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CHAPTER 9.

COMPENSATION AND PAYMENT THEREOF

**SECTION 42‑9‑5.** Basis for award.

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

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

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

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

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

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

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

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

**SECTION 42‑9‑20.** Amount of compensation for partial disability.

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

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

**SECTION 42‑9‑30.** Schedule of period of disability and compensation.

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

(1) for the loss of a thumb sixty‑six and two‑thirds percent of the average weekly wages during sixty‑five weeks;

(2) for the loss of a first finger, commonly called the index finger, sixty‑six and two‑thirds percent of the average weekly wages during forty weeks;

(3) for the loss of a second finger, sixty‑six and two‑thirds percent of the average weekly wages during thirty‑five weeks;

(4) for the loss of a third finger, sixty‑six and two‑thirds percent of the average weekly wages during twenty‑five weeks;

(5) for the loss of a fourth finger, commonly called the little finger, sixty‑six and two‑thirds percent of the average weekly wages during twenty weeks;

(6) the loss of the first phalange of the thumb or any finger is considered to be equal to the loss of one half of such thumb or finger and the compensation must be for one half of the periods of time above specified;

(7) the loss of more than one phalange is considered the loss of the entire finger or thumb; provided, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand;

(8) for the loss of a great toe, sixty‑six and two‑thirds percent of the average weekly wages during thirty‑five weeks;

(9) for the loss of one of the toes other than a great toe, sixty‑six and two‑thirds percent of the average weekly wages during ten weeks;

(10) the loss of the first phalange of any toe is considered to be equal to the loss of one half of such toe and the compensation must be for one half the periods of time above specified;

(11) the loss of more than one phalange is considered as the loss of the entire toe;

(12) for the loss of a hand, sixty‑six and two‑thirds percent of the average weekly wages during one hundred and eighty‑five weeks;

(13) for the loss of an arm, sixty‑six and two‑thirds percent of the average weekly wages during two hundred twenty weeks;

(14) for the loss of a shoulder, sixty‑six and two‑thirds percent of the average weekly wages during three hundred weeks;

(15) for the loss of a foot, sixty‑six and two‑thirds percent of the average weekly wages during one hundred forty weeks;

(16) for the loss of a leg, sixty‑six and two‑thirds percent of the average weekly wages during one hundred ninety‑five weeks;

(17) for the loss of a hip, sixty‑six and two‑thirds percent of the average weekly wages during two hundred eighty weeks;

(18) for the loss of an eye, sixty‑six and two‑thirds percent of the average weekly wages during one hundred forty weeks;

(19) for the complete loss of hearing in one ear, sixty‑six and two‑thirds percent of the average weekly wages during eighty weeks; and for the complete loss of hearing in both ears, sixty‑six and two‑thirds percent of the average weekly wages during one hundred sixty‑five weeks, and the commission, by regulation, shall provide for the determination of proportional benefits for total or partial loss of hearing based on accepted national medical standards;

(20) total loss of use of a member or loss of vision of an eye is considered as equivalent to the loss of the member or eye. The compensation for partial loss of or for partial loss of use of a member or for partial loss of vision of an eye is the proportion of the payments provided in this section for total loss as such partial loss bears to total loss;

(21) for the loss of use of the back in cases where the loss of use is forty‑nine percent or less, sixty‑six and two‑thirds percent of the average weekly wages during three hundred weeks. In cases where there is fifty percent or more loss of use of the back, sixty‑six and two‑thirds percent the average weekly wages during five hundred weeks. The compensation for partial loss of use of the back shall be such proportions of the periods of payment herein provided for total loss as such partial loss bears to total loss, except that in cases where there is fifty percent or more loss of use of the back the injured employee shall be presumed to have suffered total and permanent disability and compensated under Section 42‑9‑10(B). The presumption set forth in this item is rebuttable;

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

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

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

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

**SECTION 42‑9‑35.** Evidence of preexisting injury or condition.

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

(1) the subsequent injury aggravated the preexisting condition or permanent physical impairment; or

(2) the preexisting condition or the permanent physical impairment aggravates the subsequent injury.

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

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

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

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

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

**SECTION 42‑9‑40.** Compensation for hernia.

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

(1) That there was an injury resulting in hernia or rupture;

(2) That the hernia or rupture appeared suddenly;

(3) That it was accompanied by pain;

(4) That the hernia or rupture immediately followed an accident; and

(5) That the hernia or rupture did not exist prior to the accident for which compensation is claimed.

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

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

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

**SECTION 42‑9‑50.** Repealed by 1988 Act No. 677, Section 5, eff June 27, 1988.

**SECTION 42‑9‑60.** Injury or death occasioned by intoxication or willful intention of employee; burden of proof.

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

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

**SECTION 42‑9‑70.** Repealed by 1988 Act No. 677, Section 5, eff June 27, 1988.

**SECTION 42‑9‑80.** Repealed by 2007, Act No. 111, Pt I, Section 32, eff July 1, 2007.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SECTION 42‑9‑200.** Dates on which compensation shall commence.

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

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

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

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

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

**SECTION 42‑9‑220.** Manner in which compensation shall be paid.

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

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

**SECTION 42‑9‑230.** Date on which compensation payable under agreement shall become due.

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

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

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

**SECTION 42‑9‑240.** Date on which compensation payable under award shall become due.

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

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

**SECTION 42‑9‑250.** Payment of compensation monthly or quarterly instead of weekly.

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

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

**SECTION 42‑9‑260.** Notice to Commission when payments have begun; suspension or termination of payments.

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

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

(1) the employee has returned to work; however, if the employee does not remain at work for a minimum of fifteen days, temporary disability payments must be resumed immediately; or

(2) the employee agrees that he is able to return to work and executes the proper commission form indicating that he is able to return to work; or

(3) a good faith investigation by the employer reveals grounds for denial of the claim; or

(4) the employee has been released by the treating physician to work without restriction and the employer offers comparable employment; or

(5) the employee has been released by the treating physician to limited duty work and the employer provides limited duty work consistent with the terms upon which the employee has been released; or

(6) the employee refuses medical treatment, as provided in Section 42‑15‑60, or refuses an examination or evaluation, as provided in Section 42‑15‑80, and the termination or suspension of benefits continues until the refusal ceases or the commission determines the refusal is justified pursuant to either Section 42‑15‑60 or 42‑15‑80.

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

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

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

(F) After the one‑hundred‑fifty‑day period has expired, the commission shall provide by regulation the method and procedure by which benefits may be suspended or terminated for any cause, but the regulation must provide for an evidentiary hearing and commission approval prior to termination or suspension unless such prior hearing is expressly waived in writing by the recipient or the circumstances identified in Section 42‑9‑260(B)(1) or (B)(2) are present. Further, the commission may not entertain any application to terminate or suspend benefits unless and until the employer or carrier is current with all payments due.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SECTION 42‑9‑301.** Lump‑sum payments.

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

HISTORY: 1983 Act No. 92 Section 5.

**SECTION 42‑9‑310.** Trustees may administer lump‑sum settlements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SECTION 42‑9‑370.** Preferences or priorities of rights of compensation.

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

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

**SECTION 42‑9‑380.** Repealed by 1993 Act No. 181, Section 1617(A), eff July 1, 1993.

**SECTION 42‑9‑390.** Voluntary settlements.

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

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

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

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

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

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

(b) If the subsequent injury of such an employee shall result in the death of the employee, and it shall be determined that the death would not have occurred except for such preexisting permanent physical impairment, the employer or his insurance carrier shall in the first instance pay the compensation prescribed by this title; but he or his insurance carrier shall be reimbursed from the Second Injury Fund created by Section 42‑7‑310, for all compensation payable in excess of seventy‑eight weeks.

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

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

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

(1) Epilepsy;

(2) Diabetes;

(3) Cardiac disease;

(4) Amputated foot, leg, arm, or hand;

(5) Loss of sight of one or both eyes or partial loss of uncorrected vision of more than seventy‑five percent bilateral;

(6) Residual disability from Poliomyelitis;

(7) Cerebral Palsy;

(8) Multiple Sclerosis;

(9) Parkinson's disease;

(10) Cerebral vascular accident;

(11) Tuberculosis;

(12) Silicosis;

(13) Psychoneurotic disability following treatment in a recognized medical or mental institution;

(14) Hemophilia;

(15) Chronic Ostemyelitis;

(16) Ankylosis of joints;

(17) Hyperinsulinism;

(18) Muscular Dystrophy;

(19) Arteriosclerosis;

(20) Thrombophlebitis;

(21) Varicose veins;

(22) Heavy metal poisoning;

(23) Ionizing radiation injury;

(24) Compressed air sequelae;

(25) Ruptured intervertebral disc;

(26) Hodgkins disease;

(27) Brain damage;

(28) Deafness;

(29) Cancer;

(30) Sickle‑Cell Anemia;

(31) Pulmonary disease;

(32) Intellectual disability provided the employee's intelligence quotient is such that he falls within the lowest percentile of the general population. However, it shall not be necessary for the employer to know the employee's actual intelligence quotient or actual relative ranking in relation to the intelligence quotient of the general population.

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

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

(1) date of accident;

(2) employee's name;

(3) employer's name and address;

(4) insurance carrier's name, address, and the National Council on Compensation Insurance code; and

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

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

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

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

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

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

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

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

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

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

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

(a) When an employee shall become totally and permanently disabled under Section 42‑9‑10, because of the loss of a hand, arm, foot, leg or the vision of an eye in a subsequent injury under Section 42‑9‑150 or 42‑9‑170, he may receive from the employer compensation and medical care provided by this Title for total and permanent disability, and the employer shall be reimbursed a portion of the cost thereof from the Second Injury Fund as herein provided.

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

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

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

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

**SECTION 42‑9‑430.** Workers' compensation benefits.

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

HISTORY: 1984 Act No. 276.

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

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

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