CHAPTER 5

Insurance and Self‑Insurance

**SECTION 42‑5‑10.** Employer shall secure payment of compensation; extent of liability.

 Every employer who accepts the compensation provisions of this title shall secure the payment of compensation to his employees in the manner provided in this chapter. While such security remains in force he or those conducting his business shall only be liable to any employee who elects to come under this title for personal injury or death by accident to the extent and in the manner specified in this title.

HISTORY: 1962 Code Section 72‑401; 1952 Code Section 72‑401; 1942 Code Section 7035‑10; 1936 (39) 1231.

**SECTION 42‑5‑20.** Insurance or proof of financial ability to pay required; self‑insurer prohibited.

 (A)(1) Every employer who accepts the provisions of this title relative to the payment of compensation shall insure and keep insured his liability thereunder in any authorized corporation, association, organization, or mutual insurance association formed by a group of employers so authorized or shall furnish to the commission satisfactory proof of his financial ability to pay directly the compensation in the amount and manner and when due as provided for in this title. The commission may, under such rules and regulations as it may prescribe, permit two or more employers in businesses of a similar nature to enter into agreements to pool their liabilities under the Workers' Compensation Law for the purpose of qualifying as self‑insurers. In the case of self‑insurers the commission shall require the deposit of an acceptable security, indemnity, or bond to secure the payment of the compensation liabilities as they are incurred. The Workers' Compensation Commission shall have exclusive jurisdiction of group self‑insurers under this section, and such group self‑insurers shall not be deemed to be insurance companies and shall not be regulated by the Department of Insurance. Provided, further, that if any provision is made for the recognition of reinsurance of the self‑insured fund, such provision shall expressly provide that the reinsurance agreement or treaty must recognize the right of the claimant to recover directly from the reinsurer and that such agreement shall provide for privity between the reinsurer and the workers' compensation claimant.

 (2) In lieu of submitting audited financial statements when an employer makes an application to self‑insure with the commission, the commission shall accept the sworn statement or affidavit of an independent auditor verifying the financial condition of the employer according to the required financial ratios and guidelines established by regulation of the commission. The independent auditor must be a certified public accountant using generally acceptable accounting principles in the preparation of the financial statements of the employer.

 (B) A corporation, association, organization, or mutual insurance association formed pursuant to Section 42‑5‑50 may not be considered a licensed insurer pursuant to Chapter 31, Title 38 and may not participate in or receive benefits or protection from the South Carolina Property and Casualty Insurance Guaranty Association.

 (C) An assumption, transfer, merger, or other acquisition of a block of business by a licensed insurer from a self‑insurer may not be approved until the commission has obtained an opinion from a qualified actuary as to the adequacy of assets and other funding to adjudicate and pay any known claims as of the effective date of the assumption, transfer, merger, or other acquisition of the self‑insured block.

HISTORY: 1962 Code Section 72‑402; 1952 Code Section 72‑402; 1942 Code Section 7035‑70; 1936 (39) 1231; 1974 (58) 2214; 1994 Act No. 459, Section 2, eff June 16, 1994; 2019 Act No. 5 (S.358), Section 2, eff July 1, 2019.

Effect of Amendment

2019 Act No. 5, Section 2, inserted the paragraph identifiers, and added (B) and (C), prohibiting a self‑insurer from participating in or obtaining benefits from the South Carolina Property and Casualty Insurance Guaranty Association and requiring the South Carolina Workers' Compensation Commission to secure an actuarial opinion before approving the transfer of a self‑insurer to a licensed insurer.

**SECTION 42‑5‑25.** Temporary workers' compensation coverage for applicant to approved self‑insurance fund.

 (A) An approved self‑insurance fund may provide temporary coverage for an applicant if he:

 (1) submits to the self‑insurance division the required completed and signed forms, including, but not limited to, an application form with the same fee required for permanent membership in a self‑insurance fund;

 (2) qualifies for membership in the fund;

 (3) qualifies under the by‑laws of the fund;

 (4) operates a business similar in nature to the businesses in the fund;

 (5) is financially sound and meets or exceeds the minimum net worth requirements established for permanent membership in a self‑insurance fund;

 (6) notifies the division in writing on or before the coverage date.

 (B) Upon receipt and review of the documents described in subsection (A), the division shall notify the fund within two business days whether temporary membership is granted. If the division does not notify the fund of its decision within two business days, temporary membership is deemed granted.

 (C) Temporary coverage expires when the full commission approves the applicant or thirty days after the full commission rejects the applicant. The effective date on the certificate for self‑insurance must show the original, temporary, coverage date.

HISTORY: 1992 Act No. 460, Section 1, eff June 15, 1992.

**SECTION 42‑5‑30.** Employer shall file evidence of compliance with Title.

 Every employer accepting the compensation provisions of this title shall file with the commission, in form prescribed by it, annually or as often as may be necessary evidence of his compliance with the provisions of Section 42‑5‑20 and all others relating thereto. In the event an employer shall insure his liability under this title with an insurance carrier, the insurance carrier shall be required to make the necessary filings.

HISTORY: 1962 Code Section 72‑403; 1952 Code Section 72‑403; 1942 Code Section 7035‑71; 1936 (39) 1231; 1980 Act No. 318, Section 6.

**SECTION 42‑5‑40.** Penalty for failure to secure payment of compensation.

 Any employer required to secure the payment of compensation under this title who refuses or neglects to secure such compensation shall be punished by a fine of one dollar for each employee at the time of the insurance becoming due, but not less than ten dollars nor more than one hundred dollars for each day of such refusal or neglect, and until the same ceases, and he shall be liable during continuance of such refusal or neglect to an employee either for compensation under this title or at law in an action instituted by the employee or his personal representative against such employer to recover damages for personal injury or death by accident and in any such action such employer shall not be permitted to defend upon any of the grounds mentioned in Section 42‑1‑510.

 The fine provided in this section may be assessed by the commission in an open hearing with the right of review and appeal as in other cases. All fines collected pursuant to this section must be submitted to the general fund.

HISTORY: 1962 Code Section 72‑404; 1952 Code Section 72‑404; 1942 Code Section 7035‑71; 1936 (39) 1231; 2007 Act No. 111, Pt I, Section 15, eff July 1, 2007, applicable to injuries that occur on or after that date.

**SECTION 42‑5‑45.** Penalty for failure of employer to secure payment of compensation.

 Any employer required to secure payment of compensation under this title who wilfully refuses to secure such compensation shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars or by imprisonment for not less than thirty days nor more than six months, or both, in the discretion of the court.

HISTORY: 1980 Act No. 318, Section 2.

**SECTION 42‑5‑50.** Certificate of compliance.

 Whenever an employer has complied with the provisions of Section 42‑5‑20 relating to self‑insurance, the commission shall issue to such employer a certificate, which shall remain in force for a period fixed by the commission. But the commission may, upon at least sixty days' notice and a hearing to the employer, revoke the certificate upon satisfactory evidence for such revocation having been presented. At any time after such revocation the commission may grant a new certificate to the employer upon his petition.

HISTORY: 1962 Code Section 72‑405; 1952 Code Section 72‑405; 1942 Code Section 7035‑72; 1936 (39) 1231.

**SECTION 42‑5‑60.** Insurance deemed subject to title; approval of forms.

 Every policy for the insurance of the compensation provided in this title or against liability therefor shall be deemed to be made subject to provisions of this title. No corporation, association or organization shall enter into any such policy of insurance unless its form shall have been approved by the Director of the Department of Insurance.

HISTORY: 1962 Code Section 72‑406; 1952 Code Section 72‑406; 1942 Code Section 7035‑75; 1936 (39) 1231; 1960 (51) 1646.

**SECTION 42‑5‑70.** Clauses required in insurance contracts.

 All policies insuring the payment of compensation under this title must contain a clause to the effect that, as between the employer and the insurer, the notice to or acknowledgment of the occurrence of the injury on the part of the insured employer shall be deemed notice or knowledge, as the case may be, on the part of the insurer, that jurisdiction of the insured for the purpose of this title shall be jurisdiction of the insurer, that the insurer shall in all things be bound by and subject to the awards, judgments or decrees rendered against such insured employer and that insolvency or bankruptcy of the employer or discharge therein shall not relieve the insurer from the payment of compensation for disability or death sustained by an employee during the life of such policy or contract.

HISTORY: 1962 Code Section 72‑407; 1952 Code Section 72‑407; 1942 Code Section 7035‑73; 1936 (39) 1231.

**SECTION 42‑5‑80.** Liability of insurer.

 (A) No policy of insurance against liability arising under this title may be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled thereto all benefits conferred by this title, and all installments of the compensation that may be awarded or agreed upon, and that the obligation shall not be affected by any default of the insured or by any default in giving notice required by such policy or otherwise.

 (B) Such agreement must be construed to be a direct promise by the insurer to the person entitled to compensation enforceable in his name.

 (C) Any insurer who issues a policy of compensation insurance to an employer not subject to this title may not plead as a defense that the employer is not subject to this title and is estopped to deny coverage.

HISTORY: 1962 Code Section 72‑408; 1952 Code Section 72‑408; 1942 Code Section 7035‑74; 1936 (39) 1231; 1988 Act No. 411, Section 2, eff March 28, 1988.

**SECTION 42‑5‑130.** Procedure upon withdrawal of carrier from State.

 Upon the withdrawal of any insurance carrier that has any outstanding liability under this title from doing business in this State the Director of the Department of Insurance shall immediately notify the commission and thereupon the commission shall issue an award against such insurance carrier and commute the installments due any injured employee and immediately have such award docketed in the court of common pleas of the county in which the claimant resides and the commission shall then cause suit to be brought on such judgment in the state of the residence of any such insurance carrier and the proceeds from such judgment, after deducting costs, if any, of the proceeding, shall be turned over to the injured employee, taking from such employee a proper receipt in satisfaction of his claim.

HISTORY: 1962 Code Section 72‑413; 1952 Code Section 72‑413; 1942 Code Section 7035‑76; 1936 (39) 1231; 1937 (40) 613; 1960 (51) 1646.

**SECTION 42‑5‑190.** Tax on self-insurers.

Every employer carrying his own risk under the provisions of Section 42-5-20 shall report under oath to the commission the employer's actual cost incurred under the provisions of this title. The report must be made in the form prescribed by the commission by the fifteenth day of the third month following the close of the self-insurer's fiscal year. The commission shall assess against the actual cost incurred a maintenance tax computed by taking two and one-half percent of the actual cost of operating under the provisions of this title as determined by the commission. The assessments must be paid to the commission which shall retain in every fiscal year the greater of fifty percent or two million two hundred thousand dollars of the maintenance tax revenues and use these funds to pay the salaries and expenses of the commission. The balance of the maintenance tax revenues must be remitted to the State Treasurer for the credit of the general fund of the State. In the event of failure to pay the tax within fifteen days of the date set forth in this section, the commission may assess against the self-insurer a penalty of five percent of the unpaid tax. If the self-insurer fails to pay the tax and penalty within fifteen days of notice by the commission, interest must be added to the amount of the deficiency at the rate of five percent for each month or fraction of a month from the date the tax was due originally until the date the deficiency is paid and the commission may initiate proceedings to withdraw the privilege of self-insuring in this State. The total maximum interest to be charged may not exceed twenty-five percent. The penalty under this section is payable to the commission. Fifty percent of the interest must be retained by the commission and used by it as retained maintenance tax revenues are used and the balance of the interest must be remitted to the State Treasurer for the credit of the general fund of the State.

HISTORY: 1962 Code Section 72-419; 1952 Code Section 72-419; 1942 Code Section 7035-76; 1936 (39) 1231; 1937 (40) 613; 1953 (48) 112; 1960 (51) 1646; 1977 Act No. 16; 1989 Act No. 100, Section 2, eff May 22, 1989; 1989 Act No. 153, Section 1, eff June 8, 1989; 2013 Act No. 95, Section 1, eff July 1, 2013.

**SECTION 42‑5‑200.** Employee shall not pay any portion of insurance, self‑insurance fund, or other things required by title.

 No agreement by an employee to pay any portion of any premium paid by his employer to a carrier or to contribute to a benefit fund or department maintained by such employer for the purpose of providing compensation or medical services and supplies as required by this title shall be valid, and any employer who makes a deduction for such purpose from the pay of any employee entitled to the benefits of this title shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars.

HISTORY: 1962 Code Section 72‑421; 1952 Code Section 72‑421; 1942 Code Section 7035‑24; 1936 (39) 1231.

**SECTION 42‑5‑210.** Insurance carrier subrogated to rights of employer.

 When any employer is insured against liability for compensation with any insurance carrier and such insurance carrier shall have paid any compensation for which the employer is liable or shall have assumed the liability of the employer therefor, it shall be subrogated to all the rights and duties of the employer and may enforce any such rights in its own name or in the name of the injured employee or his personal representative; provided, however, that nothing in this section shall be construed as conferring upon insurance carriers any other or further rights than those existing in the employer at the time of the injury to his employee, anything in the policy of insurance to the contrary notwithstanding.

HISTORY: 1962 Code Section 72‑422; 1952 Code Section 72‑422; 1942 Code Section 7035‑11; 1936 (39) 1231.

**SECTION 42‑5‑220.** Compromises by carrier must be approved.

 No compromise settlement shall be made by the insurance carrier in the exercise of its right of subrogation without the approval of the commission being first had and obtained.

HISTORY: 1962 Code Section 72‑423; 1952 Code Section 72‑423; 1942 Code Section 7035‑11; 1936 (39) 1231.

**SECTION 42‑5‑230.** Manner in which notice to insurance carrier given.

 Whenever by this chapter or the terms of any policy contract any officer is required to give any notice to an insurance carrier, such notice may be given by delivery or by mailing, by registered letter properly addressed and stamped, to the principal office or general agent of such insurance carrier within this State or to its home office or to the secretary, general agent or chief officer thereof in the United States or the Director of the Department of Insurance.

HISTORY: 1962 Code Section 72‑424; 1952 Code Section 72‑424; 1942 Code Section 7035‑76; 1936 (39) 1231; 1937 (40) 613; 1960 (51) 1646.

**SECTION 42‑5‑240.** Penalties.

 Any person who shall act or assume to act as agent for any such insurance carrier whose authority to do business in this State has been suspended, while such suspension remains in force, or shall neglect or refuse to comply with any of the provisions of Sections 42‑5‑110, 42‑5‑120, 42‑5‑140 and 42‑5‑150 obligatory upon such person or who shall wilfully make a false or fraudulent statement of the business or conditions of any such insurance carrier or a false or fraudulent return shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars or by imprisonment for not less than ten nor more than ninety days, or both such fine and imprisonment in the discretion of the court.

HISTORY: 1962 Code Section 72‑425; 1952 Code Section 72‑425; 1942 Code Section 7035‑76; 1936 (39) 1231; 1937 (40) 613.

**SECTION 42‑5‑250.** Title not applicable to insurance for single catastrophe hazards.

 This title shall not apply to policies of insurance against loss from explosion of boilers or flywheels or other similar single catastrophe hazards. But nothing contained in this section shall be construed to relieve the employer from liability for injury or death of an employee as a result of such explosion or catastrophe.

HISTORY: 1962 Code Section 72‑426; 1952 Code Section 72‑426; 1942 Code Section 7035‑75; 1936 (39) 1231.