulted in the payment of any of its outstanding bonds or notes. The terms and conditions of such obligations, including the rates of interest thereon, shall be determined by the city of Yonkers, after consultation with the commissioners of the fund, provided such terms and conditions are found to be fair and reasonable by the state comptroller.

2. It is hereby found and declared that obligations of the city of Yonkers are reasonable, prudent, proper and legal investments for the state insurance fund or for any state officer with custody or responsibility for the investment of the assets thereof.

3. Notwithstanding any other provision of law, including the provisions of section seventeen of the public officers law, no state officer with custody or responsibility for the investment of the assets thereof shall incur or suffer any liability whatsoever to any person beneficially interested in such system by reason of actions taken pursuant to the authorization and direction of subdivision one and such fund shall save harmless and indemnify all such officers and any investment advisors from financial loss arising out of any claim, demand, suit, action or judgment for alleged negligence, waste or breach of fiduciary duty by reason of any investment of any monies of the state insurance fund in obligations of the city of Yonkers provided that such person shall, within five days after the date on which he is served with any summons, complaint, process, notice, demand, claim or pleading, deliver the original or a true copy thereof to the legal advisor of such system. Upon such delivery the legal advisor of the state insurance fund may assume control of the representation of such person in connection with such claim, demand, suit, action or proceeding. Such person shall cooperate fully with the legal advisor of the system or any other person designated to assume such defense in respect of such representation or defense.

4. In order to obtain the funds necessary to purchase the bonds

required by this chapter, the commissioners of the state insurance fund in accordance with rules and regulations adopted by such commissioners shall have the right to borrow an amount not exceeding the obligation incurred by such fund pursuant to this chapter and to pledge as collateral therefor such assets as they may deem advisable.

§ 87-bb. Investments in obligations of the city of Yonkers; indemnification (1984). 1. The state insurance fund, and all state officers with responsibility for the custody or investment of such fund or of its assets, are authorized and directed to take any and all actions necessary or appropriate to cause such fund to make purchases as soon as possible, but in no event later than September first, nineteen hundred eighty-eight, of obligations of the city of Yonkers or renewals or refundings of obligations previously purchased by such fund, in the aggregate principal amount of ten million dollars, provided, however, that at the date of any such purchase the city of Yonkers has not defaulted in the payment of any of its outstanding bonds or notes. Notwithstanding any limitations on the private sale of bonds provided by law, such city may sell bonds to such fund by private sale. The terms and conditions of such obligations, including the terms of purchase and maturities thereof, and the rates of interest thereon, shall be determined by the city of Yonkers, provided such terms and conditions are found to be fair and reasonable by the New York state emergency financial control board for the city of Yonkers and the superintendent of financial services.

2. It is hereby found and declared that any and all obligations of the city of Yonkers are reasonable, prudent, proper and legal investments for the state insurance fund and for all state officers with responsibility for the custody or investment of such fund or of its assets.

3. In order to obtain the funds necessary to make the purchases required by subdivision one of this section, the state insurance fund, and all state officers with responsibility for the custody or investment of such fund or of its assets, are authorized and directed to take any

and all actions necessary or appropriate to cause such fund to sell securities owned by the fund or to borrow an amount not exceeding the obligation incurred by such fund pursuant to this section and to pledge as collateral therefor such assets, on such terms and conditions as are found to be fair and reasonable by the state superintendent of financial services.

4. Notwithstanding any other provision of law, no state officer with responsibility for the custody or investment of the state insurance fund or of its assets, or for the approval of the sale or investment of such assets, nor any investment advisor, attorney, accountant or actuary who shall have been employed by or shall have advised such officer, shall incur or suffer any liability whatsoever to any person by reason of actions taken pursuant to the authorization and direction of subdivision one or three of this section. Any action which could have been brought against any aforementioned state officer, investment advisor, attorney, accountant or actuary, except for the provisions of this subdivision, may be brought against the state insurance fund.

5. a. Notwithstanding any other provision of law, including the provisions of section seventeen of the public officers law, the state insurance fund and the state, jointly and severally, shall save harmless and indemnify each and every state officer with responsibility for the custody or investment of such fund or of its assets or for the approval of the sale or investment of such assets, and any investment advisor, attorney, accountant or actuary who shall have been employed by or who shall have advised such officer, and the state shall save harmless and indemnify the state insurance fund, from any and all financial loss and expense arising out of or in connection with any claim, demand, suit, action, proceeding or judgment for alleged negligence, gross negligence, waste or breach of fiduciary duty, or incapacity of any kind by reason of any transaction pursuant to the authorization and direction of subdivision one or three of this section, provided that such officer, investment advisor, attorney, accountant or actuary shall, within fifteen days after the date on which he is personally served with, or receives actual notice of, any summons, complaint, process, notice, demand, claim or pleading, give notice thereof to such fund or the

attorney general. Upon such notice the state insurance fund and the attorney general shall, if so requested, assume control of the representation of such officer or investment advisor, attorney, accountant or actuary, in connection with such claim, demand, suit, action or proceeding. Each person so represented shall cooperate fully with the fund and the attorney general or any other person designated to assume such defense in respect of such representation or defense.

b. Notwithstanding any provision of law to the contrary, the state shall also save harmless and indemnify the state insurance fund for any and all financial loss and expense arising out of or in connection with any claim, demand, suit, action, proceeding or judgment rendered thereupon against such fund pursuant to subdivision four hereof or by reason of any transaction pursuant to the authorization and direction of subdivision one or three of this section, provided that such fund shall, within fifteen days after the date on which it is served with, or receives actual notice of, any summons, complaint, process, notice, demand, claim or pleading, give notice thereof to the attorney general. Upon such notice the attorney general shall assume control of the representation of such fund in connection with such claim, demand, suit, action or proceeding. The fund shall cooperate fully with the attorney general or any other person designated to assume such defense in respect of such representation or defense.

§ 87-c. Investments in obligations of designated public benefit corporations; indemnifications. 1. The state insurance fund, and all state officers with responsibility for the custody or investment of such fund or of its assets, are authorized and directed to take any and all actions necessary or appropriate to cause such fund to make purchases, in accordance with a schedule to be established, subject to amendment from time to time, by the state director of the budget in the aggregate principal amount of two hundred eighty-three million dollars, of obligations of any one or more of the following public benefit corporations: the New York state housing finance agency, the New York state medical care facilities finance agency, the dormitory authority and the New York state environmental facilities corporation. Such

schedule may be amended from time to time to provide for the renewal, refunding, redemption or repayment of notes purchased by the state insurance fund in accordance with the schedule, or for the conversion of such notes into bonds, provided that at no time shall the total aggregate amount of obligations held by the state insurance fund pursuant to the provisions of this section exceed two hundred eighty-three million dollars. The terms and conditions of such obligations, including the times of purchase and maturities thereof and the rates of interest thereon, shall be determined by the public benefit corporation issuing the obligations, provided such terms and obligations are found to be fair and reasonable by the state superintendent of financial services.

2. In order to obtain the funds necessary to make the purchases required by subdivision one of this section, the state insurance fund, and all state officers with responsibility for the custody or investment of such fund or of its assets, are authorized and directed to take any and all actions necessary or appropriate to cause such fund to sell all United States government securities and all United States government agency and instrumentality securities owned by the fund, on such terms and conditions as are found to be fair and reasonable by the state superintendent of financial services.

3. It is hereby found and declared that any and all obligations of the New York state housing finance agency, the New York state medical care facilities finance agency, the dormitory authority and the New York state environmental facilities corporation, are reasonable, prudent, proper and legal investments for the state insurance fund and for all state officers with responsibility for the custody or investment of such fund or of its assets.

4. Notwithstanding any other provision of law, no state officer with responsibility for the custody or investment of the state insurance fund or of its assets, or for the approval of the sale or investment of such assets, nor any investment advisor, attorney, accountant or actuary who shall have been employed by or shall have advised such officer, shall incur or suffer any liability whatsoever to any person by reason of

actions taken pursuant to the authorization and direction of subdivisions one or two of this section. Any action which could have been brought against any aforementioned state officer, investment advisor, attorney, accountant or actuary, except for the provisions of this subdivision, may be brought against the state insurance fund.

5. a. Notwithstanding any other provision of law, including the provisions of section seventeen of the public officers law, the state insurance fund and the state, jointly and severally, shall save harmless and indemnify each and every state officer with responsibility for the custody or investment of such fund or of its assets or for the approval of the sale or investment of such assets, and any investment advisor, attorney, accountant or actuary who shall have been employed by or who shall have advised such officer, and the state shall save harmless and indemnify the state insurance fund, from any and all financial loss and expense arising out of or in connection with any claim, demand, suit, action, proceeding or judgment for alleged negligence, gross negligence, waste or breach of fiduciary duty, or incapacity of any kind by reason of any transaction pursuant to the authorization and direction of subdivisions one or two of this section, provided that such officer, investment advisor, attorney, accountant or actuary shall, within five days after the date on which he is personally served with, or receives actual notice of, any summons, complaint, process, notice, demand, claim or pleading, give notice thereof to such fund or the attorney general. Upon such notice the state insurance fund and the attorney general shall, if so requested, assume control of the representation of such officer or investment advisor, attorney, accountant or actuary, in connection with such claim, demand, suit, action or proceeding. Each person so represented shall cooperate fully with the fund and the attorney general or any other person designated to assume such defense in respect of such representation or defense.

b. Notwithstanding any provision of law to the contrary, the state shall also save harmless and indemnify the state insurance fund for any and all financial loss and expense arising out of or in connection with any claim, demand, suit, action, proceeding or judgment rendered thereupon against such fund pursuant to subdivision four hereof,

provided that such fund shall, within five days after the date on which it is served with, or receives actual notice of, any summons, complaint, process, notice, demand, claim or pleading, give notice thereof to the attorney general. Upon such notice the attorney general shall assume control of the representation of such fund in connection with such claim, demand, suit, action or proceeding. The fund shall cooperate fully with the attorney general or any other person designated to assume such defense in respect of such representation or defense.

§ 87-d. Contractual obligations as evidence of indebtedness upon reimbursement of reserves. 1. a. Notwithstanding any other provision of law the contrary, the state insurance fund, hereafter referred to as the fund, and all state officers with responsibility for the custody or investment of such fund or of its assets, are authorized and directed to take any and all actions necessary or appropriate to cause such fund to enter into an agreement, renewable on an annual basis, with the department of civil service whereunder the state shall make advance periodic payments to the fund for the payment to maturity of all obligations under this chapter of the state as employer and the fund as insurer with respect to injuries or deaths resulting from accidents arising out of and in the course of employment occurring prior to April first, nineteen hundred eighty-one.

b. The agreement shall provide that the fund shall segregate on an actuarially sound basis any and all monies and assets held by it as reserves for the payment of such obligations of the state under this chapter, and pay to the state the aggregate amount thereof.

c. The agreement shall further provide that if at any time prior to July first, nineteen hundred eighty-two, and at any time prior to the termination of any twelve month period immediately succeeding such date during which the agreement, or any renewal, is in effect, an amount equal to the total amount in the aggregate determined by the fund to be required to pay to maturity the obligations referred to in paragraph a of this subdivision, has not been appropriated by the state for the state fiscal year commencing April first, nineteen hundred eighty-two,

or any subsequent fiscal year during which the agreement provided for in this subdivision, or any renewal thereof, is in existence, the unliquidated amount of the agreement or the renewal, as computed on an actuarially sound basis by the fund, required to pay in the aggregate the remainder of such incurred obligations to maturity, shall be immediately payable by the state to the fund from the funds appropriated by the state and encumbered by the agreement or renewal.

2. It is hereby found and declared that the agreement provided for in subdivision one of this section is an evidence of indebtedness, and as such, it shall be deemed an asset of the state insurance fund, and a proper and prudent legal undertaking for any state officer with the responsibility for the custody or the investment of the assets of the fund, notwithstanding any other provision of law to the contrary.

3. Notwithstanding any other provision of law, no state officer with responsibility for the custody or investment of the state insurance fund or of its assets, or for the execution of and the entering into the agreement or any renewals, as required by subdivision one of this section, nor any attorney, accountant or actuary who shall have been employed by or shall have advised such officer, shall incur or suffer any liability whatsoever to any person by reason of actions taken pursuant to the authorization and direction of subdivision one of this section. Any action which could have been brought against any aforementioned state officer, attorney, accountant or actuary, except for the provisions of this subdivision, may be brought against the state of New York.

4. a. Notwithstanding any other provision of law, including the provisions of section seventeen of the public officers law, the state insurance fund and the state, jointly and severally, shall save harmless and indemnify each and every state officer with responsibility for the custody or investment of such fund or of its assets or for the execution of and the entering into the agreement as required by subdivision one of this section, and any attorney, accountant or actuary who shall have been employed by or who shall have advised such officer, and the state shall save harmless and indemnify the state insurance fund, from any and

all financial loss and expense arising out of or in connection with any claim, demand, suit, action, proceeding or judgment for alleged negligence, gross negligence, waste or breach of fiduciary duty, or incapacity of any kind by reason of any transaction pursuant to the authorization and direction of subdivision one or two of this section, provided that such officer, attorney, accountant or actuary shall, within five days after the date on which he is personally served with, or receives actual notice of, any summons, complaint, process, notice, demand, claim or pleading, give notice thereof to such fund or the attorney general. Upon such notice the state insurance fund and the attorney general shall, if so requested, assume control of the representation of such officer or attorney, accountant or actuary in connection with such claim, demand, suit, action or proceeding. Each person so represented shall cooperate fully with the fund and the attorney general or any other person designated to assume such defense in respect of such representation or defense.

b. Notwithstanding any provision of law to the contrary, the state shall also save harmless and indemnify the state insurance fund for any and all financial loss and expense arising out of or in connection with any claim, demand, suit, action, proceeding or judgment rendered thereupon against such fund pursuant to subdivision four hereof, provided that such fund shall, within five days after the date on which it is served with, or receives actual notice of, any summons, complaint, process, notice, demand, claim or pleading, give notice thereof to the attorney general. Upon such notice the attorney general shall assume control of the representation of such fund in connection with such claim, demand, suit, action or proceeding. The fund shall cooperate fully with the attorney general or any other person designated to assume such defense in respect of such representation or defense.

§ 87-e. Amortization of gains or losses. Gains or losses realized by the state insurance fund as a result of sales or dispositions pursuant to the authorization and direction of section eighty-seven-a, eighty-seven-b, eighty-seven-bb, eighty-seven-c, or eighty-seven-f of this chapter shall be transferred to a special asset account to be known

as the deferred charge on account of security exchanges and shall be amortized within such account on a basis which matches as nearly as possible all gains or losses so realized against any increase or decrease in income resulting from the reinvestment of the proceeds of such sales or dispositions, provided that the period of amortization of the gain or loss resulting from the sale or disposition of each investment shall not be longer than the unexpired period from the date of such sale or disposition to the maturity of the investment so sold or disposed of, or on such other basis as the superintendent of financial services may authorize in his discretion.

§ 87-f. Appropriations to the state insurance fund. 1.

Notwithstanding any other provision of law, the state insurance fund, hereinafter referred to as the fund, and all state officers with responsibility for the custody or investment of such fund or of its assets, shall annually, no later than November first in each year, submit to the director of the budget the fund's request for an appropriation of one billion sixty-five million dollars. The governor shall include such amount in a budget bill for the next state fiscal year. The state comptroller shall encumber the amount so appropriated before the end of the fiscal year for which any such appropriation is made. If for any fiscal year commencing on or after April first, nineteen hundred eighty-three, the governor fails to submit a budget bill containing an appropriation in the amount requested by the fund or the legislature fails to appropriate the amount in a budget bill submitted by the governor for such fiscal year, the amount appropriated for and encumbered during the preceding fiscal year shall be payable forthwith to the fund on the first day of July of such year in the manner prescribed by law, provided, however, that such amount shall not exceed the amount of moneys transferred to the general fund, the note repayment account or the capital projects fund by the fund pursuant to the provisions of chapter fifty-five of the laws of nineteen hundred eighty-two, chapter twenty-eight of the laws of nineteen hundred eighty-six, chapter forty-seven of the laws of nineteen hundred eighty-seven and chapter seven of the laws of nineteen hundred eighty-nine.

2. Notwithstanding any other provision of law, the fund and all state officers with responsibility for the custody or investment of such fund or of its assets shall annually, no later than November first in each year, submit to the director of the budget the fund's additional request for an appropriation of two hundred thirty million dollars and the governor shall include such additional amount in a budget bill for the next state fiscal year. The state comptroller shall encumber the amount so appropriated before the end of the fiscal year for which any such appropriation is made. If for any fiscal year commencing on or after April first, nineteen hundred ninety the governor fails to submit a budget bill containing an appropriation in the amount requested by the fund or the legislature fails to appropriate the amount in a budget bill submitted by the governor for such fiscal year, the amount appropriated for and encumbered during the preceding fiscal year shall be payable forthwith to the fund on the first day of July of such year in the manner prescribed by law, provided, however, that such amount shall not exceed the amount of moneys transferred to the general fund or the note repayment account by the fund pursuant to the provisions of a chapter of the laws of nineteen hundred ninety entitled "AN ACT to authorize and direct the transfer of hazardous waste remedial fund industry fee transfer account balances and receipts to the general fund; to amend the state finance law, in relation to industry fee surcharges and the calculations relating thereto, to authorize the transfer of state insurance fund balances to the general fund; to amend the workers' compensation law, in relation to the provision of appropriations by the state for the maintenance of reserves of the state insurance fund; and making appropriations relating thereto".

3. It is hereby found and declared that any appropriations made as provided for in subdivision one or two of this section shall be deemed admitted assets of the state insurance fund, and that any transfer of moneys by the fund to the general fund, the note repayment account or the capital projects fund in accordance with the provisions of chapter fifty-five of the laws of nineteen hundred eighty-two, chapter twenty-eight of the laws of nineteen hundred eighty-six, chapter forty-seven of the laws of nineteen hundred eighty-seven, chapter seven

of the laws of nineteen hundred eighty-nine or a chapter of the laws of nineteen hundred ninety entitled "AN ACT to authorize and direct the transfer of hazardous waste remedial fund industry fee transfer account balances and receipts to the general fund; to amend the state finance law, in relation to industry fee surcharges and the calculations relating thereto, to authorize the transfer of state insurance fund balances to the general fund; to amend the workers' compensation law, in relation to the provision of appropriations by the state for the maintenance of reserves of the state insurance fund; and making appropriations relating thereto" is deemed a proper and prudent legal undertaking for any state officer with the responsibility for the custody or the investment of the assets of the fund, notwithstanding any other provision of law to the contrary.

§ 87-g. Advances to the urban development corporation. 1. The state insurance fund, and all state officers with responsibility for the custody or investment of such fund or of its assets, are authorized and directed to take any and all actions necessary or appropriate to cause such fund to advance thirty million dollars to the urban development corporation as soon as possible, but in no event later than March thirty-first, nineteen hundred ninety-one, in return for repayment of the aforesaid advance to the state insurance fund over a maximum of thirty years with interest from the date of advance at the rate of ten per centum per annum calculated quarterly using actual days and payable quarterly; said payment with accrued interest to be derived solely and exclusively from moneys pledged to be repaid by the urban development corporation to the state of New York out of payments on loans or leases which the urban development corporation has made or will make pursuant to appropriations and reappropriations through fiscal year nineteen hundred eighty-nine--ninety and any subsequent reappropriations thereof under the following legislative initiatives and any amendments thereof, excluding, however, any moneys appropriated for the minority and women revolving loan fund and the Buffalo minority and women enterprise center:

Economic Development Purpose:

Chapter 776, section 3, of the laws of 1978, as amended by chapter 54, section 3, of the laws of 1988 and reappropriated by chapter 54, section 3, of the laws of 1989 (\$30,000,000); chapter 54, section 1, of the laws of 1978, as amended by chapter 54, section 3, of the laws of 1988 and reappropriated by chapter 54, section 3, of the laws of 1989 (\$24,000,000).

High Risk Targeted Investment Purpose:

Chapter 54, section 1, of the laws of 1989, as amended by chapter 361, section 1, of the laws of 1989 (\$4,150,000); chapter 54, section 1, of the laws of 1988, as amended by chapter 391, section 2 of the laws of 1989 (\$7,500,000); chapter 54, section 1, of the laws of 1987, as amended by chapter 391, section 2, of the laws of 1989 (\$7,000,000); chapter 54, section 1, of the laws of 1986, as amended by chapter 391, section 2, of the laws of 1989 (\$7,000,000); chapter 54, section 1, of the laws of 1985, as amended by chapter 54, section 3, of the laws of 1988 and reappropriated by chapter 54, section 3, of the laws of 1989 (\$9,500,000); chapter 54, section 1, of the laws of 1984, as amended by chapter 54, section 3, of the laws of 1988 and reappropriated by chapter 54, section 3, of the laws of 1989 (\$9,500,000); chapter 54, section 1, of the laws of 1983, as last reappropriated pursuant to chapter 54, section 3, of the laws of 1984 (\$9,500,000); chapter 50, section 1, of the laws of 1982 (\$9,500,000); chapter 50, section 1, of the laws of 1981, as last reappropriated by chapter 54, section 3, of the laws of 1984 (\$7,000,000).

Industrial Building Recycling Program:

Chapter 50, section 1, of the laws of 1981, as amended and last reappropriated pursuant to chapter 54, section 3, of the laws of 1988 (\$1,500,000).

Industrial Innovation Program:

Chapter 54, section 1, of the laws of 1984, as amended and reappropriated by chapter 54, section 3, of the laws of 1989 (\$10,000,000).

Small and Medium-sized Business Assistance Program:

Chapter 54, section 1, of the laws of 1989, as amended by chapter 391, section 1, of the laws of 1989 (\$2,000,000); chapter 54, section 1, of the laws of 1988 (\$2,000,000); chapter 54, section 1, of the laws of 1987, as amended by chapter 391, section 2, of the laws of 1989 (\$4,200,000); chapter 54, section 1, of the laws of 1986, as amended by chapter 54, section 3, of the laws of 1988 (\$8,000,000).

Strategic Resurgence Fund:

Chapter 54, section 1, of the laws of 1989, as amended by chapter 391, section 1, of the laws of 1989 (\$6,850,000); chapter 54, section 1, of the laws of 1988, as amended by chapter 54, section 3, of the laws of 1989 (\$10,000,000); chapter 54, section 1, of the laws of 1987, as amended by chapter 839, section 29, of the laws of 1987, and reappropriated by chapter 54, section 3, of the laws of 1989 (\$10,500,000).

Regional Economic Development Program:

Chapter 54, section 1, of the laws of 1985, as amended by chapter 54, section 3, of the laws of 1987 (\$5,000,000).

Notwithstanding any other provision of law, to the extent of the moneys to be so repaid with accrued interest to the state insurance fund, any obligations of the urban development corporation to the state of New York under the appropriations and reappropriations enumerated above are replaced by and become obligations of the urban development corporation to the state insurance fund until such time as the aforesaid advance, with interest, is fully repaid; and all payments received by the urban development corporation from the loans and leases made pursuant to appropriations and reappropriations enumerated above, and from such other loans and leases then held by the urban development corporation and in which the state is not a leasee or subleasee as the director of the budget may approve, shall be remitted to the state insurance fund, and to no other person or entity, including the state of New York, until there is repayment in full of the advance and all accrued interest to the state insurance fund, such remittals to be credited first against any unpaid accrued interest and then to the principal of the advance.

2. It is hereby found and declared that any and all such advances to the urban development corporation are reasonable, prudent, proper and legal investments for the state insurance fund and for all state officers with responsibility for the custody or investment of such fund or of its assets.

3. In order to obtain the funds necessary to make the advances required by subdivision one of this section, the state insurance fund, and all state officers with responsibility for the custody or investment of such fund or of its assets, are authorized and directed to take any and all actions necessary or appropriate to cause such fund to sell securities owned by the fund or to borrow an amount not exceeding the obligation incurred by such fund pursuant to this section and to pledge as collateral therefor such assets, on such terms and conditions as are found to be fair and reasonable by the state superintendent of financial services.

4. Notwithstanding any other provision of law, no state officer with responsibility for the custody or investment of the state insurance fund or of its assets, or for the approval of the sale or investment of such assets, nor any investment advisor, attorney, accountant or actuary who shall have been employed by or shall have advised such officer, shall incur or suffer any liability whatsoever to any person by reason of actions taken pursuant to the authorization and direction of subdivision one or three of this section. Any action which could have been brought against any aforementioned state officer, investment advisor, attorney, accountant or actuary, except for the provisions of this subdivision, may be brought against the state insurance fund.

5. a. Notwithstanding any other provision of law, including the provisions of section seventeen of the public officers law, the state insurance fund and the state, jointly and severally, shall save harmless and indemnify each and every state officer with responsibility for the custody or investment of such fund or of its assets or for the approval of the sale or investment of such assets, and any investment advisor, attorney, accountant or actuary who shall have been employed by or who

shall have advised such officer, and the state shall save harmless and indemnify the state insurance fund, from any and all financial loss and expense arising out of or in connection with any claim, demand, suit, action, proceeding or judgment for alleged negligence, gross negligence, waste or breach of fiduciary duty, or incapacity of any kind by reason of any transaction pursuant to the authorization and direction of subdivision one or three of this section, provided that such officer, investment advisor, attorney, accountant or actuary shall, within fifteen days after the date on which he is personally served with, or receives actual notice of, any summons, complaint, process, notice, demand, claim or pleading, give notice thereof to such fund or the attorney general. Upon such notice the state insurance fund and the attorney general shall, if so requested, assume control of the representation of such officer or investment advisor, attorney, accountant or actuary, in connection with such claim, demand, suit, action or proceeding. Each person so represented shall cooperate fully with the fund and the attorney general or any other person designated to assume such defense in respect of such representation or defense.

b. Notwithstanding any provision of law to the contrary, the state shall also save harmless and indemnify the state insurance fund for any and all financial loss and expense arising out of or in connection with any claim, demand, suit, action, proceeding or judgment rendered thereupon against such fund pursuant to subdivision four hereof or by reason of any transaction pursuant to the authorization and direction of subdivision one or three of this section, provided that such fund shall, within fifteen days after the date on which it is served with, or receives actual notice of, any summons, complaint, process, notice, demand, claim or pleading, give notice thereof to the attorney general. Upon such notice the attorney general shall assume control of the representation of such fund in connection with such claim, demand, suit, action or proceeding. The fund shall cooperate fully with the attorney general or any other person designated to assume such defense in respect of such representation or defense.

§ 87-h. Investments of the state insurance fund. 1. The state

insurance fund, and all state officers with responsibility for the custody or investment of such fund or of its assets, are authorized to take any and all actions necessary or appropriate to cause such fund to make purchases of the interest of the New York state urban development corporation in certain securities or moneys as described in section three hundred thirty of the chapter of the laws of nineteen hundred ninety which added this section or its interest in such portion of such securities or moneys as shall be specified by the director of the budget, for a price equal to the reasonable value of the securities or moneys so purchased; provided that all payments which the fund shall be entitled to as buyer of such interest of the New York state urban development corporation in such moneys or securities as provided in such chapter shall be secured through credit enhancement provided by an enhancer whose credit rating at the time the enhancement arrangement is entered into is at least "Aa" or "AA", as the case might be, by a nationally recognized rating agency. Such fund is further authorized to enter into such transactions with respect to such securities as are necessary to effectuate the purposes of such chapter.

2. It is hereby found and declared that any and all such purchases of such interest in such securities or moneys are reasonable, prudent, proper and legal investments for the state insurance fund and for all state officers with responsibility for the custody or investment of such fund or of its assets.

3. In order to obtain the funds necessary to make the purchases authorized by subdivision one of this section, the state insurance fund, and all state officers with responsibility for the custody or investment of such fund or of its assets, are authorized to take any and all actions necessary or appropriate to cause such fund to sell securities owned by the fund or to borrow an amount not exceeding the obligation incurred by such fund pursuant to this section and to pledge as collateral therefor such assets, on such terms and conditions as are found to be fair and reasonable by the state superintendent of financial services.

4. Notwithstanding any other provision of law, no state officer with

responsibility for the custody or investment of the state insurance fund or of its assets, or for the approval of the sale or investment of such assets, nor any investment advisor, attorney, accountant or actuary who shall have been employed by or shall have advised such officer, shall incur or suffer any liability whatsoever to any person by reason of actions taken pursuant to the authorization of subdivision one or three of this section. Any action which could have been brought against any aforementioned state officer, investment advisor, attorney, accountant or actuary, except for the provisions of this subdivision, may be brought against the state insurance fund.

5. a. Notwithstanding any other provision of law, including the provisions of section seventeen of the public officers law, the state insurance fund and the state, jointly and severally, shall save harmless and indemnify each and every state officer with responsibility for the custody or investment of such fund or of its assets or for the approval of the sale or investment of such assets, and any investment advisor, attorney, accountant or actuary who shall have been employed by or who shall have advised such officer, and the state shall save harmless and indemnify the state insurance fund, from any and all financial loss and expense arising out of or in connection with any claim, demand, suit, action, proceeding or judgment for alleged negligence, gross negligence, waste or breach of fiduciary duty, or incapacity of any kind by reason of any transaction pursuant to the authorization of subdivision one or three of this section, provided that such officer, investment advisor, attorney, accountant or actuary shall, within fifteen days after the date on which he is personally served with, or receives actual notice of, any summons, complaint, process, notice, demand, claim or pleading, give notice thereof to such fund or the attorney general. Upon such notice the state insurance fund and the attorney general shall, if so requested, assume control of the representation of such officer or investment advisor, attorney, accountant or actuary, in connection with such claim, demand, suit, action or proceeding. Each person so represented shall cooperate fully with the fund and the attorney general or any other person designated to assume such defense in respect of such representation or defense.

b. Notwithstanding any provision of law to the contrary, the state shall also save harmless and indemnify the state insurance fund for any and all financial loss and expense arising out of or in connection with any claim, demand, suit, action, proceeding or judgment rendered thereupon against such fund pursuant to subdivision four hereof or by reason of any transaction pursuant to the authorization of subdivision one or three of this section, provided that such fund shall, within fifteen days after the date on which it is served with, or receives actual notice of, any summons, complaint, process, notice, demand, claim or pleading, give notice thereof to the attorney general. Upon such notice the attorney general shall assume control of the representation of such fund in connection with such claim, demand, suit, action or proceeding. The fund shall cooperate fully with the attorney general or any other person designated to assume such defense in respect of such representation or defense.

§ 87-i. New York state insurance fund MWBE asset management and financial institution strategy. 1. Within the discretion of the commissioners of the state insurance fund and in accordance with and subject to their fiduciary duty and obligations as trustees of the state insurance fund and to the beneficiaries of such fund and such other investment limitations as may be prescribed by this chapter, the commissioners are authorized to establish an MWBE asset management and financial institution strategy including reasonable goals for utilization of MWBE asset managers, MWBE financial institutions and MWBE financial and professional service firms, which strategy shall include, but shall not be limited to, the following objectives:

(a) investing assets of the state insurance fund with MWBE asset managers;

(b) subject to best execution, (1) conducting trades of public equity securities with MWBE financial institutions; and (2) conducting trades of fixed-income securities through MWBE financial institutions;

(c) allocating investments of assets of the state insurance fund either through (1) direct investments in the equities and debt securities of MWBEs; or (2) indirectly through special programs involving MWBE asset managers; and

(d) awarding contracts for accounting, banking, financial advisory, insurance, legal, research, valuation and other financial and professional services to MWBE financial institutions and other MWBE professional service firms.

As used in this section, the terms "MWBE asset manager", "MWBE financial institutions", "MWBE", "fiduciary-controlled entities" and "best execution" shall have the meanings specified in section one hundred seventy-six of the retirement and social security law and shall be certified in a manner consistent with the provisions of subdivision three of section four hundred twenty-three-c of the retirement and social security law.

2. The commissioners are also authorized to:

(a) periodically advertise the existence of such strategy so that MWBE asset managers, MWBE financial institutions and other MWBE professional service firms are made aware of the opportunities made available pursuant to this strategy;

(b) within sixty days of the end of each fiscal year following the effective date of this section, the commissioners shall report to the governor, the legislature and the chief diversity officer of the state of New York on the participation of MWBE asset managers, MWBE financial institutions and MWBE professional service providers in investment and brokerage transactions with or as providers of services for the state insurance fund, including a comparative analysis of such activity relative to such activity with all asset managers, financial institutions and professional service providers for the relevant period and on the progress and success of the efforts undertaken during such period to achieve the goals of such strategy. Each report shall be simultaneously published on the website of the state insurance fund for not less than sixty days following its release to the governor and the other recipients named above;

(c) work with the other fiduciary-controlled entities to create a database of such MWBE entities; and

(d) periodically, but not less than annually, hold a conference to promote such strategy in conjunction with the other fiduciary-controlled entities.

*** § 88. Administration expenses.** The entire expense of administering the state insurance fund shall be paid out of such fund. The portion of such expenses applicable and chargeable to the disability benefits fund and the medical and hospital malpractice fund shall be determined on an equitable basis with due allowance for the division of overhead expenses. Not later than the first day of November there shall be submitted to the director of the budget for his approval an estimated budget of expenditures for the succeeding calendar year having due regard to the business interests and contract obligations of the fund. There may not be expended for the state insurance fund for purposes of administration more than the amounts specified in such budget for each item of expenditure, except as authorized by the director of the budget. In no case shall the amount of expenditures so authorized for an entire year for workers' compensation insurance exceed twenty-five per centum of the earned premiums for such insurance for that year. In no case shall the amount of expenditures authorized for the disability benefits fund for an entire year exceed twenty-five per centum of the premiums earned by that fund. In no case shall the amount of expenditures authorized for the medical and hospital malpractice fund for an entire year exceed twenty-five per centum of the premiums earned by that fund. If there be officers or employees of the department whose duties relate partly to the general work of the department and partly to the work of the state insurance fund, and in case there is other expense which is incurred jointly on behalf of the general work of the department and the state insurance fund, an equitable apportionment of the expense shall be made and the part thereof which is applicable to the state insurance fund shall be chargeable thereto. The expenses of the department of audit and control incurred in connection with the pre-audit of expenditures of the state insurance fund, as required by section one hundred eleven of the state finance law, shall be a charge against and be paid out of the moneys of the state insurance fund and there shall be included in the annual estimate submitted pursuant to this section an amount sufficient to pay such expenses for the period covered by such estimate. Notwithstanding section four of the state finance law, the state comptroller is authorized to process or approve payments related

to business taxes, various workers' compensation board assessments and assessments related to the workers' compensation rating board directly from the fund's accounts without explicit appropriation authority. The commissioner of labor shall include in his annual report to the legislature a statement of the commissioners showing the expense of administering the state fund for the preceding year. All appointments to positions in the state insurance fund shall be made subject to civil service requirements.

* NB There are 2 § 88's

*** § 88. Administration expenses.** The entire expense of administering the state insurance fund shall be paid out of such fund which shall not be considered an agency or a fund of the state for the purposes of section four of the state finance law. The portion of such expenses applicable and chargeable to the disability benefits fund shall be determined on an equitable basis with due allowance for the division of overhead expenses. There shall be submitted to the director of the budget quarterly financial statements on a calendar year basis. In no case shall the amount of administrative expenditures so authorized for an entire year from the workers' compensation fund exceed twenty-five per centum of the earned premiums for such insurance for that year. In no case shall the amount of administrative expenditures authorized for the disability benefits fund for an entire year exceed twenty-five per centum of the premiums earned by that fund for such insurance for that year. No payment, expenditure or refund out of the state insurance fund shall be subject to pre-audit by the department of audit and control as provided by section one hundred eleven of the state finance law. All appointments to positions in the state insurance fund shall be made subject to civil service requirements.

* NB There are 2 § 88

§ 88-a. Payments from special or administrative funds. Whenever the compensation of any employees of the state insured in the state insurance fund is paid from a special or administrative fund provided for by law, all payments to the state insurance fund for insurance

premiums on account of such employees including a proportionate share of the administrative expense of the state insurance fund on account thereof, which otherwise would be payable from the general fund of the state treasury, shall, with the approval of the director of the budget, be paid from such special or administrative fund.

§ 88-b. Coverage of employees in state-supported educational institutions. Compensations payable under this chapter to employees of state colleges, schools and experiment stations, administered by Cornell university, Syracuse university and Alfred university shall be paid from the state insurance fund, and all payments to the state insurance fund for insurance premiums on account of such employees including a proportionate share of the administrative expense of the state insurance fund on account thereof shall be paid out of the general fund of the state treasury from moneys deposited to the credit of the public services fund therein.

The payroll records of the employees so covered shall be established and segregated with the approval of the director of the budget.

§ 88-c. Coverage of state employees. Notwithstanding any other provisions of law to the contrary and except as set forth in section two hundred and twelve-a of this chapter, the liability of the state for the payment of compensation under this chapter heretofore existing or hereinafter arising shall be secured by an insuring agreement to be entered into between the department of civil service and the state insurance fund wherein the state, from moneys appropriated therefor, shall pay in advance to the fund on a periodic basis the actual costs to the fund for the meeting and paying, as the same become due and payable, all obligations incurred under this chapter by the state as an employer. Notwithstanding any law to the contrary, the fund may on an actuarially sound basis provide to the state insurance for any portion of the obligations of the state as employer under this chapter with respect to injuries or deaths resulting from accidents arising out of and in the course of employment on or after April first, nineteen hundred

eighty-one. All such payments made by the state and paid into the state fund shall constitute a separate account in the fund to be used solely for the purpose of discharging all compensation obligations of the state pursuant to the provisions of this chapter and in accordance with the insuring agreement as provided in this section. Any portion of the account may be invested in the same manner as the assets of the fund as provided in section eighty-seven of this article. The liability of the fund for the payment of any claims or the meeting of any obligations of the state as an employer as provided in this chapter shall not exceed the moneys paid into such separate account and any increments or diminutions thereof. The agreement shall further provide that the fund shall render all services and make all reasonable expenditures necessary or required for the processing, defense and payment of all claims under this chapter, including the protection of liens, subrogation, credit and other rights of the state as an employer or the fund as an insurer, in situations where the employees' injuries or deaths were caused by culpability of third parties. Except to the extent that the state obtains insurance on an actuarially sound basis pursuant to the provisions of this section, the provisions of section eighty-six of this chapter with respect to the maintenance of reserves for the purpose of meeting anticipated compensation losses, shall not in any manner be applicable to claims of employees of the state with respect to injuries or deaths resulting from accidents arising out of and in the course of employment prior to April first, nineteen hundred eighty-one, or to an insuring agreement entered into between the state insurance fund and the department of civil service in accordance with the provisions of this section.

§ 89. Rates for workers' compensation. 1. Employments and employees in the state fund shall be divided into such groups and classes as shall be equitable based upon differences of industry or hazard for the purpose of establishing premium rates for workers' compensation insurance, and for such purpose a system of merit rating may be employed which shall take account of the peculiar hazard of each individual risk. Such premiums in the state fund shall be fixed at the lowest possible rates consistent with the maintenance of a solvent fund and of

reasonable reserves and surplus.

2. Premiums for construction classification employers shall be subject to a payroll limitation on each construction classification subject to the following transition program. For purposes of this section, "construction classification" shall mean employments classified under sections two hundred twenty, two hundred forty and two hundred forty-one of the labor law, provided such employments are classified under each of said sections, except that construction classification shall not include any employments engaged in the construction of one or two family residential housing.

(a) For policies with rating anniversary dates after September thirtieth, nineteen hundred ninety-nine and before October first, two thousand, an employer's payroll for premium computation purposes in the affected construction classifications shall be the actual weekly payroll per employee for the number of weeks employed subject to a maximum of nine hundred dollars per week per employee plus one-half of the difference between the employer's total payroll and the limited payroll.

(b) For policies with rating anniversary dates after September thirtieth, two thousand and before October first, two thousand one, an employer's payroll for premium computation purposes in the affected construction classifications shall be the actual weekly payroll per employee for the number of weeks employed subject to a maximum of nine hundred dollars per week per employee.

(c) For policies with rating anniversary dates after September thirtieth, two thousand one and before October first, two thousand two, an employer's payroll for premium computation purposes in the affected construction classifications shall be the actual weekly payroll per employee for the number of weeks employed subject to a maximum of eight hundred dollars per week per employee.

(d) For policies with rating anniversary dates after September thirtieth, two thousand two, an employer's payroll for premium computation purposes in the affected construction classifications shall be the actual weekly payroll per employee for the number of weeks employed subject to a maximum of the greater of seven hundred fifty dollars per week or the weekly payroll amount upon which the maximum weekly benefit is based, per employee.

3. The base rates applicable to construction classifications as defined in this subdivision shall be adjusted by the New York workers' compensation rating board beginning October first, nineteen hundred ninety-nine, to reflect the payroll limitations required by this subdivision as they separately affect such rates for work actually performed within each of the following geographic territories:

(a) Territory 1 comprising the counties of the Bronx, Kings, New York, Queens, and Richmond;

(b) Territory 2 comprising the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester; and

(c) Territory 3 comprising all other counties within the state.

§ 90. Dividends. Policyholders insured in the state insurance fund may be divided into such groups as shall be equitable for the purpose of accounting and declaration of dividends but for the purpose of paying compensation the state fund shall be deemed one and indivisible. Separate accounts shall be kept of income and of losses and expenses incurred, including contributions to catastrophe surplus and reserves adequate to meet anticipated losses and carry all claims to maturity, for each such group. If such accounting shows a balance remaining to the credit of the group at the close of any policy period, which shall be deemed to be safely and properly so applied, there may be credited or paid to each individual member of such group such proportion of such balance as the amount of his earned premium sustains to the total earned premium of the group for the period for which the accounting is made. If any member who has withdrawn from the group would otherwise have been entitled to such a dividend, the same may be credited or paid to him.

§ 91. Groups for accident prevention. For any group established under the provisions of section ninety membership in the group of any employer otherwise entitled to be admitted thereto may be conditional upon acceptance and maintenance of special rules as to administration and as to accident prevention and medical care of employees. Such limitation of membership in the group may be established only upon proper evidence

that a majority of the members of the group have approved such rules and only when such rules have been approved by the commissioners as sufficient to constitute a proper basis of differentiation as to membership in the group.

§ 92. Payment of premiums. 1. Workers' compensation insurance premiums for any policy period shall be paid into the state insurance fund at the beginning of the period when the amount of such premium is less than one thousand dollars according to the estimated expenditure of wages for the period except to the extent that rules of the commissioners permit such amount to be paid by installments. For all other policyholders, workers' compensation insurance premiums for any policy period based on an estimated expenditure of wages for the period may, at the policyholders' option, be paid into the state insurance fund by installments in accordance with rules promulgated by the commissioners.

2. Disability benefits insurance premiums for any period shall be paid into the state insurance fund at the beginning of the period according to the estimated expenditure of wages for the period except to the extent that rules of the commissioners permit such amount to be paid by installments.

3. At the end of the period an adjustment of the premium shall be made according to the actual expenditure of wages. If such adjusted premium is more than the premium paid at the beginning of the period, the policyholder shall pay the difference immediately upon notification of the amount due except to the extent that rules promulgated by the commissioners permit such amount to be paid by installments. If such adjusted premium is less than the premium paid in advance, the state insurance fund shall, at the policyholder's option, either refund the difference or credit the amount thereof to the policyholder's account with the state insurance fund.

§ 93. Collection of premium in case of default. a. If a policyholder shall default in any payment required to be made by him to the state

insurance fund after due notice, his insurance in the state fund may be cancelled and the amount due from him shall be collected by civil action brought against him in any county wherein the state insurance fund maintains an office in the name of the commissioners of the state insurance fund and the same when collected, shall be paid into the state insurance fund, and such policyholder's compliance with the provisions of this chapter requiring payments to be made to the state insurance fund shall date from the time of the payment of said money to the state insurance fund.

b. An employer, whose policy of insurance has been cancelled by the state insurance fund for non-payment of premium and assessments or withdraws pursuant to section ninety-four of this article, is ineligible to contract for a subsequent policy of insurance with the state insurance fund while the billed premium on the cancelled policy remains uncollected. However, the state insurance fund shall have discretion to issue a new policy to such employer by consenting to a payment plan for the employer to pay off the balance on the prior policy provided that (1) any required payroll audit or self-audit has been completed at the time the new policy is issued, (2) the employer's prior payment and policy history meet the state insurance fund's underwriting standards, (3) the employer has demonstrated the ability to pay the deposit premium on the new policy and the first installment of the balance due on the prior cancelled policy prior to issuance of the new policy, and (4) the employer has demonstrated the ability to pay the overdue balance from the prior cancelled policy by installments as determined by the state insurance fund together with payments on the new policy within twelve months from the date the new policy is issued. If an employer is issued a new policy pursuant to this subdivision, such employer shall be required to make the final payment on such overdue balance within twelve months from the date the new policy is issued. If the employer defaults on payment for either the new policy or the balance due from the prior cancelled policy, the employer's new policy is subject to cancellation for non-payment of premium as provided under this chapter. If the new policy issued pursuant to this subdivision is cancelled, the employer shall be ineligible for an additional policy until all amounts due from all prior cancelled policies have been paid.

c. The state insurance fund shall not be required to write a policy of insurance for any employer which is owned or controlled or the majority interest of which is owned or controlled, directly or indirectly, by any person who directly or indirectly owns or controls or owned or controlled at the time of cancellation an employer whose former policy of insurance with the state insurance fund was cancelled for non-payment of premium and assessments or withdraws pursuant to section ninety-four of this article or who is or was at the time of cancellation the president, vice-president, secretary or treasurer of such an employer until the billed premium on the cancelled policy is paid. The state insurance fund shall have discretion to write a policy to such an employer using the same terms as applicable to writing a policy of insurance to a former policyholder that owes a balance on a prior policy as provided under subdivision b of this section.

For purposes of this subdivision, "person" shall include individuals, partnerships, corporations, and other associations.

§ 94. Withdrawal from fund. a. Any employer may, upon complying with subdivision two or three of section fifty of this chapter, withdraw from the fund by turning in his insurance contract for cancellation, provided he has given written notice to the fund of his intention to withdraw not less than thirty days before the effective date of such cancellation. Upon receipt of such notice the fund shall, at least ten days prior to the effective date file in the office of the chairman a notice of such cancellation date.

In no event shall the insurance contract be deemed cancelled until at least ten days after the date of such filing, any earlier date mentioned in the notice to the contrary notwithstanding.

If an employer withdraws from the fund upon complying with subdivision two of section fifty of this chapter, the new insurance contract with the stock corporation, mutual corporation or reciprocal insurer shall be deemed not to take effect until the cancellation of such employer's

contract with the state insurance fund has become effective.

b. Notwithstanding any of the provisions contained in subdivision five of section fifty-four of this chapter the fund may cancel a contract of insurance at any time during the contract period upon being furnished by an employer with proof satisfactory to the fund that he is no longer required to comply with section fifty of this chapter by reason of his having discontinued, sold, transferred, assigned or otherwise disposed of his business and has ceased employing workmen or operatives; or, where the insurance contract has been issued to cover the operations under a specific contract or at a specified location, that such operations have been completed or discontinued and the employment of workmen or operatives in connection therewith has ceased; provided, however, such cancellation shall not become effective until at least ten days after notice thereof shall have been filed in the office of the chairman.

§ 95. Record and audit of payrolls. (1) Every employer who is insured in the state insurance fund shall keep a true and accurate record of the number of his employees and the wages paid by him, and shall furnish, upon demand, a sworn statement of the same. Such record shall be open to inspection at any time and as often as may be necessary to verify the number of employees and the amount of the payroll. Any employer who shall fail to keep such record, who shall willfully fail to furnish such record or who shall willfully falsify any such record, shall be guilty of a misdemeanor.

(2) Employers subject to subdivision (e) of section two thousand three hundred four of the insurance law and subdivision two of section eighty-nine of this article shall keep a true and accurate record of hours worked for all construction classification employees. The willful failure to keep such record, or the knowing falsification of any such record, may be prosecuted as insurance fraud in accordance with the provisions of section 176.05 of the penal law.

§ 96. Penalties for fraudulent practices. 1. Any person who knowingly

makes a false statement or representation, conceals any material fact, or engages in any other fraudulent scheme or device for the purpose of obtaining, maintaining or renewing insurance in the state insurance fund at less than the proper rate for such insurance, whether for himself or herself or any other person or entity, or for the purpose of evading the requirements of section fifty of this chapter or for the purpose of obtaining any benefit or payment out of such fund, whether for himself or herself or any other person or entity, shall be guilty of a class E felony. If a violation of this subdivision is alleged and such act could also constitute a violation of the penal law or any other law, the prosecuting official may charge such person pursuant to the provisions of this section and charge such person in accordance with such other law or laws. In addition to any other remedy, the state insurance fund shall be entitled to restitution for any amount obtained or withheld as a result of a violation of this subdivision.

2. For violations of subdivision one of this section, the state insurance fund shall have a right of action to recover civil damages equal to three times the amount wrongfully obtained, or five thousand dollars, whichever is greater. The remedy provided in this section shall be in addition to any other remedy provided by law.

§ 97. Inspections. The commissioners shall have the right to inspect the plants and establishments of employers insured in the state insurance fund; and the inspectors designated by the commissioners shall have free access to such premises during regular working hours.

§ 98. Disclosures prohibited. Information as required by the state fund, or its officers or employees, from employers or employees pursuant to this chapter shall not be opened to public inspection, and any officer or employee who, without authority of the commissioners or pursuant to their regulations, or as otherwise required by law, shall disclose the same shall be guilty of a misdemeanor.

§ 99. Reports of state insurance fund. 1. The commissioners shall make separate reports to the superintendent of financial services concerning the state insurance fund at the same time and in the same manner as is required from mutual employer's liability and workers' compensation corporations by section three hundred seven of the insurance law, and the superintendent of financial services may examine into the condition of such state insurance fund at any time, either personally or by any duly authorized examiner appointed by him for the purpose of determining the condition of the investments and the adequacy of the reserves of such fund and such other matters as shall be in the jurisdiction of the superintendent of financial services.

2. The commissioners shall file annually with the state comptroller, on or before June fifteenth, financial statements for the state insurance fund audited by an independent auditor. Such statements shall be prepared in the same manner as reports filed with the superintendent of financial services under subdivision one of this section. A copy of the independent auditor's report shall accompany any financial statements submitted pursuant to this subdivision.

§ 100. Insurance against liability to volunteer firefighters and ambulance workers. Insurance contracts issued by the state insurance fund to insure political subdivisions against liability in relation to volunteer firefighters or volunteer ambulance workers under the volunteer firefighters' benefit law or the volunteer ambulance workers' benefit law shall be designated "volunteer firefighters' benefit insurance" or "volunteer ambulance workers' benefit insurance". The provisions of this article which are not inconsistent with such laws shall be applicable in relation to such insurance. The following terms used in this article, unless inconsistent with the volunteer firefighters' benefit law or the volunteer ambulance workers' benefit law, are hereby enlarged as follows:

1. "Employer" includes any political subdivision liable for benefits pursuant to the volunteer firefighters' benefit law or the volunteer ambulance workers' benefit law.

2. "Employee" includes a volunteer firefighter or volunteer ambulance worker who has been or might be injured in line of duty or who dies or might die from such an injury. When a political subdivision or a district or area thereof is responsible for the payment of benefits pursuant to the volunteer firefighters' benefit law or the volunteer ambulance workers' benefit law, it shall be deemed the "employer" of such "employee."

3. "Workers' compensation" and "compensation" include the benefits in relation to volunteer firefighters or volunteer ambulance workers pursuant to the volunteer firefighters' benefit law or the volunteer ambulance workers' benefit law.

4. "This chapter" includes the volunteer firefighters' benefit law and the volunteer ambulance workers' benefit law, except when such a meaning is inconsistent with this article.

ARTICLE 6-A

Workers' Compensation Security Fund

- Section 106. Consolidation of funds; definitions.
107. Workers' compensation security fund.
108. Payments into fund; returns; recoupment.
109. Suspension of payments into fund; temporary surcharge authorized.
- 109-a. Administration of fund.
- 109-b. Custody and investment of fund.
- 109-c. Payments from fund.
- 109-d. Notification of insolvency.
- 109-e. Rights and duties of superintendent of financial services as administrator of the fund.
- 109-f. Expenses of administration.

§ 106. Consolidation of funds; definitions. On and after March first, nineteen hundred ninety, the stock workers' compensation security fund

and the mutual workers' compensation security fund heretofore created are hereby consolidated into a single fund to be known as the "workers' compensation security fund". All assets, liabilities, rights and obligations of the stock workers' compensation security fund and the mutual workers' compensation security fund are hereby transferred and assigned to and assumed by and devolved upon the workers' compensation security fund and shall continue to be assets, liabilities, rights and obligations of such fund without diminution or impairment. As used in this article, unless the context or subject matter otherwise require;

"Fund" means the workers' compensation security fund.

"Fund year" means the calendar year.

"Stock carrier" means any stock corporation other than an insolvent carrier, authorized to transact the business of workmen's compensation insurance in this state.

"Mutual carrier" means any mutual corporation or reciprocal insurer, other than an insolvent carrier, authorized to transact the business of workmen's compensation insurance in this state.

"Nonprofit property/casualty insurance company" means a nonprofit property/casualty insurance company as defined in paragraph fifty-three of subsection (a) of section one hundred seven of the insurance law.

"Reciprocal insurer" means any reciprocal insurer authorized to transact the business of workmen's compensation insurance in this state and such reciprocal insurer shall be deemed to be a mutual carrier within the intent of the several provisions of this article.

"Carrier" means a stock or mutual corporation or a reciprocal insurer or a nonprofit property/casualty insurance company, if such corporation or insurer is authorized to transact the business of workers' compensation insurance in this state, including but not limited to the issuance of an assumption of workers' compensation liability insurance policy, but not including any such corporation or insurer which is insolvent.

"Insolvent carrier" means a carrier as to which an order of rehabilitation or of liquidation, or, if such carrier be a foreign insurer, as to which an order for conservation of its assets within the state, shall have been made after the effective date of this article pursuant to article seventy-four of the insurance law, or a foreign carrier which withdraws from or discontinues operation in this state and

fails to meet payments due on awards made, but not including a carrier, whether a domestic or foreign insurer, which shall have become rehabilitated and allowed to resume business after any such rehabilitation or conservation of assets and meets its obligations as they mature.

"Employer" includes any political subdivision liable for benefits pursuant to the volunteer firefighters' benefit law.

"Employment" includes the service of a volunteer firefighter for which a political subdivision is liable for benefits pursuant to the volunteer firefighters' benefit law.

"Workers' compensation" and "compensation" include the benefits in relation to volunteer firefighters and volunteer ambulance workers pursuant to the volunteer firefighters' benefit law and the volunteer ambulance workers' benefit law and benefits in relation to longshore and harbor workers pursuant to the longshore and harbor workers' compensation act, United States Code, Title 33, Sections 901 through 950.

"This chapter" includes the volunteer firefighters' benefit law and the volunteer ambulance workers' benefit law; and the longshore and harbor workers' compensation act, United States Code, Title 33, Sections 901 through 950; except when such a meaning is inconsistent with this article.

§ 107. Workers' compensation security fund. The purpose of the fund is to assure to persons and funds entitled thereto the compensation and benefits provided by this chapter for employments insured in insolvent carriers, including the return of unearned premiums. Such fund shall be applicable to the payment of awards for compensation or death benefits and to the payment of benefits into the special funds created under the provisions of subdivisions eight and nine of section fifteen and section twenty-five-a of this chapter heretofore or hereafter made pursuant to this chapter, and remaining unpaid, in whole or in part, by reason of the default, after the effective date of this article, of an insolvent carrier including the return of unearned premiums, but such fund shall not be applicable to the payment of any amounts due under any policy of reinsurance issued to an insurance carrier. The fund shall also be

applicable to the payment of liability claims against an employer under the employer's liability insurance portion of the standard New York workers' compensation and employer's liability insurance policy, but no payment from the fund for such liability claim shall exceed the lesser of the policy limit or one million dollars on any one claim. Expenses of administration also shall be paid from the fund as herein provided. Such fund shall consist of all contributions received and paid into the fund by carriers, as herein defined, of property and securities acquired by and through the use of moneys belonging to the fund and of interest earned upon moneys deposited or invested as herein provided. The payment of the return of unearned premiums and the payment of liability claims provided for pursuant to the provisions of this section shall be made only if the fund is determined by the superintendent of financial services to be sufficient to satisfy all claims for compensation or death benefits and to the payment of benefits into the special funds created under the provisions of subdivisions eight and nine of section fifteen and section twenty-five-a of this chapter and, provided further, that the superintendent of financial services shall designate sufficient assets from this fund for the payment of such claims which shall not at any time be diverted to any other use or purpose. The fund shall be administered by the superintendent of financial services in accordance with the provisions of this article.

§ 108. Payments into fund; returns; recoupment. 1. On or before the fifteenth day of February, May, August and November, of each year, every carrier shall file, quarterly, with the superintendent of financial services and with the commissioner of taxation and finance, identical returns, under oath, on a form to be prescribed and furnished by the superintendent of financial services, stating the amount of net written premiums for policies issued or renewed by such carrier, during the three months' periods ending, respectively, on the preceding December thirty-first, March thirty-first, June thirtieth, and September thirtieth, to insure payment of compensation pursuant to this chapter and/or the longshore and harbor workers' compensation act and stating the amount of dividends paid to policyholders during said period. For the purposes of this section "net written premiums" shall mean gross

written premiums less return premiums on policies returned "not taken" and on policies cancelled, but shall not mean premiums for reinsurance.

2. For the privilege of carrying on the business of workers' compensation insurance in this state, every carrier shall pay into the fund for deposit in the workers' compensation security fund payment account established pursuant to section eighty-nine-f of the state finance law, upon filing each quarterly return, a sum equal to one per centum, provided, however, that the superintendent of financial services may require each carrier to pay into the fund not more than two per centum, of its net written premiums, less the amount of dividends paid to policyholders, for the period covered by such return, except when suspended in accordance with section one hundred nine of this article.

3. The provisions of this section shall not apply with respect to policies containing coverage pursuant to subsection (j) of section three thousand four hundred twenty of the insurance law relating to every policy providing comprehensive personal liability insurance on a one, two, three or four family owner-occupied dwelling.

4. The superintendent shall adopt a recoupment rate which shall enable each carrier to recoup over a reasonable length of time a sum reasonably calculated to recover the payments by the carrier under this section by way of a surcharge on premiums charged for insurance policies to which this section applies. Amounts recouped shall not be considered taxable for the purposes of article thirty-three of the tax law.

5. The amount of any surcharge on premiums pursuant to subdivision two of this section shall be separately stated on either a billing or policy declaration sent to an insured. The superintendent shall determine the rate of the surcharge and the collection period and these shall be mandatory for all carriers. Carriers who collect surcharges in excess of payments made pursuant to this section shall remit the excess to the superintendent within one hundred twenty days after the end of the collection period determined by the superintendent. The excess shall first be applied to reimburse, on an equitable basis, those carriers who are unable to collect surcharges equal to their paid assessments, and

any excess thereafter shall be retained by the fund to reduce future assessments.

6. The statement of the amount of surcharge required to be provided by subdivision five of this section shall include a description of, and purpose for, the New York Workers' Compensation Security Fund, as follows:

"Companies writing workers' compensation insurance business in New York are required to participate in the New York Workers' Compensation Security Fund. If a company becomes insolvent, the security fund settles unpaid claims and assesses each insurance company for its fair share.

New York law requires all companies to surcharge policies to recover these assessments. If your policy is surcharged 'NY surcharge', an amount will be displayed on your premium notice."

§ 109. Suspension of payments into fund; temporary surcharge authorized. 1. When as of the end of any quarterly period the amount of assets in the fund, as determined by the superintendent of financial services, including any appropriation to such fund from the general fund equals or exceeds seventy-four million dollars, no further contributions to such fund shall be required to be made after that quarterly period, provided, however, that whenever as of any subsequent quarterly period the amount of such assets is less than seventy-four million dollars such contributions shall be resumed at the beginning of the next quarter. Thereafter the suspension or resumption of contributions shall be governed by the foregoing provisions. During the period of time in which any loans to the fund made pursuant to section seven thousand four hundred thirty-three-a of the insurance law are outstanding, any assets available after the payment of awards pursuant to section one hundred nine-c of this article shall be used to repay such loans and not be counted as assets for purposes of this section.

2. Notwithstanding the provisions of subdivision one of this section, for each of the three month periods, commencing April first, nineteen hundred ninety and ending March thirty-first, nineteen hundred

ninety-five, every mutual and every reciprocal carrier shall pay into the fund a surcharge equal to one per centum of its net written premiums, less the amount of dividends paid to policyholders, for the period of such return. Such surcharge shall be in addition to any payments which may be required pursuant to subdivision two of section one hundred eight of this chapter.

§ 109-a. Administration of fund. The superintendent of financial services may adopt, amend and enforce all reasonable rules and regulations necessary for the proper administration of said fund. In the event any carrier shall fail to file any return or make any payment required by this article, or in case the superintendent of financial services shall have cause to believe that any return or other statement filed is false or inaccurate in any particular, or that any payment made is incorrect, the superintendent shall have full authority to examine all the books and records of the carrier for the purpose of ascertaining the facts and shall determine the correct amount to be paid and may proceed in any court of competent jurisdiction to recover for the benefit of the fund any sums shown to be due upon such examination and determination. Any carrier which fails to make any statement as required by this article, or to pay any contribution to the fund when due, shall thereby forfeit to said fund a penalty of five per centum of the amount of unpaid contribution determined to be due as provided by this article plus one per centum of such amount for each month of delay, or fraction thereof, after the expiration of the first month of such delay but the superintendent, if satisfied that the delay was excusable, may remit all or any part of such penalty. The superintendent, in his discretion, may revoke the certificate of authority to do business in this state of any foreign carrier which shall fail to comply with this article or to pay any penalty imposed in accordance with this article.

§ 109-b. Custody and investment of fund. 1. The fund created by this article shall be separate and apart from any other fund so created and from all other state moneys, and the faith and credit of the state of New York is pledged for its safekeeping. The commissioner of taxation

and finance shall be the custodian of said fund; and all disbursements from said fund shall be made by the commissioner of taxation and finance upon vouchers signed by the superintendent of financial services, or his deputy, as hereinafter provided. The moneys of said fund may be invested by the commissioner of taxation and finance in the stocks or bonds of the United States or of this state and in interest bearing certificates of deposit of a bank or trust company located and authorized to do business in this state or of a national bank located in this state secured by a pledge of direct obligations of the United States or of the state of New York, or in accordance with the provisions of section ninety-eight-a of the state finance law, in an amount equal to the amount of such certificates of deposit. The commissioner of taxation and finance may sell any of the securities or certificates of deposit in which said fund is invested, if advisable for its proper administration or in the best interests of such fund, and all earnings from the investments of such fund shall be credited to such fund.

2. (a) Notwithstanding any provision of law to the contrary, the superintendent of financial services shall annually no later than November first in each year, submit to the director of the budget a request for an appropriation of sixty-seven million dollars. The governor shall include such amount in a budget bill for the next state fiscal year. The state comptroller shall encumber the amount so appropriated before the end of the fiscal year for which any such appropriation is made. If for any fiscal year commencing on or after April first, nineteen hundred eighty-three, the governor fails to submit a budget bill containing an appropriation in the amount requested by the superintendent of financial services or the legislature fails to appropriate the amount in a budget bill submitted by the governor for such fiscal year, the amount appropriated for and encumbered during the preceding fiscal year shall be payable forthwith to the fund on the first day of July of such year in the manner prescribed by law, provided, however, that such amount shall not exceed the amount of moneys transferred to the general fund from the fund pursuant to the provisions of chapter fifty-five of the laws of nineteen hundred eighty-two.

(b) It is hereby found and declared that any appropriation made as

provided for in paragraph (a) of this subdivision shall be deemed an asset of the fund, and that any transfer of moneys from such fund to the general fund in accordance with the provisions of chapter fifty-five of the laws of nineteen hundred eighty-two is deemed a proper and prudent legal undertaking for any state officer with the responsibility for the custody or the investment of the assets of the fund, notwithstanding any other provision of law to the contrary.

§ 109-c. Payments from fund. 1. The final award for compensation or death benefits, or installments thereof, or of payment of benefits into the special funds created under the provisions of subdivisions eight and nine of section fifteen and section twenty-five-a of this chapter heretofore or hereafter granted pursuant to this chapter, or the payment of a claim made against an insured under the employer's liability insurance portion of the insured's standard New York workers' compensation and employer's liability insurance policy, which has remained or shall remain due and unpaid for thirty days, by reason of default by an insolvent carrier, shall be paid from the fund in the manner provided in this section. Benefits or compensation pursuant to the longshore and harbor workers' compensation act shall be payable only with respect to coverage of risks located or resident in this state; provided further that the insolvency, bankruptcy or dissolution of the insured shall effect a termination of security fund benefits provided hereunder. The chairman or any person in interest may file with the superintendent of financial services an application for payment of compensation or death benefits, special fund benefits or liability claims from the fund on a form to be prescribed and furnished by the superintendent. If there has been an award, final or otherwise, a certified copy thereof shall accompany the application. The superintendent of financial services shall thereupon certify to the commissioner of taxation and finance such award for payment according to the terms of the same.

2. Payments from the fund shall be made by the commissioner of taxation and finance on the said certificate of the superintendent of financial services, and no payment shall be made by the commissioner of

taxation and finance in excess of the amount certified.

3. Payment of the award from the fund shall not give the fund any right of recovery against the employer.

4. An employer may pay any such award or part thereof in advance of payment from the fund and shall thereupon be subrogated to the rights of the employee or other party in interest against such fund to the extent of the amount so paid.

5. The commissioner of taxation and finance as custodian of the fund shall be entitled to recover the sum of all liabilities, including loss adjustment expenses relating to such liabilities, of such insolvent carrier assumed by such fund from such carrier, its receiver, liquidator, rehabilitator or trustee in bankruptcy and may prosecute an action or other proceedings therefor. All moneys recovered in any such action or proceedings shall forthwith be placed to the credit of the fund by the commissioner of taxation and finance to reimburse the fund to the extent of the moneys so recovered and paid.

6. The provisions of section twenty-six of this chapter shall not apply in the case of a failure to pay any compensation when due by reason of the default, after the effective date of this article, of an insolvent carrier as defined in this article, and the provisions of section thirty-four of this chapter shall not apply to compensation insured by any carrier as defined in this article if the compensation is paid by the fund.

§ 109-d. Notification of insolvency. Duties of chairman. Forthwith upon any carrier becoming an insolvent carrier, the superintendent of financial services shall so notify the chairman, who shall immediately advise the superintendent (a) of all claims for compensation pending or thereafter made against an employer insured by such insolvent carrier or against such insolvent carrier; (b) of all unpaid or continuing awards and decisions made upon claims prior to or after the date of such notice from the superintendent; and (c) of all appeals from or applications for

modification or rescission or review of such awards or decisions.

§ 109-e. Rights and duties of superintendent of financial services as administrator of the fund. The superintendent of financial services may designate or appoint a duly authorized representative or representatives to appear and defend an insured against a liability claim under the employer's liability portion of the standard New York workers' compensation and employer's liability insurance policy, and to appear and defend before the board any or all claims for compensation or benefits against an employer insured by an insolvent carrier or against such insolvent carrier. The superintendent of financial services shall have, as of the date of the insolvency of any carrier, only all the rights and duties which the insurance carrier would have had with respect to awards made or claims for compensation or benefits filed or pending, or pending liability claims, if it had not become insolvent. For the purposes of this article the superintendent shall have power to employ such counsel, clerks and assistants as may by him be deemed necessary, and to give each of such persons such powers to assist him as he may consider wise.

§ 109-f. Expenses of administration. The expense of administering the fund shall be paid out of the fund. Prior to the first days of January, April, July and October there shall be submitted to the director of the budget for approval an estimated budget of expenditures for the succeeding three months. There may not be expended for the purpose of administering the fund more than the amounts as authorized by the director of the budget. The superintendent of financial services shall serve as administrator of the fund without additional compensation, but may be allowed and paid from the fund expenses incurred in the performance of his duties in connection with the fund. The compensation of those persons employed by the superintendent of financial services, within the amounts approved by the director of the budget, shall be deemed administration expense payable from the fund. The superintendent of financial services shall include in his annual report to the legislature a statement of the expense of administering the fund for the

preceding year.

ARTICLE 7

Miscellaneous Provisions.

- Section 110. Record and report of injuries by employers.
- 110-a. Confidentiality of workers' compensation records.
 - 110-b. Reporting of injuries to employer.
 - 111. Information to be furnished by employer.
 - 112. Inspection of records of employers.
 - 113. Interstate commerce.
 - 114. Penalties for fraudulent practices.
 - 114-a. Disqualification for false representation.
 - 114-b. Readjustment of an employer's experience rating.
 - 114-c. Multiple offenses.
 - 115. Limitation of time.
 - 116. Sessions.
 - 117. Rules.
 - 118. Technical rules of evidence or procedure not required.
 - 118-a. Effect of findings and determinations in subsequent proceedings.
 - 119. Subpoenas.
 - 120. Discrimination against employees.
 - 121. Depositions.
 - 121-a. Proof of dependency in foreign countries.
 - 122. Transcripts.
 - 123. Jurisdiction of board to be continuing.
 - 124. Reporting.
 - 125. Job discrimination prohibited based on prior receipt of benefits.
 - 125-a. Discriminating against an injured veteran.
 - 127. Construction.
 - 128. Unconstitutional provisions.
 - 129. Actions or causes of action pending.
 - 130. Workmen's compensation premiums shall be deemed preferred claims.
 - 131. Payroll records.

- 132. Criminal prosecution; certifications.
- 133. Refunds and credits.
- 134. Workplace safety and loss prevention program; certification of safety and loss management specialists.
- 135. Premium credits for safety investment.
- 136. Workers' compensation fraud inspector general.
- 137. Independent medical examinations.

§ 110. Record and report of injuries by employers. 1. An employer, or a third party designated by the employer, shall record any injury or illness incurred by one of its employees in the course of employment using the form prescribed by the chair for reporting injuries under subdivision two of this section. Such form, a copy of which shall be provided to the injured employee upon request, shall be maintained by the employer, or a third party designated by the employer, for at least eighteen years, and shall be subject to review by the chair at any time. Such form need not be filed with the chair unless the status of such injury or illness changes resulting in a loss of time from regular duties or in medical treatment which would require reporting in accordance with subdivision two of this section.

2. An employer, or a third party designated by the employer, shall file with the chair of the workers' compensation board and with the carrier if the employer is insured, upon a form prescribed by the chair, a report of any accident resulting in personal injury which has caused or will cause a loss of time from regular duties of one day beyond the working day or shift on which the accident occurred, or which has required or will require medical treatment beyond ordinary first aid or more than two treatments by a person rendering first aid. Such report shall state the name and nature of the business of the employer, the location of its establishment or place of work, the name, address and occupation of the injured employee, the time, nature and cause of the injury and such other information as may be required by the chair. Such report shall be filed within ten days after the occurrence of the accident. An employer shall furnish a report of an occupational disease

incurred by an employee in the course of his or her employment, to the chair of the workers' compensation board, and to the carrier if the employer is insured, upon the same form. The carrier, within fourteen days of receipt of the report or accompanying the initial check forwarded to the employee, whichever is earlier, or a self-insured employer, within fourteen days of transmitting the report to the chair or accompanying the initial check forwarded to the employee, whichever is earlier, shall provide the injured employee or, in the case of death, his or her dependents with a written statement of their rights under this chapter, in a form prescribed by the chair. An employer shall file a report of any other accident resulting in personal injury incurred by its employee in the course of employment, upon the same form, whenever directed by the chair.

3. Any injury or illness which is not required to be reported in accordance with subdivision two of this section, shall not be used as a basis for determining experience modification rates, provided the employer pays in the first instance or reimburses the employer's insurer for the treatment rendered to the employee.

4. An employer who refuses or neglects to make a report or to keep records as required by this section shall be guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars. The board or chair may impose a penalty of not more than two thousand five hundred dollars upon an employer who refuses or neglects to make such report.

5. The chair shall be authorized to promulgate regulations necessary to carry out the provisions of this section.

§ 110-a. Confidentiality of workers' compensation records. 1.

Restrictions on disclosure. (a) Except upon the order or subpoena of a court of competent jurisdiction, or subpoena of a law enforcement agency, or subpoena properly issued under the authority of an administrative agency, or in accordance with subdivision two or three of this section, no workers' compensation record shall be disclosed, redisclosed, released, disseminated or otherwise published by an

officer, member, employee or agent of the board to any other person.

(b) For purposes of this section, (i) "record" means a claim file, a file regarding an injury or complaint for which no claim has been made, and/or any records maintained by the board in electronic databases in which individual claimants or workers are identifiable, or any other information relating to any person who has heretofore or hereafter reported an injury or filed a claim for workers' compensation benefits, including a copy or oral description of a record which is or was in the possession or custody of the board, its officers, members, employees or agents.

(ii) "person" means any natural person, corporation, association, partnership, or other public or private entity.

(iii) "individually identifiable information" means any data concerning any injury, claim, or potential claim that is linked to an identifiable employee or other natural person.

2. Authorized disclosure. Workers' compensation records which contain individually identifiable information may, unless otherwise prohibited by law, be disclosed to:

(a) those officers, members and employees of, and to those who contract with, the board if such disclosure is necessary to the performance of their official duties pursuant to a purpose of the board required to be accomplished by statute or executive order or otherwise necessary to perform their lawful duties;

(b) officers or employees of another governmental unit, or agents and/or contractors of the governmental unit at the request and/or direction of the governmental unit, if the information sought to be disclosed is necessary for the receiving governmental unit to operate a program or carry out a purpose specifically authorized by statute, including the investigation of a fraud, criminal offense or licensing or regulatory violation, or to act upon an application for benefits submitted by the person who is the subject of the record;

(c) a person who is the subject of the particular record for which disclosure is sought; or an attorney or licensed representative who is retained by the person who is the subject of the particular record for which disclosure is sought;

(d) a workers' compensation insurance carrier, employer or the state

insurance fund, including officers, employees, legal representatives, agents, reinsurers and contractors thereof, where such individuals are acting within the scope of their duties in evaluating, processing or settling a claim involving the subject of the particular record for which disclosure is sought, and where such carrier, employer or fund is a party to such claim;

(e) a judicial or administrative officer or employee in connection with an administrative or judicial proceeding; and

(f) a person engaged in bona fide statistical research, including but not limited to actuarial studies and health and safety investigations, which are authorized by statute or regulation of the board or other governmental agency. Individually identifiable information shall not be disclosed unless the researcher has entered into a confidentiality agreement with the board and has agreed that any research findings will not disclose individually identifiable information; and

(g) an insurer or health benefit plan including officers, employees, legal representatives, agents, and contractors thereof, where such individuals are acting within the scope of their duties in evaluating compensation records for the purpose of determining entitlement to reimbursement for payments made for medical and/or hospital services pursuant to subdivisions (d) and (h) of section thirteen of this chapter.

(h) a treating physician or other health care provider who has rendered treatment to a claimant, or is seeking authorization for treatment or special services, (i) where the information sought to be disclosed relates to (a) compensability of a claim related to such treatment, (b) reimbursement for such treatment, or (c) authorization for special services; or (ii) where the information to be disclosed is limited to notice to the treating physician or other health care provider that a waiver agreement has been initiated pursuant to section thirty-two of this chapter.

3. Individual authorization. Notwithstanding the restrictions on disclosure set forth under subdivision one of this section, a person who is the subject of a workers' compensation record may authorize the release, re-release or publication of his or her record to a specific person not otherwise authorized to receive such record, by submitting

written authorization for such release to the board on a form prescribed by the chair or by a notarized original authorization specifically directing the board to release workers' compensation records to such person. However, in accordance with section one hundred twenty-five of this article, no such authorization directing disclosure of records to a prospective employer shall be valid; nor shall an authorization permitting disclosure of records in connection with assessing fitness or capability for employment be valid, and no disclosure of records shall be made pursuant thereto. It shall be unlawful for any person to consider for the purpose of assessing eligibility for a benefit, or as the basis for an employment-related action, an individual's failure to provide authorization under this subdivision.

4. It shall be unlawful for any person who has obtained copies of board records or individually identifiable information from board records to disclose such information to any person who is not otherwise lawfully entitled to obtain these records.

5. Any person who knowingly and willfully obtains workers' compensation records which contain individually identifiable information under false pretenses or otherwise violates this section shall be guilty of a class A misdemeanor and shall be subject upon conviction, to a fine of not more than one thousand dollars.

6. In addition to or in lieu of any criminal proceeding available under this section, whenever there shall be a violation of this section, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of

section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than five hundred dollars for the first violation, and not more than one thousand dollars for the second or subsequent violation within a three year period. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

§ 110-b. Reporting of injuries to employer. Every farm labor contractor, foreman or supervisor of farm laborers who has notice of any injury to a farm laborer incurred during the course of employment shall be required to inform the employer, owner or operator of a farm of any such injury.

§ 111. Information to be furnished by employer. Every employer shall furnish the chairman, upon request, any information required by him to carry out the provisions of this chapter. The chairman or board may examine under oath any employer, officer, agent or employee. An employer or an employee receiving from the chairman a blank with directions to file the same shall cause the same to be properly filled out so as to answer fully and correctly all questions therein, or if unable to do so, shall give good and sufficient reasons for such failure. Answers to such questions shall be subscribed by the employer or the employee and affirmed as true under the penalties of perjury and returned to the chairman within the period fixed by the chairman therefor.

§ 112. Inspection of records of employers. All books, records and payrolls of the employers, showing or reflecting in any way upon the amount of wage expenditures of such employers shall always be open for inspection by the chairman for the purpose of ascertaining the correctness of the wage expenditure and number of men employed and such other information as may be necessary for the uses and purposes of the

chairman in the administration of this chapter.

§ 113. Interstate commerce. The provisions of this chapter shall apply to employers and employees engaged in intrastate, and also interstate or foreign commerce, for whom a rule of liability or method of compensation has been or may be established by the congress of the United States, only to the extent that their mutual connection with intrastate work may and shall be clearly separable and distinguishable from interstate or foreign commerce, provided that awards according to the provisions of this chapter may be made by the board in respect of injuries subject to the admiralty or other federal laws in case the claimant, the employer and the insurance carrier waive their admiralty or interstate commerce rights and remedies, and the state insurance fund or other insurance carrier may assume liability for the payment of such awards under this chapter.

§ 114. Penalties for fraudulent practices. 1. Any person who, knowingly and with intent to defraud presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer or purported insurer, or any agent thereof, any written statement as part of, or in support of, an application for the issuance of or the rating of an insurance policy for compensation insurance, or a claim for payment or other benefit pursuant to a compensation policy which he or she knows to: (i) contain a false statement or representation concerning any fact material thereto; or (ii) omits any fact material thereto, shall be guilty of a class E felony. Upon conviction, the court in addition to any other authorized sentence, may order forfeiture of all rights to compensation or payments of any benefit, and may also require restitution of any amount received as a result of a violation of this subdivision.

2. An employer or carrier, or any employee, agent, or person acting on behalf of an employer or carrier, who knowingly makes a false statement or representation as to a material fact in the course of reporting, investigation of, or adjusting a claim for any benefit or payment under

this chapter for the purpose of avoiding provision of such payment or benefit shall be guilty of a class E felony.

3. A person who knowingly makes a false statement or representation as to a material fact for the purpose of obtaining, maintaining or renewing insurance under this chapter, whether for himself or herself or for any other person or entity or for the purpose of evading the requirements of section fifty of this chapter shall be guilty of a class E felony. In addition to any other remedy, the carrier providing insurance shall be entitled to restitution of any amount obtained or withheld as a result of a violation of this subdivision.

4. Consistent with the provisions of the criminal procedure law, in any prosecution alleging a violation of subdivision one, two or three of this section, or sections fifty-two and one hundred thirty-one of this chapter, in which the act or acts alleged may also constitute a violation of the penal or other law, the prosecuting official may charge a person pursuant to the provisions of this section and in the same accusatory instrument with a violation of such other law.

5. A person (a) who is convicted of a second or subsequent offense under this section within ten years of the prior conviction, or (b) who violates any provision of this section concerning two or more claimants, shall be guilty of a class D felony.

§ 114-a. Disqualification for false representation. 1. If for the purpose of obtaining compensation pursuant to section fifteen of this chapter, or for the purpose of influencing any determination regarding any such payment, a claimant knowingly makes a false statement or representation as to a material fact, such person shall be disqualified from receiving any compensation directly attributable to such false statement or representation. In addition, as determined by the board, the claimant shall be subject to a disqualification or an additional penalty up to the foregoing amount directly attributable to the false statement or representation. Any penalty monies shall be paid into the state treasury.

2. If with the knowledge of a claimant, another person knowingly makes a false statement or representation as to a material fact for the purpose of assisting a claimant in either obtaining, or influencing any determination regarding compensation pursuant to section fifteen of this chapter, such claimant may be disqualified from receiving any compensation directly attributable to such false statement or representation. In addition, as determined by the board, the claimant may be subject to a disqualification or an additional penalty up to the foregoing amount directly attributable to the false statement or representation. Any penalty monies shall be deposited to the credit of the general fund of the state.

3. If the board or any court having jurisdiction over proceedings in respect of any claim for compensation determines that the proceedings in respect of such claim, including any appeals, have been instituted or continued without reasonable ground:

(i) the cost of such proceedings shall be assessed against the party who has so instituted or continued the proceedings, which shall be payable to the board for administrative expenses pursuant to section one hundred fifty-one of this chapter;

(ii) reasonable attorneys' fees shall be assessed against an attorney or licensed representative who has instituted or continued proceedings without reasonable grounds, which assessment shall be payable to the board for administrative expenses pursuant to section one hundred fifty-one of this chapter. Fees awarded under this provision may not be recouped from the party; and

(iii) such assessments shall be in addition to any other penalty permitted under this chapter.

§ 114-b. Readjustment of an employer's experience rating. If pursuant to section one hundred fourteen-a of this chapter, benefits or payments are suspended or otherwise prohibited, and so long as the employer has not been found to be in violation of section one hundred fourteen of this chapter, such employer's experience rating, or where the employer is not experience rated, any surcharges resulting from the fraudulent

claim, shall be readjusted to reflect the position in which it would have been, or the experience rating which it would have had, had such fraudulent claim not been made.

§ 114-c. Multiple offenses. Any provision of this chapter which imposes additional penalties for a second or subsequent offense shall apply whenever the prior offense was committed by a substantially owned affiliated entity of the party subject to penalty.

§ 115. Limitation of time. No limitation of time provided in this chapter shall run as against any person who is mentally incompetent or a minor so long as he has no committee or guardian.

§ 116. Sessions. The offices of the chairman and the board shall be open for business during all business hours of all days except Sundays and legal holidays. All sessions of the board shall be public. The records of the board shall contain a record of each case considered, and all awards, decisions or orders with respect thereto. For convenience of parties and prevention of delay or expense, the board may hold sessions in cities other than Albany.

§ 117. Rules. 1. The board may adopt reasonable rules consistent with and supplemental to the provisions of this chapter and the labor law. The chairman may make reasonable regulations consistent with the provisions of this chapter and the labor law.

2. Notwithstanding any other provision of this chapter, the board shall, at least forty-five days prior to the adoption, amendment, suspension or repeal of any rule or regulation of the board or of the chairman, give or cause to be given notice and offer any person or other agency an opportunity to present data, views or arguments, in accordance with the provisions of subdivision one of section two hundred two of the state administrative procedure act, providing, however, that the

inadvertent failure to mail notice to any person or agency as provided therein shall not invalidate any rule or regulation adopted thereunder. A proceeding to contest any rule on the grounds of noncompliance with the procedural requirements of such subdivision must be commenced within four months from the effective date of the rule or regulation.

§ 118. Technical rules of evidence or procedure not required. The chairman or board in making an investigation or inquiry or conducting a hearing shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter; but may make such investigation or inquiry or conduct such hearing in such manner as to ascertain the substantial rights of the parties. Declarations of a deceased employee concerning the accident shall be received in evidence and shall, if corroborated by circumstances or other evidence, be sufficient to establish the accident and the injury.

§ 118-a. Effect of findings and determinations in subsequent proceedings. With respect to an action for a workers' compensation claim permissible under this chapter, no finding or decision by the workers' compensation board, judge or other arbiter shall be given collateral estoppel effect in any other action or proceeding arising out of the same occurrence, other than the determination of the existence of an employer employee relationship.

§ 119. Subpoenas. A subpoena or a subpoena duces tecum may be signed and issued by the chairman, a member of the board, referee or such other officer as may be designated by the chairman. A subpoena or a subpoena duces tecum may also be signed and issued by any attorney and counsellor-at-law appearing before the board on behalf of a claimant or other party. A subpoena issued under this section shall be regulated by civil practice law and rules.

§ 120. Discrimination against employees. It shall be unlawful for any employer or his or her duly authorized agent to discharge or fail to reinstate pursuant to section two hundred three-b of this chapter, or in any other manner discriminate against an employee as to his or her employment because such employee has claimed or attempted to claim compensation from such employer, requested a claim form for injuries received in the course of employment, or claimed or attempted to claim any benefits provided under this chapter or because he or she has testified or is about to testify in a proceeding under this chapter and no other valid reason is shown to exist for such action by the employer.

Any complaint alleging such an unlawful discriminatory practice must be filed within two years of the commission of such practice. Upon finding that an employer has violated this section, the board shall make an order that any employee so discriminated against shall be restored to employment or otherwise restored to the position or privileges he or she would have had but for the discrimination and shall be compensated by his or her employer for any loss of compensation arising out of such discrimination together with such fees or allowances for services rendered by an attorney or licensed representative as fixed by the board. Any employer who violates this section shall be liable to a penalty of not less than one hundred dollars or more than five hundred dollars, as may be determined by the board. All such penalties shall be paid into the state treasury. All penalties, compensation and fees or allowances shall be paid solely by the employer. The employer alone and not his or her carrier shall be liable for such penalties and payments. Any provision in an insurance policy undertaking to relieve the employer from liability for such penalties and payments shall be void.

An employer found to be in violation of this section and the aggrieved employee must report to the board as to the manner of the employer's compliance within thirty days of receipt of a final determination. In case of failure to report on compliance, or failure to comply with an order or penalty of the board within thirty days after the order or notice of penalty is served, except where timely application to the board for a modification, rescission or review of such order or penalty has been filed under section twenty-three of this chapter, the chair in

any such case or, on the chair's consent, any party may enforce the order or penalty in a like manner as an award of compensation.

§ 121. Depositions. The chairman or board may cause depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the supreme court.

§ 121-a. Proof of dependency in foreign countries. In cases involving the dependency of noncitizens residing in foreign countries, transcripts of birth or marriage certificates, also documents and affidavits, certified by a local official or local magistrate and authenticated as to such official or magistrate by the secretary of state or other official having charge of foreign affairs, or a United States consul, in said foreign country, may be received in evidence, but in all such cases proof of present existence and of dependency may be made by the personal appearance of each and all persons claiming relationship to or dependence upon a deceased worker under the provisions of sections sixteen and seventeen of this chapter, before a diplomatic or consular officer of the United States, and statements made to or evidence presented before such diplomatic or consular officer under oath may be received in evidence in whole or in part by the board upon any such claim. Questions regarding admissibility and adequacy of evidence arising in connection with proceedings before the consul shall be determined by the board. The board may by rule prescribe the conditions under which proofs other than personal appearance before a diplomatic or consular officer of the United States may be accepted as proof of the facts of existence, relationship and dependency.

§ 122. Transcripts. A copy of the testimony, evidence and procedure of any investigation, or a particular part thereof, transcribed by a stenographer in the employ of the board and certified by such stenographer to be true and correct may be received in evidence with the same effect as if such stenographer were present and testifying to the

facts so certified. A copy of such transcript shall be furnished to any party upon payment of the fee for transcripts of similar minutes in the supreme court.

§ 123. Jurisdiction of board to be continuing. The power and jurisdiction of the board over each case shall be continuing, and it may, from time to time, make such modification or change with respect to former findings, awards, decisions or orders relating thereto, as in its opinion may be just, except that, where the employer has secured the payment of compensation in accordance with the provisions of section fifty of this chapter, no claim for compensation or for death benefits that has been disallowed after a trial on the merits, or that has been otherwise disposed of without an award after the parties in interest have been given due notice of hearing or hearings and opportunity to be heard and for which no determination was made on the merits, shall be reopened after a lapse of seven years from the date of the accident or death. Nor shall any award of compensation or death benefits be made against the special fund provided in section twenty-five-a of this chapter or against an employer or an insurance carrier where application therefor is made after a lapse of eighteen years from the date of the injury or death and also a lapse of eight years from the date of the last payment of compensation.

§ 124. Reporting. 1. The chair shall prescribe the form and format for the collection and dissemination of information and data as the administration of this chapter requires. In the event the proper format requires the submission of a complete paper document, the chair shall have distributed such blank forms, including forms of notice and claims and forms for processing injury, death, medical or other attendance or treatment, employment or wage earnings as are necessary.

2. Insurance carriers shall constantly keep on hand, at their own expense, a sufficient supply of such forms or, in the event of electronic transfer, be responsible for all charges associated with transmission of such information.

3. Nothing stated above shall preclude the chair from requiring the submission or dissemination of notices or reports in an electronic or typed form, with the exact format to be prescribed by the chair.

§ 125. Job discrimination prohibited based on prior receipt of benefits. 1. It shall be unlawful for any employer to inquire into, or to consider for the purpose of assessing fitness or capability for employment, whether a job applicant has filed for or received benefits under this chapter, or to discriminate against a job applicant with regard to employment on the basis of that claimant having filed for or received benefits under this chapter, or because the claimant is an injured veteran. An individual aggrieved under this subdivision may initiate proceedings in a court of competent jurisdiction seeking damages, including reasonable attorney fees, for violation of this subdivision.

2. An employer who violates the provisions of subdivision one of this section shall be guilty of a misdemeanor, and upon conviction shall be punished, except as in this chapter or in the penal law otherwise provided, by a fine of not more than one thousand dollars, and subject to the debarment provisions of section one hundred forty-one-b of this chapter.

§ 125-a. Discriminating against an injured veteran. 1. An insurance carrier is guilty of unlawfully discriminating against an injured veteran when with respect to workers' compensation insurance, the insurer knowingly and intentionally (a) discriminates against an injured veteran because of the veteran's injury or status as a veteran, or (b) encourages or causes an employer or other entity to unlawfully discriminate against an injured veteran in hiring or discharging decisions because of the veteran's injury or status as a veteran.

2. For the purpose of this section (a) "injured veteran" shall mean an individual who suffered an injury as a result of his or her service in

the armed forces; and (b) "insurance carrier" shall be defined as in subdivision twelve of section two of this chapter.

3. Discriminating against an injured veteran is a class A misdemeanor.

4. Any person convicted under this section shall be subject to the debarment provisions of section one hundred forty-one-b of this chapter.

§ 127. Construction. This chapter shall be read and construed in connection with the labor law.

§ 128. Unconstitutional provisions. If any section or provision of this chapter be decided by the courts to be unconstitutional or invalid, the same shall not affect the validity of the chapter as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

§ 129. Actions or causes of action pending. This act shall not affect any action pending or cause of action existing or which accrued prior to July first, nineteen hundred and twenty-two.

§ 130. Workmen's compensation premiums shall be deemed preferred claims. All premiums and interest charges on account of policies insuring employers against liability under this chapter which may be due to the state insurance fund, or any stock corporation or mutual association authorized to transact the business of insurance in this state, and all judgments recovered by the state insurance fund or any such insurance corporation or association against any employer on actions brought under any such policy, shall be deemed preferred claims in all insolvency or bankruptcy proceedings, trustee proceedings for administration of estates and receiverships involving the employer liable therefor or the property of such employer, provided however that claims for wages shall receive prior preference in all such proceedings.

§ 131. Payroll records. (1) Every employer subject to the provisions of this chapter shall keep a true and accurate record of the number of his or her employees, the classification of employees, information regarding employee accidents and the wages paid by him or her for a period of four years after each entry therein, which records shall be open to inspection at any time, and as often as may be necessary to verify the same by investigators of the board, by the authorized auditors, accountants or inspectors of the carrier with whom the employer is insured, or by the authorized auditors, accountants or inspectors of any workers' compensation insurance rating board or bureau operating under the authority of the insurance law and of which board or bureau such carrier is a member or the group trust of which the employer is a member. Any and all records required by law to be kept by such employer upon which the employer makes or files a return concerning wages paid to employees shall form part of the records described in this section and shall be open to inspection in the same manner as provided in this section. Any employer who shall fail to keep such records, who shall willfully fail to furnish such record as required in this section or who shall falsify any such records, shall be guilty of a misdemeanor and subject to a fine of not less than five nor more than ten thousand dollars in addition to any other penalties otherwise provided by law, except that any such employer that has previously been subject to criminal penalties under this section within the prior ten years shall be guilty of a class E felony, and subject to a fine of not less than ten nor more than twenty-five thousand dollars in addition to any penalties otherwise provided by law.

(2) Employers subject to subsection (e) of section two thousand three hundred four of the insurance law and subdivision two of section eighty-nine of this chapter shall keep a true and accurate record of hours worked for all construction classification employees. The willful failure to keep such record, or the knowing falsification of any such record, may be prosecuted as insurance fraud in accordance with the provisions of section 176.05 of the penal law.

(3) The chair, upon finding that an employer has failed to keep true and accurate records as required by this section, may impose upon such

employer, in addition to all other penalties, fines or assessments provided for in this chapter, one thousand dollars for each ten day period of non-compliance or a sum not in excess of two times the cost of compensation for its payroll for the period of such violation, which sum shall be paid into the uninsured employers' fund created under section twenty-six-a of this chapter. When an employer fails to provide business records sufficient to enable the chair to determine the employer's payroll for the period requested for the calculation of the penalty provided in this section, the imputed weekly payroll for each employee, corporate officer, sole proprietor, or partner shall be the New York state average weekly wage, multiplied by 1.5. Where the employer is a corporation, the corporation and any of the following shall be liable for the penalty provided in this subdivision: the president, secretary and treasurer. If the employer shall within thirty days after notice of the imposition of a penalty by the chair pursuant to this subdivision make an application in affidavit form for a redetermination review of such penalty, the chair shall make a decision in writing on the issues raised on such application.

§ 132. Criminal prosecution; certifications. 1. The attorney-general may prosecute every person charged with the commission of a criminal offense in violation of this chapter, or of any rule, regulation or order made thereunder, or in violation of the laws of this state, applicable to or arising out of any provision of this chapter or any rule, regulation or order made thereunder.

2. Every check or draft issued directly to a benefit recipient or provider of health services in payment of a claim made pursuant to this chapter shall contain a printed statement on the reverse side immediately above the signature line for the first endorsement indicating that in endorsing the check or draft for payment the benefit recipient or provider of health services is certifying that such person is entitled to such payment and that circumstances which would affect entitlement to receive the payment have not changed. The statement shall be in a form prescribed by the workers' compensation board after consultation with the superintendent of financial services.

3. The check or draft described in subdivision two of this section shall be claim forms within the meaning of section 176.00 of the penal law and subsection (d) of section four hundred three of the insurance law.

§ 133. Refunds and credits. In any case where an award, an assessment or a penalty has been made and paid directly into the state treasury or into one of the special funds created under the provisions of this chapter, and it is thereafter determined by the chairman, the board or by a court of competent jurisdiction that such award, assessment or penalty, or any portion thereof was erroneously, illegally, or improperly made, the employer or his insurance carrier who made any such payment may be reimbursed, or allowed a credit, from any moneys in the state treasury not otherwise appropriated or from the special fund to which the payment had been made, for such amount, without costs or interest, as may be determined by the chairman, the board or by a court of competent jurisdiction; provided, however, that a request for such reimbursement is filed with the chairman within three months after such determination, on the audit and warrant of the comptroller on certification of the chairman.

§ 134. Workplace safety and loss prevention program; certification of safety and loss management specialists. 1. The commissioner of labor, in consultation with the superintendent of financial services and the chair of the board shall develop a compulsory workplace safety and loss prevention program for all employers whose most recent annual payroll is in excess of eight hundred thousand dollars and whose most recent experience rating exceeds the level of 1.2. The commissioner of labor shall promulgate rules and regulations for the implementation of safety, drug and alcohol prevention, and return to work incentive programs.

2. The commissioner of labor shall provide written notification to employers whose most recent annual payroll is in excess of eight hundred thousand dollars and whose most recent experience rating exceeds the

level of 1.2 that they are required to undergo a workplace safety and loss prevention consultation and written evaluation. Copies of the written notification shall be provided to the department of labor and the employer's insurer. The employer must arrange for the consultation and evaluation within thirty days after receiving the notification and must within ten days thereafter notify its insurer and the department of labor in writing of the means by which the evaluation is to be accomplished. The employer must provide its insurer and the department of labor with a copy of the evaluation within thirty days after receiving it from the safety and loss consultant. Any remedial action recommended in the evaluation must be implemented by the employer within a reasonable period of time, but not to exceed six months after the employer receives the evaluation. The insurer, within sixty days after the expiration of such six month period, shall conduct an inspection to ascertain whether the recommended remedial action has been implemented, and the insurer shall within forty-five days thereafter provide to the employer and the department of labor a copy of its inspection report.

3. If the employer does not arrange for a consultation and evaluation or fails to implement recommended remedial action within the times prescribed, the insurer shall surcharge the employer's manual rate premium by .05 for the next ensuing policy period, and so long as non-compliance continues there shall be an additional .05 surcharge for each year thereafter of non-compliance. An employer may challenge an insurer's determination that the employer has not taken the recommended remedial action by appeal to the department of labor on notice to the insurer. The department of labor shall thereafter conduct an independent inspection and its determination of compliance or non-compliance shall be final. However, such appeal may not be entertained if the employer has not paid its billed premium including any surcharge thereof.

4. Employers required to participate in the workplace safety and loss prevention program established by this section shall be permitted to utilize the services of either the department of labor, or a private safety and loss consultant which has been certified by the department of labor. Private safety and loss consultants may charge employers a fee for their services.

6. Safety, drug and alcohol prevention, and return to work incentive programs. Employers insured through the state insurance fund (except those who are current policyholders in a recognized safety group) or any other insurer that issues policies of workers' compensation insurance, shall be eligible for a credit in workers' compensation insurance premiums if they:

a. pay annual workers' compensation insurance premiums of at least five thousand dollars; and

b. maintain an experience rating of under 1.30 for the year preceding and the years in which the credit has been applied for provided that no insured required to implement a safety program pursuant to subdivision one of this section shall be eligible for a premium credit under this subdivision; and

c. implement any of the following:

(1) a safety incentive plan, that has been recommended by a safety and loss management specialist after such specialist has been certified by the commissioner of labor, or if such plan otherwise conforms to regulations promulgated by the commissioner of labor;

(2) a drug and alcohol prevention program that conforms to regulations issued by the commissioner of labor, in consultation with the office of alcoholism and substance abuse services; and

(3) a return to work program that conforms to regulations issued by the commissioner of labor.

The credit for each such program shall be established by regulations issued by the superintendent of financial services. Such regulations shall include provisions for recertification on an annual basis.

7. An individual self-insured employer shall be eligible for a reduction in the security deposit provided for in subdivision three of section fifty of this chapter, and a member of a group shall be eligible for a credit against their contributors if such credit is authorized by the chair and in accordance with limitations set by the chair, if such

employer has implemented any or all of the following: a. a safety incentive plan that has been recommended by a safety and loss management specialist after such specialist has been certified by the commissioner of labor or if such plan otherwise conforms to regulations promulgated by the commissioner of labor;

b. a drug and alcohol prevention program that conforms to regulations issued by the commissioner of labor, in consultation with the office of alcoholism and substance abuse services; and

c. a return to work program that conforms to regulations issued by the commissioner of labor.

The credit for each program shall be no greater than established by regulations issued by the superintendent of financial services or such lesser amount as determined by the chair of the board to be necessary to assure that the deposit remains sufficient to secure the employer's liability to pay the compensation provided in this chapter. The chair, in consultation with the superintendent of financial services, shall adopt regulations which provide for recertification on an annual basis.

8. The commissioner of labor shall: (i) receive and review applications from applicants for certification as safety and loss management specialists; and (ii) certify persons as safety and loss management specialists; and (iii) revoke certification of safety and loss management specialists for just cause.

9. The commissioner of labor shall monitor all safety incentive plans implemented by employers. As part of this responsibility, the board shall insure that employee representatives are involved in the development of such plans through meetings and discussions with the respective certified safety and loss management specialist.

10. The commissioner of labor, in consultation with the superintendent of financial services, shall promulgate rules and regulations for the certification of safety and loss management specialists. Such rules and regulations shall include provisions that outline the minimum

qualifications for safety and loss management specialists, procedures for certification, causes for revocation or suspension of certification and appropriate administrative and judicial review procedures, and violations and penalties for misuse of certification by certified safety and loss management specialists.

§ 135. Premium credits for safety investment. 1. An employer insured by a licensed insurer or the state insurance fund for workers' compensation insurance may apply for a credit against the premiums for such coverage provided such employer is not currently receiving any statutory safety incentive or sanction authorized under this chapter for amounts invested by such employer in the creation of a safer work environment which meets the requirements of this section. The credit may be applied for a renewable period not to exceed three years. For any one year, the credit shall equal, if actuarially appropriate, an amount up to five percent of the total amount invested as calculated under the provisions of this section but shall not exceed fifteen percent of such employer's annual earned premium for that year in accordance with workers' compensation rating board manual rates. An employer applying for such credit must provide evidence required by rules or regulations promulgated by the superintendent of financial services that the investment would result in a safer work environment, with such evidence to include a written opinion by a certified safety professional, a certified industrial hygienist or a licensed professional engineer describing the items included in the investment and an analysis of how they will substantially enhance the safety of the work environment.

2. It shall be the sole responsibility of the superintendent of financial services, with the assistance of a committee, to determine whether an employer who has made an application is eligible for a premium credit and the extent of any such credit, and to otherwise assist in the administration of the premium credit program, including the promulgation of department of financial services rules and regulations for the implementation of the program.

In addition to the superintendent of financial services, the committee

shall consist of:

- (a) a representative from the department of labor;
- (b) a representative from the department of economic development;
- (c) a representative from the state insurance fund;
- (d) an individual with an actuarial background and experience in the field of workers' compensation;
- (e) an individual with a background in safety engineering appointed by the governor upon recommendation by the New York State American Federation of Labor-Congress of Industrial Organizations;
- (f) an individual with a background in safety engineering appointed by the governor upon recommendation of the Business Council of the State of New York;
- (g) an individual with a background in safety engineering appointed by the governor upon recommendation of the insurance industry; and
- (h) an additional member of the committee with respect to any given application for a premium credit shall be the current insurer of the applicant.

All departments, divisions, boards, offices, and public corporations of the state, and the workers' compensation rating board, shall provide such data, information or other assistance as the committee may require to fulfill its purposes.

The committee shall serve at the pleasure of the governor and shall receive no compensation except for reasonable and necessary expenses incurred in the course of performing the official duties of the committee. Such expenses shall be paid from application fees paid in accordance with rules and regulations promulgated by the superintendent of financial services.

3. Premium credit calculations with respect to investments for safety shall be based only upon tangible personal property and other tangible property, including buildings and structural components of buildings which make for a safer work environment, which are depreciable pursuant to section one hundred sixty-seven of the internal revenue code, have a useful life of four years or more, are acquired by purchase as defined in section one hundred seventy-nine(d) of the internal revenue code,

have a situs in this state and are:

(a) principally used by the premium payer in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing,

(b) industrial waste treatment facilities or air pollution control facilities, used in the premium payer's trade or business, or

(c) research and development property.

For purposes of this section, the term "goods" shall not include electricity.

4. For purposes of this section, the following definitions shall apply:

(a) Manufacturing shall mean the process of working raw materials into wares suitable for use or which gives new shapes, new quality or new combinations to matter which already has gone through some artificial process by the use of machinery, tools, appliances and other similar equipment. Property used in the sale of goods at retail or the production of goods shall include machinery, equipment or other tangible property which is principally used in the repair and service of other machinery, equipment or other tangible property used principally in the production of goods and shall include all facilities used in the production operation, including storage of material to be used in production and of the products that are produced.

(b) Research and development property shall mean property which is used for purposes of research and development in the experimental or laboratory sense. Such purposes shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions, or research in connection with literary, historical or similar projects.

(c) Industrial waste treatment facilities shall mean property constituting facilities for the treatment, neutralization or stabilization of industrial waste and other wastes (as the terms "industrial waste" and "other wastes" are defined in section 17-0105 of the environmental conservation law) from a point immediately preceding

the point of such treatment, neutralization or stabilization to the point of disposal, including the necessary pumping and transmitting facilities, but excluding such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable.

(d) Air pollution control facilities shall mean property constituting facilities which remove, reduce, or render less noxious air contaminants emitted from an air contamination source (as the terms "air contaminant" and "air contamination source" are defined in section 19-0107 of the environmental conservation law) from a point immediately preceding the point of such removal, reduction or rendering to the point of discharge of air meeting emission standards as established by the department of environmental conservation, but excluding such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable and excluding those facilities which rely for the efficacy on dilution, dispersion or assimilation of air contaminants in the ambient air after emission. Such term shall further include flue gas desulfurization equipment and attendant sludge disposal facilities, fluidized bed boilers, precombustion coal cleaning facilities or other facilities that conform with this section and which comply with the provisions of the state acid deposition control act set forth in title nine of article nineteen of the environmental conservation law.

5. A premium credit under this section shall be allowed with respect to industrial waste treatment facilities and air pollution control facilities only on condition that such facilities have been certified by the state commissioner of environmental conservation or his or her designated representative, pursuant to subdivision one of section 17-0707 or subdivision one of section 19-0309 of the environmental conservation law, as complying with applicable provisions of the environmental conservation law, the public health law and the state sanitary code and codes, rules, regulations, permits or orders issued pursuant thereto.

6. Tangible personal property and other tangible property, including buildings and structural components of buildings, which an employer

leases to any other person or corporation are not to be considered as investments for safety in premium credit calculations. For purposes of the preceding sentence, any contract or agreement to lease or rent or for a license to use such property shall be considered a lease. Provided, however, in determining whether an employer shall be allowed a credit under this section with respect to such property, any election made with respect to such property pursuant to the provisions of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code, as such paragraph was in effect for agreements entered into prior to January first, nineteen hundred eighty-four, shall be disregarded.

7. Subject to the limitations provided in subdivision one of this section, the amount of a premium credit shall be a percent of the investment credit base. The investment credit base is the cost or other basis for federal income tax purposes of tangible personal property and other tangible property, including buildings and structural components of buildings, as described in subdivision three of this section. The amount of the percent to be applied against such investment credit base shall be based upon the useful life of such tangible personal property and other tangible property, and the extent to which the investment would result in a safer work environment and upon such other actuarially appropriate evidence offered by the applicant that the investment would result in a safer work environment. The superintendent of financial services shall promulgate rules and regulations determining how the percentage to be applied against the investment credit base shall be calculated.

8. The superintendent of financial services shall promulgate rules and regulations for the purpose of determining how to calculate the period during which an applicant may receive a premium credit.

9. In the event an employer which applied for and received a premium credit pursuant to this section moves or relocates its business outside of this state during the period in which it receives the benefits of such credit, such employer shall be responsible for repaying to the insurer the entire amount of such credit already received.

10. An employer who is obligated to but does not comply with the requirements of section one hundred thirty-four of this article is not eligible to apply for premium credits under this section.

11. An employer shall be eligible for a credit against premiums for workers' compensation insurance coverage in an amount up to five percent of such premiums for such other safety measures that may be implemented by an employer and which meet the standard for such premium credit as established by the superintendent. Such safety measures shall not include those measures provided for in this section of this article, or apply to such industries provided for in this section.

§ 136. Workers' compensation fraud inspector general. 1. Definitions. For the purposes of this section, the following definitions shall apply:

(a) "Inspector general" means the workers' compensation fraud inspector general created by this section.

(b) "Assistant inspector general" means a workers' compensation fraud assistant inspector general created by this section.

2. Appointment, compensation and removal. Notwithstanding any other provision of law, the governor shall appoint the inspector general. The board shall employ and the governor shall fix the compensation of the inspector general. The inspector general shall, and may do so without civil service examination, appoint and the board shall employ, such assistant inspectors general and other persons as he or she deems necessary, determine their duties and fix their compensation. Such assistant inspectors general shall assist the inspector general in carrying out the inspector general's duties and responsibilities as set forth in this section and shall have such powers as granted the inspector general under this section. Employees appointed pursuant to this section without civil service examination shall be placed in the noncompetitive class of the competitive service pursuant to subdivision two-a of section forty-two of the civil service law and shall serve at the pleasure of the governor. The payment of salaries and compensation of employees appointed pursuant to this section shall be made pursuant

to section one hundred forty-eight of this chapter.

3. Powers, duties and responsibilities. The inspector general shall investigate violations of the laws and regulations pertaining to the operation of the workers' compensation system. The inspector general shall have the following powers, duties and functions:

(a) to conduct and supervise investigations, within or without this state, of possible fraud and other violations of laws, rules and regulations pertaining to the workers' compensation system;

(b) to subpoena witnesses, administer oaths or affirmations, take testimony and compel the production of such books, papers, records and documents as the inspector general may deem to be relevant to an investigation undertaken pursuant to this section;

(c) to report to the attorney general, the insurance frauds bureau, or other appropriate law enforcement agency, violations found through investigations undertaken pursuant to this section and to provide such materials and assistance as may be necessary or appropriate for the successful investigation and prosecution of violations of this chapter;

(d) to submit a written report, on an annual basis, to the governor and to the chair of the board, listing all activities undertaken to the extent such activities can be disclosed pursuant to subdivision five of this section; and

(e) to recommend legislative and regulatory changes to the governor and to the chair of the board.

4. Cooperation of agency officials and employees. (a) In addition to the authority otherwise provided by this section, the inspector general, in carrying out the provisions of this section, is authorized:

(i) to have full and unrestricted access to all records, reports, audits, reviews, documents, papers, recommendations or other material maintained by the board or any other state agency relating to the workers' compensation system, with respect to which the inspector general has responsibilities under this section; and

(ii) to request such information, assistance and cooperation from any federal, state or local government, department, board, bureau, commission, or other agency or unit thereof as may be necessary for carrying out the duties and responsibilities enjoined upon the inspector

general by this section. State and local agencies or units thereof are hereby authorized and directed to provide such information, assistance and cooperation.

(b) No person shall prevent, seek to prevent, interfere with, obstruct or otherwise hinder any investigation being conducted pursuant to this section.

5. Disclosure of information. The inspector general shall not publicly disclose information which is:

(a) a part of an ongoing investigation or prosecution; or

(b) specifically prohibited from disclosure by any other provision of law.

The disclosure of information in order to coordinate investigations with the insurance frauds bureau of the department of financial services, including the unit for workers' compensation insurance frauds investigations within such insurance frauds bureau, and any frauds investigations unit of the state insurance fund, to provide the report required by paragraph (c) of subdivision three of this section or to apprise the chair of ongoing investigations shall not be considered public disclosure for purposes of this section.

§ 137. Independent medical examinations. 1. (a) A copy of each report of independent medical examination shall be submitted by the practitioner on the same day and in the same manner to the board, the insurance carrier, the claimant's attending physician or other attending practitioner, the claimant's representative and the claimant.

(b) If a practitioner who has performed or will be performing an independent medical examination of a claimant receives a request for information regarding the claimant, including faxed or electronically transmitted requests, the practitioner shall submit a copy of the request for information to the board within ten days of receipt of the request. Nothing in this subdivision shall be construed to abrogate the attorney-client privilege.

(c) Copies of all responses to such requests for information as are described in paragraph (b) of this subdivision, including all materials

which are provided in response to such a request, shall be submitted by the responding practitioner to the board within ten days of submission of the response to the requestor. Nothing in this subdivision shall be construed to abrogate the attorney-client privilege.

2. In any open case where an award has been directed by the board for temporary or permanent disability at an established rate of compensation and there is a direction by the board for continuation of payments, or any closed case where an award for compensation has been made for permanent total or permanent partial disability, a report of an independent medical examination shall not be the basis for suspending or reducing payments unless and until the rules and regulations of the board regarding suspending or reducing payments have been met and there is a determination by the board finding that such suspension or reduction is justified.

3. (a) Only a New York state licensed and board certified physician, surgeon, podiatrist or any other person authorized to examine or evaluate injury or illness by the board shall perform such independent medical examination. Where a claimant resides out of state a practitioner qualified to examine or evaluate injury or illness by the board shall perform such independent medical examination.

(b) Any practitioner performing the independent medical examinations shall be paid according to the fee schedule established pursuant to section thirteen of this chapter.

4. All independent medical examinations shall be performed in medical facilities suitable for such exam, with due regard and respect for the privacy and dignity of the injured worker as well as the access and safety of the claimant. Such facilities must be provided in a convenient and accessible location within a reasonable distance from the claimant's residence.

5. All independent medical examinations shall be performed by a practitioner competent to evaluate or examine the injury or disease from which the injured worker suffers. Such examination shall be performed by a practitioner who is licensed and board certified in the state of New

York or any other person authorized to examine or evaluate injury or illness by the board.

6. No practitioner examining or evaluating a claimant under this chapter nor any supervising authority or proprietor nor insurance carrier or employer may cause, direct or encourage a report to be submitted as evidence in workers' compensation claim adjudication which differs substantially from the professional opinion of the examining practitioner. Such an action shall be considered within the jurisdiction of the workers' compensation fraud inspector general and may be referred as a fraudulent practice.

7. The claimant shall receive notice by mail of the scheduled independent medical examination at least seven business days prior to such examination. Such notice shall advise the claimant if the practitioner intends to record or video tape the examination, and shall advise the claimant of their right to video tape or otherwise record the examination. Claimants shall be advised of their right to be accompanied during the exam by an individual or individuals of their choosing.

8. Independent medical examinations shall be performed during regular business hours except with the consent and for the convenience of the claimant. Claimants subject to such examination shall be notified at the time of the exam in writing of the available travel reimbursement under law.

9. A practitioner is not eligible to perform an independent medical examination of a claimant if the practitioner has treated or examined the claimant for the condition for which the independent medical examination is being requested or if another member of a preferred provider organization or managed care provider to which the practitioner belongs has treated or examined the claimant for the condition for which the independent medical examination is being requested.

10. The ability of a claimant to appear for an exam or hearing shall not be dispositive in the determination of disability, extent of disability or eligibility for benefits.

11. At the time of the independent medical examination the claimant shall receive a notice from the entity performing the independent medical examination, on a form which shall be approved and promulgated by the chair, stating the rights and obligations of the claimant and the practitioner with respect to such exam, and such notice shall include but not be limited to a statement that the claimant's receipt of benefits could be denied, terminated, or reduced as a result of a determination which may be based upon the medical evaluation made after such independent medical examination, and the claimant's rights to challenge or appeal such a determination.

12. The chair shall conduct a thorough study of the utilization of independent medical examinations under this chapter, to occur within calendar year two thousand eighteen, and shall convene and present a preliminary report based on the study to an advisory committee set to commence on or about January first, two thousand nineteen. The advisory committee is to consist of representatives of organized labor, business, carriers, self-insured employers, medical providers, and other stakeholders and experts as the chair may deem fit to include. The advisory committee shall meet quarterly, or more frequently if directed by the chair. By December thirty-first, two thousand nineteen, the committee shall present detailed recommendations to the governor, speaker of the assembly, and majority leader of the senate, regarding administrative improvements, and regulatory and statutory proposals, that will ensure fairness, and highest medical quality, while improving methods of combatting fraud. The committee shall review and analyze leading studies, both in New York state and nationally. The compensation insurance rating board shall provide data, and cooperate with the chair and committee in identifying potential abuse and fraud. The report shall consider, among other items, the feasibility of new methods of assigning independent medical examinations, such as through rotating providers or panels, statewide networks, or other arrangements.

ARTICLE 8

Administration

- Section 140. Workers' compensation board.
- 141. General powers and duties of the chair.
 - 141-a. Civil enforcement.
 - 141-b. Suspension and debarment.
 - 141-c. Coordination of forms.
 - 142. General powers and duties of the workmen's compensation board.
 - 143. Maintenance of records.
 - 144. Seal.
 - 145. Oaths of office.
 - 146. Offices of the board.
 - 147. Vacancies and removals.
 - 148. Salaries and expenses.
 - 149. Employees.
 - 150. Referees and secretary.
 - 150-a. Secretary as agent for service of process on non-resident non-insured employers; method and effect of service.
 - 151. Assessments for annual expenses.
 - 152. Administrative regulations.
 - 153. Annual report.
 - 154. Construction of article.
 - 155. Saving clause.
 - 156. Separability.
 - 157. Application of article to volunteer firefighters' benefit law or the volunteer ambulance workers' benefit law.

§ 140. Workers' compensation board. The workers' compensation board in the department of labor is hereby continued. Such board shall consist of thirteen members, at least four of whom shall be attorneys and counsellors-at-law duly admitted to practice in this state. The members of the board shall be appointed by the governor, by and with the advice and consent of the senate. The members of the board in office, together with the additional members and the members appointed to fill vacancies, if any, at the time this section takes effect, shall continue, notwithstanding the appointment of any of the members for a term expiring on a different date, to hold office for terms to be assigned by

the governor by and with the advice and consent of the senate; two such terms to expire on December thirty-first, nineteen hundred fifty; two to expire on December thirty-first, nineteen hundred fifty-one; two to expire on December thirty-first, nineteen hundred fifty-two; two to expire on December thirty-first, nineteen hundred fifty-three; two to expire on December thirty-first, nineteen hundred fifty-four; two to expire on December thirty-first, nineteen hundred fifty-five; and one to expire on December thirty-first, nineteen hundred fifty-six. The members next appointed, except to fill a vacancy created otherwise than by expiration of term, shall be appointed for terms of seven years. The governor shall designate one of the members of the board as chairman and another as vice-chairman.

*** § 141. General powers and duties of the chair.** The chair shall be the administrative head of the workers' compensation board and shall exercise the powers and perform the duties in relation to the administration of this chapter heretofore vested in the commissioner of labor by chapter fifty of the laws of nineteen hundred twenty-one, and acts amendatory thereof, and by this chapter excepting article six thereof, and except in so far as such powers and duties are vested by this chapter in the workers' compensation board. The chair shall preside at all meetings of the board and shall appoint all committees and panels of the board; shall designate the times and places for the hearing of claims under this chapter and shall perform all administrative functions of the board as in this chapter set forth. The chair, in the name of the board, shall enforce all the provisions of this chapter, and may make administrative regulations and orders providing for the receipt, indexing and examining of all notices, claims and reports, for the giving of notice of hearings and of decisions, for certifying of records, for the fixing of the times and places for the hearing of claims, and for providing for the conduct of hearings and establishing of calendar practice to the extent not inconsistent with the rules of the board. The chair shall issue and may revoke certificates of authorization of physicians, chiropractors and podiatrists as provided in sections thirteen-a, thirteen-k and thirteen-1 of this chapter, and licenses for medical bureaus and x-ray and other laboratories under the

provisions of section thirteen-c of this chapter, issue stop work orders as provided in section one hundred forty-one-a of this article, and shall have and exercise all powers not otherwise provided for herein in relation to the administration of this chapter heretofore expressly conferred upon the commissioner of labor by any of the provisions of this chapter, or of the labor law. The chair, on behalf of the workers' compensation board, shall enter into the agreement provided for in section one hundred seventy-one-h of the tax law, and shall take such other actions as may be necessary to carry out the agreement provided for in such section for matching beneficiary records of workers' compensation with information provided by employers to the state directory of new hires for the purposes of verifying eligibility for such benefits and for administering workers' compensation.

* NB Effective until January 1, 2028

* § 141. General powers and duties of the chair. The chair shall be the administrative head of the workers' compensation board and shall exercise the powers and perform the duties in relation to the administration of this chapter heretofore vested in the commissioner of labor by chapter fifty of the laws of nineteen hundred twenty-one, and acts amendatory thereof, and by this chapter excepting article six thereof, and except in so far as such powers and duties are vested by this chapter in the workers' compensation board. The chair shall preside at all meetings of the board and shall appoint all committees and panels of the board; shall designate the times and places for the hearing of claims under this chapter and shall perform all administrative functions of the board as in this chapter set forth. The chair, in the name of the board, shall enforce all the provisions of this chapter, and may make administrative regulations and orders providing for the receipt, indexing and examining of all notices, claims and reports, for the giving of notice of hearings and of decisions, for certifying of records, for the fixing of the times and places for the hearing of claims, and for providing for the conduct of hearings and establishing of calendar practice to the extent not inconsistent with the rules of the board. The chair shall issue and may revoke certificates of authorization of physicians, chiropractors, podiatrists, and psychologists to perform independent medical examinations in accordance with paragraph (b) of subdivision four of section thirteen-a and section

one hundred thirty-seven of this chapter, and licenses for medical bureaus and x-ray and other laboratories under the provisions of section thirteen-c of this chapter, shall publish and maintain an exclusion list, in accordance with section thirteen-d of this chapter, for providers as defined in section thirteen-b of this chapter currently disqualified from providing medical care or from performing independent medical examinations in accordance with paragraph (b) of subdivision four of section thirteen-a and section one hundred thirty-seven of this chapter, shall develop and require trainings for providers as defined in section thirteen-b of this chapter, which shall include, but not be limited to, the role of medical evidence in the board's determination of claims, the contents of medical reports, the process for seeking authorization for special services, diagnostic test networks, and permanency guidelines, issue stop work orders as provided in section one hundred forty-one-a of this article, and shall have and exercise all powers not otherwise provided for herein in relation to the administration of this chapter heretofore expressly conferred upon the commissioner of labor by any of the provisions of this chapter, or of the labor law. The chair, on behalf of the workers' compensation board, shall enter into the agreement provided for in section one hundred seventy-one-h of the tax law, and shall take such other actions as may be necessary to carry out the agreement provided for in such section for matching beneficiary records of workers' compensation with information provided by employers to the state directory of new hires for the purposes of verifying eligibility for such benefits and for administering workers' compensation. The chair shall promulgate regulations to (1) require that the employer or its carrier or special fund shall pay the costs associated with any deposition of a claimant's provider, and (2) allow workers' compensation law judges to deny cross-examination of a provider where appropriate. The chair may promulgate further regulations designed to prevent the consequences of a treating provider's failure to comply with statutory or regulatory provisions, including failure to appear for a deposition, from unduly harming the injured worker's receipt of compensation or medical treatment.

* NB Effective January 1, 2028

§ 141-a. Civil enforcement. 1. To investigate violations of sections fifty-two, one hundred thirty-one and two hundred thirteen of this chapter, the chair or his or her designees shall have the power to:

(a) Enter and inspect any place of business at any reasonable time for the purpose of investigating employer compliance.

(b) Examine and copy business records.

(c) Administer oaths and affirmations.

(d) Issue and serve subpoenas for attendance of witnesses or production of business records, books, papers, correspondence, memoranda, and other records. Such subpoenas may be served without the state on any defendant over whom a New York court would have personal jurisdiction under the civil practice law and rules as to the subject matter under investigation, provided the information or testimony sought bears a reasonable relationship to the subject matter under investigation.

2. The chair shall specify by rule the business records that employers must maintain and produce to comply with this section.

3. If a person has refused to obey a subpoena, the chair may commence an action in supreme court of any county where venue is proper for an order requiring compliance with the subpoena. Costs, including reasonable attorney's fees, incurred by the chair to obtain and enforce an order granting, in whole or in part, a petition to enforce a subpoena shall be taxed against the subpoenaed party.

4. (a) Whenever the chair determines that an employer who is required to secure compensation in accordance with this chapter has failed to secure such compensation, or where an employer has failed to pay penalties assessed against it pursuant to this chapter, or failed to pay a judgment under section twenty-six of this chapter within ninety days after notice to the employer and has not moved to modify or vacate such judgment, such failure shall be deemed an immediate serious danger to public health, safety, or welfare sufficient to justify service by the chair of a stop-work order on the employer, requiring the cessation of all business operations effective immediately, except where the

employer's failure concerns only domestic or child care workers in his or her own household. The chair may issue such order, which shall take effect as to a particular employer worksite when served at that worksite, or as to all employer worksites in the state for which the employer is not in compliance when served on the employer. A stop-work order may be served with regard to an employer's worksite by posting a copy of the stop-work order in a conspicuous location at the worksite. The order shall remain in effect until the chair directs that the stop-work order be removed, upon a determination that the employer has come into compliance with the coverage requirements of this chapter and has paid any penalty assessed under this chapter. If the employer shall within thirty days after notice of the stop-work order make an application in affidavit form for a redetermination review of such order the chair shall make a decision in writing on the issues raised in such application. The chair may direct a conditional release from a stop-work order upon a finding that the employer has complied with coverage requirements of this chapter and has agreed to remit periodic payments of the penalty pursuant to a payment agreement schedule with the chair. If an agreement or order of conditional release is issued, failure by the employer to meet any term or condition of such payment agreement shall result in the immediate reinstatement of the stop-work order and the entire unpaid balance of the penalty shall become immediately due. The chair may require an employer who is found to have failed to comply with the coverage requirements of this chapter to file with the board, as a condition of release from a stop-work order, periodic reports for a probationary period that shall not exceed two years, and that demonstrate the employer's continued compliance with this chapter. The board shall by rule specify the reports required and the time for filing under this subdivision.

(b) A stop-work order issued against an employer under this section shall be in effect against any non-compliant substantially-owned affiliated entity.

5. The chair may file a complaint in the supreme court of any county where venue is proper: (a) to enjoin any employer from violating a stop-work order; or (b) to enjoin any other practice prohibited by section fifty-two or one hundred thirty-one of this chapter. In any

action brought by the chair pursuant to this section in which it prevails, the court may award costs, including the reasonable costs of investigation and reasonable attorneys' fees.

6. Any judgment obtained by the chair and any penalty due under this section shall, until collected, constitute a lien upon the entire interest of the employer, legal or equitable, in any property, real or personal, tangible or intangible; however, such lien is subordinate to claims for unpaid wages and any prior recorded liens, and a lien created by this section is not valid against any person who, subsequent to such lien and in good faith and for value, purchases real or personal property from such employer or becomes the mortgagee on real or personal property of such employer, or against a subsequent attaching creditor, unless, with respect to real estate of the employer, a notice of the lien is recorded in the public records of the county where the real estate is located, and with respect to personal property of the employer, the notice is recorded with the secretary of state.

7. In any court proceedings under this section, the chair shall be represented by the attorney general.

§ 141-b. Suspension and debarment. Any person subject to a final assessment of civil fines or penalties or a stop-work order, or that has been convicted of a misdemeanor for a violation of sections twenty-six, fifty-two or one hundred thirty-one of this chapter, and any substantially-owned affiliated entity of such person, shall be ineligible to submit a bid on or be awarded any public work contract or subcontract with the state, any municipal corporation or public body for a period of one year from the final determination or conviction. Any person convicted of a felony under this article, or a misdemeanor under sections one hundred twenty-five and one hundred twenty-five-a of this chapter shall be ineligible to submit a bid on or be awarded any public work contract or subcontract with the state, any municipal corporation or public body for a period of five years from such conviction.

§ 141-c. Coordination of forms. The board, the commissioner of labor, the commissioner of taxation and finance, the commissioner of motor vehicles, and the superintendent of financial services shall consult on an ongoing basis to coordinate the amendment of forms used to gather data helpful in identifying fraud, so as to promote effective use and sharing of such information for identifying fraud in the area of workers' compensation. Through such consultations and other means, these agencies shall study the implementation of appropriate practicable technology to verify the authenticity of forms, including certificates of coverage.

§ 142. General powers and duties of the workmen's compensation board.

1. The workmen's compensation board shall have power to hear and determine all claims for compensation or benefits or relating to special funds created under the provisions of this chapter, in the manner provided by this chapter; to require medical service for injured employees as provided by this chapter; to approve and fix attorney's fees and claims for medical service to the extent provided in this chapter; to excuse failure to give notice either of injury or death of an employee, to approve agreements, to modify or rescind awards, to make conclusions of fact and rulings of law, to certify questions to the appellate division of the supreme court, to enter orders in appealed cases, to determine the time for the payment of compensation, to order the reimbursement of employers for amounts advanced, to assess penalties, to commute awards, to compromise actions for the collection of awards, to require or permit employers to deposit the present value of awards in the aggregate trust fund of the state fund, to determine by rule the assignment of a minor's right to sue a third party, to require guardianship for minor dependents, to hear and determine claims under the occupational disease act, to order physical examinations, to take testimony by depositions; and to have and exercise all other powers and duties, exclusive of purely administrative functions, originally conferred or imposed upon the workmen's compensation commission by this chapter, or by any other statute, and by chapter six hundred and seventy-four of the laws of nineteen hundred fifteen conferred and imposed upon the industrial commission, and by chapter fifty of the laws

of nineteen hundred twenty-one conferred and imposed upon the industrial board. For the purpose of exercising such powers and performing such duties, the workmen's compensation board shall be deemed to be a continuation of the industrial board provided for by the provisions of the labor law; and all proceedings under this chapter pending before such board are hereby transferred to the workmen's compensation board without prejudice to the rights of any party to such proceeding.

The workmen's compensation board, subject to the provisions of this chapter and of the provisions of the labor law as to the distribution of functions, shall succeed to all the rights, powers, duties and obligations of the department of labor, the industrial commissioner and the industrial board, in so far as they relate to workmen's compensation, as heretofore constituted, except such as are vested in the chairman of the board by this article and except with respect to article six of this chapter.

Whenever the term "industrial board" or the "chairman" or "vice-chairman" thereof appears in this chapter or in the provisions of the labor law after the time this article takes effect, it shall be construed to mean the workmen's compensation board or the chairman thereof, as created by the provisions of this chapter, as may be required by the context unless the contrary shall be indicated.

2. Any review, hearing, rehearing, inquiry or investigation required or authorized to be conducted or made by the workers' compensation board may be conducted or made by any panel of the board consisting of not less than three members thereof, and the order, decision or determination of a majority of the members of a panel shall be deemed the order, decision or determination of the board from the date of filing thereof with the secretary of the board, unless the board on its own motion, or on application by a party in interest for a full board review made in accordance with section twenty-three of this chapter, shall modify or rescind such order, decision or determination. Four panels shall be constituted at all times, and the chair shall assign the members to the panels upon which they shall serve. At least one member on each panel shall be an attorney and counsellor-at-law, but the

absence of an attorney on any panel shall not invalidate the order, decision or determination of a majority of the members of the panel if at least two affirmative votes are cast in favor of such action. The panels shall be constituted so that the members of the board shall alternate in their periods of service together thereon. Whenever a number of proceedings remains pending before the board for a period in excess of thirty days, members of the board shall hold hearings and otherwise act in the discharge of their duties evenings and at other convenient times on all days of the week except Sundays, in addition to the times when they would perform such duties in the ordinary conduct of the business of the board, in order to expedite the disposal thereof. The chair may and shall, when directed by the governor, prescribe the hours and the times for such additional performance of duty by the members of the board and the period or periods for the continuance thereof.

Notwithstanding any provision in this section to the contrary, a member of the board may be designated by the chair to act individually in the hearing and determination of any claim under this chapter, or conduct any investigation, hearing or inquiry hereunder, or review and rescind any order, decision or determination upon any claim and restore such claim for further trial hearing and evidence or consideration except that such member may not conduct any appellate rehearing of any case or otherwise review any order, decision or determination upon any claim and reverse, modify or affirm such order, decision or determination which by the provisions of this section shall be reheard or reviewed by the board or a panel thereof.

3. The members of the workmen's compensation board, a referee or any other officer or employee of the board if duly authorized by the chairman, may administer oaths and take affidavits in matters relating to the provisions of this chapter.

The members of the workmen's compensation board, the referees and any other officer of the board designated by the chairman, shall have power:

- a. To issue subpoenas for and compel the attendance of witnesses and

the production of books, contracts, papers, documents and other evidence;

b. To hear testimony and take or cause to be taken depositions of witnesses residing within or without this state in the manner prescribed by law for like depositions in civil actions in the supreme court. Subpoenas and commissions to take testimony shall be issued under the seal of the board.

4. Notwithstanding the provisions of any other law, neither the industrial commissioner nor any board or other agency of the department of labor shall in any way direct, review, modify or reverse any decision or finding of the board nor shall the industrial commissioner or any board or other agency of the department of labor supervise or control the board or its members in the exercise of any powers or in the performance of any duties under this chapter.

5. The workers' compensation board shall keep an accurate record of all hearings held. Where the decision of a referee is affirmed by the board upon review, the board shall assess against each insurance carrier or employer seeking such review the sum of one hundred fifty dollars and may assess against any other party the sum of twenty dollars. The amount so secured from these assessments shall be paid into the state treasury.

6. The workers' compensation board shall not release any information acquired pursuant to section five hundred thirty-seven of the labor law and section one hundred seventy-one-a of the tax law unless the release of such information is required to further fraud control activities undertaken by the workers' compensation board pursuant to this chapter, in which case release of such information shall be subject to the restrictions contained in section five hundred thirty-seven of the labor law and section one hundred seventy-one-a of the tax law.

7. Where there has been a motor vehicle accident which caused personal injury and there is a dispute as to whether the injury occurred in the course of employment, the workers' compensation board shall, after notice to the no-fault carrier and the workers' compensation carrier,

hold an expedited hearing on the issue of whether the accident occurred during the course of employment.

§ 143. Maintenance of records. 1. The board is authorized and empowered to use electronic means in accordance with section three hundred five of the state technology law to record and maintain public records, papers, documents or matters required by law to be recorded. Such records shall be capable of being copied, photographed, or microphotographed by a process which accurately reproduces the original thereof in all details.

2. The copies thereof shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies. A transcript, exemplification or certified copy thereof shall, for all purposes recited herein, be deemed to be a transcript, exemplification, or certified copy of the original.

3. The board shall have the power to authorize the destruction, sale to a historical, educational, or scientific organization or to otherwise dispose of its records, subject only to receiving the consent of the commissioner of education as may be required by article fifty-seven of the arts and cultural affairs law.

§ 144. Seal. The board may adopt a seal and require that it be used for the authentication of orders and proceedings and for such other purposes as the board may prescribe.

§ 145. Oaths of office. The members of the board and the secretary shall, before entering upon the duties of their office, take and subscribe the constitutional oath of office. Such oaths shall be filed in the office of the department of state.

§ 146. Offices of the board. There shall be an office of the board in

the city of New York and at such other place or places in the state as may be required properly and conveniently to transact the business of the board. The board may meet and exercise any or all of its powers at any place in the state.

§ 147. Vacancies and removals. If a vacancy shall occur in the office of any member of the board otherwise than by expiration of term, it shall be filled by the governor, by and with the advice and consent of the senate, for the unexpired term. The governor may remove the chairman or any member of the board for cause after giving him a copy of the charges and an opportunity of being heard in person or by counsel on not less than ten days' notice. If the chairman or a member of the board be removed the governor shall file with the department of state a statement of the cause of such removal.

§ 148. Salaries and expenses. 1. The chairman and members of the board shall devote their entire time to the duties of their office and shall not practice in their respective professions or callings. The reasonable and necessary expenses of the board and the reasonable and necessary traveling and other expenses of the chairman and members of the board, the secretary and other officers and employees of the board, while actually engaged in the performance of their duties, outside of the city of Albany, or if any such officer or employee be in charge of or actually employed at an office of the board outside of the city of Albany, the reasonable and necessary traveling and other expenses outside of the place in which such office is located, shall be paid from the state treasury upon the audit and warrant of the comptroller, upon vouchers approved by the chairman or vice-chairman or secretary of the board.

2. For the purpose of extending the benefits of workmen's compensation and improving administration and expediting the adjudication of claims, the chairman is hereby authorized, within the limits of the appropriation available therefor, to initiate studies and surveys, to observe operations in other states, to conduct research, and to make

investigations in the entire field of workmen's compensation, within and without the state of New York. The chairman is also hereby authorized to accept a gift, grant, or contribution of funds to be used in his discretion to carry out the purposes of this subdivision and shall in the annual report of the board set forth the progress of the same.

§ 149. Employees. Permanent employees of the department of labor assigned to duties wholly in relation to the enforcement and administration of this chapter, in the competitive class of the classified civil service in office when this section takes effect shall continue in office, except that upon certification by the chairman to the director of the budget filed within sixty days from the time this chapter takes effect that any such employee is not required for the exercise of the functions, powers, duties and obligations transferred and assigned to the board pursuant to this chapter, such employee shall not be continued; provided, however, that whenever there are more than three officers or employees in the same class and grade of position the provisions of section thirty-one of the civil service law shall apply, and any such employee or employees not continued in office shall be placed on the preferred eligible list.

The chairman of the board may appoint officers and employees, including such investigators, statisticians, examiners, and other assistants, as may be necessary for the exercise of the powers and the performance of the duties of the chairman or the board.

The chairman may transfer officers or employees from their positions to other positions under the board; may abolish or consolidate such positions; and may suspend or remove from office any officer or employee of the board; subject, however, to the provisions of the civil service law and rules.

§ 150. Referees and secretary. (a) The chair shall appoint as many persons as may be necessary to be referees to perform the duties prescribed by this section. All positions of referee now in existence

shall remain in the exempt class of the classified civil service, except as otherwise provided herein. The term of referees appointed to positions in the exempt class shall be seven years from the date of appointment; provided, however, that referees may be removed by the chair for cause after notice of charges and an opportunity to be heard. A newly created position of referee, or one that has been vacated, shall be classified in the competitive class of the classified service, and the term of office prescribed herein shall not apply to such appointments; provided, however, that those who are serving in referee positions on the date that this act becomes effective whose term has already expired or whose term expires on or after such effective date may, in the discretion of the appointing authority, be retained in that position until the expiration of the eligible list established as the result of the next competitive examination appropriate for such title, held after January first, nineteen hundred ninety-one or may, before such time, be appointed from such eligible list.

A referee shall devote his or her entire time to the duties of that office and shall not hold any other public office or public employment for which compensation is received, other than necessary travel or other expenses incurred in the performance of the duties of such office or employment, and may engage in any employment that does not conflict with the proper performance of the duties of his or her office and is not inconsistent with the public officers law. Referees shall receive an annual salary to be fixed by the chair within the appropriation made therefor.

(b) It shall be the duty of a referee, under rules adopted by the board, to hear and determine claims for compensation, and to conduct such hearings and investigations and to make such orders, decisions and determinations as may be required by any general or special rule or order of the board under the provisions of this chapter. The decision of a referee on such a claim shall be deemed the decision of the board from the date of the filing thereof in the office of the secretary of the board unless the board, on its own motion or on application duly made to it, modify or rescind such decision. Whenever any deaf person is a party to a hearing conducted before a referee, or a witness therein, the referee shall in all instances appoint a qualified interpreter who is

certified by a recognized national or New York state credentialing authority to interpret the proceedings to and the testimony of such deaf person. The board shall determine a reasonable fee for all such interpreting services, the cost of which shall constitute an administrative expense.

(c) Notwithstanding any other provisions of this section to the contrary, the chair may establish a list of board employees qualified by training or experience to serve as acting referees. When the chair or his or her duly designated representative shall determine that a temporary emergency exists, he, she or said representative may assign an employee from such list to serve as an acting referee during such temporary emergency. Such board employee qualified by training or experience shall serve without additional compensation and shall have all the powers and duties of a duly appointed referee.

(d) There shall be a secretary of the board who shall be appointed and may be removed by the board. The board shall fix his salary within the limits of the appropriations therefor. The secretary shall perform such duties in connection with meetings of the board and such other duties as may be assigned to him by the board. He shall also perform such of the administrative duties and have such of the administrative powers of the chairman of the board as may be delegated or assigned to him by the chairman.

§ 150-a. Secretary as agent for service of process on non-resident non-insured employers; method and effect of service. Any non-insured employer, not a resident of this state or any resident non-insured employer who becomes a non-resident of this state after the occurrence of any injury to an employee, who shall employ or who shall have employed any person who shall be entitled to benefits under this chapter, shall be deemed, by the accepting of the privilege of engaging in work in this state, to make, constitute and appoint the secretary of the workmen's compensation board as his or its agent for the acceptance of process in any proceeding by any such employee or dependent or representative of such employee, under and by virtue of this chapter; and the acceptance of such privilege shall be a signification of such employer that any such process issued against him or it, which is so

served, shall be of the same legal force and validity as if served upon him or it personally within the state.

Service of such process shall be made by filing a copy of the claim for workmen's compensation with the secretary of the board, and such service shall be sufficient service upon such non-resident employer, provided that notice of such filing together with copy of the claim for workmen's compensation are forthwith sent by registered mail by the secretary of the board to the employer to the address stated in such claim for workmen's compensation or the last known address of the employer.

A non-resident employer against whom claim for compensation has been filed with the chairman under and by virtue of this chapter shall be deemed to have consented that the appointment of the secretary of the board as his or its agent for the acceptance of process pursuant to the provisions of this section shall be irrevocable and binding upon his executor or administrator. Where the non-resident employer has died prior to the filing of a claim for workmen's compensation with the chairman, service of process shall be made on the executor or administrator of such non-resident employer in the same manner and on the same notice as is provided in the case of a non-resident employer. Where the non-resident employer has died subsequent to the service of process made in accordance with the provisions of this section, the proceedings under and by virtue of this chapter shall continue against his executor or administrator upon such notice as the board shall deem proper. The board may order such continuance as may be necessary to afford the employer a reasonable opportunity to defend the claim.

This section shall be construed to extend the right of service of process upon non-residents and shall not be construed as limiting any provisions for the service of process now or hereafter existing.

§ 151. Assessments for annual expenses. 1. The annual expenses necessary for the board to administer the provisions of this chapter, the volunteer ambulance workers' benefit law, the volunteer

firefighters' benefit law, the disability benefits law, and the workmen's compensation act for civil defense volunteers shall be borne by affected employers securing compensation for their employees pursuant to section fifty of this chapter. The board shall collect such annual expenses from affected employers through assessments as provided by the provisions of this section, including for purposes of this subdivision: (a) the aggregate assessment amount described in subparagraph four of paragraph (h) of subdivision eight of section fifteen of this chapter for the special disability fund in accordance with each financing agreement described in such subparagraph, (b) the aggregate assessment amount described in section fifty-c of this chapter for the self-insurer offset fund in accordance with each financing agreement described in such section, (c) the assessment amount described in subdivision three of section twenty-five-a of this chapter for the fund for reopened cases, (d) the assessment amount described in section two hundred fourteen of this chapter for the special fund for disability benefits and (e) a sum sufficient as determined by the chair but no greater than 0.4% of the total estimated statewide premium to cover the establishment and maintenance of dedicated workers' compensation fraud units within New York state district attorneys' offices; provided, that the foregoing and any other provision of this chapter to the contrary notwithstanding, assessment receipts shall be applied first to fully fund the amount described in subparagraph four of paragraph (h) of subdivision eight of section fifteen of this chapter and then to fully fund the amount described in section fifty-c of this chapter in accordance with each then applicable financing agreement pursuant to such provisions prior to application to any other purpose other than to pay any actual costs of collecting such assessment that are not otherwise funded. For purposes of this section, affected employer means all employers required to obtain workers' compensation coverage pursuant to this chapter.

2. On the first day of November, two thousand thirteen, and annually thereafter, the chair shall establish an assessment rate for all affected employers in the state of New York in an amount expected to be sufficient to produce assessment receipts at least sufficient to fund all estimated annual expenses pursuant to subdivision one of this section except those expenses for which an assessment is authorized for

self-insurance pursuant to subdivision five of section fifty of this chapter. Such rate shall be assessed effective the first of January of the succeeding year and shall be based upon a single methodology determined by the chair. The chair may also establish an additional assessment rate, not to exceed thirty percent of annual premiums, for those affected employers who are in default in the payment of their compensation pursuant to subparagraph (b) of paragraph seven of subdivision three-a of section 50 of this chapter. Such additional assessment shall be collected and remitted to the chair consistent with subdivisions four and five of this section. The chair shall make available for public inspection an itemized statement of the estimated annual expenses in the office of the board for thirty days immediately after the rate is established.

3. The chair and department of audit and control annually as soon as practicable after the first of April of each year shall ascertain the actual total amount of expenses, including in addition to the direct costs of personal service, the cost of maintenance and operation, the cost of retirement contributions made and workers' compensation premiums paid by the state for or on account of personnel, rentals for space occupied in state owned or state leased buildings, such additional sum as may be certified to the chair and the department of audit and control as a reasonable compensation for services rendered by the department of law and expenses incurred by such department, for transfer into the training and educational program on occupational safety and health fund created pursuant to chapter eight hundred eighty-six of the laws of nineteen hundred eighty-five and section ninety-seven-c of the state finance law, for the New York state occupational health clinics network, for the department of labor occupational safety and health program and for transfer into the uninsured employers' fund pursuant to subdivision two of section twenty-six-a of this chapter, and all other direct or indirect costs, incurred by the board in connection with the administration of this chapter, except those expenses for which an assessment is authorized for self-insurance pursuant to subdivision five of section fifty of this chapter. Assessments pursuant to subparagraph four of paragraph (h) of subdivision eight of section fifteen of this chapter for the special disability fund, pursuant to section fifty-c of

this chapter for the self insurer offset fund, pursuant to subdivision three of section twenty-five-a of this chapter for the fund for reopened cases, and pursuant to section two hundred fourteen of this chapter for the special fund for disability benefits shall be included in the total amount of expenses for the purposes of this subdivision. Any overpayment of annual assessments resulting from the requirements of this subdivision shall be applied as a credit against the future assessment rate provided the fund balance shall not be reduced below five percent of the total amount assessed.

4. For those affected employers obtaining coverage:

(a) by insuring with the state fund pursuant to subdivision one of section fifty of this chapter; or (b) through a policy pursuant to subdivision two of section fifty of this chapter; or (c) through a county self-insurance plan under article five of this chapter; or (d) through a group private or public self-insurer pursuant to subdivision three-a of section fifty of this chapter, such assessment amounts shall be collected and remitted to the chair by the carrier or the state insurance fund, or county plan, or group private or public self-insurer, on behalf of the employer(s) until such time as the board establishes a direct employer payment process. Affected private or public employers providing compensation through self insurance pursuant to subdivision three of section fifty of this chapter shall pay assessment amounts directly to the chair.

5. Insurance carriers as defined in section two of this chapter including the state insurance fund and self-insurers, shall collect from affected employers and periodically remit to the board such assessments and shall be responsible for ensuring their employers/policyholders are current on their assessments. (a) Failure to ensure policyholders or employers are current on their assessments will result in the insurance carrier; or self-insurer; being liable for such assessments.

(b) In the event the employer; insurance carrier; or self-insurer; knew or should have known that the employer misreported any data related to the assessment process, they may be subject to any applicable penalties or sanctions provided by this chapter.

6. (a) Effective the first day of January, two thousand fourteen, all assessment cycles in progress will be replaced with the assessment rate determined herein. However, such new assessment rate shall not relieve any carrier or self-insurer for outstanding amounts due as of the first day of January two thousand fourteen.

(b) All assessment amounts collected by insurance carriers, except the state fund, and not yet remitted to the board prior to the first day of January, two thousand fourteen must be remitted to the chair no later than the first day of February, two thousand fourteen.

(c) Effective immediately, notwithstanding any law to the contrary, pursuant to the provisions of this chapter, the assessment reserves remitted to the chair pursuant to this paragraph shall, at the request of the director of the budget, be distributed as follows:

(i) As soon as practicable on or after April first, two thousand sixteen, the chair of the workers' compensation board shall transfer one hundred forty million dollars to the state insurance fund, for partial payment and partial satisfaction of the state's obligations to the state insurance fund under workers' compensation law section eighty-eight-c for two thousand sixteen.

(ii) Effective immediately, the chair of the workers' compensation board shall authorize the board to expend up to sixty million dollars to implement infrastructure and system upgrades consistent with recommendations of the workers' compensation board redesign and reengineering project.

(iii) Effective immediately, the chair of the workers' compensation board shall authorize the board to expend up to forty million dollars for: (A) transfer into the training and educational program on occupational safety and health fund created pursuant to chapter eight hundred eighty-six of the laws of nineteen hundred eighty-five and section ninety-seven-c of the state finance law; (B) the department of labor occupational safety and health program; (C) transfer into the uninsured employers' fund pursuant to subdivision two of section twenty-six-a of this chapter in connection with payment of claims made pursuant to article eight-A of this chapter; (D) a reduction in liabilities of the special disability fund pursuant to subdivision eight of section fifteen of this chapter and/or the fund for reopened cases pursuant to section twenty-five-a of this chapter; and/or (E) transfer

to or payment of up to ten million dollars of such amount on behalf of the superintendent of financial services for costs associated with the implementation of the paid family leave act of article nine of this chapter.

Any and all funds remaining after accounting for the transfers and expenditures set forth above may, at the discretion of the director of the budget, either remain with the workers' compensation board or be transferred to the general fund for the purpose of reducing budget gaps.

Annually, the workers' compensation board will provide to the director of the budget, the chair of the senate finance committee, and the chair of the assembly ways and means committee, an accounting of such funds and all associated income received. Such accounting will continue until March thirty-first, two thousand twenty.

7. Assessments for the expenses of the board including assessments pursuant to paragraph (h) of subdivision eight of section fifteen of this chapter for the special disability fund and pursuant to subdivision three of section twenty-five-a of this chapter for the fund for reopened cases shall not constitute elements of loss.

7-a. Notwithstanding any law to the contrary, when there is a default on the payment of premium, including any assessments payable under subdivision seven of this section, any action by the carrier, including the state insurance fund, to collect any unpaid premium shall include an action seeking recovery of such assessments on behalf of the board. The carrier shall remit the amount of any such unpaid assessments collected either pursuant to a judgment or by settlement to the board.

8. The foregoing and every other provision of law to the contrary notwithstanding, all moneys received on account of the assessment authorized by this section shall be deposited upon receipt into the administrative clearing account held by the commissioner of taxation and finance and applied, as pledged assessments for purposes of sections sixteen hundred eighty-l and sixteen hundred eighty-q of the public authorities law and prior to any other application: first, in accordance

with any other provision of any special disability fund financing agreement entered into prior to March thirty-first, two thousand thirteen, to the extent required to fully fund the then current payment and reserve requirements under such financing agreement; and second, in accordance with each special disability fund financing agreement and each self-insured bond financing agreement, to the extent required to fully fund the then current payment and reserve requirements under each such financing agreement entered into after March thirty-first, two thousand thirteen with respect to bonds issued by the dormitory authority pursuant to either section sixteen hundred eighty-l or section sixteen hundred eighty-q of the public authorities law, on a pari passu basis without preference or priority among all such other bonds. Such monies shall not be commingled with any other monies in the commissioner's custody prior to the completion of such application and shall not be deemed to be part of the state treasury or of any funds under management of the state. This section shall not be deemed to authorize any infringement upon the rights of holders of such bonds issued or to be issued under such sections of the public authorities law. The provisions of this section may be included by the dormitory authority in any contract with the holders of any such bonds. The operation of this section and the application of the receipts of the assessment authorized by this section shall be subject to the provisions of each financing agreement authorized pursuant to subparagraph four of paragraph (h) of subdivision eight of section fifteen or to section fifty-c of this chapter and this section shall not be deemed to authorize any infringement upon the rights of holders of bonds issued or to be issued pursuant to either such provision.

9. The provisions of this section shall not apply with respect to policies containing coverage pursuant to paragraph one of subsection (j) of section three thousand four hundred twenty of the insurance law relating to every policy providing comprehensive personal liability insurance on a one, two, three or four family owner-occupied dwelling.

10. If the assessments collected pursuant to this section are insufficient to meet the obligations financed by the assessments, the chair, for a period of three years, may borrow any shortfall from the

state insurance fund with any borrowing to be added to the assessments under this section and repaid the following year to the state insurance fund with interest at the state insurance fund's then current rate of return.

11. Effective immediately, notwithstanding any law to the contrary, pursuant to the provisions of this chapter, the assessment reserves held by the state insurance fund for the payment of future assessments are no longer required and all funds and investments held by the state insurance fund related to the assessment reserves shall be transferred to the chair of the workers' compensation board as soon as practicable. The commissioner of taxation and finance shall be custodian of such funds, which shall not be commingled with other funds of the workers' compensation board, and may invest such funds in the same manner as surplus funds held by the state insurance fund pursuant to subdivision two of section eighty-seven of this chapter. Disbursements of such funds shall be made by such commissioner upon written warrant of the chair of the workers' compensation board or the chair's designee.

At the request of the director of the budget, such moneys transferred to the chair of the workers' compensation board shall be distributed as follows:

(a) As soon as practicable after April first, two thousand thirteen, the chair of the workers' compensation board shall transfer two hundred fifty million dollars to the general fund for debt management or fiscal uncertainties.

(b) As soon as practicable after April first, two thousand fourteen, the chair of the workers' compensation board shall transfer one billion dollars to the general fund for the purpose of reducing budget gaps.

(c) As soon as practicable after April first, two thousand fifteen, the chair of the workers' compensation board shall transfer two hundred fifty million dollars to the general fund for the purpose of reducing budget gaps.

(d) As soon as practicable after April first, two thousand sixteen, the chair of the workers' compensation board shall transfer two hundred fifty million dollars to the general fund for the purpose of reducing budget gaps.

(e) Any and all funds remaining after accounting for the transfers set forth above may, at the discretion of the director of the budget, either remain with the workers' compensation board or be transferred to the general fund for the purpose of reducing budget gaps or to the state insurance fund. The budget director, acting in consultation with the chair of the workers' compensation board, shall determine whether any money returned to the state insurance fund is a loan or a transfer and the terms and conditions therein. Any funds transferred or loaned to the state insurance fund upon the budget director's request may be invested in a manner consistent with investment guidelines pursuant to subdivision two of section eighty-seven of the workers' compensation law.

Annually, the state insurance fund and the workers' compensation board will provide to the director of the budget, the chair of the senate finance committee, and the chair of the assembly ways and means committee, an accounting of such funds and all associated income received. Such accounting will continue until March thirty-first, two thousand seventeen.

12. The chair shall promulgate regulations to carry out the provisions of this section.

13. To effectuate an efficient assessment process and the proper management of the workers' compensation system all data in possession of the compensation insurance rating board shall be made available to the board and the department of financial services upon request.

14. The chair may conduct periodic audits of any employer, self-insurer, insurance carrier and the state insurance fund concerning any information or payment required under this section, including any information relevant to the payment or calculation of any assessments. The employer, self-insurer, insurance carrier and the state insurance fund shall provide all necessary documents and information in relation to an audit in a manner prescribed by the chair. Upon the determination of the chair that an employer, self-insurer, insurance carrier or the state insurance fund has underpaid an assessment as a result of its

inaccurate reporting, the employer, self-insurer, insurance carrier or the state insurance fund upon notice from the chair, shall pay the full amount of the underpaid assessment, along with interest at the rate of nine per cent per annum on the unpaid assessment due not later than thirty days after such notice. An insurance carrier or employer that knowingly makes a material misrepresentation of information required for the purpose of effectuating this section shall be guilty of a class E felony.

15. Beginning in two thousand twenty-eight, the board shall include in its annual report made pursuant to section one hundred fifty-three of this article a summary of the funds distributed for the purpose of establishment and maintenance of dedicated workers' compensation fraud units within New York state district attorneys' offices pursuant to paragraph (e) of subdivision one of this section, which shall include for each district attorneys' office:

- (a) the amount of funds distributed;
- (b) a description of each resulting conviction, including:
 - (i) the full name of the defendant;
 - (ii) the date of conviction;
 - (iii) a description of the offense;
 - (iv) the amount of money alleged to have been defrauded; and
 - (v) a description of any offenses other than workers' compensation fraud for which the defendant was simultaneously convicted;
- (c) the total number of and pertinent details contained in any charging instruments, which shall include only the amount of money alleged to have been defrauded and the workers' compensation fraud charges alleged, and shall not include any personally identifying information of the charged individual or any other information that is not publicly available; and
- (d) the number of new positions created and persons hired for positions within dedicated workers' compensation fraud units.

§ 152. Administrative regulations. The chairman of the board may make, amend and repeal regulations for the administration of the board and its employees. Such regulations shall not be deemed rules within the meaning

of this chapter or of the labor law unless the context of such regulations otherwise requires.

The chairman may by order filed in the office of the secretary delegate any of his administrative powers to or direct any of his duties other than as a member of the board to be performed by any other officer of the board or the head of any bureau or section of the board.

*** § 153. Annual report.** The board shall on or before the first day of February in each year make an annual report in writing to the governor, stating in detail the work it has done in hearing and deciding cases and otherwise.

* NB Effective until January 1, 2028

* § 153. Annual report. The board shall on or before the first day of February in each year make an annual report in writing to the governor, the temporary president of the senate, the speaker of the assembly, and the chairs of the senate and assembly standing committees on labor, stating in detail the work it has done in hearing and deciding cases and otherwise. Such reports shall include the number of providers who rendered medical care or treatment under this chapter in the prior calendar year, the completion rate for provider training required by the board pursuant to section one hundred forty-one of this article, and an analysis of the degree to which new providers are successfully complying with this chapter and implementing regulations.

* NB Effective January 1, 2028

§ 154. Construction of article. This article shall be construed as a continuation of those parts of article two of chapter thirty-six of the laws of nineteen hundred nine, entitled "An act relating to labor, constituting chapter thirty-one of the consolidated laws," as amended by chapter fifty of the laws of nineteen hundred twenty-one, and acts amendatory thereof, in so far as it relates to the administration of the workmen's compensation law, and not as a new enactment.

§ 155. Saving clause. This article shall not affect pending actions, civil or criminal, brought by or against the department of labor, the industrial commissioner or the industrial board, but the same may be prosecuted or defended in the same manner and with the same effect as if this article had not been passed, by the industrial commissioner if the subject matter of the action or proceeding falls within his jurisdiction and otherwise by the workmen's compensation board or the chairman thereof. Every rule, regulation, order, permit or license of the industrial commissioner or industrial board in force when this article takes effect shall continue in force until such rule, regulation or order be amended or repealed or such permit or license revoked or terminated pursuant to the provisions of this chapter or of the labor law, or otherwise. Any investigation, examination or proceeding undertaken, commenced or instituted by the industrial board or by any referee prior to the taking effect of this article may be conducted and continued to a final determination or conclusion in the same manner, and under the same terms and conditions and with the same effect as though this article had not been passed, by the workmen's compensation board or the chairman thereof, if the subject matter of the investigation, examination or proceeding falls within its or his jurisdiction by the terms of this act, and otherwise by the industrial commissioner.

§ 156. Separability. If any clause, sentence, paragraph, or part of this article or the application thereof to any person or circumstances, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgments shall not affect, impair, or invalidate the remainder of this article, and the application thereof to other person or circumstances, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstances involved. It is hereby declared to be the legislative intent that this article would have been adopted had such invalid provisions not been included.

§ 157. Application of article to volunteer firefighters' benefit law

or the volunteer ambulance workers' benefit law. The following terms used in this article, unless inconsistent with the volunteer firefighters' benefit law or the volunteer ambulance workers' benefit law, are hereby enlarged as follows:

1. "Employer" includes any political subdivision liable for benefits pursuant to the volunteer firefighters' benefit law or the volunteer ambulance workers' benefit law.

2. "Employee" includes a volunteer firefighter or volunteer ambulance worker who has been or might be injured in line of duty or who dies or might die from such an injury. When a political subdivision or a district or area thereof is responsible for the payment of benefits pursuant to the volunteer firefighters' benefit law or the volunteer ambulance workers' benefit law, it shall be deemed the "employer" of such "employee."

3. "Workers' compensation" and "compensation" include the benefits in relation to volunteer firefighters or volunteer ambulance workers pursuant to the volunteer firefighters' benefit law or the volunteer ambulance workers' benefit law.

4. "This chapter" includes the volunteer firefighters' benefit law and the volunteer ambulance workers' benefit law, except when such a meaning is inconsistent with this article.

5. "Subdivisions one and two of section fifty", as used in section one hundred fifty-one of this chapter, includes subdivision nine of section thirty of the volunteer firefighters' benefit law and subdivision nine of section thirty of the volunteer ambulance workers' benefit law.

ARTICLE 8-A

WORLD TRADE CENTER RESCUE, RECOVERY AND CLEAN-UP OPERATIONS

Section 161. Definitions.

162. Registration of participation in World Trade Center rescue, recovery and clean-up operations.

- 163. Notice; participants in the World Trade Center rescue, recovery and clean-up operations.
- 164. Disablement of a participant in World Trade Center rescue, recovery and clean-up operations treated as an accident.
- 165. Reopening of disallowed claims.
- 166. Liability of employer and insurance carrier.
- 167. Claims of volunteers.
- 168. Additional period for filing certain claims.
- 169. Presumptive evidence.

§ 161. Definitions. Whenever used in this article:

1. "Participant in World Trade Center rescue, recovery, or cleanup operations" means any (a) employee who within the course of employment, or (b) volunteer upon presentation to the board of evidence satisfactory to the board that he or she:

(i) participated in the rescue, recovery, or cleanup operations at the World Trade Center site between September eleventh, two thousand one and September twelfth, two thousand two; or

(ii) worked at the Fresh Kills Land Fill in New York city between September eleventh, two thousand one and September twelfth, two thousand two, or

(iii) worked at the New York city morgue or the temporary morgue on pier locations on the west side of Manhattan between September eleventh, two thousand one and September twelfth, two thousand two, or

(iv) worked on the barges between the west side of Manhattan and the Fresh Kills Land Fill in New York city between September eleventh, two thousand one and September twelfth, two thousand two.

2. "World Trade Center site" means anywhere below a line starting from the Hudson River and Canal Street; east on Canal Street to Pike Street; south on Pike Street to the East River; and extending to the lower tip of Manhattan.

3. "Qualifying condition" means any of the following diseases or conditions resulting from a hazardous exposure during participation in

World Trade Center rescue, recovery or clean-up operations:

(a) Diseases of the upper respiratory tract and mucosae, including conditions such as conjunctivitis, rhinitis, sinusitis, pharyngitis, laryngitis, vocal cord disease, upper airway hyper-reactivity and tracheo-bronchitis, or a combination of such conditions;

(b) Diseases of the lower respiratory tract, including but not limited to bronchitis, asthma, reactive airway dysfunction syndrome, and different types of pneumonitis, such as hypersensitivity, granulomatous, or eosinophilic;

(c) Diseases of the gastroesophageal tract, including esophagitis and reflux disease, either acute or chronic, caused by exposure or aggravated by exposure;

(d) Diseases of the psychological axis, including post-traumatic stress disorder, anxiety, depression, or any combination of such conditions; or

(e) New onset diseases resulting from exposure as such diseases occur in the future including cancer, chronic obstructive pulmonary disease, asbestos-related disease, heavy metal poisoning, musculoskeletal disease and chronic psychological disease.

4. "Disablement" shall have the same meaning as defined in section thirty-seven of this chapter and determined by the board in the same manner as provided in section forty-two of this chapter.

§ 162. Registration of participation in World Trade Center rescue, recovery and clean-up operations. In order for the claim of a participant in World Trade Center rescue, recovery and clean-up operations to come within the application of this article, such participant must file a written and sworn statement with the board on a form promulgated by the chair indicating the dates and locations of such participation and the name of such participant's employer during the period of participation. Such statement must be filed not later than September eleventh, two thousand thirty. The board shall transmit a copy of such statement to the employer or carrier named therein. The filing of such a statement shall not be considered the filing of a claim for benefits under this chapter.

§ 163. Notice; participants in the World Trade Center rescue, recovery and clean-up operations. The notice requirements for injury or death resulting from a qualifying condition for a participant in World Trade Center rescue, recovery and clean-up operations shall be the same as set forth in section eighteen of this chapter, except that the notice shall be given to the employer, or in the case of a volunteer, to the board, within two years after the disablement of the participant or after the participant knew or should have known that the qualifying condition was causally related to his or her participation in World Trade Center rescue, recovery and clean-up operations, whichever is the later date.

§ 164. Disablement of a participant in World Trade Center rescue, recovery and clean-up operations treated as an accident. The date of disablement of a participant in World Trade Center rescue, recovery and clean-up operations resulting from a qualifying condition that is causally related to such participant shall be treated as the happening of an accident within the meaning of this chapter and the procedure and practice provided in this chapter shall apply to all proceedings under this article, except where otherwise specifically provided herein. The board shall determine the date of disablement that is most beneficial to the claimant.

§ 165. Reopening of disallowed claims. The board, upon receiving a statement duly filed as required under section one hundred sixty-two of this article, from a participant in World Trade Center rescue, recovery and clean-up operations for a qualifying condition that was disallowed as barred by section eighteen or section twenty-eight of this chapter or by section one hundred sixty-two of this article for failure to register timely shall reopen and redetermine such claim in accordance with the provisions of this article, provided that no such previously disallowed claim for a qualifying condition shall be determined to have a date of disablement that would bar the claim under section eighteen or section twenty-eight of this chapter.

§ 166. Liability of employer and insurance carrier. The employer in whose employment an employee participated in World Trade Center rescue, recovery and clean-up operations shall be liable for any claim for a qualifying condition that is causally related to such participation provided that such participation arose out of and in the course of such employment. For the purpose of determining which carrier has insurance coverage of such claim, the date of accident shall be considered the last day of such participation.

§ 167. Claims of volunteers. For persons who participated in World Trade Center rescue, recovery and clean-up operations as volunteers, the uninsured employers' fund shall be deemed to be the employer for the purposes of administering and paying claims pursuant to this article. Benefits under this chapter shall be payable to such volunteers in the first instance and to the extent that funds are available out of funds appropriated to the United States Department of Labor under Public Law 109-148 to reimburse the uninsured employer's fund for the payment of such benefits and thereafter from the uninsured employers' fund. The uninsured employers' fund may pay for volunteers' medical treatment notwithstanding such medical expenses having been denied by the World Trade Center Health Organization.

§ 168. Additional period for filing certain claims. 1. A claim by a participant in the World Trade Center rescue, recovery or cleanup operations whose disablement occurred between September eleventh, two thousand three, and September eleventh, two thousand eight, shall not be disallowed as barred by section eighteen or section twenty-eight of this chapter if such claim is filed on or before September eleven, two thousand ten. Any such claim by a participant in the World Trade Center rescue, recovery or cleanup operations whose disablement occurred between September eleventh, two thousand three, and September eleventh, two thousand eight, and was disallowed by section eighteen or twenty-eight of this chapter shall be reconsidered by the board.

2. A claim by a participant in the World Trade Center rescue, recovery or cleanup operations whose disablement occurred between September twelfth, two thousand eight, and September eleventh, two thousand twelve, shall not be disallowed as barred by section eighteen or section twenty-eight of this chapter if such claim is filed on or before September eleventh, two thousand fourteen. Any such claim by a participant in the World Trade Center rescue, recovery or cleanup operations whose disablement occurred between September eleventh, two thousand eight, and September eleventh, two thousand twelve, and was disallowed by section eighteen or twenty-eight of this chapter shall be reconsidered by the board.

3. A claim by a participant in the World Trade Center rescue, recovery or cleanup operations whose disablement occurred between September eleventh, two thousand twelve, and September eleventh, two thousand fifteen, shall not be disallowed as barred by section eighteen or section twenty-eight of this chapter if such claim is filed on or before September eleventh, two thousand eighteen. Any such claim by a participant in the World Trade Center rescue, recovery or cleanup operations whose disablement occurred between September eleventh, two thousand twelve, and September eleventh, two thousand fifteen, and was disallowed by section eighteen or twenty-eight of this chapter shall be reconsidered by the board.

4. A claim by a participant in the World Trade Center rescue, recovery or cleanup operations whose disablement occurred between September eleventh, two thousand fifteen, and September eleventh, two thousand seventeen, shall not be disallowed as barred by section eighteen or section twenty-eight of this chapter if such claim is filed on or before September eleventh, two thousand twenty-two. Any such claim by a participant in the World Trade Center rescue, recovery or cleanup operations whose disablement occurred between September eleventh, two thousand fifteen, and September eleventh, two thousand seventeen, and was disallowed by section eighteen or twenty-eight of this chapter shall be reconsidered by the board.

5. A claim by a participant in the World Trade Center rescue, recovery or cleanup operations whose disablement occurred between September eleventh, two thousand seventeen, and September eleventh, two thousand twenty-one, shall not be disallowed as barred by section eighteen or section twenty-eight of this chapter if such claim is filed on or before September eleventh, two thousand twenty-six. Any such claim by a participant in the World Trade Center rescue, recovery or cleanup operations whose disablement occurred between September eleventh, two thousand seventeen, and September eleventh, two thousand twenty-one, and was disallowed by section eighteen or twenty-eight of this chapter shall be reconsidered by the board.

6. A claim by a participant in the World Trade Center rescue, recovery or cleanup operations whose disablement occurred between September eleventh, two thousand twenty-one, and September eleventh, two thousand twenty-five, shall not be disallowed as barred by section eighteen or section twenty-eight of this chapter if such claim is filed on or before September eleventh, two thousand thirty. Any such claim by a participant in the World Trade Center rescue, recovery or cleanup operations whose disablement occurred between September eleventh, two thousand twenty-one, and September eleventh, two thousand twenty-five, and was disallowed by section eighteen or twenty-eight of this chapter shall be reconsidered by the board.

§ 169. Presumptive evidence. 1. The board shall accept the certifications of the Centers for Disease Control and Prevention World Trade Center Health Program as presumptive evidence of causation of certified illnesses pursuant to 42 USC 300mm for claims filed for conditions of impairment of health or death pursuant to a qualifying condition.

2. Notwithstanding section eighteen or twenty-eight of this chapter, any claimant who filed a claim or claims that were denied prior to the effective date of this section may refile such claim or claims within two years of the effective date of this section.

ARTICLE 9
DISABILITY BENEFITS

- Section 200. Short title.
201. Definitions.
202. Covered employer.
203. Employees eligible for benefits under section two hundred four of this article.
- 203-a. Retaliatory action prohibited for family leave.
- 203-b. Reinstatement following family leave.
- 203-c. Health insurance during family leave.
204. Disability and family leave during employment.
205. Disabilities, family leave and periods for which benefits are not payable.
206. Non-duplication of benefits.
207. Disability while unemployed.
208. Payment of disability and family leave benefits.
209. Contribution of employees for disability and family leave benefits.
210. Employer contributions.
211. Provision for payment of benefits.
212. Voluntary coverage.
- 212-a. (Enacted without section heading).
- 212-b. Public employees; public employees represented by an employee organization; employee opt in.
213. Non-compliance or default.
214. Special fund for disability benefits.
215. Commissioner of taxation and finance custodian of fund.
216. Disposition of uncommitted balance of employees' contributions.
217. Notice and proof of claim.
218. Disability benefit rights inalienable.
219. Enforcement of payment in default.
220. Penalties.
221. Determination of contested claims for disability and family leave benefits.
222. Technical rules of evidence or procedure not required.

- 223. Modification of board decisions or orders.
- 224. Appeals.
- 225. Fees for representing employees.
- 226. The insurance contract.
- 227. Actionable injuries in claims for disability benefits; subrogation.
- 228. Administrative expenses.
- 229. Posting of notice and providing of notice of rights.
- 230. Destruction of records.
- 231. Subpoenas.
- 232. Fees for testimony of physicians, podiatrists, chiropractors, dentists, psychologists and health care providers.
- 233. Inspection of records of employers.
- 234. Disclosures prohibited.
- 235. Exemptions.
- 236. Disposition of accrued benefits upon death.
- 237. Reimbursement for advance payments by employers.
- 238. Payments to minors.
- 239. Representation before the board.
- 240. Non-liability of state.
- 241. Application of other provisions of chapter.
- 242. Separability of provisions; federal law; regulations.

§ 200. Short title. This article shall be known and may be cited as the "disability benefits law and the paid family leave benefits law."

§ 201. Definitions. As used in this article:

1. "Board" means the workers' compensation board created under this chapter.

2. "Chairman" means the chairman of the workers' compensation board of the state of New York.

3. "State fund" means the state insurance fund created under article six of this chapter.

4. "Employer," except when otherwise expressly stated, means a person, partnership, association, corporation, legal representative of a deceased employer, or the receiver or trustee of a person, partnership, association or corporation, who has persons in employment as defined in subdivision six of this section, but does not include the state, a municipal corporation, local governmental agency, other political subdivisions or public authority.

5. "Employee" means a person engaged in the service of an employer in any employment defined in subdivision six of this section, except a minor child of the employer, except a duly ordained, commissioned, or licensed minister, priest or rabbi, a sexton, a christian science reader, or member of a religious order, or an executive officer of a corporation who at all times during the period involved owns all of the issued and outstanding stock of the corporation and holds all of the offices pursuant to paragraph (e) of section seven hundred fifteen of the business corporation law or two executive officers of a corporation who at all times during the period involved between them own all of the issued and outstanding stock of such corporation and hold all such offices provided, however, that each officer must own at least one share of stock, except as provided in section two hundred twelve of this article, or an executive officer of an incorporated religious, charitable or educational institution, or persons engaged in a professional or teaching capacity in or for a religious, charitable or educational institution, or volunteers in or for a religious, charitable or educational institution, or persons participating in and receiving rehabilitative services in a sheltered workshop operated by a religious, charitable or educational institution under a certificate issued by the United States department of labor, or recipients of charitable aid from a religious or charitable institution who perform work in or for the institution which is incidental to or in return for the aid conferred, and not under an express contract of hire. The terms "religious, charitable or educational institution" mean a corporation, unincorporated association, community chest, fund or foundation

organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual.

"Employee" shall also mean, for purposes of this chapter, a professional musician or a person otherwise engaged in the performing arts who performs services as such for a television or radio station or network, a film production, a theatre, hotel, restaurant, night club or similar establishment unless, by written contract, such musician or person is stipulated to be an employee of another employer covered by this chapter. "Engaged in the performing arts" shall mean performing service in connection with the production of or performance in any artistic endeavor which requires artistic or technical skill or expertise.

"Employee" shall also mean, for purposes of this chapter, a professional model, who:

- (a) performs modeling services for; or

- (b) consents in writing to the transfer of his or her exclusive legal right to the use of his or her name, portrait, picture or image, for advertising purposes or for the purposes of trade, directly to

a retail store, a manufacturer, an advertising agency, a photographer, a publishing company or any other such person or entity, which dictates such professional model's assignments, hours of work or performance locations and which compensates such professional model in return for a waiver of such professional model's privacy rights enumerated above, unless such services are performed pursuant to a written contract wherein it is stated that such professional model is the employee of another employer covered by this chapter. For the purposes of this paragraph, the term "professional model" means a person who, in the course of his or her trade, occupation or profession, performs modeling services. For purposes of this paragraph, the term "modeling services" means the appearance by a professional model in photographic sessions or the engagement of such model in live, filmed or taped modeling performances for remuneration.

6. "Employment." A. "Employment" means employment in any trade, business or occupation carried on by an employer, except that the

following shall not be deemed employment under this article: services performed for the state, a municipal corporation, local governmental agency, other political subdivision or public authority; employment subject to the federal railroad unemployment insurance act; service performed on or as an officer or member of the crew of a vessel on the navigable water of the United States or outside the United States; casual employment and the first forty-five days of extra employment of employees not regularly in employment as otherwise defined herein; service as golf caddies; and service during all or any part of the school year or regular vacation periods as a part-time worker of any person actually in regular attendance during the day time as a student in an elementary or secondary school. The term "employment" shall include domestic or personal work in a private home. The term "employment" shall not include the services of a licensed real estate broker or sales associate if it be proven that (a) substantially all of the remuneration (whether or not paid in cash) for the services performed by such broker or sales associate is directly related to sales or other output (including the performance of services) rather than to the number of hours worked; (b) the services performed by the broker or sales associate are performed pursuant to a written contract executed between such broker or sales associate and the person for whom the services are performed within the past twelve to fifteen months; and (c) the written contract provided for in subparagraph (b) of this paragraph was not executed under duress and contains the following provisions:

(i) that the broker or sales associate is engaged as an independent contractor associated with the person for whom services are performed pursuant to article twelve-A of the real property law and shall be treated as such for all purposes, including but not limited to federal and state taxation, withholding, unemployment insurance and workers' compensation;

(ii) that the broker or sales associate (1) shall be paid a commission on his or her gross sales, if any, without deduction for taxes, which commission shall be directly related to sales or other output; (2) shall not receive any remuneration related to the number of hours worked; and (3) shall not be treated as an employee with respect to such services for federal and state tax purposes;

(iii) that the broker or sales associate shall be permitted to work

any hours he or she chooses;

(iv) that the broker or sales associate shall be permitted to work out of his or her own home or the office of the person for whom services are performed;

(v) that the broker or sales associate shall be free to engage in outside employment;

(vi) that the person for whom the services are performed may provide office facilities and supplies for the use of the broker or sales associate, but the broker or sales associate shall otherwise bear his or her own expenses, including but not limited to automobile, travel, and entertainment expenses;

(vii) that the person for whom the services are performed and the broker or sales associate shall comply with the requirements of article twelve-A of the real property law and the regulations pertaining thereto, but such compliance shall not affect the broker or sales associate's status as an independent contractor nor should it be construed as an indication that the broker or sales associate is an employee of the person for whom the services are performed for any purpose whatsoever;

(viii) that the contract and the association created thereby may be terminated by either party thereto at any time upon notice given to the other.

"Employment" shall not include, for the purposes of this chapter, the services of a licensed insurance agent or broker if it be proven that (a) substantially all of the remuneration (whether or not paid in cash) for the services performed by such agent or broker is directly related to sales or other output (including the performance of services) rather than to the number of hours worked; (b) such agent is not a life insurance agent receiving a training allowance subsidy described in paragraph three of subsection (e) of section four thousand two hundred twenty-eight of the insurance law; (c) the services performed by the agent or broker are performed pursuant to a written contract executed between such agent or broker and the person for whom the services are performed; and (d) the written contract provided for in clause (c) of this paragraph was not executed under duress and contains the following provisions:

(i) that the agent or broker is engaged as an independent contractor

associated with the person for whom services are performed pursuant to article twenty-one of the insurance law and shall be treated as such for all purposes, including but not limited to federal and state taxation, withholding (other than federal insurance contributions act (FICA) taxes required for full time life insurance agents pursuant to section 3121(d)(3) of the federal internal revenue code), unemployment insurance and workers' compensation;

(ii) that the agent or broker (1) shall be paid a commission on his or her gross sales, if any, without deduction for taxes (other than federal insurance contributions act (FICA) taxes required for full time life insurance agents pursuant to section 3121(d)(3) of the federal internal revenue code), which commission shall be directly related to sales or other output; (2) shall not receive any remuneration related to the number of hours worked; and (3) shall not be treated as an employee with respect to such services for federal and state tax purposes (other than federal insurance contributions act (FICA) taxes required for full time life insurance agents pursuant to section 3121(d)(3) of the federal internal revenue code);

(iii) that the agent or broker shall be permitted to work any hours he or she chooses;

(iv) that the agent or broker shall be permitted to work out of his or her own office or home or the office of the person for whom services are performed;

(v) that the person for whom the services are performed may provide office facilities, clerical support, and supplies for the use of the agent or broker, but the agent or broker shall otherwise bear his or her own expenses, including but not limited to automobile, travel, and entertainment expenses;

(vi) that the person for whom the services are performed and the agent or broker shall comply with the requirements of article twenty-one of the insurance law and the regulations pertaining thereto, but such compliance shall not affect the agent's or broker's status as an independent contractor nor should it be construed as an indication that the agent or broker is an employee of the person for whom the services are performed for any purpose whatsoever;

(vii) that the contract and the association created thereby may be terminated by either party thereto at any time with notice given to the

other.

B. The term "employment" includes an employee's entire service performed within or both within and without this state if the service is localized in this state. Service is deemed localized within the state if it is performed entirely within the state or is performed both within and without the state but that performed without the state is incidental to the employee's service within the state or is temporary or transitory in nature or consists of isolated transactions.

C. The term "employment" includes an employee's entire service performed both within and without this state provided it is not localized in any state but some of the service is performed in this state, and

(1) the employee's base of operations is in this state; or

(2) if there is no base of operations in any state in which some part of the service is performed, the place from which such service is directed or controlled is in this state; or

(3) if the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, the employee's residence is in this state.

D. "Employment" shall not include the services of a media sales representative if it be proven that (A) substantially all of the compensation for the services performed by such media sales representative is directly related to sales or other productivity rather than to the number of hours worked; (B) the media sales representative must be incorporated under the laws of this state in order to be considered an independent contractor and shall be solely responsible for the payment of workers' compensation premiums; (C) the services performed by the media sales representative are performed pursuant to a written contract executed between such media sales representative and the person for whom the services are performed; and (D) the written contract provided for in subparagraph (C) of this paragraph was not executed under duress and contains the following provisions:

(i) that the media sales representative is engaged as an independent contractor associated with the person for whom services are performed

and shall be treated as such for all purposes, including but not limited to federal and state taxation, withholdings, and workers' compensation;

(ii) that the media sales representative (1) shall be paid a commission based on a fixed fee rate outlined in the written contract, if any, without deduction for taxes, which commission shall be directly related to sales pursuant to price guidelines or other productivity within the sales area; (2) shall not receive any compensation related to the number of hours worked; and (3) shall not be treated as an employee with respect to such services for federal and state tax purposes;

(iii) that the media sales representative shall be permitted to work any hours he or she chooses subject to the restrictions in section three hundred ninety-nine-p of the general business law;

(iv) that the media sales representative may work at any site other than on the premises of the person for whom services are performed;

(v) that the person for whom the services are performed shall not be responsible for any reimbursement expenses other than those outlined in the written contract;

(vi) that the person for whom the services are performed and the media sales representative shall comply with all articles of the labor law that apply to such work other than article eighteen of the labor law, but such compliance shall not affect the media sales representative's status as an independent contractor nor should it be construed as an indication that the media sales representative is an employee of the person for whom the services are performed for any purpose whatsoever;

(vii) that the contract and the association created thereby may be terminated by the media sales representative thereto at any time with two weeks notice given to the person for whom the services are performed.

For the purposes of this paragraph, "media sales representative" shall include any contractor engaged in the sale or renewal of magazine subscriptions or the sale or renewal of magazine advertising space who (i) receives no direction or control on the methods by which they perform services other than training on product characteristics, (ii) are solely in control of their work schedule, and (iii) may refuse any work assignment.

7. "Termination of employment". Employment with a covered employer terminates on the last day on which an employee performs work in the service of such employer; provided, however, that employment shall not terminate on such day if the employee by agreement with the employer, then commences, for a specified period, a leave of absence with pay or vacation with pay, at the conclusion of which the employee will return to work with the same employer. If notwithstanding such agreement the employee does not so return, his employment shall be deemed to have terminated on the last day of the period of such paid leave of absence or such paid vacation.

8. "Injury" and "sickness" mean accidental injury, disease, infection or illness or incapacitation as a result of being an organ donor in a transplant operation.

9. A. "Disability" during employment means the inability of an employee, as a result of injury or sickness not arising out of and in the course of an employment, to perform the regular duties of his employment or the duties of any other employment which his employer may offer him at his regular wages and which his injury or sickness does not prevent him from performing. "Disability" during unemployment means the inability of an employee, as a result of injury or sickness not arising out of and in the course of an employment, to perform the duties of any employment for which he is reasonably qualified by training and experience.

B. "Disability" also includes disability caused by or in connection with a pregnancy.

10. "Benefits" means the money allowances during disability payable to an employee who is eligible to receive such benefits, as provided in this article.

11. "Carrier" shall include: the state fund, stock corporations, mutual corporations and reciprocal insurers which insure the payment of benefits provided pursuant to this article; and employers and associations of employers or of employees and trustees authorized or

permitted to pay benefits under the provisions of this article. For purposes of this chapter, a nonprofit property/casualty insurance company which is licensed pursuant to subsection (b) of section six thousand seven hundred four of the insurance law shall be deemed a stock corporation and a nonprofit property/casualty insurance company which is licensed as a reciprocal insurer pursuant to subsection (c) of section six thousand seven hundred four of the insurance law shall be deemed a reciprocal insurer.

12. "Wages" means the money rate at which employment with a covered employer is recompensed under the contract of hiring with the covered employer and shall include the reasonable value of board, rent, housing, lodging, or similar advantage received under the contract of hiring.

13. "Average weekly wage." For the purpose of computing the amount of disability benefits of an employee during any period of disability, "average weekly wage" shall be the amount determined by dividing either the total wages of such employee in the employment of his last covered employer for the eight weeks or portion thereof that the employee was in such employment immediately preceding and including his last day worked prior to commencement of such disability, or the total wages of the last eight weeks or portion thereof immediately preceding and excluding the week in which the disability began, whichever is the higher amount, by the number of weeks or portion thereof of such employment. The chairman may by regulation prescribe reasonable procedures to determine average weekly wage, including procedures in lieu of the foregoing for determination of the average weekly wage of a class or classes of employees, and may authorize reasonable deviations to facilitate administration in the determination of average weekly wage of a class or classes of the employees of a covered employer.

In the event the employee was not in the employment of his last covered employer during all of such eight weeks and if the above determination results in an average weekly wage which does not fairly represent the normal earnings of such employee in all employments with covered employers during such eight weeks, there may be a redetermination of average weekly wage to reflect wages received from

all covered employers during such eight week period. The chairman may by regulation prescribe reasonable procedures for such redetermination.

14. "A day of disability" means any day on which the employee was prevented from performing work because of disability, including any day which the employee uses for family leave, and for which the employee has not received his or her regular remuneration.

15. "Family leave" shall mean any leave taken by an employee from work: (a) to participate in providing care, including physical or psychological care, for a family member of the employee made necessary by a serious health condition of the family member; or (b) to bond with the employee's child during the first twelve months after the child's birth, or the first twelve months after the placement of the child for adoption or foster care with the employee; or (c) because of any qualifying exigency as interpreted under the family and medical leave act, 29 U.S.C.S § 2612(a)(1)(e) and 29 C.F.R. S.825.126(a)(1)-(8), arising out of the fact that the spouse, domestic partner, child, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the armed forces of the United States.

16. "Child" means a biological, adopted, or foster son or daughter, a stepson or stepdaughter, a legal ward, a son or daughter of a domestic partner, or the person to whom the employee stands in loco parentis.

17. "Domestic partner" has the same meaning as set forth in section four of this chapter.

18. "Serious health condition" means an illness, injury, impairment, or physical or mental condition, including transplantation preparation and recovery from surgery related to organ or tissue donation, that involves inpatient care in a hospital, hospice, or residential health care facility, continuing treatment or continuing supervision by a health care provider. Continuing supervision by a health care provider includes a period of incapacity which is permanent or long term due to a condition for which treatment may not be effective where the family

member is under the continuing supervision of, but need not be receiving active treatment by, a health care provider.

19. "Parent" means a biological, foster, or adoptive parent, a parent-in-law, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child.

20. "Family member" means a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner as defined in this section.

21. "Grandchild" means a child of the employee's child.

22. "Health care provider" shall mean for the purpose of family leave, a person licensed under article one hundred thirty-one, one hundred thirty-one-B, one hundred thirty-two, one hundred thirty-three, one hundred thirty-six, one hundred thirty-nine, one hundred forty-one, one hundred forty-three, one hundred forty-four, one hundred fifty-three, one hundred fifty-four, one hundred fifty-six or one hundred fifty-nine of the education law or a person licensed under the public health law, article one hundred forty of the education law or article one hundred sixty-three of the education law.

23. "Grandparent" means a parent of the employee's parent.

24. "Sibling" means a biological or adopted sibling, a half-sibling or stepsibling.

* 25. "Construction employee" means employees who perform construction, demolition, reconstruction, excavation, rehabilitation, repairs, renovations, alterations, or improvements for multiple employers pursuant to a collective bargaining agreement.

* NB Effective January 1, 2027

§ 202. Covered employer. 1. An employer who has in employment, after June thirtieth, nineteen hundred sixty-one, one or more employees on each of at least thirty days in any calendar year, shall be a covered employer subject to the provisions of this article from and after

January first, nineteen hundred sixty-two, or the expiration of four weeks following the thirtieth day of such employment, whichever is the later.

2. The provisions of subdivision one of this section shall not apply to an employer of personal or domestic employees in a private home, except an employer shall become a covered employer from and after the expiration of four weeks following the employment of one or more personal or domestic employees who work for a minimum of twenty hours per week for such employer and are employed on each of at least thirty days in any calendar year.

3. A covered employer, except as otherwise provided herein, shall continue to be a covered employer until the end of any calendar year in which he shall not have employed in employment one or more employees on each of thirty days, and shall have duly filed with the chairman satisfactory evidence thereof. A covered employer of employees in personal or domestic service in a private home shall continue to be a covered employer until the end of any calendar year in which he shall not have employed in such service one or more employees for at least forty hours per week and on each of at least thirty days, and shall have duly filed with the chairman satisfactory evidence thereof.

4. An employer who by operation of law becomes successor to a covered employer, or who acquires by purchase or otherwise the trade or business of a covered employer, shall immediately become a covered employer.

5. Whenever an employee of a covered employer, with the consent of the employer, engages or permits another to do any work in employment for which the employee is employed, the employer shall be deemed for the purpose of this article to be the employer also of such other person, regardless of whether the employee or the employer pays for his service.

*** § 203. Employees eligible for benefits under section two hundred four of this article.** Employees in employment of a covered employer for four or more consecutive weeks and employees in employment during the

work period usual to and available during such four or more consecutive weeks in any trade or business in which they are regularly employed and in which hiring from day to day of such employees is the usual employment practice shall be eligible for disability benefits as provided in section two hundred four of this article. Employees in employment of a covered employer for twenty-six or more consecutive weeks and employees in employment during the work period usual to and available during such twenty-six or more consecutive weeks in any trade or business in which they are regularly employed and in which hiring from day to day of such employees is the usual employment practice shall be eligible for family leave benefits as provided in section two hundred four of this article. Every such employee shall continue to be eligible for family leave benefits only during employment with a covered employer. Every such employee shall continue to be eligible for disability benefits during such employment and for a period of four weeks after such employment terminates regardless of whether the employee performs any work for remuneration or profit in non-covered employment. If during such four week period the employee performs any work for remuneration or profit for another covered employer the employee shall become eligible for disability benefits immediately with respect to that employment. In addition every such employee who has previously completed four or more consecutive weeks in employment with the covered employer for purposes of disability benefits, or twenty-six or more consecutive weeks in employment with the covered employer for purposes of paid family leave, and returns to work with the same employer after an agreed and specified unpaid leave of absence or vacation without pay shall become eligible for benefits immediately with respect to such employment. An employee who during a period in which he or she is eligible to receive benefits under subdivision two of section two hundred seven of this article returns to employment with a covered employer and an employee who is currently receiving unemployment insurance benefits or benefits under section two hundred seven of this article and who returns to employment with a covered employer shall become eligible for disability benefits immediately with respect to such employment. An employee regularly in the employment of a single employer on a work schedule less than the employer's normal work week shall become eligible for disability leave benefits on the twenty-fifth day of

such regular employment and for purposes of paid family leave an employer shall become eligible for benefits on the one hundred seventy-fifth day of such regular employment. An employee who is eligible for disability and family leave benefits in the employment of a covered employer shall not be deemed, for the purposes of this article, to have such employment terminated during any period he or she is eligible to receive benefits under section two hundred four of this article with respect to such employment.

* NB Effective until January 1, 2027

* § 203. Employees eligible for benefits under section two hundred four of this article. Employees in employment of a covered employer for four or more consecutive weeks and employees in employment during the work period usual to and available during such four or more consecutive weeks in any trade or business in which they are regularly employed and in which hiring from day to day of such employees is the usual employment practice shall be eligible for disability benefits as provided in section two hundred four of this article. Employees in employment of a covered employer for twenty-six or more consecutive weeks and employees in employment during the work period usual to and available during such twenty-six or more consecutive weeks in any trade or business in which they are regularly employed and in which hiring from day to day of such employees is the usual employment practice shall be eligible for family leave benefits as provided in section two hundred four of this article. For purposes of this article, construction employees shall be eligible for family leave benefits with the covered employer immediately preceding the period of family leave if the employee was in employment and worked the employer's normal work week for at least twenty-six of the last thirty-nine weeks with any covered employer which is signatory to a collective bargaining agreement. Every such employee shall continue to be eligible for family leave benefits only during employment with a covered employer. Every such employee shall continue to be eligible for disability benefits during such employment and for a period of four weeks after such employment terminates regardless of whether the employee performs any work for remuneration or profit in non-covered employment. If during such four week period the employee performs any work for remuneration or profit for another covered employer the employee shall become eligible for

disability benefits immediately with respect to that employment. In addition every such employee who has previously completed four or more consecutive weeks in employment with the covered employer for purposes of disability benefits, or twenty-six or more consecutive weeks in employment with the covered employer for purposes of paid family leave, and returns to work with the same employer after an agreed and specified unpaid leave of absence or vacation without pay shall become eligible for benefits immediately with respect to such employment. For purposes of this article, construction employees who became eligible for paid family leave benefits by working in the employment of a covered employer and worked the employer's normal work week for at least twenty-six of the last thirty-nine weeks, and who return to work after an agreed and specified unpaid leave of absence or vacation without pay with the same or different employer, shall be immediately eligible for family leave benefits with the covered employer immediately preceding the period of family leave. In the case of construction employees who are laid-off and receive unemployment benefits, such employees shall be eligible for family leave benefits with the covered employer immediately preceding the period of family leave upon returning to work if they are otherwise qualified by having worked in the employment of a covered employer and worked the employer's normal work week for at least twenty-six of the last thirty-nine weeks. An employee who during a period in which such employee is eligible to receive benefits under subdivision two of section two hundred seven of this article returns to employment with a covered employer and an employee who is currently receiving unemployment insurance benefits or benefits under section two hundred seven of this article and who returns to employment with a covered employer shall become eligible for disability benefits immediately with respect to such employment. An employee regularly in the employment of a single employer on a work schedule less than the employer's normal work week shall become eligible for disability leave benefits on the twenty-fifth day of such regular employment and for purposes of paid family leave an employer shall become eligible for benefits on the one hundred seventy-fifth day of such regular employment. An employee who is eligible for disability and family leave benefits in the employment of a covered employer shall not be deemed, for the purposes of this article, to have such employment terminated during any period such employee is

eligible to receive benefits under section two hundred four of this article with respect to such employment.

* NB Effective January 1, 2027

§ 203-a. Retaliatory action prohibited for family leave. 1. The provisions of section one hundred twenty of this chapter and section two hundred forty-one of this article shall be applicable to family leave.

2. Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any collective bargaining agreement or employment contract.

§ 203-b. Reinstatement following family leave. Any eligible employee of a covered employer who takes leave under this article shall be entitled, on return from such leave, to be restored by the employer to the position of employment held by the employee when the leave commenced, or to be restored to a comparable position with comparable employment benefits, pay and other terms and conditions of employment. The taking of family leave shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced. Nothing in this section shall be construed to entitle any restored employee to the accrual of any seniority or employment benefits during any period of leave, or any right, benefit or position to which the employee would have been entitled had the employee not taken the leave.

*** § 203-c Health insurance during family leave.** In accordance with the Family and Medical Leave Act (29 U.S.C. §§ 2601-2654), during any period of family leave the employer shall maintain any existing health benefits of the employee in force for the duration of such leave as if the employee had continued to work from the date he or she commenced family leave until the date he or she returns to employment.

* NB Effective until January 1, 2027

* § 203-c Health insurance during family leave. In accordance with the

Family and Medical Leave Act (29 U.S.C. §§ 2601-2654), during any period of family leave the employer shall maintain any existing health benefits of the employee in force for the duration of such leave as if the employee had continued to work from the date such employee commenced family leave until the date such employee returns to employment.

Notwithstanding the foregoing, construction employees shall maintain any existing union health plan or fund benefits in force for the duration of family leave as if the construction employee had continued to work from the date they commenced family leave until the date the construction employee returns to employment. Nothing herein prevents parties to a collective bargaining agreement for construction employees from providing additional terms including, but not limited to, payment of health contributions for such employees on leave time, whether leave time is considered hours worked for purposes of eligibility in the health plan or fund, or other terms that do not conflict with this section.

* NB Effective January 1, 2027

§ 204. Disability and family leave during employment. 1. Disability benefits shall be payable to an eligible employee for disabilities, beginning with the eighth day of disability and thereafter during the continuance of disability, subject to the limitations as to maximum and minimum amounts and duration and other conditions and limitations in this section and in sections two hundred five and two hundred six of this article. Family leave benefits shall be payable to an eligible employee for the first full day when family leave is required and thereafter during the continuance of the need for family leave, subject to the limitations as to maximum and minimum amounts and duration and other conditions and limitations in this section and in sections two hundred five and two hundred six of this article. Successive periods of disability or family leave caused by the same or related injury or sickness shall be deemed a single period of disability or family leave only if separated by less than three months.

2. (a) The weekly benefit for family leave that occurs (i) on or after January first, two thousand eighteen shall not exceed eight weeks during

any fifty-two week calendar period and shall be fifty percent of the employee's average weekly wage but shall not exceed fifty percent of the state average weekly wage, (ii) on or after January first, two thousand nineteen shall not exceed ten weeks during any fifty-two week calendar period and shall be fifty-five percent of the employee's average weekly wage but shall not exceed fifty-five percent of the state average weekly wage, (iii) on or after January first, two thousand twenty shall not exceed ten weeks during any fifty-two week calendar period and shall be sixty percent of the employee's average weekly wage but shall not exceed sixty percent of the state average weekly wage, and (iv) on or after January first of each succeeding year, shall not exceed twelve weeks during any fifty-two week calendar period and shall be sixty-seven percent of the employee's average weekly wage but shall not exceed sixty-seven percent of the New York state average weekly wage in effect. The superintendent of financial services shall have discretion to delay the increases in the family leave benefit level provided in subparagraphs (ii), (iii), and (iv) of this paragraph by one or more calendar years. In determining whether to delay the increase in the family leave benefit for any year, the superintendent of financial services shall consider: (1) the current cost to employees of the family leave benefit and any expected change in the cost after the benefit increase; (2) the current number of insurers issuing insurance policies with a family leave benefit and any expected change in the number of insurers issuing such policies after the benefit increase; (3) the impact of the benefit increase on employers' business and the overall stability of the program to the extent that information is readily available; (4) the impact of the benefit increase on the financial stability of the disability and family leave insurance market and carriers; and (5) any additional factors that the superintendent of financial services deems relevant. If the superintendent of financial services delays the increase in the family leave benefit level for one or more calendar years, the family leave benefit level that shall take effect immediately following the delay shall be the same benefit level that would have taken effect but for the delay. The weekly benefits for family leave that occurs on or after January first, two thousand eighteen shall not be less than one hundred dollars per week except that if the employee's wages at the time of family leave are less than one

hundred dollars per week, the employee shall receive his or her full wages. Benefits may be payable to employees for paid family leave taken intermittently or for less than a full work week in increments of one full day or one fifth of the weekly benefit.

(b) The weekly benefit which the disabled employee is entitled to receive for disability commencing on or after May first, nineteen hundred eighty-nine shall be one-half of the employee's weekly wage, but in no case shall such benefit exceed one hundred seventy dollars; except that if the employee's average weekly wage is less than twenty dollars, the benefit shall be such average weekly wage. The weekly benefit which the disabled employee is entitled to receive for disability commencing on or after July first, nineteen hundred eighty-four shall be one-half of the employee's weekly wage, but in no case shall such benefit exceed one hundred forty-five dollars; except that if the employee's average weekly wage is less than twenty dollars, the benefit shall be such average weekly wage. The weekly benefit which the disabled employee is entitled to receive for disability commencing on or after July first, nineteen hundred eighty-three and prior to July first, nineteen hundred eighty-four shall be one-half of the employee's average weekly wage, but in no case shall such benefit exceed one hundred thirty-five dollars nor be less than twenty dollars; except that if the employee's average weekly wage is less than twenty dollars the benefit shall be such average weekly wage. The weekly benefit which the disabled employee is entitled to receive for disability commencing on or after July first, nineteen hundred seventy-four, and prior to July first, nineteen hundred eighty-three, shall be one-half of the employee's average weekly wage, but in no case shall such benefit exceed ninety-five dollars nor be less than twenty dollars; except that if the employee's average weekly wage is less than twenty dollars, the benefit shall be such average weekly wage. The weekly benefit which the disabled employee is entitled to receive for disability commencing on or after July first, nineteen hundred seventy and prior to July first, nineteen hundred seventy-four shall be one-half of the employee's average weekly wage, but in no case shall such benefit exceed seventy-five dollars nor be less than twenty dollars; except that if the employee's average weekly wage is less than twenty dollars the benefit shall be such average weekly wage. For any period of disability less than a full week, the benefits payable shall

be calculated by dividing the weekly benefit by the number of the employee's normal work days per week and multiplying the quotient by the number of normal work days in such period of disability. The weekly benefit for a disabled employee who is concurrently eligible for benefits in the employment of more than one covered employer shall, within the maximum and minimum herein provided, be one-half of the total of the employee's average weekly wages received from all such covered employers, and shall be allocated in the proportion of their respective average weekly wage payments.

§ 205. Disabilities, family leave and periods for which benefits are not payable. 1. No employee shall be entitled to disability benefits under this article:

(a) For more than twenty-six weeks minus any days taken for family leave during any fifty-two consecutive calendar weeks during a period of fifty-two consecutive calendar weeks or during any one period of disability, or for more than twenty-six weeks;

(b) for any period of disability during which an employee is not under the care of a duly licensed physician or with respect to disability resulting from a condition of the foot which may lawfully be treated by a duly registered and licensed podiatrist of the state of New York or with respect to a disability resulting from a condition which may lawfully be treated by a duly registered and licensed chiropractor of the state of New York or with respect to a disability resulting from a condition which may lawfully be treated by a duly licensed dentist of the state of New York or with respect to a disability resulting from a condition which may lawfully be treated by a duly registered and licensed psychologist of the state of New York or with respect to a disability resulting from a condition which may lawfully be treated by a duly certified nurse midwife, for any period of such disability during which an employee is neither under the care of a physician nor a podiatrist, nor a chiropractor, nor a dentist, nor a psychologist, nor a certified nurse midwife; and for any period of disability during which an employee who adheres to the faith or teachings of any church or denomination and who in accordance with its creed, tenets or principles depends for healing upon prayer through spiritual means alone in the

practice of religion, is not under the care of a practitioner duly accredited by the church or denomination, and provided such employee shall submit to all physical examinations as required by this chapter.

2. No employee shall be entitled to family leave benefits under this article:

(a) For more than twelve weeks, or the maximum duration permitted as set forth in paragraph (a) of subdivision two of section two hundred four of this article, during a period of fifty-two consecutive calendar weeks, or for any period in which the family leave combined with the disability benefits previously paid exceeds twenty-six weeks during the same fifty-two consecutive calendar weeks;

(b) For any period of family leave wherein the notice and medical certification as prescribed by the chair has not been filed. At the discretion of the chair or chair's designee pursuant to section two hundred twenty-one of this article, the family member who is the recipient of care may be required to submit to a physical examination by a qualified health care provider. Such examination shall be paid for by the carrier; and

(c) As a condition of an employee's initial receipt of family leave benefits during any fifty-two consecutive calendar weeks in which an employee is eligible for these benefits, an employer may offer an employee who has accrued but unused vacation time or personal leave available at the time of use of available family leave to choose whether to charge all or part of the family leave time to accrued but unused vacation or personal leave, and receive full salary, or to not charge time to accrued but unused vacation or personal leave, and receive the benefit as set forth in section two hundred four of this article. An employer that pays full salary during a period of family leave may request reimbursement in accordance with section two hundred thirty-seven of this article. With the election of either option, the employee shall receive the full protection of the reinstatement provision set forth in section two hundred three-b of this article, and shall concurrently use available family medical leave act and paid family leave credits. In no event can an employee utilize family leave beyond twelve weeks, or the maximum duration permitted as set forth in paragraph (a) of subdivision two of section two hundred four of this

article, per any fifty-two week period set forth in this article. This paragraph may not be construed in a manner that relieves an employer of any duty of collective bargaining the employer may have with respect to the subject matter of this paragraph.

3. No employee shall be entitled to disability or family leave benefits under this article:

(a) for any disability occasioned by the wilful intention of the employee to bring about injury to or the sickness of himself or another, or resulting from any injury or sickness sustained in the perpetration by the employee of an illegal act;

(b) for any day of disability or family leave during which the employee performed work for remuneration or profit;

(c) for any day of disability or family leave for which the employee is entitled to receive from his or her employer, or from a fund to which the employer has contributed, remuneration or maintenance in an amount equal to or greater than that to which he or she would be entitled under this article; but any voluntary contribution or aid which an employer may make to an employee or any supplementary benefit paid to an employee pursuant to the provisions of a collective bargaining agreement or from a trust fund to which contributions are made pursuant to the provisions of a collective bargaining agreement shall not be considered as continued remuneration or maintenance for this purpose;

(d) for any period in respect to which such employee is subject to suspension or disqualification of the accumulation of unemployment insurance benefit rights, or would be subject if he or she were eligible for such benefit rights, except for ineligibility resulting from the employee's disability;

(e) for any disability due to any act of war, declared or undeclared;

(f) for any disability or family leave commencing before the employee becomes eligible to benefits under this section.

4. An employee may not collect benefits concurrently under both subdivisions one and two of this section.

5. In any case in which the necessity for family leave is foreseeable based on an expected birth or placement, the employee shall provide the

employer with not less than thirty days notice before the date the leave is to begin, of the employee's intention to take family leave under this article, except that if the date of the birth or placement requires leave to begin in less than thirty days, the employee shall provide such notice as is practicable. In any case in which the necessity for family leave is foreseeable based on planned medical treatment, the employee shall provide the employer with not less than thirty days notice, before the date the leave is to begin, of the employees intention to take family leave under this article, except that if the date of the treatment requires leave to begin in less than thirty days, the employee shall provide such notice as is practicable.

§ 206. Non-duplication of benefits. 1. No disability benefits shall be payable under section two hundred four or two hundred seven of this article:

(a) in a weekly benefit amount which, together with any amount that the employee receives or is entitled to receive for the same period or any part thereof as a permanent disability benefit or annuity under any governmental system or program, except under a veteran's disability program, or under any permanent disability policy or program of an employer for whom he or she has performed services, would, if apportioned to weekly periods, exceed his or her weekly benefit amount under this section, provided however, that there shall be no offset against the benefits set forth in this article if the claim for disability benefits is based on a disability other than the permanent disability for which the aforesaid permanent disability benefit or annuity was granted;

(b) with respect to any week for which payments are received under the unemployment insurance law or similar law of this state or of any other state or of the United States;

(c) subject to the provisions of subdivision two of this section, for any period with respect to which benefits, compensation or other allowances (other than workers' compensation benefits for a permanent partial disability occurring prior to the disability for which benefits are claimed hereunder) are paid or payable under this chapter, the volunteer firefighters' benefit law, or any other workers' compensation

act, occupational disease act or similar law, or under any employers' liability act or similar law; under any other temporary disability or cash sickness benefits act or similar law; under section six hundred eighty-eight, title forty-six, United States code; under the federal employers' liability act; or under the maritime doctrine of maintenance, wages and cure.

2. If an employee who is eligible for disability benefits under section two hundred three or two hundred seven of this article is disabled and has claimed or subsequently claims workers' compensation benefits under this chapter or benefits under the volunteer firefighters' benefit law or the volunteer ambulance workers' benefit law, and such claim is controverted on the ground that the employee's disability was not caused by an accident that arose out of and in the course of his employment or by an occupational disease, or by an injury in line of duty as a volunteer firefighter or volunteer ambulance worker, the employee shall be entitled in the first instance to receive benefits under this article for his or her disability. If benefits have been paid under this article in respect to a disability alleged to have arisen out of and in the course of the employment or by reason of an occupational disease, or in line of duty as a volunteer firefighter or a volunteer ambulance worker, the employer or carrier or the chair making such payment may, at any time before award of workers' compensation benefits, or volunteer firefighters' benefits or volunteer ambulance workers' benefits, is made, file with the board a claim for reimbursement out of the proceeds of such award to the employee for the period for which disability benefits were paid to the employee under this article, and shall have a lien against the award for reimbursement, notwithstanding the provisions of section thirty-three of this chapter or section twenty-three of the volunteer firefighters' benefit law or section twenty-three of the volunteer ambulance workers' benefit law provided the insurance carrier liable for payment of the award receives, before such award is made, a copy of the claim for reimbursement from the employer, carrier or chair who paid disability benefits, or provided the board's decision and award directs such reimbursement therefrom.

3. No family leave benefits shall be payable under section two hundred

four of this article:

(a) During periods when the employee is receiving total disability payments pursuant to a claim for workers' compensation, volunteer firefighters' benefits or volunteer ambulance workers' benefits, except that when the employee is receiving payments for partial disability or reduced earnings under such laws, the family leave benefit, when combined with the benefits under such laws shall not exceed the average weekly wage in the employment for which family leave benefits are sought;

(b) To an employee who is not employed or is on administrative leave from his or her employment;

(c) To an employee during periods where the employee is collecting sick pay or paid time off from the employer; and

(d) for any day in which claimant works at least part of that day for remuneration or profit for the covered employer or for any other employer while working for remuneration or profit, for him or herself, or another person or entity, during the same or substantially similar working hours as those of the covered employer from which family leave benefits are claimed, except that occasional scheduling adjustments with respect to secondary employments shall not prevent receipt of family leave benefits.

4. Unless otherwise expressly permitted by the employer, benefits available under 29 U.S. Code Chapter 28 (The Family and Medical Leave Act) must be used concurrently with family leave benefits. For a subsequent unrelated disability, an employee may seek benefits up to the maximum number of available weeks permitted in this article.

5. A covered employer is not required to permit more than one employee to use the same period of family leave to care for the same family member.

§ 207. Disability while unemployed. 1. Employees entitled to unemployment insurance benefits. An employee whose employment with a covered employer is terminated and who during a period of unemployment within twenty-six weeks immediately following such termination of

employment shall become ineligible for benefits currently being claimed under the unemployment insurance law solely because of disability commencing after June thirtieth, nineteen hundred fifty, and who on the day such disability commences is not employed or working for remuneration or profit and is not then otherwise eligible for benefits under this article, shall be entitled to receive disability benefits as herein provided for each week of such disability for which week he would have received unemployment insurance benefits if he were not so disabled. The weekly benefit of such disabled employee shall be computed in the same manner as provided in subdivision two of section two hundred four, and the benefits he is entitled to receive shall be subject to the limitations as to maximum and minimum amounts and duration and other conditions and limitations prescribed in sections two hundred four, two hundred five and two hundred six.

2. Employees not eligible for unemployment insurance benefits. An employee whose employment with a covered employer is terminated and who was in employment of one or more covered employers and was paid wages of at least thirteen dollars in such employment in each of twenty calendar weeks during the thirty calendar weeks immediately preceding the date he last worked for such covered employer, and who during a period of unemployment within twenty-six weeks immediately following such termination of employment is not eligible to benefits under the unemployment insurance law because of lack of qualifying wages but who during unemployment has evidenced his continued attachment to the labor market, shall be eligible for benefits under the provisions of this subdivision for disability commencing after June thirtieth, nineteen hundred fifty. If such employee becomes disabled and continues to be disabled for at least eight consecutive days during such twenty-six week period and on the day such disability commences he is not employed or working for remuneration or profit and is not then otherwise eligible for benefits under this article, he shall be entitled to receive disability benefits, as herein provided, beginning with the eighth consecutive day of such disability, for each week of such disability thereafter. The weekly benefit of such disabled employee shall be computed in the same manner as provided in subdivision two of section two hundred four, and the benefits he is entitled to receive shall be

subject to the limitations as to maximum and minimum amounts and duration and other conditions and limitations prescribed in sections two hundred four, two hundred five and two hundred six.

3. Payment of benefits. The benefits payable under this section shall be subject to the provisions and limitations generally applicable to disability benefits payable under this article, and shall be paid by the chairman out of any assets in the fund created by section two hundred fourteen. The chairman may require an employee claiming benefits under this section to file proofs of disability and of his employment and wages, and other proofs reasonably necessary for the chairman to make in the first instance the determination of eligibility and benefit rights under this section; and may require his employer or his former employer or employers to file reports of employment and wages and other information reasonably necessary for such determination. The chairman may make administrative regulations for such determinations. The chairman may also by regulation establish reasonable procedures for determining pro rata benefits payable with respect to disability periods of less than one week. Any employee claiming benefits under this section whose claim is rejected in whole or in part by the chairman, shall be entitled to request a review by the board and shall have all the rights with respect to contested claims provided in this article.

4. Qualification notwithstanding casual non-covered employment. An employment of not more than four weeks with a non-covered employer or employers occurring within such twenty-six weeks period shall not disqualify an employee from benefits provided such employee was otherwise eligible to receive benefits under this section at the time such employment for a non-covered employer commenced.

5. The foregoing provisions of this section shall not apply to family leave benefits, as family leave benefits are not available to employees that are not employed at the time family leave is requested by filing the notice and medical certification required by the chair.

§ 208. Payment of disability and family leave benefits. 1. Benefits

provided under this article shall be paid periodically and promptly and, except as to a contested period of disability or family leave, without any decision by the board, or designee of the chair pursuant to section two hundred twenty-one of this article. The first payment of benefits shall be due on the fourteenth day of disability or family leave and benefits for that period shall be paid directly to the employee within four business days thereafter or within four business days after the filing of required proof of claim, whichever is the later. If the employer or carrier rejects an initial claim for family leave benefits, the employer or carrier must notify the employee in a manner prescribed by the chair within eighteen days of filing of the proof of claim. Failure to timely reject shall constitute a waiver of objection to the family leave claim. Thereafter benefits shall be due and payable bi-weekly in like manner. The chair or chair's designee, pursuant to section two hundred twenty-one of this article, may determine that benefits may be paid monthly or semi-monthly if wages were so paid, and may authorize deviation from the foregoing requirements to facilitate prompt payment of benefits. Any inquiry which requires the employee's response in order to continue benefits uninterrupted or unmodified shall provide a reasonable time period in which to respond and include a clear and prominent statement of the deadline for responding and consequences of failing to respond.

2. The chair and superintendent of financial services may, whenever such information is deemed necessary, require any carrier to file in form prescribed by the chair a report or reports as to any claim or claims, including (but without limitation) dates of commencement and termination of benefit payments and amount of benefits paid under this article. The chair and superintendent of financial services may also require annually information in respect to the aggregate of benefits paid, the number of claims allowed and disallowed, the average benefits and duration of benefit periods, the amount of payrolls covered and such other information as the chair may deem necessary for the purposes of administering this article. If the carrier is providing benefits in respect to more than one employer, the chair and superintendent of financial services may require that such information be shown separately as to those employers who are providing only benefits that are

substantially the same as the benefits required in this article. The chair and superintendent of financial services may prescribe the format of such report and may promulgate regulations to effectuate this article.

§ 209. Contribution of employees for disability and family leave benefits. 1. Every employee in the employment of a covered employer shall contribute to the cost of providing disability and after January first, two thousand eighteen, family leave benefits under this article, to the extent and in the manner herein provided.

2. The special contribution of each such employee to the accumulation of funds to provide benefits for disabled unemployed shall be as provided in subdivision one of section two hundred fourteen of this article.

3. (a) Disability benefits. The contribution of each such employee to the cost of disability benefits provided by this article shall be one-half of one per centum of the employee's wages paid to him or her on and after July first, nineteen hundred fifty, but not in excess of sixty cents per week.

(b) Family leave benefits. On June first, two thousand seventeen and annually thereafter on September first, the superintendent of financial services shall set the maximum employee contribution, using sound actuarial principles and the reports provided in section two hundred eight of this article. No employer shall be required to fund any portion of the family leave benefit.

4. Notwithstanding any other provision of law, the employer is authorized to collect from his or her employees, except as otherwise provided in any plan or agreement under the provisions of subdivisions four or five of section two hundred eleven of this article, the contribution provided under subdivisions two and three of this section, through payroll deductions. If the employer shall not make deduction for any payroll period he or she may thereafter, but not later than one month after payment of wages, collect such contribution through payroll

deduction.

5. In collecting employee contributions through payroll deductions, the employer shall act as the agent of his or her employees and shall use the contributions only to provide disability and family leave benefits as required by this article. In no event may the employee's annual contribution for family leave exceed his or her per capita share of the actual annual premium charged for the same year and must be determined consistent with the principle that employees should pay the total costs of family leave premium. In no event may the employee's weekly contribution for disability premium exceed one-half of one per centum of the employee's wages paid to him or her, but not in excess of sixty cents per week. After June thirtieth, nineteen hundred fifty, if the employer is not providing, or to the extent that he or she is not then providing, for the payment of disability benefits to his or her employees by insuring with the state fund or with another insurance carrier, he or she shall keep the contributions of his or her employees as trust funds separate and apart from all other funds of the employer. The payment of such contributions by the employer to a carrier providing for the payment of such benefits shall discharge the employer from responsibility with respect to such contributions.

§ 210. Employer contributions. 1. Every covered employer shall, on and after January first, nineteen hundred fifty, contribute the cost of providing disability benefits in excess of the contributions collected from his or her employees, to the extent and in the manner provided in this article.

2. The special contribution of each covered employer to the accumulation of funds to provide benefits for disabled unemployed shall be as provided in subdivision one of section two hundred fourteen of this article.

3. The contribution of every covered employer to the cost of providing disability benefits after June thirtieth, nineteen hundred fifty, shall be the excess of such cost over the amount of the contributions of his

or her employees.

4. No profit shall be derived by any employer or association of employers or of employees from providing payment of disability and family leave benefits under this article. All funds representing contributions of employers and employees, and increments thereon, held by employers or associations of employers or of employees authorized or permitted to pay benefits under the provisions of this article, and by trustees paying benefits under plans or agreements meeting the requirements of section two hundred eleven of this article, shall be trust funds and shall be expended only to provide for the payment of benefits to employees and for the costs of administering this article and for the support of the fund established under section two hundred fourteen of this article.

§ 211. Provision for payment of benefits. A covered employer shall, with his or her own contributions and the contributions of his employees, provide disability and after January first, two thousand eighteen, family leave benefits to his or her employees in one or more of the following ways:

1. by insuring and keeping insured the payment of such benefits in the state fund, or

2. by insuring and keeping insured the payment of such benefits with any stock or mutual corporation or reciprocal insurer authorized to transact the business of accident and health insurance in this state, or

3. by furnishing satisfactory proof to the chair of the employers financial ability to pay such benefits, in which case the chair shall require the deposit of such securities as the chair may deem necessary consistent with the provisions of subdivision three of section fifty of this chapter. An association of employers or employees authorized to pay benefits under this article or the trustee or trustees paying benefits under a plan or agreement authorized under subdivisions four and five of this section, may with the approval of the chair furnish such proof and

otherwise comply with the provisions of this section to provide disability and family leave benefits to employees under such plan or agreement.

4. by a plan in existence on the effective date of this article. If on the effective date of this article the employees of a covered employer or any class or classes of such employees are entitled to receive disability and family leave benefits under a plan or agreement which remains in effect on July first, nineteen hundred fifty, the employer, subject to the requirements of this section, shall be relieved of responsibility for making provision for benefit payments required under this article until the earliest date, determined by the chair for the purposes of this article, upon which the employer shall have the right to discontinue the provisions thereof or to discontinue his contributions towards the cost. Any such plan or agreement may be extended, with or without modification, by agreement or collective bargaining between an employer or employers or association of employers and an association of employees, in which event the period for which the employer is relieved of such responsibility shall include such period of extension. Any other plan or agreement in existence on the effective date of this article which the employer may, by his or her sole act, terminate at any time, or with respect to which he or she is not obligated to continue for any period to make contributions, may be accepted by the chair as satisfying the obligation to provide for the payment of benefits under this article if such plan or agreement provides benefits at least as favorable as the disability and family leave benefits provided by this article and does not require contributions of any employee or of any class or classes of employees in excess of the statutory amount provided in subdivision three of section two hundred nine of this article, subdivision three, except by agreement and provided the contribution is reasonably related to the value of the benefits as determined by the chair. The chair may require that the employer shall enter into an agreement in writing with the chair that he or she will pay the assessments set forth in sections two hundred fourteen and two hundred twenty-eight and that until he or she shall have filed written notice with the chair of his or her election to terminate such plan or agreement or to discontinue making necessary

contributions to its cost, he or she will continue to provide for the payment of the disability and family leave benefits under such plan or agreement.

During any period in which any plan or agreement or extension thereof authorized under this subdivision provides for payment of benefits under this article, the responsibility of the employer and the obligations and benefits of the employees shall be as provided in said plan or agreement rather than as provided under this article, other than the benefits provided in section two hundred seven, and provided the employer or carrier has agreed to pay the assessments described in sections two hundred fourteen and two hundred twenty-eight.

Any such plan or agreement may be extended with or without modification, provided the benefits under such plan or agreement, as extended or modified, shall be found by the chair to be at least as favorable as the benefits provided by this article.

5. by a new plan or agreement. After the effective date of this article, a new plan or agreement with a carrier may be accepted by the chair as satisfying the obligation to provide for the payment of benefits under this article if such plan or agreement shall provide benefits at least as favorable as the disability and family leave benefits provided by this article and does not require contributions of any employee or of any class or classes of employees in excess of the statutory amount provided in section two hundred nine, subdivision three, except by agreement and provided the contribution is reasonably related to the value of the benefits as determined by the chair. Any such plan or agreement shall continue until written notice filed with the chair of intention to terminate such plan or agreement, and any modification of such plan or agreement shall be subject to the written approval of the chair.

During any period in which any plan or agreement or extension thereof authorized under this subdivision provides for payment of benefits under this article, the responsibility of the employer and the obligations and benefits of the employees shall be as provided in said plan or agreement

rather than as provided under this article, other than the benefits provided in section two hundred seven, and provided the employer or carrier has agreed to pay the assessments described in sections two hundred fourteen and two hundred twenty-eight.

6. if any plan or agreement authorized under subdivisions four and five of this section covers less than all of the employees of a covered employer, the provisions of this article shall apply with respect to his remaining employees not covered under such plan or agreement.

7. Premiums for policies providing disability or family leave benefits in accordance with this article shall be calculated in accordance with applicable provisions of the insurance law, including subsection (n) of section four thousand two hundred and thirty-five of such law.

8. An employer providing disability benefits coverage pursuant to subdivision three of this section may obtain coverage for family leave benefits separately pursuant to subdivision one or subdivision two of this section.

The chairman may make reasonable regulations for the filing under subdivisions four and five of this section of plans and agreements to provide for the payment of benefits under this article.

§ 212. Voluntary coverage. 1. Any employer not required by this article to provide for the payment of disability or family leave benefits to his employees, or to any class or classes thereof, may become a covered employer or bring within the provisions of this article such employees or class or classes thereof by voluntarily electing to provide for payment of such benefits in one or more of the ways set forth in section two hundred eleven of this article; but such election shall be subject to the approval of the chair, and if the employees are required to contribute to the cost of such benefits the assent within thirty days before such approval is granted, of more than one-half of such employees shall be evidenced to the satisfaction of the chair. On approval by the chair of such election to provide benefits, all the

provisions of this article shall become and continue applicable as if the employer were a covered employer as defined in this article. The obligation to continue as a covered employer with respect to employees for whom provision of benefits is not required under this article, may be discontinued by such employer on ninety days notice to the chair in writing and to his or her employees, after he or she has provided for payment of benefits for not less than one year and with such provision for payment of obligations incurred on and prior to the termination date as the chair may approve.

2. Notwithstanding the definition of "employer" and "employment" in section two hundred one of this article, a public authority, a municipal corporation or a fire district or other political subdivision may become a covered employer for the purpose of providing disability benefits under this article by complying with the provisions of subdivision one of this section and may discontinue such status only as provided in that subdivision.

3. Notwithstanding the definition of "employment" in section two hundred one of this article, service as a farm laborer may become covered employment by the employer complying with the provisions of subdivision one of this section and such employer may discontinue such status only as provided in that subdivision.

4. (a) An executive officer of a corporation who at all times during the period involved owns all of the issued and outstanding stock of the corporation and holds all of the offices pursuant to paragraph (e) of section seven hundred fifteen of the business corporation law or two executive officers of a corporation who at all times during the period involved between them own all of the issued and outstanding stock of such corporation and hold all such offices provided, however, that each officer must own at least one share of stock and who is the executive officer or who are the executive officers of a corporation having other persons who are employees required to be covered under this article, shall be deemed to be included in the corporation's disability and family leave benefits insurance contract or covered by a certificate of self-insurance or a plan under section two hundred eleven of this

article, unless the officer or officers elect to be excluded from the coverage of this article. Such election shall be made by any such corporation filing with the insurance carrier, or the chair of the workers' compensation board in the case of self-insurance, upon a form prescribed by the chair, a notice that the corporation elects to exclude the executive officer or officers of such corporation named in the notice from the coverage of this article. Such election shall be effective with respect to all policies issued to such corporation by such insurance carrier as long as it shall continuously insure the corporation. Such election shall be final and binding upon the executive officer or officers named in the notice until revoked by the corporation.

(b) Notwithstanding the definition of "employer" in section two hundred one of this article, a sole proprietor, member of a limited liability company or limited liability partnership, or other self-employed person may become a covered employer under this article by complying with the provisions of subdivision one of this section.

5. A spouse who is an employee of a covered employer shall be deemed to be included in the employer's disability and family leave benefits insurance contract or covered by a certificate of self-insurance or a plan under section two hundred eleven of this article, unless the employer elects to exclude such spouse from the coverage of this article. Such election shall be made by any such employer filing with the insurance carrier, or the chair of the workers' compensation board in the case of self-insurance, upon a form prescribed by the chair, a notice that the employer elects to exclude such spouse named in the notice from the coverage of this article. Such election shall be effective with respect to all policies issued to such employer by such insurance carrier as long as it shall continuously insure the employer. Such election shall be final and binding upon the spouse named in the notice until revoked by the employer.

§ 212-a. Notwithstanding the definition of "employer" and "employment" set forth in section two hundred one of this article and the requirement for insurance policies to offer both disability and family leave

coverage set forth in two hundred twenty six of this article, the state, any political subdivision of the state, a public authority or any other governmental agency or instrumentality, may elect to become a covered employer solely for the purpose of family leave benefits. Coverage for family leave benefits may be secured by a public employer, as that term is defined in subdivision one of section two hundred twelve-b of this article, as permitted by this article, including as applicable section two hundred eleven, subdivision four of section fifty, or section eighty-eight-c. The provider of family leave coverage for such public employees shall be exempt from the requirement that insurance policies offer both disability and family leave benefits in section two hundred twenty-six of this article.

§ 212-b. Public employees; public employees represented by an employee organization; employee opt in.

1. For purposes of this section, "public employee" means any employee of the state, any political subdivision of the state, a public authority or any other governmental agency or instrumentality. "Public employer" means the state, any political subdivision of the state, a public authority or any other governmental agency or instrumentality thereof. "Employee organization" shall have the same meaning set forth in section two hundred one of the civil service law.

2. Public employers shall provide benefits for family leave to public employees in accordance with the procedures and terms set forth in subdivision three of this section.

3. (a) An employee organization may, pursuant to collective bargaining, opt in to paid family leave benefits on behalf of those public employees it is either certified or recognized to represent, within the meaning of article fourteen of the civil service law. Nothing in this section shall prohibit an agreement to opt in to paid family leave between the employee organization and any public employer. An employee organization that has opted in to paid family leave benefits may, pursuant to collective bargaining, opt out of it as is mutually

agreed upon between the employee organization and any public employer.

b. For public employees who are not represented by an employee organization, the public employer may opt-in to paid family leave benefits within ninety days notice to such public employees. Following opt-in by a public employer for public employees not represented by an employee organization, the public employer may opt-out of paid family leave benefits with twelve months notice to those public employees.

4. In the absence of any contrary statement in a collectively negotiated agreement under article fourteen of the civil service law, a public employer may require public employees who opt in under this section to provide the maximum employee contribution, as defined in paragraph (b) of subdivision three of section two hundred nine of this article.

§ 213. Non-compliance or default. 1. Whenever a covered employer does not comply with this article by providing for the payment of disability and family leave benefits to his or her employees in one or more of the ways provided in section two hundred eleven of this article or whenever a carrier fails to pay the benefits required by this article to employees of a covered employer, then such employer shall be fully and directly liable to each of his or her employees for the payment of benefits provided by this article. The amount of the benefits to which employees of such employers are entitled under this article and attendance fees of any attending physicians or attending podiatrists or health care provider fixed pursuant to subdivision two of section two hundred thirty-two of this article shall, on order of the chair, be paid out of the fund established under section two hundred fourteen of this article. In case of non-compliance of the employer, such employer shall forthwith pay to the chair, for credit to the fund, the sum so expended or one percent of his or her payroll for his or her employees in employment during the period of non-compliance, whichever is greater; provided, however, that if it shall appear to the satisfaction of the chair that the default in payment of benefits or the non-compliance of the employer otherwise with his or her obligation under this article was

inadvertent, the chair may fix the sum payable in such case for non-compliance or default at the amount paid out of the fund and a sum less than one percent of such payroll, and in addition the penalties for non-compliance imposed under this article. In case of failure of the carrier to pay benefits, the employer shall forthwith pay to the chair, for credit to the fund, the sum so expended.

2. Where a carrier authorized by the superintendent of financial services to do business in this state has failed to pay benefits on behalf of an employer pursuant to this article solely because an order of rehabilitation, conservation or liquidation has been issued by a court of competent jurisdiction of this or any other state or jurisdiction, the provisions of subdivision one of this section shall not apply as they relate to: (a) the payment of benefits to an employee if the policy of the employer's carrier is subject to the protection afforded by any guaranty fund pursuant to the insurance law; or (b) the reimbursement to the fund, created under section two hundred fourteen of this article, by an employer whose carrier has failed to pay benefits.

3. The provisions of section one hundred forty-one-b of this chapter shall not apply to violations of this section after January first, two thousand eighteen and before January first, two thousand twenty. Thereafter, in the event an employer is subject to debarment solely due to a penalty for violation of this section, the chair may, in the interests of justice, restore the employer's eligibility to submit a bid on or be awarded any public work contract or subcontract. The chair may exercise this authority only if it is the employer's first time violation of section one hundred forty-one-b of this chapter; the employer is not liable for any outstanding workers' compensation, disability or family leave claims as a result of the lack of coverage; and the employer has paid all fines, assessments, and penalties associated with the lack of coverage.

§ 214. Special fund for disability benefits. There is hereby created a fund which shall be known as the special fund for disability benefits to provide for the payment of disability benefits under sections two

hundred seven, two hundred thirteen and attendance fees under section two hundred thirty-two of this article.

1. As promptly as practicable after April first, in each year, the chairman shall ascertain the condition of the fund, and if as of any such date the net assets of the fund shall be one million dollars or more below the sum of twelve million dollars, the chairman shall assess and collect an amount sufficient to restore the fund to an amount equal to twelve million dollars.. Such assessment shall be included in the assessment rate established pursuant to subdivision two of section one hundred fifty-one of this chapter. Such assessments shall be deposited with the commissioner of taxation and finance and transferred to the benefit of such fund upon payment of debt service, if any, pursuant to section one hundred fifty-one of this chapter.

2. Whenever the net assets of the fund shall be less than three million dollars and the disability claims currently being paid shall indicate the necessity of supplementing the assets of the fund the chairman may transfer from monies collected pursuant to subdivision two of section one hundred fifty-one of this chapter an amount sufficient in the discretion of the chairman for the needs of the fund, but not in excess of an amount sufficient to restore the fund to twelve million dollars.

3. All contributions and assessments received by the chairman under the provisions of this section shall be credited to the fund herein established and deposited by the chairman to the credit of the commissioner of taxation and finance for the benefit of the fund. The superintendent of financial services may examine into the condition of the fund at any time on his own initiative or upon the request of the chairman.

§ 215. Commissioner of taxation and finance custodian of fund. The commissioner of taxation and finance shall be the custodian of the special fund for disability benefits and all disbursements therefrom shall be paid by him upon drafts signed by the chairman or those

authorized by the chairman for that purpose. The commissioner of taxation and finance shall give a separate and additional bond in an amount to be fixed by and with sureties approved by the state comptroller conditioned for the faithful performance of his duty as custodian of the fund. The commissioner of taxation and finance shall deposit any portion of the fund not needed for immediate use, in the manner and subject to all the provisions of law respecting the deposit of other state funds by him. The commissioner of taxation and finance may invest any surplus or reserve moneys thereof in securities of the United States or the state of New York and in interest bearing certificates of deposit of a bank or trust company located and authorized to do business in this state or of a national bank located in this state secured by a pledge of direct obligations of the United States or of the state of New York, or in accordance with the provisions of section ninety-eight-a of the state finance law, in an amount equal to the amount of such certificates of deposit, and may sell any such securities or certificates of deposit if advisable for the proper administration of such fund. Interest earned by such portion of the fund deposited or invested by the commissioner of taxation and finance shall be collected by him and placed to the credit of the fund. The commissioner of taxation and finance may issue checks on the fund for the transfers of moneys between depositories and for the purpose of making investments for the fund.

§ 216. Disposition of uncommitted balance of employees' contributions.

Whenever any arrangement for the provision of benefits as set forth in section two hundred eleven is terminated, any uncommitted balance of employee contributions shall be utilized only to pay accrued benefits and to provide benefits under this article. On the liquidation of a covered employer's business, or when he shall cease to be a covered employer, any such sums so remaining in excess of those required to discharge obligations under this article may be used for the benefit of employees on a reasonable basis approved by the chairman, and any such sums not so used shall be promptly paid to the chairman for deposit in the fund created under section two hundred fourteen.

§ 217. Notice and proof of claim. 1. Written notice and proof of disability or proof of need for family leave shall be furnished to the employer by or on behalf of the employee claiming benefits or, in the case of a claimant under section two hundred seven of this article, to the chair, within thirty days after commencement of the period of disability. Additional proof shall be furnished thereafter from time to time as the employer or carrier or chair may require but not more often than once each week. Such proof shall include a statement of disability by the employee's attending physician or attending podiatrist or attending chiropractor or attending dentist or attending psychologist or attending certified nurse midwife or family leave care recipient's health care provider, or in the case of an employee who adheres to the faith or teachings of any church or denomination, and who in accordance with its creed, tenets or principles depends for healing upon prayer through spiritual means alone in the practice of religion, by an accredited practitioner, containing facts and opinions as to such disability in compliance with regulations of the chair. Failure to furnish notice or proof within the time and in the manner above provided shall not invalidate the claim but no benefits shall be required to be paid for any period more than two weeks prior to the date on which the required proof is furnished unless it shall be shown to the satisfaction of the chair not to have been reasonably possible to furnish such notice or proof and that such notice or proof was furnished as soon as possible; provided, however, that no benefits shall be paid unless the required proof of disability is furnished within the period of actual disability or family leave that does not exceed the statutory maximum period permitted under section two hundred four of this article. No limitation of time provided in this section shall run as against any disabled employee who is mentally incompetent, or physically incapable of providing such notice as a result of a serious medical condition, or a minor so long as such person has no guardian of the person and/or property.

2. An employee claiming disability benefits shall, as requested by the employer or carrier, submit himself or herself at intervals, but not more than once a week, for examination by a physician or podiatrist or

chiropractor or dentist or psychologist or certified nurse midwife designated by the employer or carrier. All such examinations shall be without cost to the employee and shall be held at a reasonable time and place.

3. The chair or chair's designee, pursuant to section two hundred twenty-one of this article, may direct the claimant or family leave care recipient to submit to examination by a health care provider designated by him or her in any case in which the claim to disability or family leave benefits is contested and in claims arising under section two hundred seven of this article, and in other cases as the chair or board may require.

4. Refusal of the claimant or family leave care recipient without good cause to submit to any such examination shall disqualify the claimant or employee from all benefits hereunder for the period of such refusal, except as to benefits already paid.

5. If benefits required to be paid by this article have been paid to an employee, further payments for the same disability or family leave shall not be barred solely because of failure to give notice or to file proof of disability for the period or periods for which such benefits have been paid.

6. In the event that a claim for disability benefits is rejected, the carrier or employer shall send by first class mail written notice of rejection to the employee within forty-five days of receipt of proof of disability. Failure to mail such written notice of rejection within the time provided, shall bar the employer or carrier from contesting entitlement to benefits for any period of disability prior to such notice but such failure may be excused by the chair if it can be shown to the satisfaction of the chair not to have been reasonably possible to mail such notice and that such notice was mailed as soon as possible. Such notice shall include a statement, in a form prescribed by the chair, to the effect that the employee may, for the purpose of review, file notice that his or her claim has not been paid as set forth in section two hundred twenty-one of this article.

§ 218. Disability benefit rights inalienable. 1. Any agreement by an employee to waive his rights under this article shall be void.

2. Disability benefits payable under this article shall not be assigned or released, except as provided in this article, and shall be exempt from all claims of creditors and from levy, execution and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived provided, however, that such benefits shall be subject to an income execution or order for support enforcement pursuant to section fifty-two hundred forty-one or fifty-two hundred forty-two of the civil practice law and rules.

§ 219. Enforcement of payment in default. In case of a default in the payment of any benefits, assessments or penalties payable under this article by an employer who has failed to comply with the provisions of section two hundred eleven of this article or refusal of such employer to reimburse the fund under section two hundred fourteen of this article for the expenditures made therefrom pursuant to section two hundred thirteen of this article or to deposit within ten days after demand the estimated value of benefits not presently payable, the chair may file with the county clerk for the county in which the employer has his principal place of business (1) a certified copy of the decision of the board, or alternative dispute resolution association designated by the chair pursuant to section two hundred twenty-one of this article, or order of the chair, or (2) a certified copy of the demand for deposit of security, and thereupon judgment must be entered in the supreme court by the clerk of such county in conformity therewith immediately upon such filing.

§ 220. Penalties. 1. Any employer who fails to make provision for payment of disability or family leave benefits as required by section two hundred eleven of this article within ten days following the date on which such employer becomes a covered employer as defined in section two

hundred two of this article shall be guilty of a misdemeanor and upon conviction be punishable by a fine of not less than one hundred nor more than five hundred dollars or imprisonment for not more than one year or both, except that where any person has previously been convicted of a failure to make provisions for payment of disability or family leave benefits within the preceding five years, upon conviction for a second violation such person shall be fined not less than two hundred fifty nor more than one thousand two hundred fifty dollars in addition to any other penalties including fines otherwise provided by law, and upon conviction for a third or subsequent violation such person may be fined up to two thousand five hundred dollars in addition to any other penalties including fines otherwise provided by law. Where the employer is a corporation, the president, secretary, treasurer, or officers exercising corresponding functions, shall each be liable under this section.

2. The chair or any officer of the board designated by him or her, upon finding that an employer has failed to make provision for the payment of disability or family leave benefits, shall impose upon such employer a penalty not in excess of a sum equal to one-half of one per centum of his or her weekly payroll for the period of such failure and a further sum not in excess of five hundred dollars, which sums shall be paid into the fund created under section two hundred fourteen of this article.

3. If for the purpose of obtaining any benefit or payment under the provisions of this article, or for the purpose of influencing any determination regarding any benefit payment, either for himself or herself or any other person, any person, employee, employer or carrier wilfully makes a false statement or representation or fails to disclose a material fact, he or she shall be guilty of a misdemeanor.

4. Whenever a carrier shall fail to make prompt payment of disability or family leave benefits payable under this article and after hearing before an officer designated by the chair or a determination by the chair's designee, pursuant to section two hundred twenty-one of this article, for that purpose, the chair or designee shall determine that

failure to make such prompt payment was without just cause, the chair or designee, pursuant to section two hundred twenty-one of this article, shall collect from the carrier a sum not in excess of twenty-five per centum of the amount of the benefits as to which the carrier failed to make payment, which sum shall be credited to the special fund for disability benefits. In addition, the chair or designee, pursuant to section two hundred twenty-one of this article, may collect and pay over to the employee the sum of ten dollars in respect to each week, or fraction thereof, for which benefits have not been promptly paid.

* 5. In addition to other penalties herein provided, the chair or designee shall remove from the list of physicians authorized to render medical care under the provisions of articles one to eight, inclusive, of this chapter and from the list of podiatrists authorized to render podiatric care under section thirteen-k of this chapter, and from the list of chiropractors authorized to render chiropractic care under section thirteen-l of this chapter the name of any physician or podiatrist or chiropractor whom the chair or designee, pursuant to section two hundred twenty-one of this article, shall find, after reasonable investigation, has submitted to the employer or carrier or chair in connection with any claim for disability benefits under this article, a statement of disability that is not truthful and complete.

* NB Effective until January 1, 2028

* 5. In addition to other penalties herein provided, the chair or designee shall place on the exclusion list pursuant to section thirteen-d of this chapter the name of any physician or podiatrist or chiropractor whom the chair or designee, pursuant to section two hundred twenty-one of this article, shall find, after reasonable investigation, has submitted to the employer or carrier or chair in connection with any claim for disability benefits under this article, a statement of disability that is not truthful and complete.

* NB Effective January 1, 2028

6. In addition to other penalties herein provided, any person who for the purpose of obtaining any benefit or payment under this article or for the purpose of influencing any determination regarding any benefit payment, knowingly makes a false statement with regard to a material fact, shall not be entitled to receive benefits with respect to the

disability claimed or any disability benefits during the period of twelve calendar months thereafter; but this penalty shall not be applied more than once with respect to each such offense.

7. All fines imposed under subdivisions one and three of this section, except as herein otherwise provided, shall be paid directly and immediately by the officer collecting the same to the chair, and be paid into the state treasury, provided, however, that all such fines collected by justices of the peace of towns and police justices of villages shall be paid to the state comptroller in accordance with the provisions of section twenty-seven of the town law.

8. (a) The head of a state or municipal department, board, commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in employment as defined in this article, and notwithstanding any general or special statute requiring or authorizing the issue of such permits, shall not issue such permit unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits and after January first, two thousand twenty-one, the payment of family leave benefits for all employees has been secured as provided by this article. Nothing herein, however, shall be construed as creating any liability on the part of such state or municipal department, board, commission or office to pay any disability benefits to any such employee if so employed.

(b) The head of a state or municipal department, board, commission or office authorized or required by law to enter into any contract for or in connection with any work involving the employment of employees in employment as defined in this article, and notwithstanding any general or special statute requiring or authorizing any such contract, shall not enter into any such contract unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits and after January first, two thousand eighteen, the payment of family leave benefits for all employees has been secured as provided by this article.

§ 221. Determination of contested claims for disability and family leave benefits. In accordance with regulations adopted by the chair, within twenty-six weeks of written notice of rejection of claim, the employee may file with the chair a notice that his or her claim for disability or family leave benefits has not been paid, and the employee shall submit proof of disability or entitlement to family leave and of his or her employment, wages and other facts reasonably necessary for determination of the employee's right to such benefits. Failure to file such notice within the time provided, may be excused if it can be shown not to have been reasonably possible to furnish such notice and that such notice was furnished as soon as possible. On demand the employer or carrier shall forthwith deliver to the board the original or a true copy of the health care provider's report, wage and employment data and all other documentation in the possession of the employer or carrier with respect to such claim.

The chair or designee, shall have full power and authority to determine all issues in relation to every such claim for disability benefits required or provided under this article, and shall file its decision in the office of the chairman. Upon such filing, the chairman shall send to the parties a copy of the decision. Either party may present evidence and be represented by counsel at any hearing on such claim. The decision of the board shall be final as to all questions of fact and, except as provided in section twenty-three of this chapter, as to all questions of law. Every decision shall be complied with in accordance with its terms within ten days thereafter except as permitted by law upon the filing of a request for review, and any payments due under such decision shall draw simple interest from thirty days after the making thereof at the rate provided in section five thousand four of the civil practice law and rules. The chair shall adopt rules and regulations to carry out the provisions of this article including but not limited to resolution of contested claims and requests for review thereof, and payment of costs for resolution of disputed claims by carriers. Any designated process shall afford the parties the opportunity to present evidence and to be represented by counsel in any such proceeding. The chair shall have the authority to provide for alternative dispute resolution procedures for claims arising under

family leave, including but not limited to referral and submission of disputed claims to a neutral arbitrator under the auspices of an alternative dispute resolution association pursuant to article seventy-five of the civil practice law and rules. Neutral arbitrator shall mean an arbitrator who does not have a material interest in the outcome of the arbitration proceeding or an existing and substantial relationship, including but not limited to pecuniary interests, with a party, counsel or representative of a party. Any determination made by alternative dispute resolution shall not be reviewable by the board and the venue for any appeal shall be to a court of competent jurisdiction.

§ 222. Technical rules of evidence or procedure not required. The chair, the board or the chair's designee, pursuant to section two hundred twenty-one of this article, in making an investigation or inquiry or conducting a hearing shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter; but may make such investigation or inquiry or conduct such hearing in such manner as to ascertain the substantial rights of the parties.

§ 223. Modification of board decisions or orders. Upon its own motion or upon the application of any party in interest, the board may at any time review any decision or order regarding disability benefits and, on such review, may make a decision ending, diminishing or increasing the disability benefits previously ordered, and shall state the reason therefor. Upon the filing of such decision regarding disability benefits, the chair shall send to each of the parties a copy thereof. No such review shall affect any previous decision as regards any moneys regarding disability benefits already paid, except that a decision increasing the disability benefit rate may be made effective from date of commencement of disability, and except that, if any part of the disability benefits due is unpaid, a decision decreasing the disability benefit rate may be made effective from the commencement of disability, and any payments made prior thereto in excess of such decreased rate shall be deducted from future disability benefits in such manner and by

such method as may be determined by the board.

§ 224. Appeals. All the provisions of section twenty-three of this chapter with respect to decisions of the board and appeals from such decisions shall be applicable to decisions of the board regarding disability benefits and to appeals from such decisions regarding disability benefits as fully in all respects as if the provisions of section twenty-three of this chapter were fully set forth in this article except that reimbursement for disability benefits, if required, following modification or rescission upon appeal shall be paid from administrative expenses as provided in section two hundred twenty-eight of this article.

§ 225. Fees for representing employees. Claims of attorneys and counsellors-at-law for services in connection with any contested claim arising under this article shall not be enforceable unless approved by the board. If so approved, such fee or fees shall become a lien upon the benefits ordered, but shall be paid therefrom only in the manner fixed by the board or the alternative dispute resolution association. Any other person, firm, corporation, organization, or other association who shall exact or receive any fee or gratuity for any services rendered on behalf of an employee except in an amount so determined shall be guilty of a misdemeanor. Any person, firm, corporation, organization, or association who shall solicit the business of an employee claiming benefits under this article, or who shall make it a business to solicit employment for a lawyer in connection with any claim for disability or family leave benefits under this article, or who shall exact or receive any fee or gratuity or other charge with respect to the collection of any uncontested claim for disability or family leave benefits, shall be guilty of a misdemeanor.

§ 226. The insurance contract. 1. Every policy of insurance providing the benefits required to be paid under this article shall contain a provision setting forth the right of the chairman to enforce in the name

of the people of the state of New York for the benefit of the person entitled to the benefits insured by the policy, either by filing a separate application or by making the insurance carrier a party to the original application, the liability of the insurance carrier in whole or in part for the payment of such benefits; provided, however, that payment in whole or in part of such benefits by either the employer or the insurance carrier shall to the extent thereof be a bar to the recovery against the other of the amount so paid.

2. Every such policy shall contain a provision that, as between the employee and the insurance carrier, the notice to or knowledge of the occurrence of the injury or sickness on the part of the employer shall be deemed notice or knowledge as the case may be, on the part of the insurance carrier; that jurisdiction of the employer shall, for the purpose of this chapter, be jurisdiction of the insurance carrier and that the insurance carrier shall in all things be bound by and subject to the orders, findings or decisions rendered in connection with the payment of benefits under the provisions of this article.

3. Every such policy shall contain a provision to the effect that the insolvency or bankruptcy of the employer shall not relieve the insurance carrier from the payment of benefits for disability suffered by an employee during the life of such policy.

4. Every policy of insurance issued to meet the requirements of section two hundred eleven shall contain a provision reciting in effect that notwithstanding any other provision of the policy, benefits shall be paid at least to the extent and in the manner and subject to the conditions required by the terms of the insured's provision of benefits under this article.

5. No contract of insurance issued by an insurance carrier providing the benefits to be paid under this article shall be cancelled within the time limited in such contract for its expiration unless notice is given as required by this section. When cancellation is due to non-payment of premiums such cancellation shall not be effective until at least ten days after a notice of cancellation of such contract, on a date

specified in such notice, shall be filed in the office of the chair and also served on the employer. When cancellation is due to any reason other than non-payment of premiums such cancellation shall not be effective until at least thirty days after a notice of cancellation of such contract, on a date specified in such notice, shall be filed in the office of the chair and also served on the employer; provided, however, in either case that if insurance with another insurance carrier has been obtained which becomes effective prior to the expiration of the time stated in such notice, the cancellation shall be effective as of the date of such other coverage. Such notice shall be served on the employer as prescribed by the chair, including delivering it to him or her by electronic means; provided that, if the employer be a partnership, then such notice may be given to any one of the partners, and if the employer be a corporation then the notice may be given to any agent or officer of the corporation upon whom legal process may be served, provided, however, the right to cancellation of a policy of insurance in the state fund shall be exercised only for nonpayment of premiums or as provided in section ninety-four of this chapter.

6. (a) Any insurance carrier or the state insurance fund who issues, reinstates, amends or endorses any contract of insurance or rider thereto providing the benefits required to be paid under this article shall file notification in the office of the chair within thirty days after such issuance, reinstatement, amendment or endorsement of the contract. Such notice shall be filed in the manner and form prescribed by the chair.

(b) In the event notice required under this subdivision or subdivision five of this section is not filed with the chair within the thirty-day time period, the chair may impose a penalty of up to one hundred dollars for each ten-day period the insurance carrier or state insurance fund failed to file the notification. All penalties collected pursuant to this subdivision shall be deposited in the uninsured employers' fund.

7. The chair may require by regulation that every policy of family leave insurance contain a provision requiring that all disputes be resolved by designated alternative dispute resolution process in accordance with such regulations.

8. Premiums for policies providing disability or family leave benefits in accordance with this article shall be calculated in accordance with applicable provisions of the insurance law, including subsection (n) of section four thousand two hundred thirty-five of such law.

9. Except as set forth in subdivision eight of section two hundred eleven of this article, every policy of insurance issued pursuant to this article must offer coverage for both disability and family leave benefits.

§ 227. Actionable injuries in claims for disability benefits; subrogation. 1. If an employee entitled to disability benefits under this article be disabled by injury caused by the negligence or wrong of a third party, such employee need not elect whether to take such disability benefits or to pursue his remedy against such third party, but may take his benefits under this article. The carrier liable for payment of disability benefits under this article or the chairman in case of benefits paid under section two hundred seven or two hundred thirteen shall have a lien on the proceeds of any recovery from such third party, whether by judgment, settlement or otherwise, after the deduction of reasonable and necessary expenditures, including attorneys' fees, incurred in effecting such recovery, to the extent of the total amount of disability benefits provided by this article and paid, and to such extent such recovery shall be deemed for the benefit of such carrier or the chairman. Should the employee secure a recovery from such third party, whether by judgment, settlement or otherwise, such employee may apply on notice to such lienor to the court in which the third party action was instituted, or to a court of competent jurisdiction if no action was instituted, for an order apportioning the reasonable and necessary expenditures, including attorneys' fees, incurred in effecting such recovery. Such expenditures shall be equitably apportioned by the court between the employee and the lienor. Notice of the commencement of such action shall be given within ninety days thereafter to the employer or carrier or to the chairman, as the case may be. The foregoing rights, limitations, and procedures shall also apply to actions and recoveries

under the employers' liability act, and section six hundred eighty-eight, title forty-six, United States code, and under the maritime doctrine of wages, maintenance and cure. Any of the foregoing providers of disability benefits which has recovered a lien pursuant to the provisions hereof against the recovery of a person injured on or after December first, nineteen hundred seventy-seven and before July first, nineteen hundred seventy-eight, through the use or operation of a motor vehicle in this state, shall notify such person by certified mail, in a manner to be approved by the chairman and the superintendent of financial services, of the responsibilities of an "insurer" (as defined in subsection (g) of section five thousand one hundred two of the insurance law), to reimburse such person under such circumstances to the extent that the recovered lien represents first party benefits as defined in article fifty-one of the insurance law.

1-a. Notwithstanding any other provisions of this article the carrier liable for payment of disability benefits under this article, or the chairman in case benefits are paid under section two hundred seven or section two hundred thirteen of this chapter shall not have a lien on the proceeds of any recovery received pursuant to subsection (a) of section five thousand one hundred four of the insurance law, whether by judgment, settlement or otherwise for disability benefits paid, which were in lieu of first party benefits which another insurer would have otherwise been obligated to pay under article fifty-one of the insurance law. The sole remedy of any of the foregoing providers to recover the payments in the situation specified in the preceding sentence shall be pursuant to the settlement procedures contained in section five thousand one hundred five of the insurance law.

2. If such disabled employee has been paid disability benefits under this article but has failed to commence action against such other within six months prior to the expiration of the statute of limitations, the carrier or the chairman, as the case may be, may maintain an action against such third party. If the carrier or the chairman, as the case may be, having paid disability benefits to a disabled employee, who is also a "covered person" (as defined in subsection (j) of section five thousand one hundred two of the insurance law), and who was injured in a

motor vehicle accident in this state on and after December first, nineteen hundred seventy-seven and before July first, nineteen hundred seventy-eight, maintains an action against such third party, who is also a "covered person", and recovers, whether by judgment, settlement or otherwise, it shall advise the disabled employee, by certified mail, in a manner to be approved by the chairman and the superintendent of financial services, of the responsibility of an "insurer" (as defined in subsection (g) of section five thousand one hundred two of the insurance law) to further compensate such disabled employee.

2-a. Notwithstanding any other provisions of this article, the failure of a "covered person" (as defined in subsection (j) of section five thousand one hundred two of the insurance law), who has been paid disability benefits under this article for injuries arising out of the use or operation of a motor vehicle in this state, to commence an action against such other within six months prior to the expiration of the statute of limitations, shall not operate to permit the carrier or the chairman to institute an action against such other third party for recovery of disability benefits paid which were in lieu of first party benefits which an insurer would have otherwise been obligated to pay under article fifty-one of the insurance law unless such third party is not a "covered person". The sole remedy of any of the foregoing providers to recover the payments in the situation specified in the preceding sentence when the other party is a "covered person" shall be pursuant to the settlement procedures contained in section five thousand one hundred five of the insurance law.

3. A compromise of any such cause of action by the employee in an amount less than the benefits provided by this article shall be made only with the written consent of the carrier or the chairman, as the case may be.

§ 228. Administrative expenses. 1. The estimated annual expenses necessary for the workers' compensation board to administer the provisions of the disability benefits law shall be borne by all affected employers and included as part of the assessment rate generated pursuant

to subdivision two of section one hundred fifty-one of this chapter.

2. Annually, as soon as practicable after the first day of April, the chair and department of audit and control shall ascertain the total amount of actual expenses.

§ 229. Posting of notice and providing of notice of rights. 1. Each covered employer shall post and maintain in a conspicuous place or places in and about the employer's place or places of business typewritten or printed notices in form prescribed by the chair, stating that the employer has provided for the payment of disability and family leave benefits as required by this article. The chair may require any covered employer to furnish a written statement at any time showing the carrier insuring the payment of benefits under this article or the manner in which such employer has complied with section two hundred eleven of this article or any other provision of this article. Failure for a period of ten days to furnish such written statement shall constitute presumptive evidence that such employer has neglected or failed in respect of any of the matters so required.

2. Whenever an employee of a covered employer who is eligible for benefits under section two hundred four of this article shall be absent from work due to a disability or to provide family leave as defined in subdivision nine and subdivision fifteen respectively, of section two hundred one of this article for more than seven consecutive days, the employer shall provide the employee with a written statement of the employee's rights under this article in a form prescribed by the chair. The statement shall be provided to the employee within five business days after the employee's seventh consecutive day of absence due to disability or family leave or within five business days after the employer has received notice that the employee's absence is due to disability or family leave, whichever is later.

§ 230. Destruction of records. All records and documents relative to this article required to be filed with the chairman or board may be

destroyed, in accordance with the state finance law.

§ 231. Subpoenas. A subpoena or a subpoena duces tecum may be signed and issued by the chairman, a member of the board, referee or such officer as may be designated by the chairman. A subpoena or a subpoena duces tecum may also be signed and issued by any attorney and counsellor-at-law appearing before the board on behalf of an employee or other party. A subpoena issued under this section shall be regulated by the civil practice law and rules.

*** § 232. Fees for testimony of physicians, podiatrists, chiropractors, dentists, psychologists and health care providers.** Whenever his or her attendance at a hearing, deposition or arbitration before the board or the chair's designee, pursuant to section two hundred twenty-one of this article, is required, the attending physician or attending podiatrist or attending chiropractor or attending dentist or attending psychologist or attending certified nurse midwife of the disabled employee, except such physicians as are disqualified from testifying pursuant to subdivision one of section thirteen-b, or section nineteen-a of this chapter, and except such podiatrists as are disqualified from testifying under the provisions of section thirteen-k, and except such chiropractors as are disqualified from testifying under the provisions of section thirteen-l, and except such psychologists as are disqualified from testifying under the provisions of section thirteen-m, or health care provider shall be entitled to receive a fee in accordance with regulations of the chair.

* NB Effective until January 1, 2028

*** § 232. Fees for testimony of physicians, podiatrists, chiropractors, dentists, psychologists and health care providers.** Whenever their attendance at a hearing, deposition or arbitration before the board or the chair's designee, pursuant to section two hundred twenty-one of this article, is required, the attending physician or attending podiatrist or attending chiropractor or attending dentist or attending psychologist or attending certified nurse midwife of the disabled employee, or health care provider shall be entitled to receive a fee in accordance with regulations of the chair.

* NB Effective January 1, 2028

§ 233. Inspection of records of employers. All books, records and payrolls of employers shall be open for inspection by the chairman or by any officer or employee of the board designated by him for the purpose of ascertaining the amount of wages and the number of employees and such other information as may be necessary in the administration of this article. Any person who refuses to allow the chairman or his authorized representative to inspect any such books, records or payrolls relative to the enforcement of this article shall be guilty of a misdemeanor.

§ 234. Disclosures prohibited. Information as required by any carrier, or its officers or employees, from employers or employees or others pursuant to this article shall not be opened to public inspection or used for any purpose other than the determination of claims under and complying with the provisions of this article; and any carrier, or officer or employee of a carrier who, except with the authority of the chairman or pursuant to his regulations, or as otherwise provided by law, shall disclose the same shall be guilty of a misdemeanor.

§ 235. Exemptions. Any employee who is receiving or is entitled to receive old-age insurance benefits under title two of the social security act, shall be exempt from this article upon filing with the chairman and his employer a statement, in such form as the chairman shall prescribe, waiving any and all benefits under this article. Thereafter such employee shall be exempt from any liability to contribute toward the cost of such benefits, and his employer shall be relieved of responsibility to provide for the payment of any benefits to such employee under this article.

§ 236. Disposition of accrued benefits upon death. If any benefits due under this article to an employee are unpaid at the time of his death, such benefits shall be payable to the estate of the individual or, at

the option of the carrier, may be paid to the surviving spouse, parent, child or children of the deceased employee. Benefits that are not paid as above provided shall, after the expiration of one year after such death, be paid into the special fund for disability benefits created under section two hundred fourteen of this article.

§ 237. Reimbursement for advance payments by employers. If an employer has made advance payments of benefits or has made payments to an employee in like manner as wages during any period of disability or family leave for which such employee is entitled to the benefits provided by this article, he or she shall be entitled to be reimbursed by the carrier out of any benefits due or to become due for the existing disability or family leave, if the claim for reimbursement is filed with the carrier prior to payment of the benefits by the carrier.

§ 238. Payments to minors. Minors shall be deemed to be sui juris for the purpose of receiving payment of benefits under this article.

§ 239. Representation before the board. Any person, firm, or corporation licensed by the board under section twenty-four-a of this article or subdivision three-b of section fifty of this chapter shall be deemed to be authorized to appear in behalf of claimants or self insured employers, as the case may be, in contested disability or family leave claims under this article.

§ 240. Non-liability of state. The special fund for disability benefits created by section two hundred fourteen shall be the sole and exclusive source for the payment of benefits provided by sections two hundred seven and two hundred thirteen. The state of New York undertakes the administration of the fund without any liability on the part of the state beyond the amount of moneys actually collected and credited to the fund.

§ 241. Application of other provisions of chapter. All the powers and duties conferred or imposed upon the chairman and board by this chapter that are necessary for the administration of this article and not inconsistent are, to that extent, hereby made applicable to this article; and none of the other provisions of this chapter pertaining to benefits provided by other articles of this chapter shall be construed to be applicable to this article. The provisions of section one hundred twenty of this chapter shall be applicable as fully as if set forth in this article, except that penalties paid into the state treasury pursuant thereto under this article shall be applied toward the expenses of administering this article.

§ 242. Separability of provisions; federal law; regulations. 1. If any provision of this article or the application thereof to any person or circumstances is held invalid, the remainder of this article and the application of such provision to other persons or circumstances shall not be affected thereby.

2. Nothing in this article shall be interpreted or applied so as to create a conflict with federal law.

3. The chair shall have authority to adopt regulations to effectuate any of the provisions of this article.

ARTICLE 10

WORKMEN'S COMPENSATION ACT FOR CIVIL DEFENSE VOLUNTEERS

Section 300. Short title.

301. Declaration of policy and legislative intent.

302. Definitions.

303. Provision of workmen's compensation for civil defense volunteers.

304. Evidence of authorized services.

305. Compensation provided.

306. Compensation not allowed during first seven days.

- 307. Computation of benefits.
- 308. Liability for compensation.
- 309. Non-duplication.
- 310. Disposition of accrued benefits upon death.
- 311. Payments to minors.
- 312. Exclusiveness of remedy.
- 313. Compensation inalienable.
- 314. Claim filing.
- 315. Claims procedures.
- 316. Record of enrollment.
- 317. Determination of contested claims for compensation.
- 318. Rules of evidence; modification of board decisions or orders; appeals.
- 319. Special fund for civil defense volunteers.
- 320. Commissioner of taxation and finance custodian of fund.
- 321. Reinsurance.
- 322. Rehabilitation.
- 323. Limitation of liability.
- 324. Distribution of unexpended assets of the special fund.
- 325. Administration expenses.
- 326. Penalties.
- 327. Application of other provisions of chapter.
- 328. Separability of provisions.

§ 300. Short title. This article shall be known and may be cited as the "workers' compensation act for civil defense volunteers."

§ 301. Declaration of policy and legislative intent. The president of the United States on December sixteenth, nineteen hundred fifty, proclaimed a state of national emergency. The governor of this state, in a special message to the legislature on January eighth, nineteen hundred fifty-one, recommended a program for the defense of the people of our state and the safeguarding of property against attack. In order to make effective necessary measures of civil defense, many of our citizens will voluntarily undertake to perform civil defense duties and may, in the

event of attack, be exposed to injury in the performance of authorized civil defense duties they voluntarily assumed as a patriotic service for the common good.

Those who volunteer to perform civil defense duties deserve some protection for themselves and their families in the event that disability or death should be incurred while they are performing these duties. No such benefits have yet been provided by the federal government. Accordingly it is hereby declared to be the intent of the legislature that special workmen's compensation benefits, as provided in this article, should be made available for civil defense volunteers in this state.

§ 302. Definitions. Except as otherwise provided in this article, terms used in this article shall have the meaning given to such terms in articles one to eight, inclusive, of this chapter and in the state defense emergency act.

1. "Civil defense volunteers" shall include those members of the civil defense forces under the provisions of the state defense emergency act who are volunteer persons serving without compensation in the personnel of volunteer agencies.

2. "Authorized civil defense service" for the purposes of this article includes duties and services performed by an air raid warden during attack, actual or imminent, and subsequent to attack, but not during training or practice periods; and duties and services performed by a civil defense volunteer other than an air raid warden following actual attack, but not during training or practice periods or during attack, actual or imminent. For the purposes of this article, such services shall be those authorized by the local director of civil defense in accordance with regulations and orders of the commission or state director of civil defense.

3. "Injury" within the meaning of this article means only accidental injury arising in the course of authorized civil defense service during

attack, actual or imminent, or subsequent to attack, and disease or infection that may be sustained or death incurred either as the natural and unavoidable result thereof or of exposure to radiation or to noxious gases or to germ warfare in the course of such authorized service.

4. "Commission" shall mean the state civil defense commission created by article three of the state defense emergency act, and "state director" shall mean the New York state director of civil defense appointed under the provisions of said act.

5. "Board" shall mean the workers' compensation board.

6. "Chairman" shall mean the chairman of the workers' compensation board.

§ 303. Provision of workmen's compensation for civil defense volunteers. A civil defense volunteer performing authorized civil defense services shall be deemed to be in special employment of his local office as defined in the state defense emergency act. Workmen's compensation benefits are provided in this article for disability or death proximately caused by injury in the course of such special employment without regard to fault as a cause of injury. Such special employment may be within the area under the jurisdiction of the local director in which civil defense volunteers of said local office are mobilized or outside such area where civil defense volunteers are operating in accordance with plans approved by or orders issued by the New York state civil defense commission.

§ 304. Evidence of authorized services. For the purpose of administering this article a certified copy of regulations and orders of the commission or state director shall be evidence thereof when filed with the chairman; but if not so filed the burden of proving an authorized civil defense service or duty or activity shall be on the claimant.

§ 305. Compensation provided. The schedule of special compensation for civil defense volunteers under this article is hereby established as follows:

(1) Total disability. In case of total disability, sixty-six and two-thirds per centum of average weekly wages computed under the provisions of section fourteen shall be paid to the civil defense volunteer during continuance of such disability, up to a maximum period of disability of five years from the date of injury.

(2) Permanent partial disability. In case of disability partial in character but permanent in quality, such percentage of sixty-six and two-thirds per centum of average weekly wages computed under the provisions of section fourteen as the percentage of impairment bears to total disability, shall be paid to the civil defense volunteer during continuance of such disability, up to a maximum period of disability of five years from the date of injury.

(3) Medical care and chiropractic care. Necessary medical, chiropractic and other attendance and treatment as set forth in section thirteen shall be provided, subject to the provisions of sections thirteen-a to thirteen-j inclusive and thirteen-l; but the aggregate cost of all such attendance and treatment shall not exceed the sum of four thousand dollars in a case of total disability or of permanent partial disability or in a case of total disability with subsequent or prior permanent partial disability, nor one thousand dollars in a case of temporary partial disability without subsequent or prior total disability.

(4) Death. Compensation shall be paid in the amount, and to and for the benefit of persons, as follows:

(a) Actual funeral expenses in a reasonable sum not exceeding seven hundred and fifty dollars to a person or persons and in manner as provided in section sixteen subdivision one.

(b) If there be a surviving dependent wife or dependent husband and no surviving child of the deceased under the age of eighteen years, to such dependent wife or dependent husband forty per centum of the average wages of the deceased as defined in section sixteen subdivision five during widowhood or widowerhood; provided that the total amount payable shall in no case exceed sixty-six and two-thirds per centum of such

wages or be paid for any period which, when combined with other benefits provided under this article in the event of disability preceding death, shall extend more than five years from the date of injury.

(c) If there be a surviving dependent wife or dependent husband and also a surviving child or children of the deceased under the age of eighteen years, to such dependent wife or dependent husband thirty per centum of such average wages of the deceased during widowhood or widowerhood, and the additional amount of twenty per centum of such wages for each such child, but not after the child shall have attained the age of eighteen years; provided that the total amount payable shall in no case exceed sixty-six and two-thirds per centum of such wages or be paid for any period which, when combined with other benefits provided under this article in the event of disability preceding death, shall extend more than five years from the date of injury.

(d) If there be a surviving child or children of the deceased under the age of eighteen years, but no surviving dependent wife or dependent husband, then for the support of each such child but not after such child shall have attained the age of eighteen years, thirty per centum of such average wages of the deceased; provided that the total amount payable shall in no case exceed sixty-six and two-thirds per centum of such wages or be paid for a period which, when combined with other benefits provided under this article in the event of disability preceding death, shall extend more than five years from the date of injury.

(e) If there be no surviving dependent wife or dependent husband and no surviving child or children under the age of eighteen, no payment shall be made to the special funds established under the provisions of section fifteen and twenty-five-a of this chapter nor to any person, except only for funeral expenses as provided in subdivision four of this section.

§ 306. Compensation not allowed during first seven days. No compensation shall be allowed for the first seven days of disability, except medical benefits provided in section three hundred five subdivision three; and during a period of time and within an area in which a county or city is providing medical treatment for the injured

under section twenty-five of the state defense emergency act, medical attendance or treatment under this article shall not be allowed.

§ 307. Computation of benefits. Compensation of a civil defense volunteer under this article shall be computed on the basis of his wages during the year preceding injury, in case of disability under the provisions of section fourteen subject to the limitations of section fifteen subdivision six, and in case of death under the provisions of section sixteen subdivision five; and "wages" shall be as defined in section two subdivision nine.

Compensation of a civil defense volunteer who was self-employed at the time of injury shall be computed, whether for disability or death, on the basis of the wages of a similar worker determined under the provisions of section fourteen unless the self-employed volunteer, or a dependent in a death case, shall authorize the state commissioner of taxation and finance to furnish to the chairman a copy of the income tax return of the civil defense volunteer filed to report income of the year next preceding the date of injury, in which event compensation under this article shall be computed on the basis of an assumed wage which shall be deemed to be the entire net income from self-employment minus investment income as reported to the state department of taxation and finance.

If earnings as so computed do not fairly represent normal earnings of the civil defense volunteer, there may be a redetermination more accurately to reflect earnings and the chairman may by rule prescribe reasonable procedures for such redetermination.

If the compensation of a civil defense volunteer can not be computed either on the basis of actual wages or wages of a similar worker, the compensation of such civil defense volunteer shall be at the rate provided in section fifteen subdivision six as the minimum rate for disability or, in case of death, on the basis of assumed wages which shall be deemed not to be less than the minimum provided in section sixteen subdivision five.

§ 308. Liability for compensation. Compensation provided in this article, including cash benefits, medical and chiropractic care and funeral expenses, shall be paid by the chairman promptly out of the special fund created under this article and, except as to a disallowed claim, without decision by the board.

§ 309. Non-duplication. No compensation under the provisions of this article shall be payable to any civil defense volunteer or to the dependents of a deceased civil defense volunteer otherwise entitled to receive workers' compensation under the provisions of this chapter or of any other law, or volunteer firefighters' benefits or volunteer ambulance workers' benefits under the provisions of the volunteer firefighters' benefit law or the volunteer ambulance workers' benefit law or of any other law, or if the disabled civil defense volunteer or the dependents of a deceased civil defense volunteer are entitled to receive benefits under the disability benefits law or similar statute of any state or under any disability or retirement or insurance program of an employer who has contributed to the cost thereof or under any provision of benefits by or under laws of the federal government or a state or political subdivision thereof, except only as herein provided. Compensation payable under this article shall in such event, or any of them, be reduced to an amount which, together with such other compensation or benefits, shall not exceed in aggregate the amount of compensation to which the claimant, or his dependents, would be entitled under this article but for such other provision.

§ 310. Disposition of accrued benefits upon death. If any benefits due to a civil defense volunteer under this article are unpaid at the time of his death, such benefits shall be payable to the estate of the claimant or, at the option of the chairman, may be paid to the surviving spouse, child or children of the deceased employee. Benefits that are not paid as above provided shall lapse.

§ 311. Payments to minors. Civil defense volunteers who are minors shall be deemed to be sui juris for the purpose of receiving payment of compensation under this article. Work as a civil defense volunteer shall not be deemed an employment in violation of any of the provisions of the labor law for purposes of section fourteen-a.

§ 312. Exclusiveness of remedy. Compensation as provided in this article shall be the exclusive remedy of a civil defense volunteer or his or her spouse, dependents, executor or administrator, for injury, disease or death arising in the course of civil defense volunteer service, as against the state or any political subdivision of the state or civil defense agency or any person or other agency acting under governmental authority in furtherance of civil defense activities, with or without negligence, except only as otherwise provided by law. A member of a civil defense agency of the federal government or of another state or of the Dominion of Canada or a province thereof, who may perform services within this state, whether pursuant to a mutual aid compact or otherwise, shall not be entitled to compensation under the provisions of this article.

§ 313. Compensation inalienable. Compensation payable under this article shall not be assigned or released and shall be exempt from all claims of creditors and from levy, execution and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived.

§ 314. Claim filing. The right to compensation including medical care and funeral expenses under the provisions of this article shall be barred unless written claim is filed with the chairman within ninety days after injury or, if death results therefrom, within ninety days after death; except that if death shall occur more than one year after the injury, the right shall be barred unless prior written claim based on the injury has been timely filed. If disability or death is caused by

a disease that is included among the diseases enumerated in section forty, then the claim may be filed within the time and in the manner provided in section forty.

Failure to file written claim as required may be excused by the chairman on the ground that, for good and sufficient reason, claim could not be filed on time.

§ 315. Claims procedures. Claims shall be subject to the administrative procedures prescribed for claims filed with the chairman for disability benefits payable under section two hundred seven.

The chairman may require a claimant under this article to file the same proofs required under other articles of this chapter or other proofs for determination of rights under this article, and may require the employer or any former employer of the claimant and the local director to file reports and to furnish such information as may be reasonably necessary for such determination. If any such report or information is not filed or furnished, the chairman may make determination on the basis of available information, including the claimant's statement.

§ 316. Record of enrollment. Each local director of civil defense shall maintain a record of enrollment of civil defense volunteers who are personnel of the volunteer agencies sponsored by his local office. Each record shall contain the name and address of the volunteer, the name of his employer, date of enrollment and authorized classification or assignment to duty, including the times of his assigned duty, as well as changes in or termination of enrollment. Such record shall be maintained in duplicate and the duplicate records shall be filed in separate places for greater security in the event of attack.

Records of enrollment shall be open for inspection during usual business hours by the chairman or by an officer or employee of the board designated by the chairman. The local director shall furnish to the

chairman on request such information in the record of enrollment as is required for administration of this article.

In the event of attack, actual or imminent, for which volunteers in any part of the area under the jurisdiction of a local director are mobilized, the local director shall forthwith deliver to the chairman one of such duplicate records of enrollment.

If the civil defense volunteers enrolled by a local office shall, in accordance with a mutual aid agreement approved by the New York state civil defense commission, respond to a request for assistance from any place, either within or without the state, which has suffered attack, and shall perform therein authorized civil defense duties, the local director shall forthwith deliver to the chairman one of such duplicate records of enrollment.

The information contained in such record of enrollment delivered to the chairman shall be prima facie evidence of information on which the chairman may rely in paying claims of civil defense volunteers or their dependents under this article; and if such record is not delivered to the chairman as required by this section, the burden of proving his right to compensation under this article in the case of civil defense volunteers of the local office shall rest on the claimant.

§ 317. Determination of contested claims for compensation. A civil defense volunteer may file with the board a notice that his claim for compensation under this article has not been paid, and the board shall have full power and authority to determine all issues in relation to every such claim and shall file its decision in the office of the chairman. The decision of the board shall be final as to all questions of fact and, except as provided in section twenty-three, as to all questions of law.

§ 318. Rules of evidence; modification of board decisions or orders; appeals. The provisions of section two hundred twenty-two of this

chapter are made applicable to claims for compensation under this article.

§ 319. Special fund for civil defense volunteers. There is hereby created a fund which shall be known as the special fund for civil defense volunteers to provide for payment of cash benefits and medical care and funeral expenses under this article and expenses of administration under section three hundred twenty-five of this article. Such fund shall consist of any moneys appropriated therefor or credited thereto.

§ 320. Commissioner of taxation and finance custodian of fund. The commissioner of taxation and finance shall be the custodian of the special fund for workmen's compensation for civil defense volunteers and all disbursements for compensation therefrom shall be paid by him upon drafts signed by the chairman or those authorized by the chairman for that purpose. The commissioner of taxation and finance shall give a separate and additional bond in an amount to be fixed by and with sureties approved by the state comptroller conditioned for the faithful performance of his duty as custodian of the fund. The commissioner of taxation and finance may deposit any portion of the fund not needed for immediate use, in the manner and subject to all the provisions of law respecting the deposit of state funds by him. Interest earned by such portion of the fund deposited by the commissioner of taxation and finance shall be collected by him and placed to the credit of the fund.

§ 321. Reinsurance. Funds credited to the special fund for the purposes of this article may be used to effect insurance or reinsurance with the war damage corporation or with any other authority or instrumentality, public or private, or otherwise to distribute the liability for compensation payable to civil defense volunteers.

§ 322. Rehabilitation. Fees for rehabilitation services to disabled

civil defense volunteers shall be paid out of the special fund in an amount approved by the chairman, and shall be the reasonable and necessary cost of such services, including services of a physician or rehabilitation facility specially qualified to render rehabilitation services. Expenses of rehabilitation may include travel, board and room, when necessary.

§ 323. Limitation of liability. The special fund for civil defense volunteers created by this article shall be the sole and exclusive source for payment of compensation provided by this article for civil defense volunteers.

§ 324. Distribution of unexpended assets of the special fund. Within five years after the period of emergency as defined in the state defense emergency act shall have expired, the chairman shall determine the amount of outstanding liabilities of the special fund and shall establish reasonable reserves to pay to claimants cash benefits, medical care and funeral expenses, and to meet the cost of administering unpaid claims and the expenses of liquidating the fund in a sum allocated for that purpose by the director of the budget, and the same shall become a charge against the fund. Any balance in the fund after establishment of such reserves shall be forthwith paid to the comptroller for the general fund.

§ 325. Administration expenses. The entire expense of administering this article shall be paid out of the special fund and charged thereto.

At least thirty days prior to the first days of April and October in each year, the chairman shall submit to the director of the budget for his approval an estimated budget of expenditures for the succeeding six months. In the event of attack within the state for which civil defense volunteers are mobilized or outside the state if, in accordance with a mutual aid agreement approved by the New York state civil defense commission, civil defense volunteers of any local office respond to a

request for assistance, the chairman shall prepare and submit to the director of the budget for his approval an estimated budget of expenditures for funds to be allocated to the board during the period of emergency. There may not be expended for purposes of such administration more than the amounts specified in such budget for each item of expenditure, except as authorized by the director of the budget. The funds so allocated by the director of the budget shall be available to the workmen's compensation board for services and expenses, including travel outside the state, to carry out the provisions of this article and shall be paid from the treasury on audit and warrant of the comptroller on vouchers approved by the chairman, vice chairman or secretary of the board. If there be officers or employees of the board whose duties relate partly to the general work of the board and partly to such administration, and in case there is other expense which is incurred jointly on behalf of the general work of the board and to such administration, an equitable apportionment of the expense shall be made and the part thereof which is applicable to administration as provided in this article shall be chargeable thereto.

§ 326. Penalties. 1. If for the purpose of obtaining any benefit or payment under the provisions of this article or for the purpose of influencing any determination regarding any benefit payment, either for himself or another, any person shall wilfully make a false statement or representation or fail to disclose a material fact, he shall be guilty of a misdemeanor.

2. In addition to other penalties provided in this chapter, any person who for the purpose of obtaining any benefit or payment under this article, or for the purpose of influencing any determination regarding any benefit payment, knowingly makes a false statement with regard to a material fact, shall not be entitled to receive any benefits, cash or medical, for the disability claimed.

§ 327. Application of other provisions of chapter. All the powers and duties conferred or imposed upon the chairman and board by this chapter

that are necessary for the administration of this article and not inconsistent therewith are, to that extent, hereby made applicable to this article. The several rights, privileges and obligations set forth in other articles of this chapter, and not inconsistent with the rights, privileges and obligations provided herein, are deemed incorporated in this article and are made a part hereof.

§ 328. Separability of provisions. If any provisions of this act or the application thereof to any person or circumstances is held invalid, the remainder of this act and the application of such provision to other persons or circumstances shall not be affected thereby.

ARTICLE 10-A

PREFERRED PROVIDER ORGANIZATIONS

Section 350. Short title.

351. Preferred provider organizations; contracts.

352. Preferred provider organizations; defined.

353. Preferred provider organizations; licensing.

354. Preferred provider organizations; medical treatment.

355. Preferred provider organizations; medical fee schedules.

§ 350. Short title. This article may be known and shall be cited as the "preferred provider organization act".

§ 351. Preferred provider organizations; contracts. The state insurance fund, any stock corporation, mutual corporation or reciprocal insurer authorized to transact the business of workers' compensation insurance in this state or self-insurer may contract with a preferred provider organization to deliver all medical services mandated by this chapter, provided such contract takes effect on or after January first, nineteen hundred ninety-seven and the insurer or the employer has no financial interest in the preferred provider organization. Where there is a duty to collectively bargain, an employer shall collectively

bargain the use and implementation of a preferred provider organization with the authorized collective bargaining agent of its employees.

§ 352. Preferred provider organizations; defined. As used in this article, the term "preferred provider organization" or "P.P.O." shall mean a plan licensed pursuant to section three hundred fifty-three of this article owned, operated or administered by an entity that provides for the delivery of all services required by this chapter to all persons covered by such plan.

§ 353. Preferred provider organizations; licensing. To be licensed as a preferred provider organization any entity, except any organization which provides limited health care services, shall make an application to the commissioner of health and shall submit therewith an application fee of five hundred dollars. Such application shall be accompanied by the information prescribed in regulation. Such information shall include but not be limited to the following:

1. the standards by which the providers participating in the preferred provider organization shall be selected;

2. the names and credentials of all individuals and organizations that will provide service under the preferred provider organization, together with appropriate evidence of compliance with all licensing or certification requirements for such individuals or organizations to practice in this state;

3. a description of any final disposition of professional misconduct charges against any of the individuals or organizations which will provide medical or other health care services under the preferred provider organization program;

4. the names and professional qualifications of providers licensed by the board in each medical specialty;

5. the names and certifications of hospitals from which employees may choose in the event that hospitalization is necessary;

6. a description of the times, places and manner of providing services under the preferred providers organization;

7. a detailed description of procedures to be followed by the preferred providers organization for ongoing quality assurance, utilization review and dispute resolution.

Each preferred provider organization formed pursuant to this article shall comply with the provisions of sections forty-four hundred eight, forty-four hundred eight-a, forty-four hundred six-c, forty-four hundred six-d, subdivisions five and six of section forty-four hundred three and article forty-nine of the public health law. The commissioner of health, in consultation with the chair of the workers' compensation board may waive or modify the application of these provisions to such organizations where appropriate.

§ 354. Preferred provider organizations; medical treatment. 1. Each preferred provider organization shall provide at least two providers in every medical specialty from which the employee may choose and at least two hospitals from which the employee may choose in the event that hospitalization is necessary. The commissioner of health may waive such numerical requirements upon a finding that the geographical area in which the preferred provider organization is located cannot meet the requirements.

2. An employee may seek medical treatment from outside the preferred provider organization thirty days after his or her first visit to a preferred provider organization provider. In the event that such employee seeks medical treatment outside the preferred provider organization the employer may require a second opinion from a provider within the preferred provider organization.

3. An employee may seek a second opinion with respect to such medical

treatment from another provider within the preferred provider organization at any time.

§ 355. Preferred provider organizations; medical fee schedules. The medical fee schedules authorized pursuant to section thirteen of this chapter shall not apply to any medical services provided by a preferred provider organization pursuant to the provisions of this article.

ARTICLE 11

LAWS REPEALED; WHEN TO TAKE EFFECT

Section 400. Laws repealed.

401. When to take effect.

§ 400. Laws repealed. Article fourteen-a and sections two hundred and fifteen to two hundred and nineteen-g, both inclusive, of chapter thirty-six of the laws of nineteen hundred and nine, as added by chapter six hundred and seventy-four of the laws of nineteen hundred and ten, are hereby repealed.

§ 401. When to take effect. This chapter as amended shall take effect July first, nineteen hundred and twenty-two.