CHAPTER 1

General Provisions

Article 1

Short title; Definitions

**SECTION 42-1-10. Short title.**

 This title shall be known and cited as "The South Carolina Workers' Compensation Law". All references in this title to "workmen's compensation" shall mean "workers' compensation"; provided, however, all state agencies and departments and all political subdivisions of the State must exhaust the use of all current forms, stationery, and any other printed material before using, printing, or preparing any new forms, stationery, or printed material reflecting the change effected by this section.

HISTORY: 1962 Code § 72-1; 1952 Code § 72-1; 1942 Code § 7035-1; 1936 (39) 1231; 1982 Act No. 303.

**SECTION 42-1-20. Application of definitions.**

 When used in this title, unless the context otherwise requires, the terms dealt with in Sections 42-1-30 to 42-1-190 shall include the categories or shall have the meanings severally ascribed to them in said sections.

HISTORY: 1962 Code § 72-2; 1952 Code § 72-2; 1942 Code § 7035-2; 1936 (39) 1231.

**SECTION 42-1-30. "Adoption" and "adopted" defined.**

 The term "adoption" or "adopted" means legal adoption prior to the time of the injury.

HISTORY: 1962 Code § 72-3; 1952 Code § 72-3; 1942 Code § 7035-2; 1936 (39) 1231.

**SECTION 42-1-40. "Average weekly wages" defined.**

 "Average weekly wages" means the earnings of the injured employee in the employment in which he was working at the time of the injury during the period of fifty-two weeks immediately preceding the date of the injury, including the subsistence allowance paid to veteran trainees by the United States Government if the amount of the allowance is reported monthly by the trainee to his employer. "Average weekly wage" must be calculated by taking the total wages paid for the last four quarters immediately preceding the quarter in which the injury occurred as reported on the Department of Employment and Workforce's Employer Contribution Reports divided by fifty-two or by the actual number of weeks for which wages were paid, whichever is less. When the employment, prior to the injury, extended over a period of less than fifty-two weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed, as long as results fair and just to both parties will be obtained. Where, by reason of a shortness of time during which the employee has been in the employment of his employer or the casual nature or terms of his employment, it is impracticable to compute the average weekly wages as defined in this section, regard is to be had to the average weekly amount which during the fifty-two weeks previous to the injury was being earned by a person of the same grade and character employed in the same class of employment in the same locality or community.

 When for exceptional reasons the foregoing would be unfair, either to the employer or employee, such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury. Whenever allowances of any character made to an employee in lieu of wages are a specified part of a wage contract they are deemed a part of his earnings.

HISTORY: 1962 Code § 72-4; 1952 Code § 72-4; 1942 Code § 7035-2; 1936 (39) 1231; 1943 (43) 91; 1944 (43) 1329; 1946 (44) 1390; 1949 (46) 247; 1964 (53) 1828; 1969 (56) 297; 1971 (57) 788; 1977 Act No. 121; 1983 Act No. 33 § 1; 1996 Act No. 424, § 1, eff June 18, 1996.

**SECTION 42-1-50. "Average weekly wage in this State for the preceding fiscal year" defined.**

 As used in this title, the term "average weekly wage in this State for the preceding fiscal year" shall mean the average weekly wage for that period determined by the Department of Employment and Workforce for employment covered by the employment security compensation law.

HISTORY: 1962 Code § 72-8.1; 1974 (58) 2265; 1976 Act No. 532 § 1.

**SECTION 42-1-60. "Carrier" and "insurer" defined.**

 The term "carrier" or "insurer" means any person or fund authorized under Section 42-5-20 to insure under this title and includes self-insurers.

HISTORY: 1962 Code § 72-5; 1952 Code § 72-5; 1942 Code § 7035-2; 1936 (39) 1231.

**SECTION 42-1-70. "Child", "grandchild", "brother" and "sister" defined.**

 The term "child" shall include a posthumous child, a child legally adopted prior to the injury of the employee and a stepchild or acknowledged illegitimate child dependent upon the deceased, but does not include married children unless wholly dependent upon him. "Grandchild" means a child of a child. "Brother" and "sister" include stepbrothers and stepsisters, half-brothers and half-sisters and brothers and sisters by adoption, but do not include married brothers nor married sisters unless wholly dependent upon the employee. "Child," "grandchild," "brother" and "sister" include only persons under eighteen years of age or wholly dependent upon the employee.

HISTORY: 1962 Code § 72-6; 1952 Code § 72-6; 1942 Code § 7035-2; 1936 (39) 1231; 1955 (49) 459.

**SECTION 42-1-80. "Commission" defined.**

 The term "commission" means the South Carolina Workers' Compensation Commission created under the provisions of this title.

HISTORY: 1962 Code § 72-7; 1952 Code § 72-7; 1942 Code § 7035-2; 1936 (39) 1231; 1986 Act No. 399, § 1, eff May 6, 1986.

**SECTION 42-1-90. "Commission" defined; reference to administrative or judicial department.**

 Whenever the word "commission" is used in this title, it shall refer to the administrative department in matters relating to administration and the judicial department in matters relating to the judicial function of the commission.

HISTORY: 1962 Code § 72-50.12; 1974 (58) 2251.

**SECTION 42-1-100. "Compensation" defined.**

 The term "compensation" means the money allowance payable to an employee or to his dependents as provided for in this title and includes funeral benefits provided in this title.

HISTORY: 1962 Code § 72-8; 1952 Code § 72-8; 1942 Code § 7035-2; 1936 (39) 1231.

**SECTION 42-1-110. "Death" defined.**

 The term "death" as a basis for right to compensation means only death resulting from an injury.

HISTORY: 1962 Code § 72-9; 1952 Code § 72-9; 1942 Code § 7035-2; 1936 (39) 1231.

**SECTION 42-1-120. "Disability" defined.**

 The term "disability" means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment.

HISTORY: 1962 Code § 72-10; 1952 Code § 72-10; 1942 Code § 7035-2; 1936 (39) 1231.

**SECTION 42-1-130. "Employee" defined.**

 The term "employee" means every person engaged in an employment under any appointment, contract of hire, or apprenticeship, expressed or implied, oral or written, including aliens and also including minors, whether lawfully or unlawfully employed, but excludes a person whose employment is both casual and not in the course of the trade, business, profession, or occupation of his employer; and as relating to those employed by the State, the term "employee" includes all members of the South Carolina State and National Guard while performing duties in connection with the membership except duty performed pursuant to Title 10 and Title 32 of the United States Code; all volunteer state constables appointed pursuant to Section 23-1-60, while performing duties in connection with their appointments and authorized by the State Law Enforcement Division; and all officers and employees of the State, except those elected by the people, or by the General Assembly, or appointed by the Governor, either with or without the confirmation of the Senate; and as relating to municipal corporations and political subdivisions of the State, the term "employee" includes all officers and employees of municipal corporations and political subdivisions, except those elected by the people or elected by the council or other governing body of any municipal corporation or political subdivision, who act in purely administrative capacities and are to serve for a definite term of office. Any reference to an employee who has been injured or when the employee is dead, includes also his legal representative, dependents, and other persons to whom compensation may be payable.

 Any sole proprietor or partner of a business whose employees are eligible for benefits under this title may elect to be included as employees under the workers' compensation coverage of the business if they are actively engaged in the operation of the business and if the insurer is notified of their election to be included. Any sole proprietor or partner, upon this election, is entitled to employee benefits and is subject to employee responsibilities prescribed in this title.

HISTORY: 1962 Code § 72-11; 1952 Code § 72-11; 1942 Code § 7035-2; 1936 (39) 1231; 1943 (43) 91; 1969 (56) 297; 1974 (58) 2210, 2785; 1976 Act No. 547; 1985 Act No. 174, § 1, eff June 24, 1985; 1996 Act No. 451, § 2, eff June 18, 1996; 2002 Act No. 339, § 37, eff July 2, 2002.

**SECTION 42-1-140. "Employer" defined.**

 The term "employer" means the State and all political subdivisions thereof, all public and quasi-public corporations therein, every person carrying on any employment and the legal representative of a deceased person or the receiver or trustee of any person.

HISTORY: 1962 Code § 72-12; 1952 Code § 72-12; 1942 Code § 7035-2; 1936 (39) 1231.

**SECTION 42-1-150. "Employment" defined.**

 The term "employment" includes employment by the State, all political subdivisions thereof, all public and quasi-public corporations therein and all private employments in which four or more employees are regularly employed in the same business or establishment.

HISTORY: 1962 Code § 72-13; 1952 Code § 72-13; 1942 Code § 7035-2; 1963 (39) 1231; 1972 (57) 2339; 1974 (58) 2265.

**SECTION 42-1-160. "Injury" and "personal injury" defined.**

 (A) "Injury" and "personal injury" mean only injury by accident arising out of and in the course of employment and shall not include a disease in any form, except when it results naturally and unavoidably from the accident and except such diseases as are compensable under the provisions of Chapter 11 of this title. In construing this section, an accident arising out of and in the course of employment includes employment of an employee of a municipality outside the corporate limits of the municipality when the employment was ordered by a duly authorized employee of the municipality.

 (B) Stress, mental injuries, and mental illness arising out of and in the course of employment unaccompanied by physical injury and resulting in mental illness or injury are not considered a personal injury unless the employee establishes, by a preponderance of the evidence:

 (1) that the employee's employment conditions causing the stress, mental injury, or mental illness were extraordinary and unusual in comparison to the normal conditions of the particular employment; and

 (2) the medical causation between the stress, mental injury, or mental illness, and the stressful employment conditions by medical evidence.

 (C) Stress, mental injuries, heart attacks, strokes, embolisms, or aneurisms arising out of and in the course of employment unaccompanied by physical injury are not considered compensable if they result from any event or series of events which are incidental to normal employer/employee relations including, but not limited to, personnel actions by the employer such as disciplinary actions, work evaluations, transfers, promotions, demotions, salary reviews, or terminations, except when these actions are taken in an extraordinary and unusual manner.

 (D) Stress, mental injuries, and mental illness alleged to have been aggravated by a work-related physical injury may not be found compensable unless the aggravation is:

 (1) admitted by the employer/carrier;

 (2) noted in a medical record of an authorized physician that, in the physician's opinion, the condition is at least in part causally related or connected to the injury or accident, whether or not the physician refers the employee for treatment of the condition;

 (3) found to be causally related or connected to the accident or injury after evaluation by an authorized psychologist or psychiatrist; or

 (4) noted in a medical record or report of the employee's physician as causally related or connected to the injury or accident.

 (E) In medically complex cases, an employee shall establish by medical evidence that the injury arose in the course of employment. For purposes of this subsection, "medically complex cases" means sophisticated cases requiring highly scientific procedures or techniques for diagnosis or treatment excluding MRIs, CAT scans, x-rays, or other similar diagnostic techniques.

 (F) The word "accident" as used in this title must not be construed to mean a series of events in employment, of a similar or like nature, occurring regularly, continuously, or at frequent intervals in the course of such employment, over extended periods of time. Any injury or disease attributable to such causes must be compensable only if culminating in a compensable repetitive trauma injury pursuant to Section 42-1-172 or an occupational disease pursuant to the provisions of Chapter 11 of this title.

 (G) 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.

HISTORY: 1962 Code § 72-14; 1952 Code § 72-14; 1942 Code § 7035-2; 1936 (39) 1231; 1957 (50) 262; 1996 Act No. 424, § 2, eff June 18, 1996; 2007 Act No. 111, Pt I, § 6, eff July 1, 2007, applicable to injuries that occur on or after that date.

**SECTION 42-1-170. "Parent" defined.**

 The term "parent" includes stepparents and parents by adoption, parents-in-law and any person who for more than three years prior to the death of the deceased employee stood in the place of a parent to him, if dependent on the injured employee.

HISTORY: 1962 Code § 72-16; 1952 Code § 72-16; 1942 Code § 7035-2; 1936 (39) 1231.

**SECTION 42-1-172. Definitions.**

 (A) "Repetitive trauma injury" means an injury which is gradual in onset and caused by the cumulative effects of repetitive traumatic events. Compensability of a repetitive trauma injury must be determined only under the provisions of this statute.

 (B) An injury is not considered a compensable repetitive trauma injury unless a commissioner makes a specific finding of fact by a preponderance of the evidence of a causal connection that is established by medical evidence between the repetitive activities that occurred while the employee was engaged in the regular duties of his employment and the injury.

 (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 and qualified medical physician.

 (D) A "repetitive trauma injury" is considered to arise out of employment only if it is established by medical evidence that there is a direct causal relationship between the condition under which the work is performed and the injury.

 (E) Upon reaching maximum medical improvement, the employee may be entitled to benefits pursuant to Section 42-9-10, 42-9-20, or 42-9-30. Medical benefits for compensable repetitive trauma injuries shall be as provided elsewhere in this title.

HISTORY: 2007 Act No. 111, Pt I, § 7, eff July 1, 2007, applicable to injuries that occur on or after that date.

**SECTION 42-1-175. "Surviving spouse" defined.**

 The term "surviving spouse" includes only the decedent's wife or husband living with or dependent for support upon the decedent at the time of the decedent's death or living apart from the decedent for justifiable cause or by reason of desertion by the decedent at such time.

HISTORY: 1983 Act No. 92 § 1.

Article 3

Application and Effect of title

**SECTION 42-1-310. Presumption of acceptance of provisions of title.**

 Every employer and employee, except as stated in this chapter, shall be presumed to have accepted the provisions of this title respectively to pay and accept compensation for personal injury or death by accident arising out of and in the course of the employment and shall be bound thereby.

HISTORY: 1962 Code § 72-101; 1952 Code § 72-101; 1942 Code § 7035-4; 1936 (39) 1231; 1996 Act No. 424, § 3, eff June 18, 1996.

**SECTION 42-1-315. Applicability of title respecting work-related injuries to program participants.**

 The provisions of this title apply to and include all participants in the Tech Prep or other structured school to work programs, whether compensated or not, for injuries by accident arising out of and in the course of their employment with a sponsoring employer.

HISTORY: 1996 Act No. 259, § 1, eff April 1, 1996.

**SECTION 42-1-320. Applicability to public entities and their employees.**

 The State, its municipal corporations and political subdivisions thereof, and the employees of the State or its municipal corporations and political subdivisions are subject to this title.

HISTORY: 1962 Code § 72-102; 1952 Code § 72-102; 1942 Code § 7035-8; 1936 (39) 1231; 1937 (40) 613; 1996 Act No. 424, § 4, eff June 18, 1996.

**SECTION 42-1-360. Exemption of casual employees and certain other employments.**

 This title does not apply to:

 (1) a casual employee, as defined in Section 42-1-130;

 (2) any person who has regularly employed in service less than four employees in the same business within the State or who had a total annual payroll during the previous calendar year of less than three thousand dollars regardless of the number of persons employed during that period;

 (3) a state and county fair association, unless the employer voluntarily elects to be bound by this title, as provided by Section 42-1-380;

 (4) an agricultural employee, unless the agricultural employer voluntarily elects to be bound by this title, as provided by Section 42-1-380;

 (5) a railroad, railroad employee, railway express company, or railway express company employee; nor may this title be construed to repeal, amend, alter, or affect in any way the laws of this State relating to the liability of a railroad or railway express company for an injury to a respective employee;

 (6) a person engaged in selling any agricultural product for a producer of them on commission or for other compensation, paid by a producer, when the product is prepared for sale by the producer;

 (7) a licensed real estate sales person engaged in the sale, leasing, or rental of real estate for a licensed real estate broker on a straight commission basis and who has signed a valid independent contractor agreement with the broker;

 (8) a federal employee in this State;

 (9) an individual who owns or holds under a bona fide lease-purchase or installment-purchase agreement a tractor trailer, tractor, or other vehicle, referred to as "vehicle", and who, under a valid independent contractor contract provides that vehicle and the individual's services as a driver to a motor carrier. For purposes of this item, any lease-purchase or installment-purchase of the vehicle may not be between the individual and the motor carrier referenced in this title, but it may be between the individual and an affiliate, subsidiary, or related entity or person of the motor carrier, or any other lessor or seller. Where the lease-purchase or installment-purchase is between the individual and an affiliate, subsidiary, or related entity or person of the motor carrier, or any other lessor or seller, the vehicle acquisition or financing transaction must be on terms equal to terms available in customary and usual retail transactions generally available in the State. This individual is considered an independent contractor and not an employee of the motor carrier under this title. The individual and the motor carrier to whom the individual contracts or leases the vehicle mutually may agree that the individual or workers, or both, is covered under the motor carrier's workers' compensation policy or authorized self-insurance if the individual agrees to pay the contract amounts requested by the motor carrier. Under any such agreement, the independent contractor or workers, or both, must be considered an employee of the motor carrier only for the purposes of this title and for no other purposes.

HISTORY: 1962 Code § 72-107; 1952 Code § 72-107; 1942 Code § 7035-16; 1936 (39) 1231; 1937 (40) 153, 613; 1939 (41) 323; 1961 (52) 412; 1972 (57) 2339, 3073; 1974 (58) 2265; 2007 Act No. 111, Pt I, § 8, eff July 1, 2007, applicable to injuries that occur on or after that date.

**SECTION 42-1-380. Waiver of exemption by employer.**

 Any person employing employees in the State and exempted from the mandatory provisions of this title may come in under the terms of this title and receive the benefits and be subject to the liabilities of this title by filing with the commission a written notice of his desire to be subject to the terms and provisions of this title. Any such person shall come under the provisions of this title and be affected thereby thirty days after the date of such notice.

HISTORY: 1962 Code § 72-109; 1952 Code § 72-109; 1942 Code § 7035-5; 1936 (39) 1231.

**SECTION 42-1-390. Withdrawal of waiver of exemption by employer.**

 Any employer who, having elected to come under this title, being at that time exempt from this title, and subsequently desiring to withdraw from under its terms, may give notice in writing either to the commission that he no longer is under the terms of this title or to his insurer who shall give notice in writing to the commission that the employer is no longer under the terms of this title. If the insurer does not give the notice to the commission as required by this section, the insurer shall pay a penalty of one thousand dollars to the commission which shall be used by the commission to offset the costs of administering the provisions of Title 42. In the case where the employer gives the notice to the commission that he no longer is under the terms of this title, the commission shall, in turn, within thirty days of receipt of the employer's notice, inform the employer, in writing, that he must provide written notification by a date certain to his employees of his withdrawal from the terms of this title; however, no employer is required to so notify his employees unless the commission informs him he must do so, as required by this section. At the expiration of sixty days from the date of written notice to the commission the employer no longer is liable under the terms of this title and may be permitted to set up any defense as he may be advised to any action brought against him for personal injury or death by accident to any employee.

HISTORY: 1962 Code § 72-110; 1952 Code § 72-110; 1947 (45) 548; 1988 Act No. 411, § 1, eff March 28, 1988.

**SECTION 42-1-400. Liability of owner to workmen of subcontractor.**

 When any person, in this section and Sections 42-1-420 and 42-1-430 referred to as "owner," undertakes to perform or execute any work which is a part of his trade, business or occupation and contracts with any other person (in this section and Sections 42-1-420 to 42-1-450 referred to as "subcontractor") for the execution or performance by or under such subcontractor of the whole or any part of the work undertaken by such owner, the owner shall be liable to pay to any workman employed in the work any compensation under this title which he would have been liable to pay if the workman had been immediately employed by him.

HISTORY: 1962 Code § 72-111; 1952 Code § 72-111; 1942 Code § 7035-22; 1936 (39) 1231.

**SECTION 42-1-410. Liability of contractor to workmen of subcontractor.**

 When any person, in this section and Sections 42-1-420 to 42-1-450 referred to as "contractor," contracts to perform or execute any work for another person which is not a part of the trade, business or occupation of such other person and contracts with any other person (in this section and Sections 42-1-420 to 42-1-450 referred to as "subcontractor") for the execution or performance by or under the subcontractor of the whole or any of the work undertaken by such contractor, the contractor shall be liable to pay to any workman employed in the work any compensation under this title which he would have been liable to pay if that workman had been immediately employed by him.

HISTORY: 1962 Code § 72-112; 1952 Code § 72-112; 1942 Code § 7035-22; 1936 (39) 1231.

**SECTION 42-1-415. Representation of coverage; reimbursement from Uninsured Employers' Fund.**

 (A) Notwithstanding any other provision of law, upon the submission of documentation to the commission that a contractor or subcontractor has represented himself to a higher tier subcontractor, contractor, or project owner as having workers' compensation insurance at the time the contractor or subcontractor was engaged to perform work, the higher tier subcontractor, contractor, or project owner must be relieved of any and all liability under this title except as specifically provided in this section. In the event that employer is uninsured, regardless of the number of employees that employer has, the higher tier subcontractor, contractor, project owner, or his insurance carrier shall in the first instance pay all benefits due under this title. The higher tier subcontractor, contractor, project owner, or his insurance carrier may petition the commission to transfer responsibility for continuing compensation and benefits to the Uninsured Employers' Fund. The Uninsured Employers' Fund shall assume responsibility for claims within thirty days of a determination of responsibility made by the commission. The higher tier subcontractor, contractor, or project owner must be reimbursed from the Uninsured Employers' Fund as created by Section 42-7-200 for compensation and medical benefits as may be determined by the commission. Any disputes arising as a result of claims filed under this section must be determined by the commission.

 (B) To qualify for reimbursement under this section, the higher tier subcontractor, contractor, or project owner must collect documentation of insurance as provided in subsection (A) on a standard form acceptable to the commission. The documentation must be collected at the time the contractor or subcontractor is engaged to perform work and must be turned over to the commission at the time a claim is filed by the injured employee.

 (C) The knowing and wilful falsifying of information contained in standard forms submitted pursuant to this section must be considered fraud and subjects the person responsible for filing the false documentation to the penalties for fraud as provided by law. Knowing and wilful failure to notify, by certified mail, the higher tier subcontractor, contractor, or project owner who originally was provided documentation of workers' compensation coverage of a lapse in coverage within five days after the lapse is considered fraud and subjects the contractor or subcontractor who represented himself as having workers' compensation insurance to the penalties for fraud provided by law. Additionally, a contractor or subcontractor who knowingly and wilfully falsely documents workers' compensation insurance or knowingly and wilfully fails to provide notice of lapse in workers' compensation coverage as specified in this section, or any contractor or subcontractor who refuses to reimburse the Uninsured Employers' Fund for a claim paid on its behalf shall suffer the revocation of his license or certificate as a contractor or residential home builder under applicable provisions of Title 40; provided, however, notwithstanding any other provision of law, the license or certificate of a contractor or residential home builder shall be revoked for a period of two years when the contractor or subcontractor knowingly and wilfully falsely documents workers' compensation insurance or knowingly or wilfully fails to provide notice of lapse in workers' compensation coverage as specified in this section. Upon expiration of the two-year revocation period, or when the license or certificate of any contractor or subcontractor is revoked for refusal to reimburse the Uninsured Employers' Fund for a claim paid on its behalf, the licensing entity of the contractor or subcontractor may reissue the license or certificate of the contractor or residential home builder in the same manner as any other revoked license.

 (D) However, nothing in this section shall be construed to abrogate the immunity to tort liability of any subcontractor under this title or any higher tier subcontractor, contractor, or project owner who may be considered a statutory employer as provided by Sections 42-1-400, 42-1-410, 42-1-420, 42-1-430, and 42-1-450.

HISTORY: 1996 Act No. 442, § 1, eff June 18, 1996; 1997 Act No. 65, § 1, eff June 10, 1997.

**SECTION 42-1-420. Liability of subcontractor to workmen of sub-subcontractor.**

 When a subcontractor in turn contracts with still another person, in this section and Sections 42-1-430 to 42-1-450 also referred to as a "subcontractor," for the performance or execution by or under such last subcontractor of the whole or any part of the work undertaken by the first subcontractor, the liability of the owner or contractor shall be the same as the liability imposed by Sections 42-1-400 and 42-1-410.

HISTORY: 1962 Code § 72-113; 1952 Code § 72-113; 1942 Code § 7035-22; 1936 (39) 1231.

**SECTION 42-1-430. Construction of title when proceedings are against owner or contractor.**

 When compensation is claimed from or proceedings are taken against an owner or contractor then, in the application of this title, reference to the owner or contractor shall be substituted for reference to the subcontractor, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the subcontractor by whom he is immediately employed.

HISTORY: 1962 Code § 72-114; 1952 Code § 72-114; 1942 Code § 7035-22; 1936 (39) 1231.

**SECTION 42-1-440. Indemnity of principal contractor.**

 When the principal contractor is liable to pay compensation under any of Sections 42-1-400 to 42-1-450, he shall be entitled to indemnity from any person who would have been liable to pay compensation to the workmen independently of such sections or from an intermediate contractor, and have a cause of action therefor.

 A principal contractor when sued by a workman of a subcontractor shall have the right to call in that subcontractor or any intermediate contractor or contractors as defendant or codefendant.

HISTORY: 1962 Code § 72-115; 1952 Code § 72-115; 1942 Code § 7035-22; 1936 (39) 1231.

**SECTION 42-1-450. Workman may recover from subcontractor.**

 Nothing in Sections 42-1-400 to 42-1-450 shall be construed as preventing a workman from recovering compensation under this title from a subcontractor instead of from the principal contractor but he shall not collect from both.

HISTORY: 1962 Code § 72-116; 1952 Code § 72-116; 1942 Code § 7035-22; 1936 (39) 1231.

**SECTION 42-1-460. Contracts subject to title.**

 Every contract of service between any employer and employee covered by this title, written or implied, in operation or made or implied prior to July 17, 1936, shall be presumed to continue, subject to the provisions of this title; and every such contract made subsequent to said date shall be presumed to have been made subject to the provisions of this title. A like presumption shall exist equally in the case of all minors, unless notice of the same character be given by or to the parent or guardian of the minor.

HISTORY: 1962 Code § 72-117; 1952 Code § 72-117; 1942 Code § 7035-6; 1936 (39) 1231; 1996 Act No. 424, § 5, eff June 18, 1996.

**SECTION 42-1-470. Coverage of prisoners and convicts generally.**

 Except as otherwise specifically provided in this article, this title shall not apply to state, county or municipal prisoners and convicts.

HISTORY: 1962 Code § 72-108.1; 1952 Code § 72-108.1; 1942 Code § 7035-16; 1936 (39) 1231; 1937 (40) 153, 613; 1939 (41) 323.

**SECTION 42-1-480. Coverage for inmates of the State Department of Corrections.**

 Any inmate of the State Department of Corrections, as defined in this section, in the performance of his work in connection with the maintenance of the institution, any department vocational training program, or with any industry maintained therein, or with any highway or public works activity outside the institution, who suffers an injury for which compensation is specifically prescribed in this title, may, upon being released from such institution either upon parole or upon final discharge, be awarded and paid compensation under the provisions of this title. If death results from such injury, death benefits shall be awarded and paid to the dependents of the inmate. The time limit for filing a claim under this section shall be one year from the date of death of the inmate or the date of his release either by parole or final discharge, and no inmate shall be eligible for benefits unless his injury is reported prior to his release from custody of the department. If any person who has been awarded compensation under the provisions of this section shall be recommitted to an institution covered by this section, such compensation shall immediately cease, but may be resumed upon subsequent parole or discharge.

 For purposes of this section, the term "inmate" includes any person sentenced to the South Carolina Department of Corrections and who is then in the jurisdiction of the department, or any person sentenced to the county public works who has been transferred to the Department of Corrections for confinement. An inmate who has been sentenced to the Department of Corrections and who is temporarily transferred to the county public works, or to any other South Carolina law-enforcement authority, or to out-of-state authorities, is not considered to be in the "jurisdiction" of the South Carolina Department of Corrections for purposes of this section.

 This section shall not apply to patients of the Office of Mental Health or those persons who are confined within the jurisdiction of the county prisons, county jails, city jails or overnight lockups or to any inmate injured in a fight, riot, recreational activity or other incidents not directly related to his work assignment.

HISTORY: 1962 Code § 72-11.1; 1971 (57) 788; 1972 (57) 2559.

**SECTION 42-1-490. Payments to claimant-inmates of State Department of Corrections.**

 Payments for injuries as authorized in Section 42-1-480 shall be paid from the State Accident Fund from appropriations thereto in the manner claims are paid to state employees.

 Notwithstanding any other provision of this title, no inmate shall be paid a lump-sum settlement for an injury, disfigurement or death benefit. Any such lump-sum benefit which might normally be paid to an inmate or another eligible person who is not an inmate shall be paid on a monthly basis not to exceed ten percent of the total amount in any month, in addition to any weekly benefits awarded.

HISTORY: 1962 Code § 72-11.2; 1971 (57) 788; 1972 (57) 2559; 1993 Act No. 181, § 985, eff July 1, 1993.

**SECTION 42-1-500. County or municipal prisoners.**

 A county or municipality, by resolution of its governing body, may elect to cover prisoners in the custody of the county or municipality with workers' compensation benefits in accordance with the provisions of Sections 42-1-480 and 42-1-490. As used in this section, prisoners in the custody of the county include prisoners in the custody of the county sheriff. The appropriate officials shall make arrangements and necessary adjustments in their contributions or premiums to the State Accident Fund or other insurers as the fund or insurers determine necessary to provide compensation for county or municipal prisoners in appropriate cases. The provisions of this section permit workers' compensation coverage only to county or municipal prisoners performing work assigned by officials of the county or municipality or engaged in a vocational training program and, further, apply to these prisoners regardless of the length of the sentence to be served.

 For the purposes of this section, when a county or municipality elects to cover its prisoners with workers' compensation benefits, the coverage also includes:

 (a) those prisoners who have been sentenced to the Department of Corrections and who are assigned to a county or municipality; and

 (b) those prisoners who have been sentenced to the Department of Corrections and who are being used for public service work or related activities while being supervised by the county or municipality.

HISTORY: 1962 Code § 72-11.3; 1971 (57) 788; 1972 (57) 2559; 1991 Act No. 16, § 1, eff April 9, 1991; 1993 Act No. 181, § 986, eff July 1, 1993; 2005 Act No. 98, § 1, eff June 1, 2005.

**SECTION 42-1-505. Coverage of convicted persons under custody or supervision of Department of Probation, Parole and Pardon Services.**

 The Department of Probation, Parole and Pardon Services may elect to cover convicted persons under its custody or supervision with workers' compensation benefits in accordance with the provisions of this title. For purposes of this section, the department is considered the employer for those persons under its custody or supervision performing public service employment.

HISTORY: 1986 Act No. 462, § 8, eff June 3, 1986.

**SECTION 42-1-520. Defenses available to employer operating under title when employee is not so operating.**

 An officer of a corporation who elects not to operate under this title, shall, in any action to recover damages for personal injury or death brought against an employer accepting the compensation provisions of this title, proceed at common law and the employer may avail himself of the defenses of contributory negligence, negligence of a fellow servant, and assumption of risk, as such defenses exist at common law.

HISTORY: 1962 Code § 72-119; 1952 Code § 72-119; 1942 Code § 7035-18; 1936 (39) 1231; 1996 Act No. 424, § 12, eff June 18, 1996.

**SECTION 42-1-540. Employee's rights and remedies under title exclude all others against employer.**

 The rights and remedies granted by this title to an employee when he and his employer have accepted the provisions of this title, respectively, to pay and accept compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents or next of kin as against his employer, at common law or otherwise, on account of such injury, loss of service or death. Provided, however, this limitation of actions shall not apply to injuries resulting from acts of a subcontractor of the employer or his employees or bar actions by an employee of one subcontractor against another subcontractor or his employees when both subcontractors are hired by a common employer.

HISTORY: 1962 Code § 72-121; 1952 Code § 72-121; 1942 Code § 7035-11; 1936 (39) 1231; 1974 (58) 2258.

**SECTION 42-1-550. Rights against third persons prior to award.**

 When an employee, his personal representative or other person may have a right to recover damages for injury, loss of service or death from any person other than the employer, he may institute an action at law against such third person before an award is made under this title and prosecute it to its final determination.

HISTORY: 1962 Code § 72-122; 1952 Code § 72-122; 1942 Code § 7035-11; 1936 (39) 1231.

**SECTION 42-1-560. Right to compensation not affected by liability of third party; rights and remedies against third party.**

 (a) The right to compensation and other benefits under this title shall not be affected by the fact that the injury or death is caused under circumstances creating a legal liability in some person, other than the employer or another person exempt from liability under Section 42-1-540 to pay damages therefor, the person so liable being hereinafter referred to as the third party. The respective rights and interests of the injured employee, or, in the case of his death, his dependents and any person entitled to sue therefor, and of the employer or person, association, corporation or carrier liable for the payment of compensation and other benefits under this title, hereinafter called the "carrier," in respect to the cause of action and the damages recovered shall be as provided by this section.

 (b) The injured employee or, in the event of his death, his dependents, shall be entitled to receive the compensation and other benefits provided by this title and to enforce by appropriate proceedings his or their rights against the third party; provided, that action against the third party must be commenced not later than one year after the carrier accepts liability for the payment of compensation or makes payment pursuant to an award under this title, except as hereinafter provided. In such case the carrier shall have a lien on the proceeds of any recovery from the third party whether by judgment, settlement or otherwise, to the extent of the total amount of compensation, including medical and other expenses, paid, or to be paid by such carrier, less the reasonable and necessary expenses, including attorney fees, incurred in effecting the recovery, and to the extent the recovery shall be deemed to be for the benefit of the carrier. Attorney fees owed and payable by the carrier to the attorneys effecting the recovery shall be set by the commission but shall not exceed one third of the total claim amount paid by the carrier to the injured employee. Such fees shall be paid from the funds recovered by the carrier. Any balance remaining after payment of necessary expenses and satisfaction of the carrier's lien shall be applied as a credit against future compensation benefits for the same injury or death and shall be distributed as provided in subsection (g). Notice of the commencement of the action shall be given within thirty days thereafter to the Workers' Compensation Commission, the employer and carrier upon a form prescribed by the Workers' Compensation Commission.

 (c) If, prior to the expiration of the one-year period referred to in subsection (b), or within thirty days prior to the expiration of the time in which such action may be brought, the injured employee, or, in event of his death, the person entitled to sue therefor shall not have commenced action against or settled with the third party, the right of action of the injured employee, or, in event of his death, the person entitled to sue therefor shall pass by assignment to the carrier; provided, that the assignment shall not occur less than twenty days after the carrier has notified the injured employee or, in the event of his death, his personal representative or other person entitled to sue therefor in writing, by personal service or by registered or certified mail that failure to commence such action will operate as an assignment of the cause of action to the carrier. Prior to the expiration of ninety days after the assignment, the carrier shall give the Workers' Compensation Commission, the injured employee, or, in event of his death, his dependents and any other person entitled to sue therefor notice, upon a form prescribed by the Workers' Compensation Commission, that action has been or will be commenced against the third party. Failure to give this notice, or to commence the action at least thirty days prior to the expiration of the time within which such action may be brought, shall operate as a reassignment of the right of action to the injured employee, or, in event of his death, his personal representative or other person entitled to sue therefor, and the rights and obligations of the parties shall be as provided by subsection (b) of this section.

 If the carrier as assignee recovers in an action:

 (1) for injury, an amount in excess of the sum of the total of benefits paid or provided the injured employee and the reasonable expenses, including attorneys' fees, incurred in making such recovery; or

 (2) for death, an amount on behalf of the dependents of the employee in excess of the benefits paid the dependents, and the reasonable expenses, including attorneys' fees, incurred in making the recovery, the excess shall be applied as a credit against future compensation and other benefits for the same injury or death and shall be distributed in accordance with subsection (g).

 (d) If the persons entitled to share in the proceeds of an action brought under subsections (b) or (c) for death of the employee include any person who was not a dependent of the deceased employee, such person's share of any recovery made in the action, less a rateable share of the reasonable expenses incurred in making the recovery, shall be paid to the person or to the personal representative of the deceased.

 (e) The injured employee, or, in event of his death, his dependents, and the carrier may, by agreement approved by the Workers' Compensation Commission, or in event of a settlement made during actual trial of the action against the third party, approved by the presiding judge at the trial, provide for distribution of the proceeds of any recovery in the action different from that prescribed by subsection (b) or (c).

 (f) If the third party, with notice or knowledge of the carrier's lien, and the employee, or, in the event of his death his personal representative or person entitled to sue therefor make a compromise settlement without the written consent of the carrier for an amount less than the total of the compensation to which he or they are entitled under this title because of such injury or death, the settlement shall be invalid as against the carrier, which shall be entitled to maintain an action against the third party to recover the amount of compensation for which the carrier is liable under this title, less the amount actually inuring to the benefit of the carrier from the proceeds of the settlement.

 At the trial the fact of settlement shall be prima facie evidence that the injury was proximately caused by a breach of duty owed to the employee or a warranty given by the third party.

 The carrier shall not unreasonably refuse to approve a proposed compromise settlement with the third party. The injured employee or his dependents may make written application to the Workers' Compensation Commission for a finding that a proposed compromise settlement with the third party is reasonable and fair to all parties. If the Workers' Compensation Commission, after such inquiry as it deems necessary, and after hearing if demanded by either the carrier, the injured employee or his dependents, finds the proposed settlement reasonable and fair, it shall be deemed to have been approved by the carrier.

 Notwithstanding other provisions of this item, where an employee or his representative enters into a settlement with or obtains a judgment upon trial from a third party in an amount less than the amount of the employee's estimated total damages, the commission may reduce the amount of the carrier's lien on the proceeds of such settlement in the proportion that such settlement or judgment bears to the commission's evaluation of the employee's total cognizable damages at law. Any such reduction shall be based on a determination by the commission that such reduction would be equitable to all parties concerned and serve the interests of justice.

 (g) When there remains a balance of five thousand dollars or more of the amount recovered from a third party by the beneficiary or carrier after payment of necessary expenses, and satisfaction of the carrier's lien and payment of the share of any person not a beneficiary under this title, which is applicable as a credit against future compensation benefits for the same injury or death under either subsection (b) or subsection (c), the entire balance shall in the first instance be paid to the carrier by the third party. The present value of all amounts estimated by the Workers' Compensation Commission to be thereafter payable as compensation, with the present value to be computed in accordance with a schedule prepared by the Workers' Compensation Commission, shall be held by the carrier as a fund to pay future compensation as it becomes due, and to pay any sum finally remaining in excess thereof to the beneficiaries.

 As soon as the Workers' Compensation Commission has fixed the amount to be held by the carrier in this fund, or determined that no future compensation will be due, the excess of the third party recovery over the total amount necessary for payment of necessary expenses, satisfaction of the carrier's lien, and payment of the share of any person not a beneficiary under this title and creation of such fund, if any, shall be paid forthwith to the beneficiary but shall continue to constitute a credit against future compensation benefits for the same injury or death as to any compensation liability that may exist after the fund has been exhausted.

 (h) If death results from the injury and if the employee leaves no dependents entitled to benefits under this title, the carrier shall have a right of action against the third party for any amounts paid into the second-injury fund established by Section 42-1-380 and for reasonable funeral expenses and medical benefits actually paid by the carrier. The cause of action shall be in addition to any cause of action of the legal representative of the deceased. This right may be enforced in any action of law brought against the third party within two years after the death of the employee.

HISTORY: 1962 Code § 72-126.1; 1969 (56) 622; 1974 (58) 2236; 1978 Act No. 522 § 5.

**SECTION 42-1-570. Amount of compensation not admissible in suits against third parties.**

 The amount of compensation paid by the employer or the amount of compensation to which the injured employee or his dependents are entitled shall not be admissible as evidence in any action brought to recover damages.

HISTORY: 1962 Code § 72-127; 1952 Code § 72-127; 1942 Code § 7035-11; 1936 (39) 1231.

**SECTION 42-1-580. Effect of rights of third party against employer on employee's recovery.**

 When the facts are such at the time of the injury that a third person would have the right, upon payment of any recovery against him, to enforce contribution or indemnity from the employer, any recovery by the employee against the third person shall be reduced by the amount of such contribution of indemnity and the third person's right to enforce such contribution against the employer shall thereupon be satisfied.

HISTORY: 1962 Code § 72-128; 1952 Code § 72-128; 1942 Code § 7035-13; 1941 (42) 1314.

**SECTION 42-1-590. Compensability of injuries to illegally employed minor.**

 When an employer and employee have accepted the provisions of this title, any injury to a minor while employed contrary to the laws of this State shall be compensable under this title the same, and to the same extent, as if such minor employee was an adult.

HISTORY: 1962 Code § 72-129; 1952 Code § 72-129; 1942 Code § 7035-11; 1936 (39) 1231.

**SECTION 42-1-600. Suits by public employees.**

 Any employee of the State or any political subdivision or of any department thereof shall be entitled to bring suit against his employer for the recovery of the benefits to which he may be entitled under the terms and provisions of this title and consent to such suit or suits is expressly given.

HISTORY: 1962 Code § 72-130; 1952 Code § 72-130; 1942 Code § 7035-8; 1936 (39) 1231; 1937 (40) 613.

**SECTION 42-1-610. Agreement or regulation does not limit liability of employer.**

 No contract or agreement, written or implied, and no rule, regulation or other device shall in any manner operate to relieve any employer, in whole or in part, of any obligation created by this title except as otherwise expressly provided in this title.

HISTORY: 1962 Code § 72-131; 1952 Code § 72-131; 1942 Code § 7035-7; 1936 (39) 1231.

**SECTION 42-1-620. Agreements of employee to waive rights invalid.**

 No agreement by an employee to waive his rights to compensation under this title shall be valid.

HISTORY: 1962 Code § 72-132; 1952 Code § 72-132; 1942 Code § 7035-24; 1936 (39) 1231.

**SECTION 42-1-630. Situation in which provisions of title are not admissible in trial.**

 Upon the trial of any action in tort for injuries not coming under the provisions of this title no provisions of this title shall be placed in evidence or be permitted to be argued to the jury.

HISTORY: 1962 Code § 72-20; 1952 Code § 72-20; 1942 Code § 7035-16; 1936 (39) 1231; 1937 (40) 153, 613; 1939 (41) 323.

**SECTION 42-1-640. Performance of statutory duty not excused.**

 Nothing in this title shall be construed to relieve any employer or employee from penalty for failure or neglect to perform any statutory duty.

HISTORY: 1962 Code § 72-21; 1952 Code § 72-21; 1942 Code § 7035-14; 1936 (39) 1231.

**SECTION 42-1-650. Limitation of actions after claim erroneously made.**

 If any claim for compensation is made upon the theory that such claim, or the injury upon which the claim is based, is within the jurisdiction of the commission under the provisions of this title and if the commission, or the Supreme Court or court of appeals on appeal, shall adjudge that the claim is not within this title, the claimant, or if he dies his personal representative, shall have one year after the rendition of a final judgment in the case within which to commence an action at law.

HISTORY: 1962 Code § 72-22; 1952 Code § 72-22; 1942 Code § 7035-27; 1936 (39) 1231; 1999 Act No. 55, § 44, eff June 1, 1999.

**SECTION 42-1-660. Immunity from liability on construction projects; exceptions.**

 No architect, engineer, land surveyor, landscape architect, or their employees or a corporation, partnership, or firm offering architectural services, engineering services, land surveyor services, or landscape architectural services who is retained to perform professional services on a construction project is liable in any action brought pursuant to Section 42-1-560 for any injury resulting from the employer's failure to comply with safety standards on a construction project for which compensation is recoverable under this title, unless responsibility for safety practices is specifically assumed by contract or by direct supervision or continual direction of the injured employee relative to the segment of the job which results in the injury.

 The immunity provided by this section does not apply to the negligent preparation of design plans or specifications.

HISTORY: 1996 Act No. 320, § 1, eff May 20, 1996.

**SECTION 42-1-700. Specificity of description of injured or affected body parts; Employee's Notice of Claim and Request for Hearing (Form 50).**

 (A) Injured or affected body parts and conditions shall be set forth with as much specificity as possible on the commission's Employee's Notice of Claim and/or Request for Hearing form, hereinafter referred to as Form 50. A Form 50 shall not describe the injured body part(s) or condition(s) as "whole person", "whole body", "all body parts", or other similar language unless the injured employee died as a result of the accident. No hearing shall be held on a Form 50 which does not conform to the requirements of this subsection.

 (B) Nothing in this section prohibits a commissioner from determining the compensability of a body part or condition not listed or described on a Form 50 if:

 (1) the body part or condition is proved by a preponderance of the evidence to have arisen from the injury or injuries out of and in the course of employment as set forth on the Form 50;

 (2) it is proven to the satisfaction of the commissioner that the employee had no knowledge of the injury or condition on the date of the completion of the Form 50. However, the employee is required to amend the Form 50 upon discovery of the injury or condition within a reasonable time period pursuant to regulation; or

 (3) in the case of a represented employee, the body part or condition is set forth on the commission's Prehearing Brief form, and such prehearing brief is timely filed with the commission and timely served upon the parties.

 (C) A Form 50 must be signed by an attorney if the employee is represented, verifying that the contents of the form are accurate and true to the best of the attorney's knowledge. If the employee is not represented, the employee who signs a Form 50 must verify that the contents of the form are accurate and true to the best of the employee's knowledge.

HISTORY: 2007 Act No. 111, Pt I, § 9, eff July 1, 2007, applicable to injuries that occur on or after that date.

**SECTION 42-1-705. Employer's Answer to Request for Hearing (Form 51); specificity as to possible defenses.**

 (A) The commission's Employer's Answer to Request for Hearing form, hereinafter referred to as Form 51, must describe with as much specificity as possible the defenses to be relied upon by the defendants. A Form 51 shall not state that "all defenses apply" or other similar language, unless such is actually the case. A Form 51 which does not conform to the requirements of this subsection shall not be considered at a hearing.

 (B) Nothing in this section prohibits a commissioner from considering a defense not listed on a Form 51 if:

 (1) it is proven to the satisfaction of the commissioner that the defendants had no knowledge of the facts supporting the defense on the date of the completion of the Form 51; and

 (2) in the case of represented defendants, the defense omitted on the Form 51 is set forth on the commission's Prehearing Brief form, and such brief is timely filed with the commission and timely served upon the parties.

 (C) A Form 51 must be signed by an attorney, verifying that the contents of the form are accurate and true to the best of the attorney's knowledge. If the employer is unrepresented and completes a Form 51, the employer must sign the form, verifying that the contents are accurate and true to the best of the employer's knowledge.

HISTORY: 2007 Act No. 111, Pt I, § 10, eff July 1, 2007, applicable to injuries that occur on or after that date.