WORKMEN'S COMPENSATION LAW

of

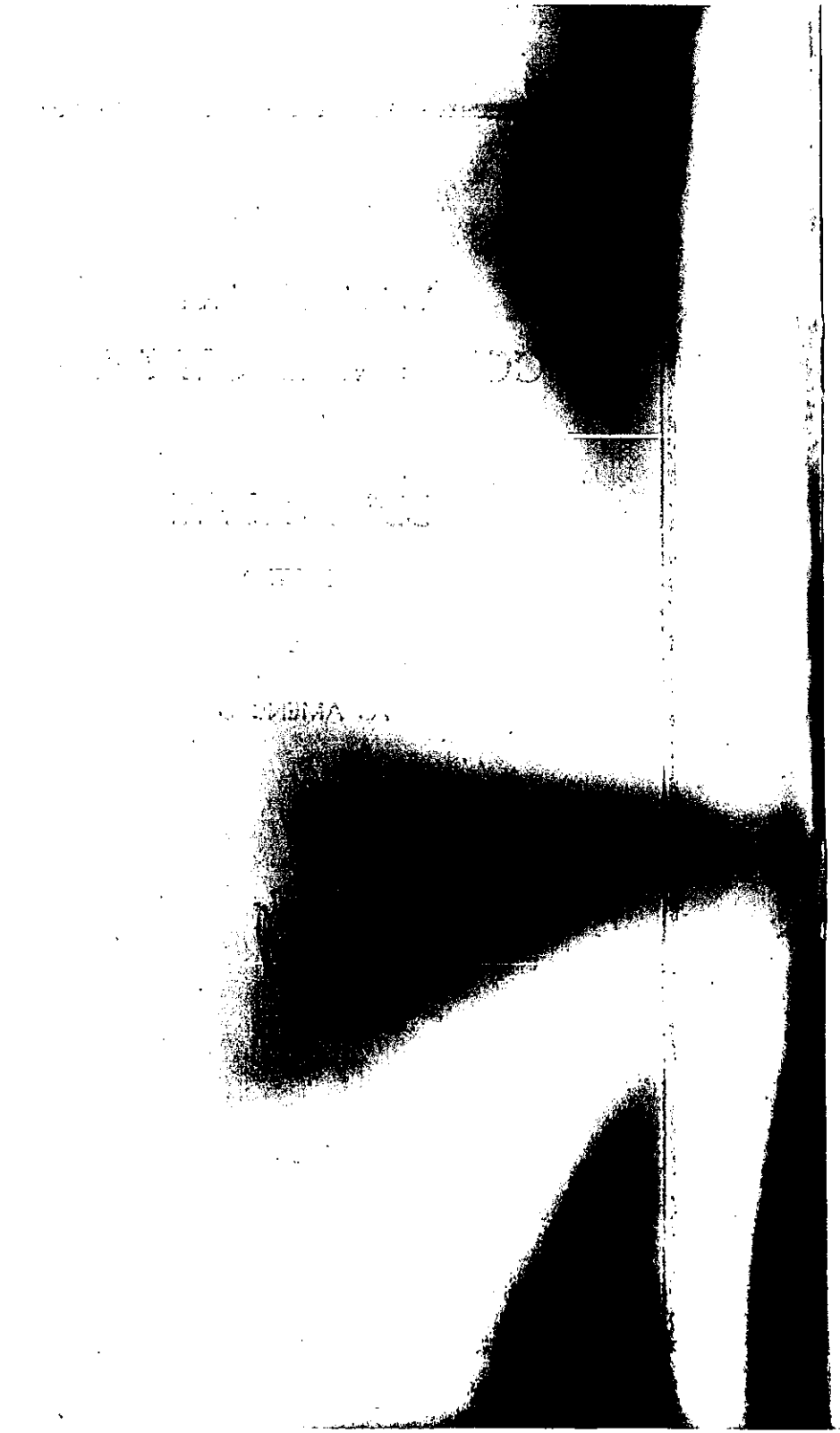
MISSISSIPPI

ENACTED

1948

AS AMENDED

1968



INDEX

References are made to Sections of the Law and General and Procedural Rules of Commission

Administrative	Section	Rule
Staff	41	
Expense Fund	43	
Collection Procedure	44	
Operating Expense	42	
Agreements — Invalid	15	
Aliens	9	(h)
Annual Report	46	
Appeals		
To Full Commission (20 days)	18	B. P-10
To Circuit Court (30 days)	20	B. P-11
Apportionment	4	
Assessments — Semiannual reports for budget	44	
Assignment and exemption for claims or creditors	16	
Assigned Risk	50	A. G-5, G-6
Attorneys	26	B. P-8, P-12, P-15
Bond — Official	38	
Budget — Collection Procedure	44	
Child Labor Law	48	B. P-13
Compensation		
Classes of	8	
Payment of	8, 9, 13	G-13
Compromise Settlements	9	(i)
Constitutionality	51	
Controverted Claim	13	B. P-2, P-3, P-4
Costs — In proceeding brought without reasonable ground	24	
Coverage		
Notice of	35	
Officers of Corporation, Partnership	34	
Death	9	
Minors illegally employed	48	
Default — In Payments	19	
Definitions	2	
Disabilities:		
Double Compensation & Death Benefits	48	
Permanent Partial	8	(c)
Permanent Total	8	(a)
Second Injury	31	
Temporary Partial	8	(e)
Temporary Total	8	(b)
Effective Date	53	
Employers — Subject to Act	3	A. G-4
Enforcement — Of Payment in Default	19	
Estoppel	34	
Evidence	22	B. P-8, P-9
Facial Disfigurement	8	(c)

Fee:	Section	Rule
Legal and Other Services	26	
Registration of Insurance Companies	45	
Self Insurer Registration Fee	45	
Witnesses	22	
Forms	37	(g) A. G-8, B. P-16, P-17
Guardian — For Minor or Incompetent	11	
Hearings:		
Attorney Referee	18	B. P-6, P-7, P-8, P-9
Full Commission	20	B. P-10
General	20, 22, 25, 37	
Pending in State or Federal Court	20	
Hernia	8	(f)
Insurance Policy Regulations	33	A. G-5
Jurisdiction:		
Continuing	21	
Extra-Territorial	49	
Liability:		
Exclusiveness of Liability	5	
Exemption from Insuring	32	(b)
Payment of Compensation	4	
Security for Payment of Compensation	32	(a)
Lien — Against Assets	17	
Lump Sum Settlements	13	(j)
Maximum and Minimum — Weekly and Total	6	
Medical Service and Supplies	7	A. G-9, G-12
Minors — Double Compensation and Death Benefits for Minors Illegally Employed	48	
Guardian for	9	(c), 11
Notices:		
Injury or death, limitation	12	
Of Coverage	35	A. G-3, G-8
Partnership, Firm or Association (Officers of Corporation)	34	
Penalty:		
For Misrepresentation	29	
Failure to secure payment of compensation	36	
Premiums — Acceptance of premium by carrier an estoppel	34	
Pre-Trial Conference	18	B. P-5
Procedure:		
Before Commission	22	
Procedural Authority	25 and 50	
Radiation	2	(2)
Recording and Reporting of Payments	14	
Record of injury and death	27	
Registration — Of Insurance Companies and Self Insurers	45	
Rehabilitation	8	(d), 47 C
Repealing Clause	52	

Reports:	Section	Rule
Of injuries or death	12, 28	B. P-1
Of Payments	14	
Seal	39	
Second Injury Fund	31	
Self Insurance	32	A. G-7
Miss. Highway Safety Patrol	Code Sec. 8085	
Miss. National Guard	Code Sec. 8519-161	
State Highway Commission	3	(19)
Settlements:		
Compromise	9	(i) B. P-15
Lump Sum	13	(j) B. P-15
Third Party	30	B. P-15
Statute of Limitations	12, 21	B. P-17
Subcontractor	4	
Subpoena	25	B. P-18
Third Parties — Liability & Settlements	30	
Time		A. G-10, G-11
Traveling Expenses	40	
Venue		
Of Commission	22	
Of Circuit Court	20	
Wages — Determination of	10	A. G-11
Waiting period	6	
Witnesses — Fees	22	
Workmen's Compensation Commission	1, 37	A. G-1

THE MISSISSIPPI WORKMEN'S COMPENSATION LAW AS ENACTED UNDER HOUSE BILL No. 351 REGULAR SESSION 1948, INCLUDING AMENDMENTS

An act to provide a system of workmen's compensation for industrial injuries and prescribing the rights and liabilities of employers, employees, and third parties in respect to such injuries; to provide methods of insuring and securing the payment of such compensation; to create and establish the Mississippi Workmen's Compensation Commission and prescribe its powers and duties; to provide a system of appeals to the courts from the decisions of the commission; to prescribe penalties for the violation of this act; and to repeal all laws or parts of laws in conflict with this act to the extent of such conflict; and for other purposes.

Be It Enacted By The Legislature of The State of Mississippi:

Code Sec. 6998-01.

Section 1. Workmen's Compensation Law — title — administration. This act shall be known and cited as "Workmen's Compensation Law," and shall be administered by the Workmen's Compensation Commission, hereinafter referred to as the commission, cooperating with other State and Federal authorities for the prevention of injuries and occupational diseases to workers, and in event of injury or occupational disease, their rehabilitation or restoration to health and vocational opportunity, and this act shall be fairly construed according to the law and the evidence.

Code Sec. 6998-02.

Section 2. Definitions. Unless the context otherwise requires, the definitions which follow govern the construction and meaning of the terms used in this act.

(1) "Person" includes an individual, firm, voluntary association, or a corporation;

(2) "Injury" means accidental injury or accidental death arising out of and in the course of employment, and includes injuries to artificial members, and also includes an injury caused by the willful act of a third person directed against an employee because of his employment while so employed and working on the job and disability or death due to exposure to ionizing radiation from any process in the employment involving the use of or direct contact with radium or radioactive substances with the use of or direct exposure to roentgen (X-rays) or ionizing radiation. In radiation cases only, the date of disablement shall be treated as the date of the accident. Occupational diseases, or the aggravation thereof, are excluded from the term "injury," provided further, however, that except as otherwise specified all provisions of this act apply equally to occupational diseases as well as injury;

(3) "Death" when mentioned as a basis for the right to compensation means only death resulting from such an injury;

(4) "Employee" means any person, including a minor whether lawfully or unlawfully employed, in the service of an employer under any contract of hire or apprenticeship, written or oral, express or implied, provided that there shall be excluded therefrom all independent contractors, and especially any individual performing service in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by the individual at a fixed price, the individual's compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to the individual, whether or not the individual is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines returned;

(5) "Employer" except when otherwise expressly stated, includes a person, partnership, association, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association or corporation;

(6) "Carrier" means any person authorized in accordance with the provisions of this act to insure under this act and includes self-insurers;

(7) "Self-insurer" is an employer who has been authorized under the provisions of this act to carry his own liability on his covered employees without insuring in a stock or mutual carrier;

(8) "Commission" means the Workmen's Compensation Commission;

(9) "Disability" means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or other employment, which incapacity and the extent thereof must be supported by medical findings;

(10) "Compensation" means the money allowance payable to an injured worker or his dependents as provided for in this act, and includes funeral benefits provided therein;

(11) "Wages" includes the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the injury, and also the reasonable value of board, rent, housing, lodging, or similar advantage received from the employer, and gratuities received in the course of employment from others than the employer;

(12) "Child" shall include a posthumous child, a child legally adopted prior to the injury of the employee, a child in relation to whom the deceased employee stood in the place of a parent for at least one year prior to the time of injury, and a stepchild or acknowledged illegitimate child dependent upon the deceased, but does not include married children unless wholly dependent on him. "Grandchild" means a child as above defined of a child as above defined. "Brother" and "sister" include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but does not include married brothers nor married sisters unless wholly dependent on the employee. "Child," "grandchild,"

"brother" and "sister" include only persons who are under eighteen (18) years of age, and also persons who, though eighteen (18) years of age or over, are wholly dependent upon the deceased employee and incapable of self-support by reason of mental or physical disability;

(13) "Parent" includes step-parents and parents by adoption, parents-in-law, or any person who for more than three (3) years prior to the death of the deceased employee stood in the place of a parent to him, or her, if dependent on the injured employee;

(14) The term "widow" includes the decedent's legal wife, living with him or dependent for support upon him at the time of his death, or living apart for justifiable cause, or by reason of his desertion at such time, provided, however, such separation had not existed for more than three (3) years without an award for separate maintenance or alimony or the filing of a suit for separate maintenance or alimony in the proper court in this state. The term "widow" shall likewise include one not a legal wife, but who had entered into a ceremonial marriage with the decedent at least one year prior to his death, and who on the date of decedent's death stood in the relationship of a wife, provided there was no living legal spouse who had protected her rights for support by affirmative action as hereinabove required. The term "widow" or "widower" as contemplated in this act shall not apply to any person who has since his or her separation from decedent entered into a ceremonial marriage or lived in open adultery with another;

(15) The term "widower" includes only the decedent's husband who at the time of her death lived with her and was dependent for support upon her;

(16) The term "adoption" or "adopted" means legal adoption prior to the time of the injury;

(17) The singular includes the plural and the masculine includes the feminine and neuter;

(18) It is expressly provided, agreed, and understood in determining beneficiaries under this section that a widow, widower suffering a mental or physical handicap, and children under the age of eighteen (18) years are presumed to be dependent;

(19) "Independent contractor" means any individual, firm or corporation who contracts to do a piece of work according to his own methods without being subject to the control of his employer, except as to the results of the work, and who has the right to employ and direct the outcome of the workmen independent of the employer, and free from any superior authority in the employer to say how the specified work shall be done, or what the laborers shall do as the work progresses; one who undertakes to produce a given result without being in any way controlled as to the methods by which he attains the result.

Code Sec. 6998-03.

Section 3. Application. The following shall constitute employers subject to the provisions of this act:

Every person, firm and private corporation, including any public service corporation, but excluding, however, all nonprofit charitable, fraternal, cultural or religious corporations or associations, that has in service eight (8) or more workmen or operatives regularly in the same business, or in or about the same establishment, under any contract of hire, express, or implied.

Any State agency, State institution, State department, or subdivision thereof, including counties and municipalities, or the singular thereof, not heretofore included under the workmen's compensation law, may elect by proper action of its officers or department head to come within its provisions, and in such case shall notify the commission of such action by filing notice of compensation insurance with the commission. Payment for compensation insurance policies so taken may be made from any appropriation or funds available to such agency, department, or subdivision thereof, or from the general fund of any county or municipality.

The State Highway Commission may elect to become a self-insurer under provisions elsewhere set out by law by notifying the commission of its intention of becoming such a self-insurer and the cost of being such a self-insurer, as provided elsewhere by law, may be paid from funds available to the State Highway Commission. The authority of the State Highway Commission to act as a self-insurer shall terminate not later than July 1, 1970.

Seventy-five per cent (75%) of the payment for compensation insurance policies so taken may be made from any appropriation or funds available to such agency, department, or subdivision thereof, or from the general fund of any county or municipality and twenty-five per cent (25%) by all beneficiaries coming under the provisions of this act.

Domestic servants, farmers and farm labor, and handicapped persons employed in sheltered workshop programs under the authority and supervision of the Department of Public Welfare and Vocational Rehabilitation Division, State Department of Education, are not included under the provisions of this act, but this exemption does not apply to the processing of agricultural products when carried on commercially.

Employers exempted by this section may assume with respect to any employee or classification of employees, the liability for compensation imposed upon employers by this act with respect to employees within the coverage of this act, and the purchase and acceptance by such employer of valid workmen's compensation insurance applicable to such employee or classification of employees shall constitute as to such employer an assumption by him of such liability under this act without any further act on his part notwithstanding any other provisions of this act, but only with respect to such employee or such classification of employees as are within the coverage of such workmen's compensation insurance, and such assumption of liability shall take effect and continue from the effective date of such workmen's compensation insurance and as long only as such insurance shall remain in force, in which case the employer shall be subject with respect to such employee or classification of employees to no other liability other than the compensation as provided for in this act.

This act shall not apply to transportation and maritime employments for which a rule of liability is provided by the laws of the United States.

Code Sec. 6998-04.

Section 4. Liability for Payment of Compensation. Compensation shall be payable for disability or death of an employee from injury or occupational disease arising out of and in the course of employment, without regard to fault as to the cause of the injury or occupational disease. An occupational disease shall be deemed to arise out of and in the course of employment when there is evidence that there is a direct causal connection between the work performed and the occupational disease.

Where a pre-existing physical handicap, disease or lesion is shown by medical findings to be a material contributing factor in the results following injury, the compensation which, but for this paragraph, would be payable shall be reduced by that proportion which such pre-existing physical handicap, disease or lesion contributed to the production of the results following the injury.

(1) Apportionment shall not be applied until the claimant has reached maximum medical recovery.

(2) The employer or carrier does not have the power to determine the date of maximum medical recovery or percentage of apportionment. This must be done by the attorney-referee, subject to review by the commission as the ultimate finder of fact.

(3) After the date the claimant reaches maximum medical recovery, weekly compensation benefits and maximum recovery shall be reduced by that proportion which the preexisting physical handicap, disease or lesion contributes to the results following injury.

(4) If maximum medical recovery has occurred before the hearing and order of the attorney-referee, credit for excess payments shall be allowed in future payments. Such allowances and method of accomplishment of the same shall be determined by the attorney-referee subject to review by the commission. However, no actual payment of such excess shall be made to the employer or carrier.

No compensation shall be payable if the intoxication of the employee was the proximate cause of the injury or if it was the willful intention of the employee to injure or kill himself or another.

Every employer to whom this act applies shall be liable for and shall secure the payment to his employees of the compensation payable under its provisions.

In the case of an employer who is a subcontractor, the contractor shall be liable for and shall secure the payment of such compensation to employees of the subcontractor, unless the subcontractor has secured such payment.

Code Sec. 6998-05.

Section 5. Exclusiveness of Liability. The liability of an employer to pay compensation shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next-of-kin, and anyone otherwise entitled to recover damages at common law or otherwise from such employer on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this act, an injured employee, or his legal representative in case death results from the injury, *may elect to claim compensation under this act, or to maintain an action* at law for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, nor that the employee assumed the risk of his employment, nor that the injury was due to the contributory negligence of the employee.

Code Sec. 6998-06.

Section 6. (a) **Waiting Period.** No compensation shall be allowed for the first five (5) days of the disability, except medical benefits. Provided, however, that in case the injury results in disability of fourteen (14) days or more the compensation shall be allowed from the date of disability.

Code Sec. 6998-07. (A).

(b) **Maximum and Minimum Weekly—Total Maximum Recovery.** Compensation for disability or in death cases shall not exceed forty dollars ~~($40.00)~~ per week, nor shall it be less than ten dollars ($10.00) per week, except in partial disability cases and in partial dependency cases.

$ 56
N/O 7/1/72

Code Sec. 6998-07. (B).

Maximum recovery. The total recovery of compensation hereunder, exclusive of medical payments under Section 7 (Sec. 6998-08) hereof, arising from the injury to an employee or the death of an employee, or any combination of such injury or death, shall not exceed seventeen thousand dollars ($17,000.00).

Code Sec. 6998-08.

Section 7. Medical Service and Supplies. (a) The employer shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, artificial members, and other

apparatus, for such period as the nature of the injury or the process of recovery may require. If the employer fails to provide the same, after request by the injured employee, such injured employee may do so at the expense of the employer. The employee shall not be entitled to recover any amount expended by him for such treatment or services except in emergency cases, unless he shall have requested the employer to furnish the same and the employer shall have refused or neglected to do so, or unless the nature of the injury required such treatment and services and the employer or his superintendent or foreman having knowledge of such injury shall have neglected to provide the same; nor shall any claim for medical or surgical treatment be valid and enforceable, as against such employer, unless within twenty (20) days following the first treatment the physician giving such treatment furnish to the employer and the commission a report of such injury and treatment, on a form prescribed by the commission. The commission may, however, excuse the failure to furnish such report within twenty (20) days when it finds it to be in the interest of justice to do so, and may, upon application by a party in interest, make an award for the reasonable value of such medical or surgical treatment so obtained by the employee. If at any time during such period the employee unreasonably refuses to submit to medical or surgical treatment, the commission shall, by order, suspend the payment of further compensation during such time as such refusal continues, and no compensation shall be paid at any time during the period of such suspension.

(b) Whenever in the opinion of the commission a physician has not correctly estimated the degree of permanent disability or the extent of temporary disability of an injured employee, the commission shall have the power to cause such employee to be examined by a physician selected by the commission and to obtain from such physician a report containing his estimate of such disabilities. The commission shall have the power in its discretion to charge the cost of such examination to the employer, if he is a self-insurer, or to the insurance company which is carrying the risk.

(c) All fees and other charges for such treatment or service shall be limited to such charges as prevail in the same community for similar treatment of injured persons of like standard of living, and shall be subject to regulation by the commission. Provided, however, no medical bill shall be paid to any doctor until all forms required by the commission have been filed.

(d) The liability of an employer for medical treatment as herein provided shall not be affected by the fact that his employee was injured through the fault or negligence of a third party, not in the same employ; provided the injured employee was engaged in the scope of his employment when injured. The employer shall, however, have a cause of ac-

tion against such third party to recover any amounts paid by him for such medical treatment.

(e) An injured worker who believes that his best interest has been prejudiced by the findings of the physician designated by the employer or carrier shall have the privilege of a medical examination by a physician of his own choosing, at the expense of the carrier or employer. Such examination may be had at any time after injury and prior to the closing of the case; provided, however, that the charge shall not exceed one hundred dollars ($100.00), and shall be paid by the carrier or employer where the previous medical findings are upset, but paid by the employee if previous medical findings are confirmed.

(f) Medical and medical treatment as provided in this section shall not be deemed to be privileged insofar as carrying out the provisions of this act is concerned. All findings pertaining to a medical examination, either at the instance of the employer or by order of the commission, shall be reported on commission forms and copies made available to both employer and employee.

Code Sec. 6998-09.

Section 8. (a) Permanent Total Disability: In case of total disability adjudged to be permanent, sixty-six and two thirds per centum (66-2/3%) of the average weekly wages, subject to the maximum limitations as to weekly benefits as set up in this act, shall be paid to the employee not to exceed four hundred fifty (450) weeks or the maximum of fifteen thousand dollars ($15,000.00), whichever shall be the lesser in amount. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two (2) thereof, shall constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts.

(b) **Temporary Total Disability:** In case of disability total in character but temporary in quality, sixty-six and two-thirds per centum (66-2/3%) of the average weekly wages, subject to the maximum limitations as to weekly benefits as set up in this act, shall be paid to the employee during the continuance of such disability not to exceed four hundred fifty (450) weeks or the maximum of fifteen thousand dollars ($15,000.00), whichever shall be the lesser in amount.

(c) **Permanent Partial Disability:** In case of disability partial in character but permanent in quality, the compensation shall be sixty-six and two-thirds per centum (66-2/3%) of the average weekly wages, subject to the maximum limitations as to weekly benefits as set up in this act, which shall be paid following compensation for temporary total disability paid in accordance with subdivision (b) of this section, and shall be paid to the employee as follows:

Member Lost	Number weeks Compensation	Member Lost	Number weeks Compensation
(1) Arm	200	(9) Second finger	30
(2) Leg	175	(10) Third finger	20
(3) Hand	150	(11) Toe other than great toe	10
(4) Foot	125	(12) Fourth finger	15
(5) Eye	100	(13) Testicle, one	50
(6) Thumb	60	(14) Testicles, both	150
(7) First finger	35	(15) Breast, female, one	50
(8) Great toe	30	(16) Breast, female, both	150

(17) Loss of hearing: Compensation for loss of hearing of one ear, forty (40) weeks. Compensation for loss of hearing of both ears, one hundred fifty (150) weeks.

(18) Phalanges: Compensation for loss of more than one phalange of a digit shall be the same as for the loss of the entire digit. Compensation for loss of the first phalange shall be one half (½) of the compensation for loss of the entire digit.

(19) Amputated arm or leg: Compensation for an arm or leg, if amputated at or above wrist or ankle, shall be for the loss of the arm or leg.

(20) Binocular vision or per centum of vision: Compensation for loss of binocular vision or for eighty per centum (80%) or more of the vision of an eye shall be the same as for loss of the eye.

(21) Two (2) or more digits: Compensation for loss of two (2) or more digits, or one or more phalanges of two (2) or more digits, of a hand or foot may be proportioned to the loss of use of the hand or foot occasioned thereby, but shall not exceed the compensation for loss of a hand or foot.

(22) Total loss of use: Compensation for permanent total loss of use of a member shall be the same as for loss of the member.

(23) Partial loss or partial loss of use: Compensation for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member.

(24) Disfigurement: The commission, in its discretion, is authorized to award proper and equitable compensation for serious facial or head disfigurements not to exceed two thousand dollars ($2,000.00). Provided, however, no such award shall be made until a lapse of one year from the date of the injury resulting in such disfigurement.

(25) Other cases: In all other cases in this class of disability, the compensation shall be sixty-six and two-thirds per centum (66-2/3%) of the difference between his average weekly wages, subject to the maximum limitations as to weekly benefits as set up in this act, and his wage-

earning capacity thereafter in the same employment or otherwise, payable during the continuance of such partial disability, but subject to reconsideration of the degree of such impairment by the commission on its own motion or upon application of any party in interest, and such payments shall in no case be made for a longer period than four hundred fifty (450) weeks.

(26) In any case in which there shall be a loss of, or loss of use of, more than one member or parts of more than one member set forth in paragraphs (1) to (23) of this subdivision, not amounting to permanent total disability, the award of compensation shall be for the loss of, or loss of use of, each such member or parts thereof, which awards shall run consecutively, except that where the injury affects only two (2) or more digits of the same hand or foot, paragraph (21) of this subdivision shall apply.

Code Sec. 6998-10.

(d) **Maintenance for Employees undergoing Vocational Rehabilitation:** An employee who as a result of injury is or may be expected to be totally or partially incapacitated for a remunerative occupation and who, under the direction of the commission is being rendered fit to engage in a remunerative occupation, may, in the discretion of the commission under regulations adopted by it, receive additional compensation necessary for his maintenance, but such additional compensation shall not exceed ten dollars ($10.00) a week for not more than fifty-two (52) weeks.

Code Sec. 6998-11.

(e) **Temporary Partial Disability:** In case of temporary partial disability resulting in decrease of earning capacity, there shall be paid to the injured employee sixty-six and two-thirds per centum (66-2/3%) of the difference between the injured employee's average weekly wages before the injury and his wage-earning capacity after the injury in the same or other employment, subject to the maximum limitations as to weekly benefits as set up in this act, payable during the continuance of such disability, but in no case exceeding four hundred fifty (450) weeks, or a maximum of fifteen thousand dollars ($15,000.00), whichever shall be the lesser in amount.

Code Sec. 6998-12.

(f) **In all cases of claim for hernia, it shall be shown by a preponderance of the evidence:**

1. That the descent or protrusion of the hernia or rupture immediately followed as the result of sudden effort, severe strain, or the application of force to the abdominal wall;

2. That there was severe pain in the region of the hernia or rupture;

3. That there has been no descent or protrusion of the hernia or rupture prior to the accident for which compensation is claimed;

4. That the physical distress resulting from the descent or protrusion of the hernia or rupture was noticed immediately by claimant, and communicated to his employer within a reasonable time; and

5. That the physical distress following the descent or protrusion of the hernia or rupture was such as to require the attendance of a licensed physician or surgeon within five (5) days after the injury for which compensation is claimed. Postoperative hernias shall be considered as original hernias.

In every case of hernia or rupture as above defined, it shall be the duty of the employer forthwith to provide the necessary and proper medical, surgical and hospital care and attention to effectuate a cure by radical operation of said hernia or rupture, and to pay compensation under the provisions of paragraph (b) of this section, not exceeding, however, a period of twenty-six (26) weeks.

In case the employee shall refuse to permit such operation, it shall be the duty of the employer to provide all necessary first aid, medical and hospital care and services, and to supply the proper and necessary truss or other mechanical appliance to enable said employee to resume work, and shall further pay compensation under the provisions of paragraph (b) hereof, not exceeding, however, the period of thirteen (13) weeks.

In case death results within a period of one year, either from the hernia or rupture, or from the radical operation thereof, compensation shall be paid the dependents as provided in other death cases under this act.

Code Sec. 6998-13.

Section 9. Compensation for Death. If the injury causes death, the compensation shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:

(a) An immediate lump sum payment of one hundred dollars ($100.00) to the widow, in addition to other compensation benefits.

(b) Reasonable funeral expenses not exceeding three hundred fifty dollars ($350.00), exclusive of other burial insurance or benefits.

(c) If there be a surviving wife or dependent husband and no child of the deceased, to such wife or dependent husband thirty-five per centum (35%) of the average wages of the deceased, during widowhood, or dependent widowhood, and if there be a surviving child or children of the deceased, the additional amount of ten per centum (10%) of such wages for each such child; in case of the death or re-marriage of such surviving wife or dependent husband, any surviving child of the deceased employee shall have his compensation increased to fifteen per centum (15%) of such wages; provided, that the total amount payable shall in no case exceed sixty-six and two-thirds per centum (66-2/3%)

of such wages, subject to the maximum limitations as to weekly benefits as set up in this act. The commission may, in its discretion, require the appointment of a guardian for the purpose of receiving the compensation of a minor dependent. In the absence of such a requirement the appointment of a guardian for such purposes shall not be necessary; provided if no legal guardian be appointed, payment to the natural guardian shall be sufficient.

(d) If there be a surviving child or children of the deceased, but no surviving wife or dependent husband, then for the support of each such child twenty-five per centum (25%) of the wages of the deceased; provided, that the aggregate shall in no case exceed sixty-six and two-thirds per centum (66-2/3%) of such wages, subject to the maximum limitation as to weekly benefits as set up in this act.

(e) If there be no surviving wife or dependent husband or child, or if the amount payable to a surviving wife or dependent husband and to children shall be less in the aggregate than sixty-six and two-thirds per centum (66-2/3%) of the average wages of the deceased, subject to the maximum limitations as to weekly benefits as set up in this act, then for the support of grandchildren or brothers and sisters, if dependent upon the deceased at the time of the injury, fifteen per centum (15%) of such wages for the support of each such person and for the support of each parent or grandparent of the deceased, if dependent upon him at the time of injury, fifteen per centum (15%) of such wages during such dependency. But in no case shall the aggregate amount payable under this subdivision exceed the difference between sixty-six and two-thirds per centum (66-2/3%) of such wages and the amount payable as hereinbefore provided to surviving wife or dependent husband and for the support of surviving child or children, subject to the maximum limitations as to weekly benefits as set up in this act.

(f) The total weekly compensation payments to any or all beneficiaries in death cases shall not exceed forty dollars ($40.00) and shall in no case be paid for a longer period than four hundred fifty (450) weeks, or a greater amount than fifteen thousand dollars ($15,000.00).

(g) All questions of dependency shall be determined as of the time of the injury. A surviving wife, child or children shall be presumed to be wholly dependent. All other dependents shall be considered on the basis of total or partial dependency as the facts may warrant.

Code Sec. 6998-14.

(h) Aliens. Compensation under this act to aliens not residents (or about to become nonresidents) of the United States or Canada shall be the same in amount as provided for residents, except that dependents in any foreign country shall be limited to surviving wife and child or children, or if there be no surviving wife or child or children, to surviving father or mother whom the employee has supported, either wholly or in part, for the period of one year prior to the date of the 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 payment of a lump sum equal to the present value of all future payments of compensation computed at four per centum (4%) discount compounded annually.

Code Sec. 6998-15.

(i) Rules of the commission shall govern compromise payments where the prescribed schedules are not applicable and which, in its discretion, may be made in cases where it is not possible to determine the exact extent of disability, as for example in certain injuries to the back or head. The commission shall also have full authority to adjudicate the disposition of death claims. Commutation and lump sum settlement payments shall be governed by rules of the commission, and shall not be made except when determined to be in the best interest of the injured worker or his dependents, the commission having final authority in such questions.

Code Sec. 6998-16.

Section 10. Determination of Wages. Except as otherwise specifically provided, the basis for compensation under this act shall be the average weekly wages earned by the employee at the time of the injury, such wages to be determined from 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 (52) weeks immediately preceeding the date of the injury divided by fifty-two (52); but if the injured employee lost more than seven days (7) during such period, although not in the same week, then the earnings for the remainder of such fifty-two (52) weeks shall be divided by the number of weeks remaining after the time so lost has been deducted. When the employment prior to the injury extended over a period of less than fifty-two (52) 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; provided, however, that results just and fair to both parties will thereby be obtained. Where by reason of the shortness of time during which the employee has been in the employment of his employer it is impracticable to compute the average weekly wages by the above method of computation, regard shall be had to the average weekly amount which, during the first fifty-two (52) weeks prior to the injury or death, was being earned by a person in the same grade, employed at the same or similar work in the community. Wherever allowances of any character are made to an employee in lieu of wages or specified as part of the wage contract, they shall be deemed a part of his earnings.

Code Sec. 6998-17.

Section 11. Guardian for Minor or Incompetent. The commission may require the appointment by a court of competent jurisdiction, for any person who is mentally incompetent or a minor, of a guardian or

other representative to receive compensation payable to such person under this act and to exercise the powers granted to or to perform the duties required of such person under this act.

Code Sec. 6998-18.

Section 12. Notice of Injury or Death, Limitation. (a) No claim for compensation shall be maintained unless, within thirty (30) days after the occurrence of the injury actual notice was received by the employer or by an officer, manager or designated representative of an employer. If no representative has been designated by posters placed in one or more conspicuous places, then notice received by any superior shall be sufficient. Absence of notice shall not bar recovery if it is found that the employer had knowledge of the injury and was not prejudiced by the employee's failure to give notice. Regardless of whether notice was received, if no payment of compensation (other than medical treatment or burial expense) is made, and no application for benefits filed with the commission within two years from the date of the injury or death, the right to compensation therefor shall be barred.

(b) If a person who is entitled to compensation under this act is mentally incompetent or a minor, the limitation for filing application for benefits shall not be applicable so long as such person has no guardian or other authorized representative, but shall be applicable in the case of a person who is mentally incompetent or a minor from the date of appointment of such guardian or other representative, or in the case of a minor, if no guardian is appointed before he becomes of age, from the date he becomes of age.

(c) Where recovery is denied to any person, in a suit brought at law or admiralty to recover damages in respect of injury or death, on the ground that such person was an employee and that the defendant was an employer within the meaning of this act, and that such employer had secured compensation to such employee under this act, the limitation upon filing application for benefits shall begin to run only from the date of termination of such suit.

Code Sec. 6998-19.

Section 13. Payment of Compensation. (a) Compensation under this act shall be paid periodically, promptly, in the usual manner, and directly to the person entitled thereto, without an award, except where liability to pay compensation is controverted by the employer.

(b) The first installment of compensation shall become due on the fourteenth day after the employer has notice, as provided in Section 12, of the injury or death, on which date all compensation then due shall be paid. Thereafter, compensation shall be paid in installments, semi-monthly, except where the commission determines that payment in installments should be made monthly or at some other period.

(c) Upon making the first payment, and upon suspension of payment for any cause, the employer shall immediately notify the commission in accordance with a form prescribed by the commission, that payment of compensation has begun or has been suspended, as the case may be. Provided, however, that no suspension in payments of compensation shall be made for refusing to submit to medical or surgical treatment until the reasonableness of such request or refusal has been determined by the commission, and a written order suspending payment issued.

(d) If the employer controverts the right to compensation he shall file with the commission on or before the fourteenth day after he has knowledge of the alleged injury or death, a notice, in accordance with a form prescribed by the commission, stating that the right to compensation is controverted, the name of the claimant, the name of the employer, the date of the alleged injury or death, and the grounds upon which the right to compensation is controverted, but failure to file this notice shall not prevent the employer raising any defense where claim is subsequently filed by the employee, nor shall the filing of the notice preclude the employer raising any additional defense.

(e) If any installment of compensation payable without an award is not paid within fourteen (14) days after it becomes due, as provided in subdivision (b) of this section, there shall be added to such unpaid installment an amount equal to ten per centum (10%) thereof, which shall be paid at the same time as, but in addition to, such installment, unless notice is filed under subdivision (d) of this section, or unless such non-payment 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.

(f) If any installment, payable under the terms of an award, is not paid within fourteen (14) days after it becomes due, there shall be added to such unpaid installment an amount equal to twenty per centum (20%) thereof, which shall be paid at the same time as, but in addition to, such compensation, unless review of the compensation order making such award is had.

(g) Within thirty (30) days after the 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 so to notify the commission within such time the commission may assess against such employer a civil penalty in an amount not exceeding one hundred dollars ($100.00). But no case shall be closed nor any penalty be assessed without notice to all parties interested and without giving to all such parties an opportunity to be heard.

(h) The commission (1) may upon its own initiative at any time in a case in which payments are being made without an award, and (2) shall in any case where right to compensation is controverted, or where payments of compensation have been stopped or suspended, upon receipt of notice from any person entitled to compensation, or from the employer, that the right to compensation is controverted, or that payments of compensation have been stopped or suspended, make such investigations, cause such medical examinations to be made, or hold such hearings, and take such further action as it considers will properly protect the rights of all parties.

(i) Whenever the commission deems it advisable it may require any self-insurer to make a deposit with the state treasurer to secure prompt and convenient payment of such compensation, and payments therefrom upon any awards shall be made upon order of the commission.

(j) Whenever the commission determines that it is for the best interests of a person entitled to compensation, the liability of the employer for compensation, or any part thereof as determined by the commission, may be discharged by the payment of a lump sum equal to the present value of future compensation payments computed, computed at four per centum (4%) true discount compounded annually. The probability of the death of the injured employee or other person entitled to compensation shall be determined in accordance with the American Experience Table of Mortality, and the probability of the remarriage of the surviving wife or dependent female shall be determined in accordance with the remarriage tables of the Dutch Royal Insurance Institute. The probability of the happening of any other contingency affecting the amount or duration of the compensation shall be disregarded. The commission shall be the sole judge as to whether or not a lump sum payment shall be to the best interest of the injured worker or his dependents.

(k) If the employer has made advance payments of compensation, he shall be entitled to be reimbursed out of any unpaid installment or installments of compensation due.

(l) An injured employee or in case of death, his dependents or personal representative, shall give receipts for payment of compensation to the employer paying the same, and whenever required such employer shall produce the same for inspection by the commission.

Code Sec. 6998-20.

Section 14. Recording and Reporting of Payments. Every insurance company which transacts the business of compensation insurance, and every employer who is subject to the Workmen's Compensation Act, but who has not insured his liability, shall keep a record of all payments made under the provisions of this law, and of the time and manner of making such payments, and shall furnish such reports based upon these records to the Workmen's Compensation Commission as it may require by general order, upon forms approved by the commission.

Code Sec. 6998-21.

Section 15. Invalid Agreements. No agreement by an employee to pay any portion of premium paid by his employer 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 act 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 act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than One Thousand Dollars ($1,000.00).

No agreement by an employee to waive his right to compensation under this act shall be valid.

Code Sec. 6998-22.

Section 16. Assignment and Exemption from Claims or Creditors. No assignment, release, or commutation of commutation of compensation or benefits due or payable under this act, except as provided by this act, shall be valid, and such compensation and benefits shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, which exemption may be waived.

Code Sec. 6998-23.

Section 17. Compensation A Lien Against Assets. Any person entitled to compensation under the provisions of this act shall have lien against the assets of the carrier or employer for such compensation without limit of amount, and shall, upon insolvency, bankruptcy, or reorganization in bankruptcy proceedings of the carrier or employer, or both, be entitled to preference and priority in the distribution of the assets of such carrier or employer, or both.

Code Sec. 6998-24.

Section 18. Determination of Claims for Compensation. Except as otherwise provided by this act, the details of practice and procedure in the settlement and adjudication of claims shall be determined by rules of the commission, the text of which shall be published and be readily available to interested parties.

The commission shall have full power and authority to determine all questions relating to the payment of claims for compensation. The commission shall make or cause to be made such investigation as it deems necessary, and upon application of either party, or upon its own initiative, shall order a hearing, and shall make or deny an award and file the same in its office.

Informal conferences and hearings in contested cases may be conducted by a duly designated representative of the commission. Upon the

conclusion of any such hearing, the commission's representative shall make or deny an award, and file the decision in the office of the commission. Immediately after such filing, a notice of decision shall be sent to all interested parties. This decision shall be final, unless within twenty (20) days a request or petition for review by the full commission is filed.

Code Sec. 6998-25.

Section 19. Enforcement of Payment in Default. In case of default by the employer in the payment of any compensation due under an award for the period of thirty (30) days after payment is due and payable, or where the employer has failed to secure the payment of compensation to his employees as required, where there is such default in payment for a period of ten (10) days after same is due, any party in interest may file with the county clerk for the county in which the injury occurred or the county in which the employer has his principal place of business, a certified copy of the decision of the commission awarding compensation or ending, diminishing or increasing compensation previously awarded, from which no appeal has been taken within the time allowed therefor, or if an appeal has been taken by an employer who has not complied with the provisions of section 32 hereof, where he fails to deposit with the commission the amount of the award as security for its payment within ten (10) days after same is due and payable, and thereupon judgment must be entered in the circuit court by the clerk of such county in conformity therewith immediately upon the filing of such decision. If the payment in default be an installment, the commission may declare the entire award due and judgment may be entered in accordance with the provisions of this section. Such judgment shall be entered in the same manner, have the same effect and be subject to the same proceedings as though rendered in a suit duly heard and determined by the circuit court, except that no appeal may be taken therefrom. The court shall vacate or modify such judgment to conform to any later award or decision of the commission upon presentation of a certified copy of such award or decision. The award may be so compromised by the commission as in its discretion may best serve the interest of the persons entitled to receive the compensation or benefits. Neither the commission nor any party in interest shall be required to pay any fee to any public officer for filing or recording any paper or instrument or for issuing a transcript of any judgment executed in pursuance of this section.

Code Sec. 6998-26.

Section 20. Court Review of Compensation Award. The final award of the commission shall be conclusive and binding unless either party to the controversy shall within thirty (30) days from the date of its filing in the office of the commission and notification to the parties appeal therefrom to the circuit court of the county in which the injury occurred.

Such appeal may be taken by filing notice of appeal with the commission, whereupon the commission shall under its certificate transmit

to the circuit court of the county where the injury occurred all documents and papers on file in the matter, together with a transcript of the evidence, the findings, and award, which shall thereupon become the record of the cause. Appeals shall be considered only upon the record as made before the commission. The circuit court shall always be deemed open for hearing of such appeals and the circuit judge may hear the same at term time or in vacation at any place in his district, and the same shall have precedence over all civil cases, except election contests. The circuit court shall review all questions of laws and of fact. If no prejudicial error be found, the matter shall be affirmed and remanded to the commission for enforcement. If prejudicial error be found, the same shall be reversed and the circuit court shall enter such judgment or award as the commission should have entered. Appeals may be taken from the circuit court to the supreme court in the manner as now required by law. An appeal from the commission to the circuit court shall not act as a supersedeas unless the court to which such appeal is directed shall so direct and then upon such terms as such court shall direct.

No controversy shall be heard by the commission or an award of compensation made therein while the same matter is pending either before a Federal Court or in any court in this state.

Any award of compensation made by the circuit court and appealed to the supreme court shall bear the same interest and penalties as do other judgments awarded in the circuit court.

Code Sec. 6998-27.

Section 21. Continuing Jurisdiction of the Commission. Upon its own initiative, or upon the application of any party in interest on the ground of a change in conditions or because of a mistake in a determination of fact, the commission may, at any time prior to one (1) year after date of the last payment of compensation, whether or not a compensation order has been issued, or at any time prior to one (1) year after the rejection of a claim, review a compensation case, issue a new compensation order which may terminate, continue, reinstate, increase or decrease such compensation, or award compensation. Such new order shall not affect any compensation previously paid, except that an award increasing the compensation rate may be made effective from the date of the injury, and if any part of the compensation due or to become due is unpaid, an award decreasing the compensation rate may be made effective from the date of the injury, and any payment made prior thereto in excess of such decreased rate shall be deducted from any unpaid compensation, in such manner and by such method as may be determined by the Commission.

Code Sec. 6998-28.

Section 22. Procedure Before the Commission. (a) In making an investigation or inquiry or conducting a hearing, the commission shall not be bound by common law or statutory rules of evidence or by tech-

nical or formal rules or procedure, except as provided by this act, but may make such investigation or inquiry or conduct such hearing in such manner as best to ascertain the rights of the parties. Declarations of a deceased employee concerning the injury in respect of which the investigation or inquiry is being made or the hearing conducted shall be received in evidence and shall, if corroborated by other evidence, be sufficient to establish the injury.

(b) Hearings before the commission shall be open to the public and shall be stenographically reported, or recorded and transcribed. The commission shall by regulations provide for the preparation of a record of the hearings and other proceedings.

(c) Unless otherwise ordered by the commission, hearings shall be conducted in the county where the injury occurred.

Code Sec. 6998-29.

Section 23. Witnesses and Their Fees. The commission shall regulate, by rules published and available to the parties, the summoning, attendance, use and compensation of witnesses, and determine the qualifications of specialists and their scale of fees as expert witnesses. Unless otherwise provided by the commission, witnesses summoned in a proceeding before the commission or whose depositions are taken shall receive the same fees and mileage as witnesses in civil cases in courts of record.

Code Sec. 6998-30.

Section 24. Costs in Proceeding Brought Without Reasonable Ground. If the court having jurisdiction of proceedings in respect of any claim or compensation order determined that the proceedings in respect of such claim or order have been instituted or continued without reasonable ground, the costs of such proceedings shall be assessed against the party who has so instituted or continued such proceedings.

Code Sec. 6998-31.

Section 25. Procedural Authority of the Commission. (a) The commission and its hearing officers shall have the power to preserve and enforce order during hearings; to issue subpoenas for, to administer oaths to, and to compel the attendance and testimony of witnesses, or the production of books, papers, documents, and other evidence, or the taking of depositions before any designated individual competent to administer oaths; to examine witnesses; and to do all things conformable to law which may be necessary to enable him effectively to discharge the duties of his office.

(b) If any person in proceedings before the commission disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce,

after having been ordered to do so, any pertinent book, paper, or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the commission shall certify the facts to the court having jurisdiction in the place in which it is sitting and the court shall thereupon in a summary manner hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same condition as if the doing of the forbidden act had occurred with reference to the process of or in the presence of the court.

Code Sec. 6998-32.

Section 26. Fees for Legal and Other Services. (a) No claim for legal services or for any other services rendered in respect of a claim or award for compensation, to or on account of any person, shall be valid unless approved by the commission, or if proceedings for review of the order of the commission in respect of such claim or award are had before any court, unless approved by such court. Any claim so approved shall, in the manner and to the extent fixed by the commission or such court, be a lien upon such compensation.

(b) Any person (1) who receives any fee, other consideration, or any gratuity on account of services so rendered, unless such consideration or gratuity is approved by the commission or such court, or (2) who makes it a business to solicit employment for a lawyer or for himself in respect of any claim or award for compensation, shall be guilty of a misdemeanor, and upon conviction thereof shall, for each offense, be punished by a fine of not more than one thousand dollars ($1,000.00) or by imprisonment not to exceed one year, or by both such fine and imprisonment.

(c) Representation of one other than himself or herself before the commission shall be considered the practice of law, and all statutes applying to and regulating the practice in all other courts of law in this state shall likewise apply to practice before the commission, in so far as the qualifications of those practicing before the commission are concerned. This paragraph shall not be construed as tightening the rules of evidence which are otherwise relaxed in other subdivisions of this bill.

In no instance shall the amount recovered by an attorney for an appearance before the commission exceed twenty-five per centum (25%) of the total award of compensation. Such limitations, however, shall not be construed as applying to a fee awarded for additional services by any superior court. Legal services rendered where no motion to controvert has been filed by either employer or employee shall be considered as consultation, and that factor shall be taken into consideration in awarding a fee. In all instances, fees shall be awarded on the basis of fairness to both attorney and client: Although exceptions may be made in the interest of justice, it shall be deemed conducive to the best interest of

all concerned for the commission to approve contracts for attorney fees voluntarily entered into between attorney and client, within the limitations hereinabove set out.

When an award of compensation becomes final, and an attorney fee is outstanding, a partial lump sum settlement sufficient to cover the attorney fee approved therein by the commission shall be made immediately, from payments last to become due, and the deductions allowed by the law shall be borne equally by the attorney and the client.

Code Sec. 6998-33.

Section 27. Record of Injury or Death. Every employer shall keep a record in respect of any injury to an employee. Such record shall contain such information of disability, or death in respect of such injury as the commission may by regulation require, and shall be available to inspection by the commission or by any state authority at such times and under such conditions as the commission may by regulation prescribe.

Code Sec. 6998-34.

Section 28. Reports of Injuries. (a) Within ten days after the fatal termination of any injury, the employer shall make a brief report of such occurrence to the commission by telegraph or by letter. Within ten (10) days after the occurrence of an injury which shall cause a loss of time beyond the day or working shift on which the injury occurred, a report thereof shall be made in writing by the employer to the commission, upon a form approved by the commission for that purpose, setting forth (1) the name, address, and business of the employer; (2) the name, address, and occupation of the employee; (3) the cause and nature of the injury or death; (4) the year, month, day and hour when and the particular locality where the injury or death occurred; and (5) such other information as the commission may require.

(b) Additional reports in respect of such injury and of the condition of such employee shall be sent by the employer to the commission at such times and in such manner as the commission may prescribe.

(c) The mailing to the commission of any such report in a stamped envelope within the time prescribed, shall be a compliance with this section.

(d) Whenever an employer fails or refuses to file any report required of him by this section, the commission may in its discretion add a penalty not to exceed one hundred dollars ($100.00) to all or any awards which may be made as a result of the unreported injury.

Code Sec. 6998-35.

Section 29. Penalty for Misrepresentation. Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining any benefit or payment under this act shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not to exceed one thousand dollars ($1,000.00) or by imprisonment of not to exceed one year, or by both such fine and imprisonment.

Code Sec. 6998-36.

Section 30. Compensation for Injuries Where Third Parties Are Liable. The acceptance of compensation benefits from or the making of a claim for compensation against an employer or insurer for the injury or death of an employee shall not affect the right of the employee or his dependents to sue any other party at law for such injury or death, but the employer or his insurer shall be entitled to reasonable notice and opportunity to join in any such action or may intervene therein. If such employer or insurer join in such action they shall be entitled to repayment of the amount paid by them as compensation and medical expenses from the net proceeds of such action (after deducting the reasonable costs of collection) as hereinafter provided.

The commencement of an action by an employee or his dependents (or legal representative) against a third party for damages by reason of the injury, or the adjustment of any such claim, shall not affect the right of the injured employee or his dependents (or legal representative) to recover compensation, but any amount recovered by the injured employee or his dependents (or legal representative) from a third party shall be applied as follows: Reasonable costs of collection as approved and allowed by the court in which such action is pending, or by the commission of this state in case of settlement without suit, shall be deducted; the remainder, or so much thereof as is necessary, shall be used to discharge the legal liability of the employer or insurer, and any excess shall belong to the injured employee or his dependents. The employee or his dependents bringing suit against the third party must notify the employer or carrier within fifteen days of the filing of such suit.

An employer or compensation insurer who shall have paid compensation benefits under this act for the injury or death of the employee shall have the right to maintain an action at law against any other party responsible for such injury or death, and in the name of such insured employee or his beneficiaries, or in the name of such employer or insurer, or any or all of them. If reasonable notice and opportunity to be represented in such action by counsel shall have been given to the compensation beneficiary, all claims of such compensation beneficiary shall be determined in such action, as well as the claim of the employer or insurer. If recovery shall be had against such other party, by suit or otherwise, the compensation beneficiary shall be entitled to any amount recovered over and above the amount that the employer and insurer shall have paid or are liable for in compensation or other benefits, after deducting the reasonable costs of collection.

In case of settlement of any action before the trial thereof, such settlement shall be subject to the approval of the court wherein such action is pending, and settlement before an action is brought shall be

subject to the approval of the commission. Distribution of the portion belonging to the dependents shall be made among such dependents in the manner provided for in this act.

In case of liability of the employer or insurer to make payment to the state treasury under the second injury fund provisions, if the injury or death creates a legal liability against a third party, the employer or insurer shall have a right of action against such third party for reimbursement of any sum so paid into the state treasury, which right may be enforced in the action heretofore provided for or by an independent action.

Code Sec. 6998-37.

Section 31. Permanent Total Incapacity Due Partly To Prior Injury: Second Injury Fund. If an employee who has previously lost, or lost the use of, one hand, one arm, one foot, one leg, or one eye, becomes permanently and totally incapacitated through the loss, or loss of use, or another member or organ, the employer shall be liable only for the compensation payable for such second injury. Provided, however, that in addition to such compensation and after the completion of the payment therefor, the employee shall be paid the remainder of the compensation that would be due for permanent total incapacity, out of a special fund known as the "Second-Injury Fund," and created for such purpose in the following manner:

In every case of compensable death of any employee under this act, the employer, or if insured, his insurance carrier, shall pay to the commission the sum of One Hundred Fifty Dollars ($150.00) except in cases where there is no dependency, then there shall be paid to the commission the sum of Five Hundred Dollars ($500.00) to be deposited with the State Treasurer for the benefit of said fund, provided, however, that a suspension of said payments of One Hundred Fifty Dollars ($150.00) per death shall be made when the total amount of all such payments, together with the accumulated interest thereon equals or exceeds Thirty-five Thousand Dollars ($35,000.00), and no further contributions to said fund shall be made except in cases where there is no dependency; but whenever, thereafter, the amount of such sum shall be reduced below Twenty Thousand Dollars ($20,000.00) by reason of payments made pursuant to Section 31 of this act, then such contributions of One Hundred Fifty Dollars ($150.00) per death shall be resumed forthwith, and shall continue until such sum, together with accumulated interest thereon, shall again amount to Thirty-five Thousand Dollars ($35,000.00), and the commission shall direct the distribution thereof.

Code Sec. 6998-38.

Section 32. Security for Payment of Compensation. (a) Insurance of Liability: An employer liable under this act to pay compensation shall insure payment of such compensation by a carrier authorized to

insure such liability in this state unless such employer shall be exempted from doing so by the commission.

(b) Exemption from Insuring: An employer desiring to be exempt from insuring his liability for compensation shall make application to the commission showing his financial ability to pay such compensaton, and agreeing as a condition for the granting of the exemption to faithfully report all injuries under compensation according to law and the requirement of the commission and to comply with the provisions of this act, and the rules of the commission pertaining to the administration thereof, whereupon the commission by written order may make such exemption. The commission may from time to time require further statement of financial ability of such employer to pay compensation and may upon ten (10) days' notice in writing, for financial reasons, or for failure of the employer to faithfully discharge his obligations according to the agreements contained in his application for exemption, revoke its order granting such exemption, in which case such employer shall immediately insure his liability. As a condition for the granting of an exemption, the commission shall have authority to require the employer to furnish such security as it may consider sufficient to insure payment of all claims under compensation. Where the security is in the form of a bond or other personal guaranty, the commission may at any time either before or after the entry of an award upon at least ten (10) days' notice and opportunity to be heard require the sureties to pay the amount of the award, the same to be enforced in like manner as the award itself may be enforced. Where an employer procures an exemption as herein provided and thereafter enters into any form or agreement for insurance coverage with an insurance company or interinsurer not licensed to operate in this state, his conduct shall automatically operate as a revocation of such exemption. An order exempting an employer from insuring his liability for compensation shall be null and void if the application contains a financial statement which is false in any material respect. The commission shall revoke the self-insurance permit if the employer is found to have directly or indirectly induced an employee to forego his right to workmen's compensation benefits.

Code Sec. 6998-39.

Section 33. Insurance Policy Regulations. (a) Every contract for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act, and provisions thereof inconsistent with the act shall be void. Such contract shall be construed to grant full coverage of all liability of the assured under and according to the provisions of the act, notwithstanding any agreement of the parties to the contrary unless the Insurance Department has theretofore by written order specifically consented to the issuance of a policy on a part of such liability. No such policy shall be cancelled within the policy period until a notice in writing shall be given to the commission and to the assured, fixing the date on which it is proposed to cancel it, or declaring that the company does not in-

tend to renew the policy upon expiration date, such notices to be served personally or by registered mail on the commission at its office in Jackson, and upon the assured. No such cancellation shall be effective until thirty (30) days after the service of such notice, unless the employer has obtained other insurance coverage, in which case such policy shall be deemed cancelled as of the effective date of such other insurance, whether or not such notice has been given.

(b) Substitution of Carrier for Employer: In any case where the employer is not a self-insurer, in order that the liability for compensation imposed by this act may be most effectively discharged by the employer, and in order that the administration of this act in respect of such liability may be facilitated, the commission shall by regulation provide for the discharge, by the carrier for such employer, of such obligations and duties of the employer in respect of such liability, imposed by this act upon the employer, as it considers proper in order to effectuate the provisions of this act. For such purposes (1) notice to or knowledge of an employer of the occurrence of the injury shall be notice to or knowledge of the carrier, (2) jurisdiction of the employer by the commission or any court under this act shall be jurisdiction of the carrier, and (3) requirement by the commission or any court under any compensation order, finding, or decision shall be binding upon the carrier in the same manner and to the same extent as upon the employer.

Code Sec. 6998-40.

Section 34. Acceptance of Premium by Carrier an Estoppel. Acceptance of a premium on a policy securing to an employee compensation, either alone or in connection with other insurance, shall estop the carrier so accepting from pleading that the employment of such employee is not covered under the act or that the employment is not carried on for pecuniary gain.

When any member of a partnership, firm or association, who does or does not perform manual labor, and where there is coverage of fellow employees, elects to take coverage under the provisions of the act, the intent of the insured as well as acceptance by the carrier shall be shown by endorsement to the policy. Any such affirmative action by the parties shall entitle said members or officers to the benefits enjoyed by an employee under the act. Every executive officer elected or appointed and empowered in accordance with a charter and bylaws of a corporation, other than nonprofit charitable, fraternal, cultural, or religious corporations or associations, shall be an employee of such corporation under this act; provided, however, that said executive officer may reject said coverage by giving notice in writing to the carrier of his election not to be covered as an employee.

Any such executive officer of a nonprofit charitable, fraternal, cultural, or religious corporation or association may, notwithstanding any other provision of this act, be brought within the coverage of its insurance contract by any such corporation or association by specifically including such executive officer in such contract of insurance; and the election to bring such executive officer within the coverage shall continue for the period such contract of insurance is in effect, and during such period such executive officers thus brought within the coverage of the insurance contract shall be employees of such corporation or association under this act.

Code Sec. 6998-41.

Section 35. Notice of Coverage. Every employer who has secured compensation under the provisions of this act shall keep notices posted in a conspicuous place or places in and about his place or places of business, in accordance with a form prescribed by the Commission, stating that such employer has secured the payment of compensation in accordance with the provisions of this act. Such notices shall contain the name and address of the carrier, if any, with whom the employer has secured payment of the compensation and the date of the expiration of the policy.

Code Sec. 6998-42.

Section 36. Penalty for Failure to Secure Payment of Compensation. (a) Any employer required to secure the payment of compensation under this act who fails to secure such compensation shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars ($1,000.00), or by imprisonment for not more than one year, or by both such fine and imprisonment; and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable to such fine or imprisonment as herein provided for the failure of such corporation to secure the payment of compensation; and such president, secretary, and treasurer shall be severally personally liable, jointly with such corporation, for any compensation or other benefit which may accrue under the said act in respect to any injury which may occur to any employee of such corporation while it shall so fail to secure the payment of compensation as required by this act.

(b) Any uninsured employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes, or destroys any property belonging to such employer, after one of his employees has been injured within the purview of this act, and with intent to avoid the payment of compensation under this act to such employee or his dependents, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars ($1,000.00), or by imprisonment for not more than one year, or by both fine and imprisonment, and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable to such penalty of imprisonment as well as jointly liable with such corporation for such fine.

(c) This section shall not affect any other liability of the employer under this act.

Code Sec. 6998-43.

Section 37. Workmen's Compensation Commission. (a) There is hereby created a commission to be known as the Workmen's Compensation Commission, consisting of three (3) members, who shall devote their entire time to the duties of the office. The governor shall appoint the members of the commission, by and with the consent of the Mississippi State Senate, one for a term of two (2) years, one for a term of four (4) years, and one for a term of six (6) years. Upon the expiration of each term as above set forth, the governor shall appoint a successor for a term of six (6) years, and thereafter the term of office of each commissioner shall be for six (6) years. One member shall be a person who by reason of his previous vocation or affiliation can be classed as a representative of employers, and one member shall be a person who by reason of his previous vocation or affiliation can be classed as a representative of employees. One member shall be an attorney-at-law of recognized ability with at least five years active practice in Mississippi prior to his appointment. The governor shall designate the chairman of the commission, whose term of chairman shall run concurrently with his appointment as a commissioner.

The chairman shall be the administrative head of the commission, and shall have the final authority in all matters relating to assignment of cases for hearing and trial and the administrative work of the commission and its employees, except in the promulgation of rules and regulations wherein the commission shall act as a body, and in the trial and determination of cases as otherwise provided.

Upon the expiration of his term as a commissioner he shall continue to serve until his successor has been appointed. Because cumulative experience is conspicuously essential to the proper administration of a workmen's compensation law, it is declared to be in the public interest to continue Workmen's Compensation Commissioners in office as long as efficiency is demonstrated. A commissioner may be removed for cause prior to the expiration of his term, but shall be furnished a written copy of the charges against him and shall be accorded a public hearing.

(b) A vacancy in the commission, if there remain two (2) members of it, shall not impair the authority of such two (2) members to act. In case of illness or continued absence for other reasons, the same authority of such two (2) members shall apply.

(c) The commission shall have the powers and duties necessary for effecting the purposes of this act, including the powers of a court of record for compelling the attendance of witnesses, examining them under oath, and compelling the production of books, papers, documents, and objects relevant to the determination of a claim for compensation, and the power to adopt rules and regulations and make or approve the forms relating to notices of injuries, payment of claims, and other purposes. The authority of the commission and its duly authorized representatives to investigate and determine claims for compensation shall include the

right to enter the premises where an injury occurred, to ascertain its causes and circumstances.

(d) The office of the commission shall be situated in the City of Jackson, but hearings may be held at such places as it may deem most convenient for the proper and speedy performance of its duties. The commission is authorized, if it deems it necessary for the convenient and efficient dispatch of business, to lease office space and facilities in other than publicly owned buildings.

(e) The commission shall adopt detailed rules and regulations for implementing the purposes of this act, at hearings attended by the main parties interested. Such rules, upon adoption, shall be published and be at all reasonable times made available to the public, and if not inconsistent with law shall be binding upon those participating in the responsibilities and benefits of the workmen's compensation act.

(f) The commission shall adopt or approve the forms required for administering the act, such notices of injury, application for benefits, receipts for compensation, and all other forms needed to assure the orderly and prompt operation of the law, and may require the exclusive use of any or all such approved forms.

Code Sec. 6998-44.

Section 38. Official Bond. Members of the commission shall give bond in the sum of Ten Thousand Dollars ($10,000.00) of a surety company authorized to do business in the state, for the faithful performance of their duties. The premium upon such bonds shall be paid out of the Workmen's Compensation Administration Fund.

Code Sec. 6998-45.

Section 39. Seal. The commission shall have a seal for authentication of its orders, awards and proceedings, upon which shall be inscribed the words "Workmen's Compensation Commission—Mississippi—Seal," and it shall be judicially noticed.

Code Sec. 6998-46.

Section 40. Traveling Expenses. Commissioners and employees of the commission shall receive their necessary traveling expenses and cost of subsistence while traveling on official business and away from their designated station. Expense accounts shall be sworn to by the person presenting them and upon approval by the chairman of the commission shall be allowed and paid as provided in Section 43.

Code Sec. 6998-47.

Section 41. Administrative Staff. The commission shall appoint such officers and employees as are necessary adequately to administer

the workmen's compensation law, including a secretary and not more than six (6) attorney referees, said secretary and attorney referees to be appointed by the commission with the consent of the governor; a statistician and one or more medical officers, and any and other employees deemed essential to the administration of the law. All salaries not specifically fixed by the act shall be set by the commission. The establishing of a merit system or career service for employees of the commission is declared to be in the public interest, because of the length of time required for understanding the details and problems involved in administering this legislation. The commission shall establish and enforce fair and reasonable rules for the appointment, promotion, and demotion of personnel. All employees of the commission with the exception of medical consultants shall devote their entire time to the duties of their office.

For the purpose of conducting hearings and making decisions upon claims, the attorney referee or attorney referees appointed by the commission shall have the authority of a commissioner.

Code Sec. 6998-48.

Section 42. Payment of Operating Expense. The commission shall make such expenditures as may be necessary for the adequate administration of this act, including salaries and traveling expenses, the cost of personal services, office rent at the seat of government and elsewhere, the purchase of books, periodicals, office equipment and supplies, printing and binding reports, the cost of membership in official organizations, and other purposes. All expenditures of the commission in the administration of this act shall be allowed and paid out of the administration expense fund as provided in Section 43 upon the presentation of itemized vouchers therefor approved by the chairman of the commission.

Code Sec. 6998-49.

Section 43. Administrative Expense Fund. (1) There is hereby established in the State Treasury a special fund for the purpose of providing for the payment of all expenses in respect of the administration of this act. Such fund shall be administered by the commission. The State Treasurer shall be the custodian of such funds and all monies and securities in such fund shall be held in trust by such treasurer and shall not be the money or property of the State.

(2) The State Treasurer is authorized to disburse monies from such fund only upon order of the commission. The official bond of the State Treasurer shall be conditioned for the faithful performance of his duty hereunder.

(3) The State Treasurer shall deposit any monies paid into such fund into such qualified depository banks as the commission may designate, and is authorized to invest any portion of the fund which, in the opinion of the commission, is not needed for current requirements, in the same manner and subject to all the provisions of the law with respect to the deposit of state funds by such treasurer. All interest earned by such portion of the fund as may be invested by the State Treasurer shall be collected by him and placed to the credit of such fund.

(4) All civil penalties provided in this chapter, if not voluntarily paid, may be collected by civil suit brought by the commission and shall be paid into such fund.

Code Sec. 6998-50.

Section 44. Budget and Collection Procedure. (1) The commission shall estimate semi-annually in advance the amounts necessary for the administration of this act, in the following manner: (a) The commission shall as soon as practicable after the first day of January and July in each year, determine the expense of administration of this act for the six-months' period preceding the first day of January or July, as the case may be. The expense of administration for such period shall be used as the basis for determining the amount to be assessed against each carrier in order to provide for the expenses of the administration of this act for the corresponding six-months' period in the current calendar year.

(b) The total expenses of administration shall be prorated among the carriers writing compensation insurance in the state, and self-insurers. The gross compensation paid is the basis for computing the amount to be assessed in the proportion that the total compensation paid by such carrier or self-insurer during such six-month period bore to the total compensation paid by all carriers and self-insurers during such period. This amount may be assessed as a specific amount or as a percentage of gross compensation paid as the commission may direct, and shall be such amount as shall be reasonably necessary to defray the necessary expenses of such administration.

(2) The commission shall provide by regulation for the collection of the amounts assessed against each carrier. Such amounts shall be paid within thirty (30) days from the date that notice is served upon such carrier. If such amounts are not paid within such period, there may be assessed for each thirty (30) days the amount so assessed remaining unpaid, a civil penalty equal to ten per cent (10%) of the amount so unpaid, which shall be collected at the same time and as a part of the amount assessed.

(3) If any carrier fails to pay the amounts assessed against it under the provisions of this section within sixty (60) days from the time such notice is served, the commission may suspend or revoke the authorization to insure compensation.

(4) All amounts collected under the provisions of this section shall be paid into the administration fund.

(5) The commission may require from each carrier, at such time and in accordance with regulations as the commission may prescribe, reports

in respect to all payments of compensation made by such carrier during each prior period, and may determine the amounts paid by each carrier and the amounts paid by all carriers during such period.

Code Sec. 6998-51.

Section 45. Registration of Insurance Companies. Each insurance company and all other carriers which desire to write Workmen's Compensation insurance in compliance with this act shall be required, before writing such insurance, to register with the Workmen's Compensation Commission and pay a registration fee of one hundred dollars ($100.00). This shall be deposited by the commission in the administration expense fund.

Code Sec. 6998-52.

Section 46. Annual Report. The commission shall each calendar year make a report to the governor upon the operation of this act, including suggestions and recommendations as to improvements in the law and administration, a detailed statement of receipts and disbursements, and an exposition of industrial injury experience and compensation and medical cost.

Code Sec. 6998-53.

Section 47. Rehabilitation. The commission shall cooperate with federal, state, and local agencies in the rehabilitation of handicapped workers, and shall promptly report to the proper authority industrial injury cases in which retraining or job placement may be needed.

Code Sec. 6998-54.

Section 48. Double Compensation and Double Death Benefits for Minors Illegally Employed. Compensation and death benefits shall be double the amount otherwise payable if the injured employee at the time of the injury is a minor under eighteen (18) years of age employed, permitted or suffered to work in violation of any provision of the Mississippi Labor laws. The employer alone and not the insurance carrier shall be liable for such increased compensation or increased death benefits. Any provision in an insurance policy undertaking to relieve an employer from such increased liability shall be void; provided, however, the provisions of this section shall not apply, and double compensation and double death benefits shall not be payable, for death or injury to an employee under eighteen (18) years of age employed in the following programs:

1. Students fourteen (14) years of age and over and regularly enrolled in an accredited secondary school or college and employed between regular terms or semesters with the written consent of their parent or parents or person standing in loco parentis.

2. Students fourteen (14) years of age and over and employed in on-the-job training as a part of a regular program of education in an accredited secondary school with the written consent of their parent or parents or person standing in loco parentis.

Code Sec. 6998-55.

Section 49. Extra-Territorial Application. (a) If an employee who has been hired or is regularly employed in this state receives personal injury by accident arising out of and in the course of his employment while temporarily employed outside of this state, he or his dependents in case of death shall be entitled to compensation according to the law of this state. This provision shall apply only to those injuries received by the employee within six months after leaving this state, unless prior to the expiration of such six months' period the employer has filed with the commission of Mississippi notice that he has elected to extend such coverage a greater period of time.

(b) The provisions of this section shall not apply to an employee whose departure from this state is caused by a permanent assignment or transfer.

(c) Any employee who has been hired or is regularly employed outside of this state and his employer shall be exempted from the provisions of this act while such employee is temporarily within this state doing work for his employer if such employer has furnished Workmen's Compensation insurance coverage under the Workmen's Compensation or similar laws for a state other than this state, so as to cover such employee's employment while in this state, provided the extra-territorial provisions of this act are recognized in such other state and provided employers and employees who are covered in this state are likewise exempted from the application of the Workmen's Compensation or similar laws of such other state. The benefits under the Workmen's Compensation Act or similar laws of such other state shall be the exclusive remedy against such employer for any injury, whether resulting in death or not, received by such employee while working for such employer in this state.

Code Sec. 6998-56.

Section 50. Assignment of Risks Not Coverable By Insurance. The commission is hereby authorized, empowered and directed, in its discretion, to promulgate such rules and regulations as will enable said commission to provide for the assignment of risks which in good faith are entitled to insurance under this act but which because of unusual conditions and circumstances are unable to obtain such insurance.

Code Sec. 6998-57.

Section 51. Constitutionality. If any section or provision of this act be decided by the courts to be unconstitutional or invalid, the same shall

not affect the validity of the act as a whole or any part thereof, other than the part so decided to be unconstitutional.

Code Sec. 6998-58.

Section 52. Repealing Clause. All laws and parts of laws in conflict with this act are hereby repealed.

Code Sec. 6998-59.

Section 53. Effective Date. That this act shall take effect January 1, 1949.

Code Sec. 8085. Personnel and salaries; Workmen's Compensation Insurance.

The Commissioner of Public Safety is hereby authorized and empowered to employ such administrative, professional, technical, stenographic, clerical, and other employees as may be necessary to perform the duties of the Mississippi Highway Safety Patrol, to comply with the provisions of the Mississippi Motor Vehicle Safety-Responsibility Act, being Chapter 359, Laws of 1952 [§§ 8285-01 et seq.] and to perform the duties of the Mississippi Livestock Theft Bureau, created by Chapter 173, Laws of 1952 [§§ 4896-01 et seq.], and all other laws required to be administered under the supervision of the Commissioner of Public Safety, and the Commissioner shall fix the salaries of all employees where such salaries are not otherwise fixed by law.

The Commissioner shall have the authority to establish, staff, equip and operate a Crime Detection and Medical Examiner Laboratory, and to cooperate, with the University Medical Center, and other hospitals and laboratories in its operation.

The Department of Public Safety shall purchase Workmen's Compensation Insurance with coverage for all patrolmen and other personnel employed by the Commissioner, as authorized by law, and all personnel shall be entitled to the benefits prescribed by Chapter 354, Laws of 1948 [§§ 6998-01 et seq.], as the same is now or may hereafter be amended, cited as the "Workmen's Compensation Law."

No state officer or other person shall utilize at any time any car, material or equipment of the Mississippi State Highway Patrol for his personal use except in an emergency and a breach of this provision shall constitute a misdemeanor punishable by a fine not to exceed one hundred dollars ($100.00), or thirty days in jail or both. Nothing in this paragraph, however, shall be construed to apply to the Governor or Lieutenant Governor of the State of Mississippi.

Code Sec. 8519-161. National Guard may elect to come within provisions of Workmen's Compensation Law.

The organized militia of the State of Mississippi, also known as the Mississippi National Guard, may elect by proper action to come within the provision of the Mississippi Workmen's Compensation Law, and in such event shall notify the commission of such action. After having made such an election, the said Mississippi National Guard may be a self-insurer without the requirement of paying the registration fee as required by Section 45 of the Workmen's Compensation Law [§ 6998-51], and without the requirement of filing a self-insurer bond; and may make payment of compensation benefits from any appropriations or funds available to the Mississippi Military Department or any subdivision thereof, provided that such benefits shall be paid only for injuries sustained as a direct result of active military service for the State of Mississippi by direction of an Executive Order of the Governor of the State of Mississippi. Provided further, that for the purpose of determining the average weekly wages of the person entitled to benefits herein, said wages shall be computed on the basis of his earnings in civilian life or on the basis of his current military pay, whichever shall be greater.

RULES AND REGULATIONS OF THE MISSISSIPPI WORKMEN'S COMPENSATION COMMISSION

A. GENERAL

RULE 1

The office of the Mississippi Workmen's Compensation Commission shall be in the City of Jackson. The Commission shall remain in continuous session, but in addition to such continuous session, the Commission shall meet as a body at the call of the Chairman for the purpose of transacting any unusual business that may come before it.

RULE 2

The rules of the Commission are subject to amendment at any time, and the Commission will adopt additional rules whenever in its judgment changes are advisable.

RULE 3

PROOF OF COVERAGE. Every employer within the scope of the Mississippi Workmen's Compensation Law shall file with the Commission proof of compliance with the insurance provisions of the Law. In cases where insurance is taken with a carrier registered with the Commission, notice of the employer's compliance by the carrier on Form A-24 (Revised), will be sufficient.

RULE 4

ELECTIONS. Where an employer not embraced by the Law elects to come within the provisions of the Law as provided for in Section 3 of the Workmen's Compensation Act, compensation coverage shall remain in effect until notice to the contrary is filed with the Commission by said employer.

RULE 5

CANCELLATION OF POLICIES. Any insurance carrier having issued a policy to an employer and desiring to cancel or terminate same, shall be required to give 30 days prior notice thereof in writing to the Commission and to the employer. In the event a request for cancellation is occasioned by the employer's having taken coverage with another company, or if for any reason the employer chooses to reject a policy presented to him by the carrier, the Commission may, upon application of the carrier and upon proper showing, waive the 30 day prior notice requirement.

The employer whose policy has thus been cancelled or terminated, shall, on or before the fifteenth day after receipt of notice of cancellation or termination thereof, file evidence with the Commission of having obtained other coverage in accordance with the Act; or that he has been rejected by at least two companies registered to write compensation in this State, in which event his request for insurance shall be processed under the assigned risk plan as provided for in Section 50 of this Act.

RULE 6

ASSIGNED RISKS. If for any reason any employer in the State shall be unable to obtain compensation insurance, such employer shall immediately file with the Commission a signed statement that he has been rejected by two or more companies registered to write workmen's compensation in Mississippi, and that he desires to be covered in accordance with the assigned risk plan under the provisions of Section 50 of the Act. Upon the receipt of such application, said request for coverage shall be forwarded to the Southeastern Compensation Rating Bureau for assignment, and a compensation policy shall be written by a designated insurance company as soon thereafter as is possible under the circumstances. Application for assigned risk insurance shall be considered evidence of good faith on the part of the employer, and shall save said employer from penalties for failure to procure insurance if able and willing to comply with the Workmen's Compensation Law in all other respects as though he were insured at the time of an injury. When an assigned risk policy is written by any company, notice shall be given this Commission on Form A-24 (Revised), such notice being specially marked "Assigned Risk." The insured shall have the benefit of all services otherwise rendered to those covered by policies voluntarily written by the same company. In cases where the Commission is furnished indisputable proof that the insured fails to follow suggstions and instructions from the carrier concerning safety measures, so as to endanger the well-being of his employees, or is flagrant in his refusal to cooperate with the carrier in such matters, then said carrier may cancel or terminate an assigned policy by the same procedure as applies to voluntarily written policies under Rule 4, except such notice shall be specially marked "Assigned Risk." In the event of such a cancellation, such employer in the discretion of the Commission, may be considered as being without compensation coverage in violation of the Act and subject to the penalties prescribed therein.

The manager of the Southeastern Compensation Rating Bureau is designated as the director of the assigned risk plan of the Mississippi Workmen's Compensation Commission, and he shall assign all claims forwarded to him by the Commission to the various companies registered to do business in this State. This plan shall remain in force so long as the Commission may deem same necessary to expedite coverage of undesired risks in Mississippi.

RULE 7

SELF-INSURERS. Any employer desiring to qualify as self-insurer and carry his own risk under the provisions of Section 32 (b) of the Mississippi Workmen's Compensation Act shall make application therefor on

Form A-2 (Revised), and shall be required to reply fully to all inquiries made thereon. In each case where an application is made, an indemnity bond or securities of a class approved by the Commission shall be posted with the Commission. In no event shall the amount of the securities or indemnity bond be less than $10,000.00. Each application will be considered upon its merits and with strict regard to the hazards involved. No record or any information concerning the solvency and financial ability of an employer acquired by the Commission shall be subject to inspection, nor shall any such information be divulged by the Commission, unless by order of the Courts. So long as the financial status of the employer remains unchanged, and his liabilities under the compensation law are promptly met, and where there is no accumulation of accrued benefits sufficient to cause uneasiness on the part of the Commission, there shall be no effort to require further bond or posted securities, or to collect under the indemnity bond or posted securities. In the event an employer, who is or has been a self-insurer pursuant to the proper provisions of the Act and the Commission's rules, later ceases to be a self-insurer or secures coverage through a properly licensed Workmen's Compensation Insurance writer, the security posted or the indemnity bond held by the Commission shall be, and is held, and firmly bound, to the Mississippi Workmen's Compensation Commission of the State of Mississippi for any assessment made against the self-insurer pursuant to Section 44 of the Mississippi Workmen's Compensation Act, as amended.

All self-insurers are required to furnish the Commission safety reports on an average of once every ninety days. Such reports are to be made by a safety engineer, or some other experienced party competent to make safety surveys and reports.

All applications for the right of self-insurance are granted upon the express condition that said self-insurers file promptly and completely all reports required of them by the Commission.

Any applicant as a self-insurer not approved by the Commission shall be given fifteen days from the date of notice of rejection, to procure insurance with a carrier, or to request that he be covered under the assigned risk plan.

RULE 8

POSTING NOTICE OF COVERAGE. Every employer operating under the provisions of the Mississippi Workmen's Compensation Law shall keep in a conspicuous place in and about his place or places of business a "Notice of Coverage" as follows:

NOTICE OF COVERAGE
MISSISSIPPI WORKMEN'S COMPENSATION COMMISSION
P. O. Box 651 — Jackson, Mississippi

As required by Section 35, Workmen's Compensation Act, Chapter 354 Laws of 1948, notice is hereby given that the undersigned employer has secured the payment of compensation under the provisions of said Act. The name and address of the Self-insurer is:

Carrier

NAME:_____

ADDRESS:_____

The date of the expiration of the policy is:____day of_____, 19____ Notice is hereby given, in accordance with Section 12, Subsection (A) Workmen's Compensation Law of Mississippi, Chapter 354, Laws of 1948, that your employer has designated to receive notices of injury, _____, being the_____of the Company. In all cases of the injury he should be notified immediately as provided by Section 12 of the Mississippi Workmen's Compensation Act.

Dated and posted on the_____day of_____, 19___

_____
(Name of Employer)

By_____
(Office)

This notice is required to be posted in a conspicuous place or places in or about the employer's place of business.

MISSISSIPPI WORKMEN'S COMPENSATION COMMISSION
JACKSON, MISSISSIPPI

RULE 9

SELECTION OF MEDICAL. The employer shall select the physician, hospital, and other attendance or treatment except in unusual cases where the Mississippi Workmen's Compensation Commission deems it to the best interest of the claimant to have care other than that offered by the employer. Selection of the physician, hospital, and other attendance, or treatment by the employee, unless specifically agreed to by the employer will not be sanctioned except in cases of emergency or where the employer has refused or neglected to furnish same. Upon proper showing to the Commission that claimant is suffering from improper medical attention or lack of medical treatment, further medical attention may be ordered by the Commission at the employer's expense.

In the event an injured employee should be eligible for and desirous of treatment at any Veterans Hospital as a result of a disability under the Workmen's Compensation Act, the employer or his carrier shall not be liable for such medical treatment as in other cases, unless the officials of the Veterans Hospital to whom the injured worker is referred complies fully with Section 7 of the Mississippi Workmen's Compensation Act and the Commission Rules.

RULE 10

SEVEN-DAY WORK-WEEK. All compensation for loss of time shall be based upon a seven-day work-week, which shall be computed as consisting of consecutive calendar days.

RULE 11

COMPUTATION OF LOST TIME. If the injured employee is paid in full for the date of accident, lost-time should be computed as beginning with that day next following the date of accident. If the injured employee is not paid in full for the date of accident, lost-time should be computed as beginning as of the date of accident.

RULE 12

MEDICAL FEES. The fees of physicians, hospitals and other attendant parties must be reasonable and measured according to the employee's station. The station of the injured person is not to be determined by his or her social status, but to be considered in connection with the wages received. In no case must the charge be based upon a schedule of fees fixed by any particular individual, group of individuals or upon any other arbitrary scale of charges.

RULE 13

In any case in which compensation is to be paid to a claimant for permanent partial disability for a period not to exceed 450 weeks and at a weekly rate less than that computed for temporary total disability, whether voluntary or by order, such payment of compensation may, as an alternate method of payment, be accelerated by paying the same weekly rate established for temporary total disability until the full amount has been paid.

Should the parties elect to pay and receive such compensation at the accelerated rate provided herein, such election may be reported to the Commission on Form B-17 by setting out said election thereon or by statement attached thereto.

B. PROCEDURAL

RULE 1

REPORTING INJURIES OR DEATHS. Employers shall report all on-the-job deaths of their employees to the Mississippi Workmen's Compensation Commission within ten (10) days, as provided for in Section 28 of the Mississippi Workmen's Compensation Act, and on forms prescribed by the Commission. Injuries causing loss of time in excess of five days shall likewise be reported within the ten day period. All injuries other than deaths or those causing loss of time in excess of five days shall be reported monthly on forms prescribed by the Commission,

briefly listing employee's name and address, employer's name and address, nature of injury, time lost, and amount of medical, if any. Unless the employee is caused to be absent from his work beyond one complete day or working shift, no report need be made except as to medical or surgical treatment. Self-insurers shall report directly to the Commission. Other employers shall report only through their carrier.

As required by Section 27 of the Act, it will be the responsibility of the employer to keep a record of all injuries, regardless of their nature, which record will be available to the Commission upon request.

RULE 2

A cause will be controverted by the employee by filing with the Mississippi Workmen's Compensation Commission a properly executed Workmen's Compensation Form B 5-11. In the event an employer desires to controvert a cause he shall file with the Commission a Commission Form B-3 along with all medical reports in reference to the cause; in addition thereto, he shall file attached thereto a concise statement giving the reasons why the matter is controverted.

RULE 3

NOTICE. Upon the receipt of properly executed Forms the Mississippi Workmen's Compensation Commission shall immediately furnish a copy of said Forms to all interested parties.

RULE 4

RESPONSE. The employer or carrier shall, within twenty-three days after Form B 5-11 has been placed in the U. S. Mail, addressed either to the employer or carrier, furnish to the Mississippi Workmen's Compensation Commission in triplicate a properly executed Form B 5-22 and, in addition to the properly executed Form B 5-22, there shall be attached, if the employer or carrier so desires, any affirmative defense. Averments contained in claimant's B 5-11 to which a responsive answer is required are admitted when not denied in the responsive answer. All affirmative defenses such as intoxication of the injured, wilful intent to injure himself or another, statute of limitations, lack of notice, etc., must be pled. Unless so pled they shall be deemed waived.

RULE 5

Upon receipt by the Commission of properly executed Forms, along with any special pleadings, the Commission, if it appears proper to do so, may hold a pre-trial conference directing the parties to appear before it for a conference to consider:

(1) The simplification of the issues;

(2) The necessity or desirability of amendments to the matters;

(3) The possibility of obtaining facts and documents which will avoid unnecessary proof;

(4) The medical reports and agreements relative to the expert witnesses to be used;

(5) Such other matters as may aid in the disposition of the action.

RULE 6

In the event a proper disposition of the cause is not made and any party desires a hearing in the matter, the Commission will give notice of this hearing at least twenty days prior to the date on which the matter is to be heard; said notice shall contain the names of the parties, the place and time of the hearing and shall list all matters that are in controversy and the hearing shall be limited to those matters contained in the notice.

RULE 7

HEARINGS. All cases to be heard before the Commission, whether an initial hearing or a review before the full Commission, shall be docketed with the Commission at least twenty-three days before the date set for hearing. Each such case docketed will be given a number and all parties concerned advised of the date of hearing. The Commission may, in its discretion, postpone or recess hearings at the instance of either party or on its own motion. No case set for hearing shall be postponed more than one time except in event of illness of the interested parties or other extreme circumstances. On failure of either party to have appeared at a scheduled hearing, the party making an appearance may dismiss by motion or be awarded compensation upon presentation of proper proof. In either case, a request for review by the absent party will not be granted. If, however, a justifiable excuse is presented within seven days after the date of the order dismissing or awarding compensation, a motion to reopen will be heard in the Commission's discretion. In the event neither party appears at the initial hearing, the case will be dismissed on motion of the Commission and its order will become final unless proper motion to reopen is filed within seven days as aforesaid.

RULE 8

GENERAL RULES OF EVIDENCE RELAXED. In compensation hearings the general rules of evidence shall be relaxed so as to permit the introduction of any relevant and competent evidence pertaining to the issue that will throw light on the matter in controversy. There shall be excluded from the record, however, by motion of either party or by the direction of the Hearing Officer, any matters that are libelous or of a personal nature which do not in the opinion of the Hearing Officer have a direct bearing on the case at hand. All other matters sought to be introduced, and which are accepted by the Hearing Officer over objection of either party, shall become a part of the record with the objection properly shown.

It shall be the duty of the Hearing Officer on initial hearings or the Chairman on review to ascertain that any party appearing before the Commission in a legal capacity is a licensed Mississippi attorney. This requirement will not apply to a claimant handling his own claim, or to an employer who defends his own suit.

RULE 9

INTRODUCTION OF EVIDENCE. All oral evidence or documentary evidence shall be presented to the designated representative of the Commission holding the initial hearing on a controverted claim, which evidence shall be stenographically reported or recorded. Where additional evidence is offered on the review before the full Commission, it shall be admitted in the discretion of the Commission. A motion for the introduction of additional evidence must be made in writing at least five days prior to the date of the hearing of the review by the full Commission. Such motion must show the nature of the evidence desired to be presented on the initial hearing. If additional evidence is admitted, it shall be stenographically reported or recorded and become a part of the record.

Depositions may be taken and discovery had by any party in accordance with the statutory provisions relating to civil actions in the chancery or circuit courts of this state, unless the parties agree otherwise.

Any party proposing to introduce physicians at the hearing of a controverted claim shall, as a condition precedent to the right so to do, furnish to the opposing party copies of the written reports of such physicians of their findings and opinions at least five days prior to the date of hearing; provided, if no such written reports are available to a party, then the party shall, in lieu of furnishing such report, notify in writing the opposing party of the name and address of the physicians proposed to be used as witnesses at least five days prior to the hearing. A party failing to observe the requirements of this rule shall not be allowed to introduce as witnesses physicians at a hearing.

RULE 10

REVIEW HEARINGS. In all cases where either party desires a review before the full Commission from the decision rendered at the initial hearing, the party desiring the review shall within twenty days of the date of said decision file with the Secretary of the Commission a written request or petition for review before the full Commission, and certify that copies of the request for review have been filed with the opposing party; provided, however, that failure to file such certification shall not be a bar to the review requested.

RULE 11

APPEAL FROM COMMISSION AWARD. Should either party desire to appeal from an award of the Commission, the party desiring to appeal shall within thirty days of the date of the award file a notice of appeal with the Secretary of the Commission. The notice shall set out the style of the case, the grounds upon which the appeal is taken, certification that copies of the motion of appeal have been filed with the opposing parties.

When a motion for appeal to the Circuit Court is filed with the Commission the Secretary shall, with a proper letter of transmittal, place the matters possessed by this Commission and pertaining to the appeal case in the hands of the Circuit Court within seven days after such notice for appeal is received by the Commission.

Following rendition by the Circuit Court or Supreme Court of any order or decree affecting any matter over which this Commission has jurisdiction, the parties to the cause shall file a copy of such decree or order with the Commission within thirty days of the date of rendition. The Commission will not take judicial notice of a higher court's award until the foregoing provision is complied with.

RULE 12

ATTORNEYS. Upon satisfactory evidence of employment, attorneys shall be entitled to all information available to their respective clients, whether claimants or employers. Either party shall likewise be bound by the acts of his respective counsel until a revocation of employment is filed with the Commission.

A fee of not more than $25.00, or an aggregate of $25.00 in any one case, shall be considered consultation, and shall not be submitted to the Commission for approval. In all instances where attorneys' fees in any matter exceed $25.00, a fee agreed upon by attorney and claimant shall be submitted to the Commission for approval as provided for in Section 26 of the law, as amended.

RULE 13

VIOLATIONS OF CHILD LABOR LAW. In matters pertaining to violations of the Child Labor Law, those certain sections numbered 6985 to 6993, inclusive, of the 1942 Code of Mississippi Annotated, shall be considered by the Commission as the labor law referred to in Section 48 of the Mississippi Workmen's Compensation Act. The Commission may order double compensation assessed against any employer where a minor worker is injured in the occupations or businesses specifically listed as hazardous in said sections in the Mississippi Code of 1942 Annotated, heretofore referred to. In all other instances of injury to minors, before double compensation shall be assessed against an employer as a penalty, there shall be filed with the Secretary of the Commission a certified copy of the findings of the court of final appeal on the prosecution and conviction of the employer in connection with violation of the Child Labor Law.

RULE 14

In any case, for good cause shown, the Commission or the attorney referee may permit deviations from these rules insofar as compliance therewith may be found to be impossible or impracticable.

RULE 15

In all matters pertaining to applications for Lump Sum Settlements pursuant to Section 13, Subsection J; Attorneys' Fees as provided for in Section 26; and Compromise Settlements in Section 9, **Subsection I,** of the Mississippi Workmen's Compensation Act, as amended, **will be considered by the Commission on Tuesday and Wednesday of each week.** In all Section 9, Subsection I, Compromise Settlements, where the claimant is physically able, it shall be the **responsibility of the Insurer to make available** to the Commission, at the office of the Commission in Jackson, Mississippi, on the days above mentioned, **the claimant** involved in the settlement; provided, however, that where **minors** and **incompetents** are concerned, or where the **claimant is represented by counsel,** the Commission will not require that claimants for Compromise Settlements be brought to Jackson; and provided further that **all expenses** incurred in transporting the claimant from his home to Jackson and return to his home shall be **paid by the Insurer.**

RULE 16

In requiring for filing forms B-15 and B-17, the Commission's sole purpose is to require promptness in the filing of certain desired data and to obtain confirmation from interested parties by their signatures thereon that they have notice of that data being on file with the Commission. Inasmuch as Section 13(a) of the Mississippi Workmen's Compensation Act, as amended, prohibits the Commission from making an award, except where liability to pay compensation is controverted, the forms, B-15 and B-17, are not intended to be a binding contract on the parties whose signatures appear thereon, or in the nature of an adjudication on the information set forth thereon, or an award by the Commission, and the requirement for signatures on said forms is not intended to affect the rights of said parties or to operate as a waiver or estoppel of any of their rights to have a full and complete hearing on any matter arising under the Workmen's Compensation Act. In order to insure the prompt payment of compensation and to avoid delay occasioned by unnecessary controversy and costly hearings, the Commission does however encourage the parties to agree whenever possible on matter of mutual interest such as, but not limited to, average weekly wage, rate of compensation, period of temporary disability, date of maximum medical recovery, degree of permanent disability, apportionment, loss of wage earning capacity, facial disfigurement and dependency and to report such agreement for Commission approval on Form B-15 or Form B-17, whichever is appropriate.

RULE 17

The requirement for the filing of Commission Form B-31, Final Report and Settlement Receipt, shall be deemed to have been met upon receipt by the Commission of such form, signed by claimant, provided, however, that the form so filed is in accordance with the requirements of Section 13 (g) of the Act and contains the information specified therein. In the event Form B-31 is not signed by claimant, the unsigned form shall be filed with the Commission with notice of such filing given to the claimant. Should the original or any subsequent Form B-31 be filed that does not furnish all medical or other information required, another form B-31 containing complete information shall be filed as soon as possible thereafter as provided herein.

RULE 18

SUBPOENAS. Subpoenas will be issued by the Commission in accordance with Section 25 of the Mississippi Workmen's Compensation Act only when it appears that written notice has been filed with the Commission requesting issuance of such subpoenas not less than five days prior to the date of hearing.

C. REHABILITATION

Rehabilitation cases shall be reported on Form R-2-Revised, as approved by the Mississippi Workmen's Compensation Commission on July 15, 1949, in compliance with the provisions of Section 47 and Section 8 (d) of the Mississippi Workmen's Compensation Act.

(a) Form R-2-Revised shall be filed by the employer or his insurance carrier in every case of injury which comes within the jurisdiction of the Mississippi Workmen's Compensation Act of 1948 and which is compensable, in which there results the loss of and/or loss of use of any member of the body which would serve to render the injured undesirable for continuance in the place of employment he occupied at the time of the injury, or which would render him unfit for employment in another part of the industry, or which by experience in the industry would tend to show the injured undesirable for employment in any part of the industry in which he becomes injured.

(b) Form R-2-Revised shall be filed immediately after the reporting of the injury and upon the receipt of sufficient medical reports which would tend to establish the extent of the injury.

(c) Form R-2-Revised should be filed in all instances of compensable injury (as outlined in (a)) in which the injured has met the requirements establishing his eligibility for Rehabilitation Training.

(d) Details and routine concerning the handling of Rehabilitation cases shall be in accordance with the agreements between the Mississippi Workmen's Compensation Commission and the Vocational Rehabilitation Division of the State Department of Education.

(e) The amount of additional compensation awarded to be used for Vocational Rehabilitation purposes will be determined by the recommendation of the Vocational Rehabilitation Division setting out the contemplated program of training needed and the necessary cost thereof, and shall be awarded only after the injured has been accepted for training.

The employer and his insurance carrier are requested by the Commission in cooperation with the Division of Vocational Rehabilitation to report directly to the Vocational Rehabilitation Division all cases not within the jurisdiction of the Compensation Act in which there is a need for Vocational Rehabilitation Training which might come to their attention.

PROCEDURE AND EVIDENCE RULINGS

APPROVED AND RECOMMENDED BY

WORKMEN'S COMPENSATION COMMITTEE

MISSISSIPPI STATE BAR ASSOCIATION

I.

TAKING TESTIMONY OUTSIDE OF MISSISSIPPI

Q. Is it permissible for the Referees to go outside of the State of Mississippi to take testimony of non-resident witnesses?

A. No, except by agreement of the parties.
COMMENT: The territorial jurisdiction of the Commission is limited to the State of Mississippi.

Q. If depositions are required in lieu of attendance by the Referee, can and should the Commission pay the reasonable cost of the reporter and transcript?

A. Yes, subject to approval of the amount of the charges by the Commission.

COMMENT: The party taking the deposition should be required to advance the cost and file a verified statement with the Commission, accompanied by a request for reimbursement.

Q. Where testimony is taken outside the State before a Commission reporter and in the presence of an Attorney Referee, should there be an agreement:
(a) To waive the oath;
(b) For Attorney Referee to rule on objections when made; and
(c) That the testimony need not be transcribed before the Referee enters his order?

A. (a) Yes.
(b) Yes.
(c) Yes.

COMMENT: The agreement for the Attorney Referee to take testimony outside of the State should be reduced to writing and signed by the parties, and this writing should contain (1) an express waiver of the oath, (2) an express waiver of the pre-order filing of the transcript, and (3) a stipulation that the testimony heard by the Referee may be considered as if given at a regular scheduled hearing, subject to any and all objections that might be interposed on such hearing.

Q. Should the testimony, when transcribed, be lodged in the record as an "exhibit" or as testimony taken at a hearing?

A. If the Referee hears the testimony, it would not be necessary that it be transcribed and lodged in the record as an exhibit, but would be considered as testimony taken at a regular scheduled hearing. If the testimony is taken by deposition, it would be necessary that the testimony be transcribed and received as an exhibit when offered and introduced into evidence by one party or the other.

II.

MEDICAL RECORDS AND OPINIONS AND TESTIMONY

A.

Doctors' Reports

Q. Should written reports of doctors be admitted into evidence when the reporting doctor is not presented for cross-examination?

A. No, except by agreement.

Q. Are there some reports which should be admitted as opposed to others, such as reports of treating physicians as contrasted with reports of examining physicians who see the employee for evaluation for compensation purposes?

A. No.

Q. Should any different rule apply to reports on Commission forms?

A. No.

COMMENT: The reports of doctors, whether in narrative form or on Commission forms, amount to hearsay evidence and should not be admitted into evidence unless the doctor making the report is placed upon the witness stand, with an opportunity being afforded for cross-examination. The objection to this form of evidence is equally valid when applied to the reports of treating or examining physicians and to reports on Commission forms.

Q. If the doctor testifies, should his written report be admitted after identification by him after he has testified that it is correct?

A. Yes.

Q. If reports are admitted, may such be accepted and acted upon to the same extent as if the doctor had testified at the hearing as set forth therein?

A. Yes.

B.

Hospital Records

Q. Should hospital records kept in the usual routine course of hospital procedure be admitted in evidence?

A. Yes.

Q. If so, should any part be excluded, such as the comments of the attending physician dealing with matters of diagnosis, prognosis and patient's pre-entry history?

A. No.

Q. If admitted, what type of identification should be required?

A. Identification may be made by any witness, such as a doctor, who knows that the record is the one kept by the hospital in the regular routine of the hospital business.

Q. Should the certificate of the record custodian of the hospital that the record is a true transcript and that it was made and kept in the regular routine of business be considered sufficient?

A. Yes.

COMMENT: While hospital records kept in the usual routine course of hospital procedure should be admitted in evidence because of the presumption that such records are accurately kept without motive or interest to falsify, it is to be noted that such records are in all respects subject to contradiction and impeachment, and the weight of the evidence furnished by such records is always a matter for the determination of the Commission.

C.

Testimony of Nurses

Q. To what extent should nurses who are not medical doctors be permitted to testify relative to the examination, handling and treatment of the patient?

A. Nurses should be allowed to testify as to all matters coming under their observation and as to all acts performed by them, but are disqualified from giving medical opinions of any kind, including views on prognosis and diagnosis.

D.

Expert Witnesses

Q. Should a doctor who is qualified as an expert witness be allowed to give an opinion based in whole or in part upon (a) X-rays taken by others; (b) Patient history given by one other than the patient; (c) Opinions of other doctors; (d) Hospital records; or a combination of these; or (e) Radiologist report; (f) Autopsy report; or (g) Office card notations made by associate?

A. Yes, provided the matter referred to has been offered and received in evidence.

COMMENT: The material referred to must be first admitted into evidence, except that upon a proper showing the doctor testifying as an expert witness may be allowed to consider the material, subject to being later factually established and received in evidence.

E.

Death Certificates, Autopsy Reports & Office Card Notations

Q. Is a death certificate admissible in evidence in the absence of the certifying physician?

A. Yes. (Code of 1942, § 7064)

Q. Is an autopsy report admissible in evidence in the absence of the pathologist who performed the autopsy?

A. No.

Q. Is the opinion of the doctor as to the cause of the death as shown on the death certificate admissible in evidence?

A. Yes, if the opinion relates to the primary cause of death.

Q. Should office card notations of a treating physician made in the regular routine course of office procedure be admitted in evidence when properly identified?

A. Yes.

COMMENT: Death certificates are admissible in evidence by virtue of the cited Code section, and under this section the certificates are presumptively correct. The statute does not exclude the opinion of the doctor as to the cause of death, but it has been held that the opinion, to be admissible, must relate to the primary cause of death. For example, the statement in a certificate that the death was caused by suicide has been excluded. On the other hand, there is no statute providing for the admission of autopsy reports. Compare Code 1942, § 7158-04, which provides that an autopsy made under Court order is not admissible in evidence in a civil case.

III.

EVIDENCE — IN GENERAL

Q. Is any form of hearsay admissible in evidence?

A. No, except as provided by MWCA Section 22, dealing with the declarations of a deceased employee, and except for such items as hospital records kept in the usual routine course of hospital procedure.

Q. Are the Commission records developed in other cases before the Commission involving the same claimant admissible?
If so, should the party introducing the record be required to pay the cost of making copies for insertion in the record of the case being tried?

A. Yes, for whatever probative value these records may have. The party introducing the record should be required to pay the cost of making copies for introduction into evidence.

Q. Medical and drug bills: Should these be admitted in evidence on the trial of the employee's claim? If so, what proof is required for the admission. (See 173 So.2d at 652) (Should order for payment of medical be in general terms or for specific amounts?)

A. Medical and drug bills should not be admitted in evidence on the trial of the employee's claim, but the order for payment of medical should be in general terms, leaving open the matter of approval in specific amounts if any objection is raised as to the reasonableness or validity of the charges.

Q. Does Rule 8 have reference to documents only, or may testimony be offered under the rule? If testimony is offered, should cross-examination be allowed as to the excluded evidence, and if so, when—then or later?

A. Rule 8 is not limited to documents, and testimony may be offered under the rule. Cross-examination should be allowed as to the excluded evidence at the time it is offered.

Q. When a document or paper is marked "For Identification" only and is not lodged in the record under procedural Rule 8, do we take such into our possession or does the attorney keep it? (See sub-section 1 or Rule 1 of the Revised Rules of the Supreme Court of Mississippi.)

A. A document offered for identification and lodged in the record under procedural Rule 8 becomes a part of the record and must be left with the Commission. On the other hand, if a document is marked for identification otherwise than under Rule 8 and is not later offered and received in evidence, it does not become a part of the record and is not left with the Commission.

Q. Are these admissible over objection that same are privileged: (a) Income tax returns; (b) Records of Welfare Department; (c) Employment Security Office records; (d) Autopsy report.

A. Yes.

Q. What Commission forms should be admitted in evidence as proof of the statements or contents thereof; for example, what about B-3, B-9, B-15 and B-27?

A. No Commission forms should be admitted in evidence as proof of the statements or contents thereof, but such may in a proper case be admissible for purposes of impeachment under existing rules of evidence, as where a form contains a statement at variance with the testimony of a witness who prepared the form.

Q. Since the Referee has the duty to investigate, should he consider matters not in evidence, such as reports which are in the file but not in evidence?

A. The Referee should never, under any circumstances, consider matters not in evidence, and the prohibition includes reports which are in the file but not in evidence.

Q. Are insurance forms, applications, etc. for group benefits, etc. admissible for statements of claimant therein against his interest? Is the rule the same where the claimant denies filling out or signing the form or knowledge of its contents when signing?

A. These items are admissible in evidence under the rules relating to the impeachment of witnesses and admissions by parties against interest. The admissibility is not affected by the claimant's denial or assertion as to lack of knowledge, but the claimant's explanation may be considered as bearing upon the weight of the evidence.

Q. Are pleadings, proceedings and judgments of Court admissible in evidence?

A. Yes, where pertinent and when properly certified and authenticated.

Q. What about admissibility of adjuster statement through (a) adjuster; (b) claimant when (1) signed, (2) unsigned (2a) when claimant denies or will not identify or admit signature, (2b) when claimant denies having read or understanding contents of statement, (2c) when in the form of a tape recording?

A. All of these items are admissible in evidence. The absence of signature or the claimant's denial of his signature or the claimant's denial of having read or understood the contents of the statement or other explanation goes only to the weight of the evidence, and not to its admissibility.

Q. On re-direct examination, does an attorney have the right to explore and contradict or expand upon hearsay testimony that was unavoidably or inadvertently brought out on cross-examination?

A. On re-direct examination, the attorney does not have the right to pursue hearsay testimony that was unavoidably or inadvertently brought out on cross-examination, as where his witness volunteers a hearsay statement. If the hearsay is objectionable, an objection should be noted at the time, accompanied by a motion to exclude, which should be sustained in a proper case.

IV.

AMENDMENTS TO PLEADINGS

Q. At what stage of the proceedings should amendments be allowed to the pleadings in general?

A. At any stage prior to the time that both sides have rested and finally submitted the case, and thereafter in the sound discretion of the Referee.

Q. When should amendments be allowed as to assertion of a contributory pre-existing disease in reference to the time when claimant rests his case?

A. At any time before the defense opens its case, and thereafter at the discretion of the Referee.

V.

NON-SUIT

Q. Should a claimant be permitted to non-suit or dismiss his claim without prejudice over the defendant's objection?

A. Yes.

Q. If so, should the rule be the same when prejudice can be shown, as where one issue is the claim for apportionment due to a pre-existing injury?

A. Yes, subject to the comment below.

Q. If dismissal is allowed, does the case remain a pending controversy, as if the employer had initiated the hearing by controverting?

A. No, subject to the comment below.

Q. If a non-suit is allowed, can it be on conditions and if so, on what type of conditions?

A. No.

COMMENT: The claimant should be allowed to take a non-suit or dismiss his claim without prejudice at any time. However, if the employer has filed a notice to controvert pursuant to MWCA Section 13(d) and Rule B-2, the employer will be entitled to have the case proceed to a final determination despite the non-suit or dismissal by the claimant.

VI.

HEARINGS

A.

Limitations on Hearings

Q. Should the number of recessed hearings allowable to each side be limited, and if so, to what extent?

A. No, unless within the discretion of the Referee one side is taking advantage of the situation in order unduly to delay the decision in the case.

B.

Postponement of Hearings

Q. What procedure should be adopted and what guides should prevail as to the granting of requests to postpone or re-schedule hearings?

A. The postponement and re-scheduling of hearings should be treated liberally within the sound discretion of the Referee.

Q. When a request is made, should the opposing attorney be given a hearing before allowing the request?

A. No, except under very exceptional circumstances in the discretion of the Referee.

Q. Should hearings be scheduled only after contacting both sides to determine the absence of conflicts?

A. No.

C.

Pre-Trial Conferences

Q. Should one holding pre-trial be given more authority to rule on motions and to take other steps to facilitate and to narrow and simplify issues?

A. No.

D.

Motions

Q. Should motions seeking dismissal of the claim (such as those raising the statute of limitations and those raising jurisdictional issues) be taken up in advance or carried with the case on its merits?

A. Such motions should be taken up in advance, so as to avoid unnecessary hearings on the merits where the claim is otherwise barred.

VII.

RULE 9 — PHYSICIANS

Q. Should Rule 9 dealing with the furnishing of doctors' reports and identity of medical witnesses be repealed or modified?

A. No.

Q. Should notice be given 5 days before **initial** hearing or 5 days before hearing at which the party expects to use the doctor or report?

A. The notice should be given 5 days before the party expects to use the doctor or report.

Q. If the rule is not complied with, under what circumstances should compliance be waived by the Referee?

A. Compliance should be waived by the Referee in his discretion in all cases where justice requires and where the waiver will not cause undue delay or hardship.

Q. In applying Rule 9, is notice to the Commission a compliance without also showing notice to the opposing party or his counsel?

A. No. The notice should be given to the opposing party through his counsel.

VIII.

SUBPOENAS, SUBPOENA DUCES TECUM AND SUMMONS

Q. What should be the procedure for securing subpoena duces tecum as to (a) form of application, (b) notice, (c) hearing, etc?

A. Court procedures should be followed. The application should identify the documents to be produced and state that the same contain evidence material to the issues involved, and should be verified by the affidavit of the party or his attorney. An order should be granted on the application without notice or hearing, subject to the right of any interested party to file a timely objection after the subpoena is served.

Q. Generally, what records may be secured by subpoena duces tecum?

A. Any records which may contain or lead to the discovery of admissible evidence which is not privileged.

Q. Should subpoenas (for witnesses or documents or both) be addressed to and served by a Sheriff or other public officer, or may these be served by the Commission through one of the mails, such as Certified Mail?

A. Subpoenas for witnesses or documents should be subject to service either personally by an officer or by Certified or Registered Mail. It is recommended that the Commission issue a procedural rule dealing with this subject, since there is no express provision of law allowing service of process by mail. On the other hand, there is no prohibition against this being accomplished by an appropriate rule of the Commission.

Q. Where an employer or carrier controverts a cause as outlined in procedural Rule 2:

(a) Is the matter at issue and ready to be set for hearing; or

(b) Is it necessary for claimant to file a B-5,11 before the matter is at issue; or

(c) Does the subsequent filing of Forms B-5,11 and B-5,22 put the matter at issue or just simplify the issues?

A. (a) Yes;

(b) No;

(c) The filing just simplifies the issues.

COMMENT: If the claimant does not appear or file a Form B-5,11 in the stated situation, formal process should issue, requiring the claimant to appear and propound his claim or be forever barred, and this process should be served by the Sheriff or other authorized public officer in the manner in which a Court summons is served.

Q. May an employer and carrier force a hearing and determination of an adult's right to compensation benefits if notice is by Registered Mail and if claimant has not filed a B-5,11 or made an appearance otherwise? (See Statute of Limitations and 69 So.2d 820).

A. The first notice should be by Registered or Certified Mail, but if the claimant does not appear or make any filing in reference to his right to compensation benefits, then formal process should issue, requiring the claimant to appear and propound his claim or be forever barred, and this process should be served by the Sheriff or other authorized public officer in the manner in which a Court summons is served.

Q. May a claimant be awarded compensation upon presenting proper proof against an employer **who has not qualified with the Commission**, where the employer does not enter an appearance and the only notice is by Registered Mail? (See Rules 4 and 7 and Sec. 37; on due process, see 69 So.2d 820—"Due process of law requires personal service to support a personal judgment . . ." etc.)

A. This situation should be considered and handled on the same basis as set forth in the answer to the question above.

IX.

DESIGNATION OF MEDICAL

Q. Does the defendant have the right to designate the examining physician in a case where the employer's first notice of injury originates with the filing of claimant's B-5,11?

A. Yes, unless the right has been waived by prior conduct.

Q. Where employee designates one physician to whom the carrier objects, may the carrier countermand the designation and select a physician of its choice and require the claimants to change or accept the carrier's designee?

A. Yes, if the carrier is paying compensation.

X.

CONTROVERTING PROCEDURE

Q. If the defendants controvert a cause as prescribed by the Act, is said cause properly controverted and immediately subject to being placed in line to be set for hearing, or must claimant be advised of defendant's controversion so as to allow the claimant a chance to file a form B-5,11 on his own behalf?

A. The claimant should be advised and allowed to answer.

Q. Is the claims examiner authorized to hold in abeyance a form B-5,11 filed by claimant and/or his attorney when said claimant requests that same be held and not processed further until notice by the claimant that he desires a hearing and that then the defendants should be called upon to file their answer?

A. No.

Q. Is the claims examiner authorized to give additional time to the parties in which to file motions and/or answer form B-5,22, and if so, under what conditions and for what period of time? In other words, is the examiner bound by the 23 days as set forth in the Act?

A. The examiner should not be bound by the 23 days as set forth in the Act, but should grant additional time if justifiable cause is shown.

Q. The Compensation law gives a claimant a two year period of time in which to file and/or controvert a claim for benefits following an injury. May this two year statute of limitations be taken from claimant by the defendant's controverting as prescribed by the Act?

A. The employer has a right to controvert and to call for a hearing, and is not required to forego this right because of the two year statute of limitations. The statute is one of limitation and not of extension.