SPONSOR: Sen. Venables & Sens. Still & Sorenson

DELAWARE STATE SENATE

143rd GENERAL ASSEMBLY

SENATE BILL NO. 362

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO WORKERS' COMPENSATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 23, Title 19 of the Delaware Code by striking such Chapter in its entirety and substituting in lieu thereof the following:

"CHAPTER 23. WORKERS' COMPENSATION

SUBCHAPTER I. GENERAL PROVISIONS

§ 2301. Definitions.

As used in this chapter:

(1) 'Administrator' means the Administrator of the Department of Labor, Office of Workers' Compensation, or his or her designee.

(2) 'Board' means the Industrial Accident Board.

(3) 'Bona Fide dispute' means a dispute upon which the opposing parties have argued or advocated for positions that are inconsistent with one another, and have either presented evidence, argument or authority on behalf of their position at hearing or have compromised their position to resolve of the issue without the need of formal or informal dispute resolution proceedings or accepted a recommended resolution resolving the issue.

(4) 'Child' includes stepchildren and adopted children and children to whom the deceased stood in loco parentis if members of the decedent's household at the time of the decedent's death, and includes posthumous children but not married children.

(5) 'Compensable ionizing radiation injury' means any harmful change in the human organism including damage to or loss of a prosthetic appliance arising out of and in the course of employment and caused by exposure to ionizing radiation which renders the injured party disabled within the meaning of §§ 2324 and 2325 of this title and/or permanently injured within the meaning of § 2326 of this title.

(6) ‘Compensable occupational diseases’ includes all occupational diseases arising out of and in the course of employment only when the exposure stated in connection therewith has occurred during employment.

(7) ‘Compensation’ wherever the context requires it includes surgical, medical and hospital services, medicines and supplies and funeral benefits provided for in this chapter. Nothing in this chapter shall be construed to require an employee who in good faith relies on or is treated by prayer or spiritual means by a duly accredited practitioner of a well-known church to undergo any medical or surgical treatment, nor shall such employee or the employee's dependents be deprived of any compensation payments to which the employee would have been entitled if medical or surgical treatment were employed.

(8) ‘Death’ when mentioned as a cause for compensation under this chapter means death resulting from violence to the physical structure of the body and its resultant effect when reasonably treated and occurring within 285 weeks after the accident, and compensable occupational diseases, as defined in this section, arising out of and in the course of the employment, provided that if death shall occur beyond 285 weeks after the accident, the Board may consider such death as a cause for compensation when the Board has a medical history on the case resulting from the payment of compensation for the injury which is alleged to have caused the death.

(9) ‘Deductible clause’ shall mean a clause in an agreement between an employer and an insurer that the employer shall be liable for a specified initial amount, per occurrence or per employee, of each claim, loss or liability; but that the insurer shall be liable for any excess liability up to and including the maximum amount permitted by law.

(10) ‘Dependent’ includes all persons other than the injured employee who are entitled to compensation under the elective schedule set forth in this chapter, and wherever the context requires it, includes the personal representatives and the surviving spouse of the deceased, and guardians of infants or trustees for incompetent persons.

(11) ‘Employee’ means, every person in service of any corporation (private, public, municipal or quasi-public), association, firm or person, excepting those employees excluded by this subchapter, under any contract of hire, express or implied, oral or written, or performing services for a valuable consideration, excluding spouse and minor children of a farm employer unless the spouse or minor child is a bona fide employee of a farm employer and is named in an endorsement to the farm employer's contract of insurance, and excluding any person whose employment is casual and not in the regular course of the trade, business, profession or occupation of his employer, and not including persons to whom articles or materials are furnished or repaired, or adopted for sale in the employee's own home, or on the premises not under the control or management of the employer. ‘Casual employment,’ as used in this subdivision, means employment for not over 2 weeks or a total salary during the employment not to exceed $100 and, subject to the above, repairs and maintenance of employer's regular business shall not be construed as casual employment; except, however, that everyone assigned to work under §§ 901-905 of Title 31 is specifically designated an employee,

notwithstanding any provisions of this section to the contrary. Inmates in the custody of the Department of Correction or inmates on work release who participate in the Prison Industries Program or other programs sponsored for inmates by the Department of Correction pursuant to Chapter 65 of Title 11 or other applicable Delaware law shall not be considered employees of the State for purposes of this title or otherwise be eligible for workers' compensation benefits unless said inmate is employed by an employer other than the State or a political subdivision thereof. Any person providing services as a sports official at a sports event in which the players are not compensated shall not be considered employees under this Title. For purposes of this Title 'sports officials' includes an umpire, referee, judge, scorekeeper, timekeeper, organizer, or other person who is a neutral participant in a sports event. This exclusion does not apply to workers' compensation claims against schools, associations of schools or other organizations sponsoring a sports contest where the claimant is a sports official who is a regular employee of such school, association of schools, or other organization sponsoring the sports contest.

(12) 'Employer' includes all those who employ others unless they are excluded from the application of this chapter by any provision of this subchapter, and if the employer is insured, the term shall include the insurer as far as practicable; employer shall also include the governing body for which employable relief recipients are assigned work under §§ 901-905 of Title 31.

(13) 'Executive officers' means the president, any vice-president, secretary, treasurer or any other executive officer elected and empowered by the board of directors in accordance with the charter and the regularly adopted bylaws of the corporation.

(14) 'Injury' and 'personal injury' mean violence to the physical structure of the body, such disease or infection as naturally results directly therefrom when reasonably treated and compensable occupational diseases and compensable ionizing radiation injuries arising out of and in the course of employment.

(15) 'Insurance carrier' means any insurance corporation, mutual association or company or interinsurance exchange which insures employers against liability under this chapter or against liability at common law for accidental injuries to employees.

(16) 'Ionizing radiation' means any particulate or electromagnetic radiation capable of producing ions directly or indirectly in its passage through matter.

(17) 'Maximum medical improvement' defines a point in time after which the treating or reviewing health care provider does not believe, to a reasonable degree of medical probability, that further formal medical or surgical intervention can be expected to improve the employee's underlying physical or mental impairment.

a. A finding that maximum medical improvement has occurred does not imply an elimination of symptoms or subjective complaints. The administration of palliative care otherwise approved pursuant to Delaware medical practice guidelines adopted pursuant to §2322 B (b), or the requirement for future medical maintenance of chronic conditions or

symptoms, shall not affect a finding that maximum medical improvement has occurred, where there is no reasonable medical probability that such care or maintenance would significantly improve the employee's condition. The possibility of deterioration or improvement of the employee's physical or mental condition, resulting from the passage of time alone, shall not affect a finding that maximum medical improvement has occurred. .

b. Maximum medical improvement is an issue of uniquely medical expertise upon which only a health care provider as defined in §2323 may give an ultimate opinion.

(18) 'Personal injury sustained by accident arising out of and in the course of the employment':

a. Shall not cover an employee except while the employee is engaged in, on or about the premises where the employee's services are being performed, which are occupied by, or under the control of, the employer (the employee's presence being required by the nature of the employee's employment), or while the employee is engaged elsewhere in or about the employer's business where the employee's services require the employee's presence as part of such service at the time of the injury, provided, however, that participation in an approved Travelink Traffic Mitigation Act program, created pursuant to subchapter IV of Chapter 20 of Title 30, shall not be construed as meeting either exception contained in this subsection; and

b. Shall not include any injury caused by the willful act of another employee directed against the employee by reasons personal to such employee and not directed against the employee as an employee or because of the employee's employment.

c. Shall, however, cover any personal injury to an off-duty employee of the State of Delaware who demonstrates by a preponderance of the evidence that the injury was the result of an intentional act by a person associated with the employee in that employee's official capacity who committed the act because of that association. It is an affirmative defense in the case of an off-duty injury that the injured employee initiated the incident that resulted in the injury.

(19) 'Services' and 'supplies' mean all treatments and apparatus, including glasses, artificial members, shoes and other corrective appliances made necessary by reason of the injuries sustained.

(20) 'Willful self-exposure to occupational disease' includes:

a. Failure or omission to observe such rules and regulations as may be promulgated and posted in the plant by the employer tending to the prevention of occupational diseases; and

b. Failure or omission to truthfully state to the best of the employee's knowledge, in answer to inquiry made by the employer, the location, duration and nature of previous employment of the employee in which the employee was exposed to any occupational diseases.

(21) 'Department' means the Department of Labor.

(22) 'Hearing Officer' means a Hearing Officer appointed pursuant to § 2301B of this title.

(23) 'Immediate Family' means a parent, spouse, child or sibling of a sole proprietor or partner.

§ 2301A. Industrial Accident Board.

(a) The Industrial Accident Board is continued. It shall consist of 10 members, each of whom shall be appointed by the Governor for a term of six years and confirmed by the State Senate. The appointments shall be made so that there shall always be on the Board two residents of New Castle County outside of the City of Wilmington, one resident of the City of Wilmington, two residents of Kent County, two residents of Sussex County and three members-at-large residents of any of the subdivisions of the State, and not more than six of said members shall be of the same political party.

(b) Each member of the Board shall receive an annual salary of twenty-two thousand seven hundred dollars except for the chairperson, who shall receive an annual salary of twenty-five thousand seven hundred dollars. The members of the Board shall receive from the State their actual and necessary expenses while traveling on the business of the Board, but such expense shall be sworn to by the person who incurred the expense, and any such person falsely making any such report shall be guilty of perjury and punishable accordingly. The salary of the members of the Board shall be paid in the same manner as the salaries of state officers are paid.

(c) A majority of the members of the Board shall constitute a quorum for the exercise of any of the powers or authority conferred on the Board, except for hearings conducted pursuant to this title, in which case two members of the Board, shall constitute a quorum and a sufficient panel to decide such hearings. Any disagreement involving a procedural issue arising before or after a hearing may be decided by one member of the Board.

(d) The Board, any Board panel, or any Board member empowered to decide any matter of this title shall act in conformity with applicable provisions of the Administrative Procedures Act set forth in chapter 101 of Title 29, including, but not limited to, § 10129 of Title 29. Lawyers representing clients before the Board shall act in conformity with applicable provisions of The Delaware Lawyers' Rules of Professional Conduct, including, but not limited to, Rule 3.5 thereof. Disputes regarding pre-hearing or post-hearing matters shall be presented by written motion and decided by written order.

(e) The Governor shall appoint the Board's Chairperson from among the Board's Members and the Chairperson shall serve at the Governor's pleasure in such capacity.

(f) The Administrator of the Office of Workers' Compensation shall perform all the administrative duties of the Board, including but not limited to scheduling the docket, maintaining the Board's records, and providing the liaison between the public and the Board members. The Department may employ such clerical and other staff as it deems necessary.

(g) The Board shall have a seal for authentication of its orders, awards and proceedings, upon which shall be inscribed the words – 'Industrial Accident Board -- Delaware -- Seal.'

(h) The Governor may at any time, after notice and hearing, remove any Board member for gross inefficiency, neglect of duty, malfeasance, misfeasance or nonfeasance in office.

(i) The Board shall have jurisdiction over cases arising under this title and shall hear disputes as to compensation to be paid under this title. The Board may promulgate its own rules of procedure for carrying out its duties consistent with this title and the provisions of the Administrative Procedures Act. Such rules shall be for the purpose of securing the just, speedy, and inexpensive determination of every petition pursuant to this title. The rules shall not abridge, enlarge or modify any substantive right of any party, and they shall preserve the rights of parties as declared by this title.

§ 2301B. Hearing Officers.

(a) There is hereby created within the Department of Labor the full-time position of Hearing Officer. With respect to cases arising under this title, the Hearing Officers shall have:

(1) All powers and duties conferred or imposed upon such Hearing Officers by law or by the Rules of Procedure for the Industrial Accident Board;

(2) The power to administer oaths and affirmations;

(3) The power, with consent of the parties, to hear and determine any pre-hearing matter pending before the Board. In such circumstances, the Hearing Officer's decision has the same authority as a decision of the Board and is subject to judicial review on the same basis as a decision of the Board;

(4) The power, with consent of the parties, to conduct hearings, including any evidentiary hearings required by this title, and to issue a final decision determining the outcome of such hearings. In such circumstances, the Hearing Officer's decision has the same authority as a decision of the Board and is subject to judicial review on the same basis as a decision of the Board;

(5) The Hearing Officer shall have the responsibility for advising the Board regarding legal issues and writing the Board's decision with respect to any hearing conducted by the Board at which such Hearing Officer has been assigned by the Department. The Hearing Officer shall not participate in the deliberations of the Board

with respect to the determination of matters before the Board or vote on any matter to be decided by the Board but may be present during such deliberations for the purpose of providing legal advice.

(6) With respect to any matter to which they are assigned responsibility in accordance with this title, the same authority as the Board would have to conduct or dispose of such matter in accordance with this title and the Board's Rules of Procedure. In such circumstances, any reference in this title or the Board's Rules of Procedure to the Board shall also refer to the Hearing Officer when such Hearing Officer is assigned responsibility in accordance with this title.

(b) Hearing Officers shall be appointed by the Secretary of Labor and shall serve for a term of five years; provided, however, that the initial Hearing Officers may be appointed to terms shorter than five years but not less than three years to ensure staggered term expirations. Appointees shall be residents of the State, shall be duly admitted to practice law before the Supreme Court of this State, and shall not engage in the practice of law nor any business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of their duties. The number of Hearing Officers from 1 major political party shall not exceed a majority of 1. Individuals appointed as Hearing Officers shall under this section shall take the oath or affirmation prescribed by Article XIV, §1 of the Delaware Constitution before they enter upon the duties of their office.

(c) Hearing Officers shall report to and be supervised by a Chief Hearing Officer, who shall be designated by the Secretary of Labor. Reappointments shall be at the discretion of the Secretary of Labor. The salary of a Hearing Officer shall not be reduced during the term being served below the salary fixed at the beginning of that term.

(d) The removal of a Hearing Officer by the Secretary of Labor, after consultation with the Chairperson of the Board, during the term of appointment may be made for just cause. For the purposes of this subsection only, 'just cause' shall be defined as including, but not limited to, reduction in force, inefficiency, or unsatisfactory performance of duties. The employee may contest the removal and file for binding arbitration and an arbitrator will be appointed jointly by the Chairperson of the Merit Employees Relations Board and the State Personnel Director to determine the matter.

§ 2301C. Workers’ Compensation Specialist.

There is hereby created within the Department of Labor the classified full-time position of Workers' Compensation Specialist. The Specialist shall assist unrepresented injured employees by providing information so that such employees can understand, assert, and protect their rights under this title. In addition, the Specialist may assist the Department in expediting the processing of petitions. However, assistance provided under this section shall not include representing claimants in hearings or offering legal advice.

§ 2301D. Annual Review of Industrial Accident Board Case Management.

(a) The General Assembly intends for the Industrial Accident Board, and the Hearing Officers thereof, to manage its caseload in a manner which recognizes the importance of determining matters before the Board in a speedy, efficient, and just manner. To that end, the General Assembly intends for the Board and the Hearing Officers thereof to cooperate closely with the Department of Labor, which is the Executive Branch agency responsible for the effective administration of the Board's activities pursuant to this title, in developing procedures and processes which accomplish that important purpose.

(b) To ensure public accountability for the speedy, efficient, and just determination of the matters before the Board, the Department of Labor shall conduct an annual review of the effectiveness of the management of the Board's caseload. Such annual review should be published on or before February 15 of each year, and the Board shall be involved in the development of such annual review. The review shall include:

(1) An analysis of the caseload pending before the Board, including, but not limited to, an analysis of dispositional speed, caseload backlog, number of continuances granted and the grounds therefore, number of appeals and the reversal rate of the Board, and compliance with hearing and decisional deadlines set forth in this title or in Board rules, to ensure that the performance of the Board as a whole can be evaluated by the General Assembly, the Governor, and the public at large;

(2) An analysis of the caseload pending before the Board, particularized as to the individual Hearing Officers of the Board to ensure that the performance of such Hearing Officers can be evaluated;

(3) Departmental recommendations regarding methods, including, but not limited to, legislative action and Board rule changes, to improve the performance of the Board and Department in ensuring the speedy, efficient, and just determination of matters before the Board.

(c) To ensure that the annual review considers the perspectives of the diversity of Delawareans interested in the effective performance of the Board, an advisory group is hereby established to consult with the Department in its development of the Department annual review. Such advisory group shall be appointed by the Governor, shall be convened by the Secretary of Labor or his or her designee, and shall consist of: the two Chairpersons of the respective Labor Committees of each House of the General Assembly or their designees; three representatives of Delaware's business community; three representatives of labor; two representatives of the Delaware Bar, one of whom shall be primarily engaged in the representation of claimants before the Board and one of whom shall be primarily engaged in the representation of employers before the Board; one representative designated by the Medical Society of Delaware; and two

members of the Board. The members shall be appointed for a term of three years. Members shall receive no compensation.

§2301E. Legislative Intent for Workers' Compensation Benefits

(a) It is the intent of the General Assembly in revising Delaware's workers' compensation law that the new system created by the revisions be interpreted to assure the quick and efficient delivery of indemnity and medical benefits to injured or disabled employees at a reasonable cost to the employers who are subject to the provisions of the Title 19 of the Delaware Code. It is the specific intent of the General Assembly that benefit claims cases are decided on their merits, without the necessity of litigation whenever possible, and that the common law rule of 'liberal construction' based on the supposed 'remedial' basis of workers' benefits legislation shall not apply in these cases. The Delaware workers' compensation system is based on a mutual renunciation of common law rights and defenses by employers and employees alike. The no-fault system created thereby is not intended to be the equivalent of, nor be interpreted consistently with, the tort system for remediation of personal injuries. Accordingly, the General Assembly declares that Title 19 of the Delaware Code is not remedial in any sense and is not to be given a broad liberal construction in favor of the claimant or employee on the one hand, nor are the rights and interests of the employer to be favored over those of the employee on the other hand. The General Assembly declares that this enactment reflects a balance of rights and responsibilities agreed to by the affected parties, and that the claims of individual employers and employees should not be utilized to alter this balance, except where the law unmistakably requires that result.

(b) The underlying principle guiding this enactment is that the purpose of the workers' compensation system is to return injured employees to the dignity and financial independence that accompany return to gainful employment as soon as they are safely able to do so, and that all provisions pertaining to payments of temporary total disability, temporary partial disability, permanent partial disability and vocational rehabilitation benefits, and all provisions pertaining to provision of medical or vocational benefits and services, are to be interpreted to advance this objective.

§2301F. Data Collection

(a) It is the intent of the General Assembly that the Department of Labor and an advisory organization designated pursuant to Title 18, Chapter 26 be provided with data enabling them to conduct studies to evaluate the workers' compensation system in the State of Delaware, identify systemic cost drivers and provide objective information to the General Assembly to guide policy formulation.

(b) The Secretary of Labor shall appoint a committee of stakeholders to advise him concerning the adoption of a standardized data transmission protocol, developed and supported by a national workers' compensation organization, to

facilitate the collection of data concerning reports of industrial injuries and occupational disease, the cost of benefits associated with such injuries and diseases and compliance with the mandatory workers' compensation insurance requirement.

(1) The committee shall be chaired by a representative of an advisory organization designated pursuant to Title 18, Chapter 26, and shall include representatives of the Department of Labor, the General Assembly and insurance carriers, including at least one insurance carrier that writes at least 10% of the total workers' compensation premiums in the State, and one insurance carrier that writes less than 5% of the total workers' compensation premiums in the State. Additional members demonstrating interest or expertise in the planning of a data collection system for workers' compensation may be appointed, provided that no more than one half of the committee members shall represent insurance carriers

(c) The Department of Labor, in cooperation with the an advisory organization designated pursuant to Title 18, Chapter 26, shall adopt rules establishing the standardized data collection protocol, the data elements that will be mandated for collection, and the schedule for implementation of mandatory data submission and sanctions for non-compliance, provided however, that no requirement for mandatory data submission shall become effective until at least two years from the effective date of the rules. The electronic collection of data concerning first reports of injuries or occupational disease, and the electronic collection of information concerning compliance with the mandatory workers' compensation insurance requirement shall receive the highest priority for implementation.

(d) Unless otherwise provided by law, the Secretary shall have access to insurance industry information that contains workers' compensation and occupational disease disablement claim data as the Secretary determines is necessary to carry out the provisions of this section.

(e) The Secretary shall have access to files and records of other agencies of the State of Delaware, or its political subdivisions that the Secretary deems necessary to carry out the provisions of this section. Information that is confidential under state law shall be accessible to the Secretary and shall remain confidential.

(f) The Secretary, in cooperation with an advisory organization designated pursuant to Title 18 Chapter 26, shall annually report to the General Assembly the progress of data collection efforts and information obtained from the analysis of the data collected useful in guiding formulation of Legislative policy.

§2301G. Authority to adopt rules and procedures

(a) The Secretary of the Department of Labor shall be authorized to adopt rules as specifically authorized in this Chapter, or such additional rules as are necessary to effectively implement the provisions of this chapter or are necessarily implied by the provisions of this chapter. The Secretary of Labor shall consult with an advisory committee of

stakeholders, appropriate to the subject matter of the rules to be considered, as part of the rules development process. The membership of the advisory committee may vary, depending on the subject matter, provided that a majority of members shall represent business and labor, and further provided that at least three representatives of the medical community participate in the development of medical cost containment rules.

(b) Prior to adoption of any rule, except an emergency rule, the Secretary shall bring the contents of the proposed rule to the attention of an advisory group of stakeholders affected by the rule, provided however, that the composition of the advisory group of stakeholders shall always contain a balance of business and labor members and shall always contain a majority of members representing business and labor. The advisory group shall be afforded a reasonable opportunity to comment on the proposed rule, prior to notice of the proposed rulemaking being given to the public. Thereafter, except in the case of an emergency rule, the Secretary shall follow the procedures set forth in the Administrative Procedures Act for the adoption and publication of rules.

(c) Notwithstanding any other provision of law, if the Secretary deems the adoption of a rule is necessary to protect the integrity of the workers' compensation program or the health or well being of any class of employees, and he further determines that delay in the adoption of the rule will likely compromise the best interests of the State of Delaware, he may declare that an emergency exists. Upon a written finding that the conditions set forth above have been met, the Secretary may adopt a rule on a temporary basis, and comply with the provision of subsection A of this section within 90 days.

§2301H. Penalties

The Administrator shall impose a penalty on any person who fails to file a report required by, or who violates any provision of, this chapter or any rule adopted pursuant to Section 2301G or any specific statutory authority. Unless specified otherwise in this chapter, the penalty shall be a fine of not less than one hundred dollars ($100.00) and not more than one thousand dollars ($1,000) for each act omission or occurrence, subject to the Administrator's discretion.

§ 2302. Wages: definition and computation; valuation of board and lodging.

(a) 'Average weekly wage' means the weekly wage earned by the employee at the time of the employee's injury at the job in which the employee was injured, including overtime pay and gratuities but excluding all fringe or other employment benefits and bonuses. The term 'average weekly wage' shall include the reasonable value of board, rent, housing or lodging received from the employer, which shall be fixed and determined from the facts in each particular case. The term 'average weekly wage' shall include those gratuities reported to the federal internal revenue service by or for the employee for the purpose of filing federal income tax returns.

(b) The average weekly wage shall be determined by computing the total wages paid to the employee during the twenty-six weeks immediately preceding the date of injury and dividing by twenty-six, provided that:

(1) if the employee worked less than twenty-six weeks in the employment in which the employee was injured, the average weekly wage shall be based upon the total wage earned by the employee in the employment in which the employee was injured, divided by the total number of weeks actually worked in that employment;

(2) if an employee sustains a compensable injury before completing his first work week, the average weekly wage shall be calculated as follows:

a. if the contract was based on hours worked, by determining the number of hours for each week contracted for by the employee multiplied by the employee's hourly rate;

b. if the contract was based on a weekly wage, by determining the weekly salary contracted for by the employee; or

c. if the contract was based on a monthly salary, by multiplying the monthly salary by twelve and dividing that figure by fifty-two; and

d. if the hourly rate of earnings of the employee cannot be ascertained, or if the pay has not been designated for the work required, the average weekly wage, for the purpose of calculating compensation, shall be taken to be the average weekly wage for similar services performed by other employees in like employment for the past twenty-six weeks.

(c) Provided that in case such earnings have been unusually large on account of the employer's necessity temporarily requiring him to pay extraordinary high wages, such average weekly earnings shall be based upon the usual earnings in the same community for labor of the kind the employee was performing at the time of the injury. In any event, the weekly compensation allowed shall not exceed the maximum or be less than the minimum provided by law.

§ 2303. Territorial application of chapter.

(a) If an employee, while working outside the territorial limits of this State, suffers an injury on account of which the employee, or in the event of the employee's death the employee's dependents, would have been entitled to the benefits provided by this chapter had such injury occurred within this State, such employee, or in the event of the employee's death resulting from such injury the employee's dependents, shall be entitled to the benefits provided by this chapter, provided that at the time of such injury:

(1) The employee's employment is principally localized in this State; or

(2) The employee is working under a contract of hire made in this State in employment not principally localized in any state; or

(3) The employee is working under a contract of hire made in this State in employment principally localized in another state whose workers' compensation law is not applicable to the employee's employer; or

(4) The employee is working under a contract of hire made in this State for employment outside the United States and Canada.

(b) The payment or award of benefits under the workers' compensation law of another state, territory, province or foreign nation to an employee or the employee's dependents otherwise entitled on account of such injury or death to the benefits of this chapter shall not be a bar to a claim for benefits under this chapter, provided that claim under this chapter is filed within 2 years after such injury or death. If compensation is paid or awarded under this chapter:

(1) The medical and related benefits furnished or paid by the employer under such other workers' compensation law on account of such injury or death shall be credited against the medical and related benefits to which the employee would have been entitled under this chapter had claim been made solely under this chapter;

(2) The total amount of all income benefits paid or awarded the employee under such other workers' compensation law shall be credited against the total amount of income benefits which would have been due the employee under this chapter had claim been made solely under this chapter;

(3) The total amount of death benefits paid or awarded under such other workers' compensation law shall be credited against the total amount of death benefits under this chapter.

(c) If an employee is entitled to the benefits of this chapter by reason of an injury sustained in the State in employment by an employer who is domiciled in another state and who has not secured the payment of compensation as required by this chapter, the employer or the employer's carrier may file with the Department a certificate, issued by the commission or agency of such other state having jurisdiction over workers' compensation claims, certifying that such employer has secured the payment of compensation under the workers' compensation law of such other state and that with respect to said injury such employee is entitled to the benefits provided under such law. In such event:

(1) The filing of such certificate shall constitute an appointment by such employer or the employer's carrier of the Department as its agent for acceptance of the service of process in any proceeding brought by such employee or the employee's dependents to enforce the employee's or dependents' rights under this chapter on account of such injury;

(2) The Department shall send to such employer or carrier, by registered or certified mail to the address shown on such certificate, a true copy of any notice of claim or other process served on the Director by the

employee or the employee's dependents in any proceeding brought to enforce the employee's or dependents' rights under this chapter;

(3) a. If such employer is a qualified self-insurer under the workers' compensation law of such other state, such employer shall, upon submission of evidence, satisfactory to the Department, of its ability to meet its liability to such employee under this chapter, be deemed to be a qualified self-insurer under this chapter;

b. If such employer's liability under the workers' compensation law of such other state is insured, such employer's carrier, as to such employee or the employee's dependents only, shall be deemed to be an insurer authorized to write insurance under and be subject to this chapter; provided, however, that unless its contract with said employer requires it to pay an amount equivalent to the compensation benefits provided by this chapter, its liability for income benefits or medical and related benefits shall not exceed the amounts of such benefits for which such insurer would have been liable under the workers' compensation law of such other state;

(4) If the total amount for which such employers' insurance is liable under paragraph (3) of this subsection is less than the total of the compensation benefits to which such employee is entitled under this chapter, the Department may, if it deems it necessary, require the employer to file security, satisfactory to the Department, to secure the payment of benefits due such employee or the employee's dependents under this chapter; and

(5) Upon compliance with the preceding requirements of this subsection, such employer, as to such employee only, shall be deemed to have secured the payment of compensation under this chapter.

(d) As used in this section:

(1) ‘United States’ includes only the states of the United States and the District of Columbia.

(2) ‘State’ includes any state of the United States, the District of Columbia, or any province of Canada.

(3) ‘Carrier’ includes any insurance company licensed to write workers' compensation insurance in any state of the United States or any state or provincial fund which insures employers against their liabilities under a workers' compensation law.

(4) A person's employment is principally localized in this or another state when:

a. A person's employment has a place of business in this or such other state and the person regularly works at or from such place of business; or

b. If subparagraph a. of this paragraph is not applicable, the person is domiciled and spends a substantial part of the person's working time in the service of the person's employer in this or such other state.

(5) Any employee whose duties require the employee to travel regularly in the service of the employee's employer in this and 1 or more other states may, by written agreement with the employee's employer, provide that the employee's employment is principally localized in this or another such state, and, unless such other state refuses jurisdiction, such agreement shall be given effect under this chapter.

(6) 'Workers' Compensation Law' includes 'Occupational Disease Law.'

§ 2304. Compensation as exclusive remedy.

Every employer and employee, adult and minor, except as expressly excluded in this chapter, shall be bound by this chapter respectively to pay and to accept compensation for personal injury or death by accident arising out of and in the course of employment, regardless of the question of negligence and to the exclusion of all other rights and remedies.

§ 2305. Exemption from liability prohibited; exception.

No agreement, rule, regulation or other device shall in any manner operate to relieve any employer or employee in whole or in part from any liability created by this chapter, except as specified in this chapter.

§ 2306. Applicability - Employers.

(a) Except as otherwise indicated, this chapter shall apply to the employer and employee in any employment in which 1 or more employees are engaged.

(b) In all cases where an employer not subject to this chapter carries insurance to insure the payment of compensation to the employees, then in any and all such cases such employer and employees shall come under this chapter, and all of the provisions thereof, with the same force and effect as in cases where an employer is subject to this chapter.

(c) Every employer shall keep a summary of this chapter, approved by the Department, and any applicable regulations published thereunder or a summary thereof, approved by the Department, posted in a conspicuous and accessible location in or about the premises or place of employment and where employees normally pass. Employers shall be furnished copies by the Department on request without charge.

(d) Notwithstanding any other provisions in this Title, including but not limited to the definitions of employer and employee in Section 2301 of this Title, the following provisions shall apply to persons who are licensed as contractors under Title 30, Chapter 25 of the Delaware Code:

(1) A contractor shall consider a person providing labor or services to the contractor for compensation to be an employee of the contractor and not an independent contractor unless the following standards are met:

a. the person providing labor or services is free from direction and control over the means and manner of providing the labor or services, subject only to the right of the person for whom the labor or services are provided to specify the desired results;

b. the person providing labor or services is responsible for obtaining business registrations or licenses required by state law or local ordinance for the person to provide the labor or services;

c. the person providing labor or services furnishes the tools or equipment necessary to provide the labor or services;

d. the person providing labor or services has the authority to hire and fire employees to perform the labor or services;

e. payment for labor or services is made upon completion of the performance of specific portions of a project or is made on the basis of a periodic retainer; and

f. the person providing labor or services represents to the public that the labor or services are to be provided by an independently established business. A person is engaged in an independently established business when four or more of the following circumstances exist:

(i) labor or services are primarily performed at a location separate from the person's residence or in a specific portion of the residence that is set aside for performing labor or services;

(ii) commercial advertising or business cards are purchased by the person, or the person is a member of a trade or professional association;

(iii) telephone or e-mail listings used for the labor or services are different from the person's personal listings;

(iv) labor or services are performed only pursuant to a written contract;

(v) labor or services are performed for two or more persons within a period of one year; or

(vi) the person assumes financial responsibility for errors and omissions in labor or services as evidence by insurance, performance bonds and warranties relating to the labor or services being provided.

(2) A contractor who intentionally or willfully makes a false report to a state or local government agency, board, commission, department, office or division that an employee is an independent contractor or who, for the purpose of a program administered by one of those entities, intentionally and willfully treats or otherwise lists an employee as an independent contractor is guilty of a misdemeanor and shall be punished by a fine of not more than $1,000 or imprisonment for a definite term not to exceed six months or both. Conviction pursuant to this subparagraph shall also be grounds for suspension, revocation, or refusal of any license issued pursuant to Title 30, Chapter 25 of the Delaware Code.

(3) This subsection shall not be construed to affect or apply to a common law or statutory action providing for recovery in tort and shall not be construed to affect or change the common law interpretation of independent contractor status as it relates to tort liability.

§ 2307. Same Domestic servants and farm laborers.

(a) This chapter shall not apply to any person employed as a household employee in a private home or household who earns less than seven hundred and fifty dollars in cash in any 3 month period from a single private home or household and any person employed as a casual employee in a private home or household who earns less than seven hundred and fifty dollars in cash in any 3 month period from a single private home or household.

(b) This chapter shall not apply to farm laborers or to their respective employers unless such an employer carries insurance to insure the payment of compensation to such employees or their dependents.

§ 2308. Same Executive officers; sole proprietors and partners.

(a) Executive officers of covered employers are included within this chapter; provided, however, that as many as 8 officers who are stockholders of a corporation may be exempted from this chapter if the corporation and the exempted corporate officers agree in writing to such an exemption. Anyone or all of the officers who elect an exemption shall for the purposes of § 2306 of this title be considered employees.

(b) Sole proprietors and partners are not included within this chapter, but such sole proprietor or partner may elect coverage in accordance with §2306 of this Title.

(c) Members of the immediate family of a sole proprietor or partner are included within this chapter; provided, however, that any such person may be exempted from this chapter if he or she agrees in writing to such an exemption.

§ 2309. Same State, counties and political subdivisions.

This chapter shall not apply to the State, any governmental agency created by it, each county, city, town, township, incorporated village, school district, sewer district, drainage district, public or quasi-public corporation or any other political subdivision of the State that has 1 or more employees, official or officer, whether elected or appointed unless proper authority is given by an above named entity to elect to be covered by the application of this chapter.

§ 2310. Applicability to persons engaged in interstate or foreign commerce.

This chapter shall not apply to employees injured or killed while engaged in interstate or foreign commerce or to their employers whenever the laws of the United States provide for compensation or for liability for such injury or death.

§ 2311. Contractors, subcontractors and lessees of motor vehicles transporting passengers for hire as employers.

(a) No contractor or subcontractor shall receive compensation under this chapter, but shall be deemed to be an employer and all rights of compensation of the employees of any such contractor or subcontractor shall be against their employer and not against any other employer.

(b) Lessees transporting passengers for hire in motor vehicles leased pursuant to written lease shall not receive compensation under this chapter, but shall be deemed to be employers.

§ 2312. Volunteer firefighters treated as State employees; election by volunteer fire companies; revocation; wage as basis for compensation.

(a) For the purposes of this chapter, volunteer firefighters shall be treated as State employees so long as the State elects to be covered by the application of this chapter.

(b) If the State elects not to be covered by the application of this chapter, then any duly organized volunteer fire company of the State may elect to be bound by the compensatory provisions of this chapter, provided that the election receives a majority vote of the members of the company at a duly called meeting of the company, and notice of the election is forwarded in writing to the Department. Any volunteer fire company which elects to be bound by the compensatory provisions of this chapter may, subsequent to the election, revoke the election provided the revocation receives a majority vote of the members of the company at a duly called meeting of the company and notice of the revocation is forwarded in writing to the Department.

(c) The wage of volunteer firefighters on which compensation is based shall be the wage received in the regular employment of such firefighters.

(d) For the purpose of this section, 'volunteer fire company' and 'volunteer firefighters' shall also include junior members, Auxiliary members, paid employees of volunteer fire companies, volunteer ambulance companies of this State, volunteer ambulance company members, paid employees of volunteer ambulance companies and members of the University of Delaware Emergency Care Unit.

§ 2313. Record and report of injuries by employers; penalty; admissibility as evidence.

(a) Every employer to whom this chapter applies shall keep a record of all injuries, fatal or otherwise, received by employees in the course of their employment. Within 10 days after knowledge of the occurrence of an accident resulting in personal injury, a report thereof shall be made in writing by the employer to the Department in duplicate on blanks to be procured from the Department for that purpose. The employer shall provide a copy of the report of injury to the employee upon completion of the report. Upon the termination of the disability of the injured employee, the employer shall make a supplemental report to the Department.

(b) The reports shall contain the name and nature of the business of the employer, the location of the employer's establishment or place of work, the name, age, sex and occupation of the injured employee and shall state the time, nature and cause of the injury and such other information as may be required for properly carrying out this chapter. The employee's copy shall contain a summary of the law as provided by the Department.

(c) Whoever, being an employer, refuses or neglects to make a report required by this section shall be assessed a civil penalty of not less than $100 nor more than $250 for each offense. In the event the employer can show that the failure to make a report required by this section was caused by the refusal of the insurance carrier for the employer to report a reportable injury which the insurance carrier had knowledge of and of which the employer had no knowledge, after written request therefore, the aforementioned fine may be levied against said insurance carrier. The fine shall be assessed by the Industrial Accident Board after the employer and/or the insurance carrier for the employer is given notice and a hearing on the violation. The fine shall be payable to the Workers' Compensation Fund.

(d) Reports made in accordance with this section shall not be evidence against the employer in any proceedings under this chapter or otherwise but shall be exclusively for the information of the Department in securing data to be used in connection with the performance of their duties.

§ 2314. Defenses unavailable in action for compensation.

(a) In any action instituted by any person to recover damages for personal injury sustained by an employee by accident arising out of and in the course of employment within this State or for death resulting from injury so sustained, it shall not be a defense that:

(1) The injury or death was caused in whole or in part by the want of ordinary or reasonable care of or by the negligence of a fellow employee; or

(2) The employee had either expressly or impliedly assumed the risk of the injury; or

(3) Injury was caused in any degree by the negligence of such employee.

§ 2315. Compensation to illegally employed minors.

The right to receive compensation under this chapter shall not be affected by the fact that a minor is employed or is permitted to be employed in violation of the laws of the State relating to employment of minors or that the minor obtained employment by misrepresenting the minor's own age.

§ 2316. Licensed real estate salespersons and licensed associate real estate brokers who are independent contractors.

(a) This chapter shall not apply to licensed real estate salespersons or licensed associate real estate brokers who are affiliated with a licensed real estate broker under a written contract pursuant to which they are remunerated on a commission only basis and are designated as independent contractors and who qualify as independent contractors for federal tax purposes, except that a licensed real estate broker with whom they have such contracts shall have the right to elect to carry insurance to insure the payment of workers' compensation to them or their dependents for part or all of the period of such affiliation.

(b) For the purposes of this section, a licensed real estate broker with whom such licensed real estate salespersons and licensed associate real estate brokers have such independent contract affiliation shall inform in writing such licensed real estate salespersons and such licensed associate real estate brokers whether the licensed real estate broker has elected to carry insurance to insure the payment of workers' compensation to them or their dependents. If a licensed real estate broker intends to change the election concerning workers' compensation, the licensed real estate broker shall notify any licensed real estate salespersons or licensed associate real estate brokers affected thereby at least 30 days prior to the effective date of the change in the election.

§ 2317. HAZMAT team members treated as State employees; wage as basis for compensation.

(a) For purposes of this chapter, HAZMAT team members shall be treated as State employees so long as the State elects to be covered by application of this chapter.

(b) The wage of HAZMAT team members on which compensation is based shall be the wage received in the regular employment of such HAZMAT team members.

(c) For purposes of this section, HAZMAT team members shall include all those persons designated as HAZMAT response team members by the Department of Natural Resources and Environmental Control and/or the State Fire School, and shall include personnel employed by private industry.

(d) Covered incidents shall include any incident where the HAZMAT team members are notified to respond, including travel to and from the incident, the incident itself, and cleanup after the incident, and any training exercises.

§2320. Disposition of monies received

Except as otherwise provided in this title, all fines, sanctions, and penalties shall be deposited to the credit of the State Treasurer and shall be credited to the Workers' Compensation Fund

§2320A. Educational Outreach

(a) The Department of Labor, Office of Workers' Compensation shall develop or commission development of educational materials and programs for employees, employers, health care providers, attorneys, judges and other interested parties concerning the requirements, benefits, rights and obligations arising under this Chapter. The information shall be made available in formats, and under circumstances, calculated to best reach the interested population, and may be presented via printed materials and workbooks, website development, provision of procedural checklists, establishment or expansion of telephonic assistance services, provision or sponsoring of educational programs or other suitable means.

(1) Provision shall be made for materials to be made available in languages other than English, and in culturally sensitive formats, when, and to the extent that, the Administrator determines that the needs of the Delaware population justify the additional expense of such materials and programs.

(2) The Department of Labor shall create and disseminate a general program of work safety awareness, based upon successful models of similar programs functioning in North America.

(b) The Department of Labor shall convene a stakeholder committee to provide guidance for the program.

(c) The program shall provide information to the public about the benefits to the employee and to the public generally of return to work after injury.

(d) The program shall be designed to raise public conscious awareness of the need for and benefits of on the job safety.

(e) The program shall be monitored for impacts on public awareness of the messages delivered, and shall be coordinated with the Delaware OSHA/SHARP program.

(f) The Department of Labor shall cooperate with the Delaware Insurance Department in preparing and presenting educational programs for workers' compensation insurance adjusters.

§2320B. Extra-Hazardous Employers

(a) The Department of Labor shall develop a program to identify extra-hazardous employers. 'Extra-hazardous employer' means an employer whose injury frequencies substantially exceed those that may reasonably be expected in that employer's business or industry. The Department of Labor shall notify each identified extra-hazardous employer and the insurance carrier for that employer that the employer has been identified as an extra-hazardous employer.

(b) An employer who receives notification under Subsection (c) of this section must obtain a safety consultation, within thirty days, from the employer's insurer or another professional source approved by the Secretary for that purpose. The safety consultant shall file a written report with the Secretary and the employer setting out any hazardous conditions or practices identified by the safety consultation.

(c) The employer, in consultation with the safety consultant, shall, within a reasonable time, formulate a specific accident prevention plan that addresses the hazards identified by the consultant. An employer who fails to formulate, implement or otherwise comply with the accident prevention plan shall be subject to a civil penalty not to exceed five thousand dollars ($5,000).

SUBCHAPTER II. PAYMENTS FOR INJURIES OR DEATH AND INCIDENTAL BENEFITS.

§ 2321. Minimum duration of incapacity.

Benefits relating to surgical, medical and hospital services, medicines and supplies, and funeral benefits shall be paid from the first day of injury. Beginning with the fourth day of incapacity, all compensation otherwise provided by law shall be paid. If the incapacity extends to 7 days or more, including the day of injury, the employee shall receive all compensation otherwise provided by law from the first day of injury.

§ 2322. Medical and other services, and supplies as furnished by employer.

(a) The employer shall furnish reasonable and necessary surgical, medical, dental, optometric, chiropractic and hospital services, medicine and supplies, for treatment limited to injuries caused by industrial accident and disabilities caused by occupational disease, including repairing damage to or replacing false dentures, false eyes or eye glasses and providing hearing aids, as and when needed unless the employee refuses to allow them to be furnished by the employer.

(b) If the employer, upon application made to the employer, refuses to furnish the services, medicines and supplies mentioned in subsection (a) of this section, the employee may procure the same and shall receive from the

employer the reasonable cost thereof within the above limitations, provided however, that in no event shall such services be considered wages, a wage equivalent, or payment in lieu of wages, and no remedy for failure to provide services other than those within this Chapter shall be applicable.

(c) An employee, at any time after a claim for compensation is made, shall have the right, upon application to the employee's employer, to inspect, copy and reproduce any medical records pertaining to said employee in the possession of the employee's employer or the employee's insurance carrier. Medical records, as used in this subsection, shall include physician's reports, hospital reports, diagnostic reports, treatment reports, X-rays and X-ray reports.

(d) The fees of medical witnesses and associated regulations and procedures shall be set by rule adopted by the Department of Labor, Office of Workers' Compensation, pursuant to the Administrative Procedures Act. The fees of medical witnesses for testimony incurred on behalf of an injured employee shall be taxed as a cost to the employer or the employer's insurance carrier in the event the injured employee receives an award.

(e) Every insurance carrier or self-insurer shall be required to replace or renew a defective or worn out prosthesis for the life of the injured person without such replacement or renewal constituting a new claim period.

(f) An employee shall be entitled to mileage reimbursement in an amount equal to the State of Delaware specified mileage allowance rate in effect at the time of travel, for travel to obtain:

(1) Reasonable and necessary surgical, medical, dental, optometric, chiropractic, and

(2) hospital services; and

(3) Medicine and supplies, including repairing and replacing damaged dentures, false eyes or eyeglasses, and providing hearing aids and prosthetic devices.

§2322A. Legislative intent with regard to medical benefits

(a) The General Assembly declares that medical benefits under the Delaware workers' compensation code are to be interpreted to provide high quality care that supports the intention of medical care in workers' compensation, at a reasonable cost to employers.

(b) The General Assembly declares that the purpose of medical care in workers' compensation is:

(1) In the short term, to promote healing of injuries, expedite the achievement of maximum medical improvement, and achieve objective, clearly defined, functional gains, with the goal of returning the employees to their pre-injury employment, or alternative employment consistent with their physical capacities and limitations.

(2) In the long term, to educate the employee, and address clinically supported symptoms reported by the employee utilizing such treatments as have, according to the most current medical evidence, the greatest

probability of yielding objectively measurable functional gains and/or reduction in clinically supported findings of dysfunction, with the goal of returning employees to meaningful employment.

(c) 'Reasonable and necessary' medical care is medical care that is designed to achieve the purpose of medical care in workers' compensation, as set forth in this section.

(d) The General Assembly declares that medical benefits, including payments under this act attributable to future medical services, are not intended as wages, wage substitutions or payments in lieu of wages, and that any savings in the cost of provision of medical care to the injured employee achieved by or through the provisions of this act are the property of the employer or employer's insurer. Any payments in lieu of provision of future medical services shall comply with applicable federal law.

§2322B. Medical cost containment

(a) Medical fee schedule

(1) The Department of Labor, Office of Workers' Compensation shall adopt, by rule, pursuant to the provisions of §2301 G, a fee schedule and associated regulations and procedures for provision of medical treatment, including all professional and paraprofessional services provided to employees for the treatment of their injuries in workers' compensation, and shall revise the fee schedule not less often than every 24 months from the date of last promulgation. The medical fee schedule shall apply to all treatments provided after the effective date of the rule, regardless of the date of injury.

(2) The intent of implementation of a medical fee schedule is to eliminate outlier charges and streamline payments by creating a presumption of acceptability of charges implemented through a transparent process, involving relevant stakeholders, for prospectively responding to the cost of maintaining medical practice, eliminating cost shifting among medical service categories and avoiding institutionalization of upward rate creep.

(3) The fee schedule shall be based upon a relative value, resource based system, other than the federal Medicare system, widely accepted in the medical community as being an accurate representation of the relative values of medical services.

(4) A conversion factor, or factors, yielding a schedule of maximum allowable fees for services shall be developed by examining billing and payment data derived from a range of non-governmental payers. The conversion factor or factors shall be controlled by the statement of intent set forth in this section.

(5) The combination of the resource based relative value for each unit of service times the applicable conversion factor shall establish the maximum allowable payment for services for that unit of service.

(6) Unbundling of service units is prohibited.

(7) The maximum fee for medical services shall be the lowest of:

a. The usual and customary fee of the provider;

b. The maximum allowable payment under the fee schedule

c. The pre-authorized, or contracted, fee for service

(8) In the absence of other evidence, the maximum allowable payment under the fee schedule shall be presumed to be the usual and customary fee of any health care provider certified to provide treatment services or impairment ratings for employees.

(9) All fees for all medical services provided by health care providers that are not certified pursuant to §2322 D shall be pre-authorized by the employer or insurer.

(10) Balance billing of the employee, employer or insurer for charges in excess of the maximum fee provided above, for medical services provided to the injured employee in connection with a compensable workers' compensation claim, is prohibited.

(b) Medical practice guidelines

(1) The Department of Labor, Office of Workers' Compensation shall adopt, by rule, pursuant to the provisions of §2301G a coordinated set of medical practice guidelines and associated regulations and procedures to guide utilization of medical treatments in workers' compensation, including, but not limited to care provided for the treatment of injured employees by, or under the supervision of a licensed health care provider as defined in §2323, prescription drug utilization, inpatient hospitalization and length of stay, diagnostic testing, physical therapy, chiropractic care and palliative care. The medical practice guidelines shall apply to all treatments provided after the effective date of the rule, regardless of the date of injury.

(2) The guidelines shall be, to the extent permitted by the most current medical science, based on well-documented scientific research concerning efficacious treatment for injuries and occupational disease. To the extent that well-documented scientific research concerning efficacious treatment is not available at the time of adoption or revision of the guidelines, the guidelines shall be based upon the best available information concerning national consensus regarding best medical practices in the medical community.

(3) The guidelines will, to the extent practical consistent with this section, address treatment of those physical conditions which occur with the greatest frequency, or which require the most expensive treatments, based upon currently available Delaware data.

(4) The guidelines shall contain a section guiding the utilization of prescription medications.

(5) The original medical practice guidelines shall be based upon an existing model, already in use to guide treatment of medical care for workers' compensation. Additional guidelines may be initially adopted, pursuant to the same criteria, to obtain coverage of areas or issues of treatment not included in other adopted guidelines. In no event shall multiple guidelines covering the same aspects of the same medical condition be simultaneously in force.

6) The Department of Labor, Workers' Compensation Office, shall appoint, after consultation with Delaware medical and health related professional societies, an advisory panel of medical researchers and professionals to assist in the initial selection of an appropriate set or sets of medical practice guidelines and in the revision of such guidelines to reflect advances in medical science. Meetings of the advisory panel shall not be considered public meetings, and no member of the advisory panel shall be subject to suit on account of the contents of the guidelines, except upon a showing by clear and convincing evidence that the advisory panel member knowingly and willfully ignored the substantial weight of well-documented and objective medical evidence, known to the member at the time of adoption or revision of the guideline.

(7) Medical services provided by any health care provider certified, pursuant to § 2322 D, to provide treatment services or impairment ratings for employees shall be presumed, in the absence of contrary evidence, to be reasonable and necessary if they conform with the most current version of the Delaware medical practice guidelines. Services provided by health care providers that are not certified pursuant to §2322 D shall not be presumed reasonable and necessary unless they are pre-authorized by the employer or insurer.

(c) Hospital fee determination mechanism

(1) The Department of Labor, Office of Workers' Compensation shall adopt, by rule, pursuant to the provisions of §2301G, a mechanism for determination of hospital fees, and the verification of containment of fees for services by hospitals, provided to injured employees for the treatment of on-the-job injuries, and associated regulations and procedures. Such mechanism shall provide that the hospital fees charged for services provided to injured employees will be equal to those paid to each hospital by the most advantageous payer of its top three commercial payers, by volume, and shall provide for automatic reductions in charges for services rendered and verification, through an independent audit, of compliance with this section and the rules adopted pursuant to it. Services provided in an emergency department or emergency room of a hospital shall be exempt from the fees determination mechanism, provided however, that if a hospital is shown to channel workers to emergency care for

the purpose of avoiding fee regulation, or to otherwise circumvent the intent of this section, then the Office of Workers' Compensation may adopt regulations to control such behavior.

The hospital fee determination mechanism adopted pursuant to this subsection shall apply to all services provided after the effective date of the rule, regardless of the date of injury.

(2) The Department of Labor, Office of Workers' Compensation shall adopt, by rule, pursuant to the provisions of §2301 G a fee schedule, or other mechanism for the determination of and verification of containment of fees for services by ambulatory surgical centers, provided to injured employees for the treatment of on-the-job injuries, and associated regulations and procedures. Such fee schedules shall be revised periodically to reflect changes in the cost of providing those services. The ambulatory surgical center fee schedule or other mechanism adopted pursuant to this subsection shall apply to all services provided after the effective date of the rule, regardless of the date of injury.

(3) Fees for non-clinical services. The Department of Labor, Office of Workers' Compensation shall adopt, by rule, pursuant to the provisions of §2301 G a fee schedule, or other mechanism for the determination of and verification of containment of fees for retrieving, copying and transmitting medical reports and records, testimony by affidavit, deposition or live testimony at any hearing or proceeding or completion and transmission of any required report, form or documentation, and associated regulations and procedures. Such fee schedules shall be revised periodically to reflect changes in the cost of providing those services. The non-clinical services fee schedule or other mechanism adopted pursuant to this subsection shall apply to all services provided after the effective date of the rule, regardless of the date of injury.

(d) Fees for medical commodities. The Department of Labor, Office of Workers' Compensation shall adopt, by rule, pursuant to the provisions of § 2301 G a fee schedule, or other mechanism, and associated regulations and procedures, for the determination of and verification of containment of fees for components of medical services that do not vary in efficacy based upon price, including, but not limited to:

(1) Prescription drugs and other pharmaceuticals

(2) Implantable surgical hardware

(3) Medical and surgical supplies not otherwise included in scheduled procedure codes.

(4) Durable medical equipment

(5) Technical portions of the cost of radiology and diagnostic testing. The fee schedule utilized with respect items under this sub-section shall be devised on a cost – plus basis, provided however, that hospitals shall

only be subject to this provision with regard to implantable surgical hardware, pursuant to subsection 2 of this section. The medical commodity fee schedule or other mechanism adopted pursuant to this subsection shall apply to all items covered by the rule provided after the effective date of the rule, regardless of the date of injury.

§2322C. Certification of health care providers

(a) The Department of Labor, Office of Workers' Compensation shall adopt, by rule, pursuant to the provisions of §2301 G criteria, procedures, and regulations for the certification and de-certification of health care providers for provision of care to employees injured in industrial accidents or suffering from occupational diseases. Two levels of certification shall be provided in the rules provided in this subsection.

(b) Certification at Level I shall be required for a health care provider, as defined in § 2323, to provide treatment to an injured employee without the requirement that the health care provider first pre-authorize each medical procedure, office visit or medical service to be provided to the employee with the employer or insurer. The provisions of this subsection shall apply to all treatments to injured employees provided after the effective date of the rule provided by subsection §2322C (a), regardless of the date of injury.

(c) Certification at Level II shall be required for any health care provider, as defined in §2323, to rate the permanent impairment or disability of an employee, express a medical opinion concerning the presence or absence of a permanent impairment or disability, directly or through any report or medical record, in any dispute resolution proceedings before the Office of Workers' Compensation or the Industrial Accident Board, or to give testimony in person or through deposition concerning the existence or extent of permanent impairment or disability before the Office of Workers' Compensation or the Industrial Accident Board. The provisions of this subsection shall apply to all treatments to injured employees provided after the effective date of the rule provided by subsection §2322C (a), regardless of the date of injury.

(d) Notwithstanding the provisions of this section, any health care provider, as defined in §2323, may provide services during one office visit, or other single instance of treatment, without first having obtained prior authorization, and receive reimbursement for reasonable and necessary services directly related to the employees' injury or occupational disease at the health care provider's usual and customary fee, or the maximum allowable fee pursuant to the workers' compensation fee schedule adopted pursuant to § 2322 A, whichever is less. The provisions of this subsection are limited to the occasion of the employee's first contact with any health care provider for treatment of the injury or occupational disease, and further limited to instances when the health care provider believes in good faith, after inquiry, that the injury or occupational disease was suffered on the employees' job. The provisions of this subsection shall apply to

all treatments to injured employees provided after the effective date of the rule provided by subsection §2322C (a), regardless of the date of injury.

§2322D. Medical dispute resolution

(a) All issues enumerated in this section, pertaining to incidents of treatment or proposed treatment occurring after the effective date of the rule specified in subsection §2322 D (c) shall be resolved exclusively by the workers' compensation medical dispute resolution system, and shall not be resolved by the Industrial Accident Board, regardless of the date of injury. The Industrial Accident Board shall accept the decisions of the workers' compensation medical dispute system as controlling precedent with regard to any questions before them in the adjudication of other issues concerning the same employee, and shall refer any questions presented to it that fall under the jurisdiction of the workers' compensation medical dispute system to that system expeditiously for resolution.

(b) The workers' compensation medical dispute system shall have exclusive jurisdiction to hear and resolve all issues concerning:

(1) Disputes concerning whether the employee has or has not reached maximum medical improvement, as defined in §2301 (17), the date upon which maximum medical improvement was reached, whether or not the employee's condition has changed such that the employee is no longer at maximum medical improvement, or any related question, issue or dispute.

(2) Any question, issue or dispute concerning the conformity of the fees for services rendered by a health care provider with the medical fee schedule adopted pursuant to §2322 A, or whether the fees charged by the health care provider are the provider's usual and customary fees.

(3) Any question, issue or dispute concerning the conformity of the treatment provided to the employee with the medical practice guidelines adopted pursuant to § 2322 A or with a pre-authorization for treatment.

(4) Any question, issue or dispute concerning the reasonableness and necessity of any medical service, treatment or procedure for which pre-authorization was sought and denied, in whole or in part, directly or by omission or delay.

(5) Any question, issue or dispute concerning the fees for any medical service, treatment or procedure for which pre-authorization was sought and denied, in whole or in part, directly or by omission or delay.

(6) Any question, issue or dispute concerning the medical appropriateness of a health care provider to provide treatment for an employee who is injured or suffering an occupational disease, considering the nature of the injury or occupational disease and the qualifications of the health care provider.

(c) The Department of Labor, Office of Workers' Compensation shall adopt, by rule, pursuant to the provisions of §2301 G, criteria, procedures, and regulations for the establishment of the workers' compensation medical dispute resolution system, that shall provide for a process of review on paper submissions, by a qualified health care provider, for expeditious resolution of the question, issue or dispute; review and resolution of the question, issue or dispute, upon the request of any health care provider involved in the question, issue or dispute, by a panel of qualified health care providers after a hearing; adoption of the findings of the reviewing panel by a hearing officer; and appeal of the findings of the reviewing panel by the Superior Court, where such findings will be upheld unless they are arbitrary, capricious, abusive of discretion, or contrary to law.

(d) The Department of Labor, Office of Workers' Compensation may contract with a health care or medical peer review organization to provide services necessary to implement this section.

§ 2323. Selection of physician, surgeon, dentist, optometrist, physical therapist or chiropractor by employee.

Any employee who alleges an industrial injury shall have the right, subject to the provisions of §2322 C and D, to employ a health care provider of the employee's own choosing. The Department of Labor, Office of Workers' Compensation shall adopt, by rule, pursuant to the provisions of § 2301 G, a list of approved categories of health care provider which shall include physicians, surgeons, dentists, optometrists and chiropractors who are licensed to practice within the State of Delaware, and shall further provide for a mechanism for health care providers who are not approved, including health care providers who are not licensed in the State of Delaware, to obtain approval for provision of services to injured employees. No employer or insurer shall be liable for payments to a medical professional who is not an approved health care provider, unless the evaluation and treatment giving rise to such charges was pre-approved by the employer or insurer. Notice of the employee's intention to employ medical aid as aforesaid shall be given to the employee's employer or its insurance carrier. Notice that medical aid was employed as aforesaid shall be given as provided in §2323 A. If the alleged injury is subsequently held to be compensable, the employer shall be liable for the usual and customary fee for the services of any physician, surgeon, dentist, optometrist or chiropractor certified pursuant to § 2322 C whose employment was utilized by the employee provided notice of said employment was given to the employer or its insurance carrier, or the fee provided for in the medical fee schedule adopted pursuant to § 2322 A, whichever is less. In the event the physician, surgeon, dentist, optometrist or chiropractor is not certified pursuant to §2322 C, the employer shall be liable for the pre-authorized fee, or a fee determined by the medical dispute resolution system.

§2323A. Billing and Payment for medical treatment

(a) Charges for medical evaluation, treatment and therapy, including all drugs, supplies, tests and associated chargeable items and events, shall be submitted to the employer or insurer within 60 days of the date on which the medical evaluation, treatment or therapy took place. The bill or invoice for such charges shall be accompanied by medical records or notes, concerning the treatment or services submitted for payment, documenting the employees' condition and the appropriateness of the evaluation, treatment or therapy, with reference to the medical practice guidelines adopted pursuant to §2223A, or documenting the pre-authorization of such evaluation, treatment or therapy. The initial copy of the supporting medical notes or records shall be produced without separate or additional charge to the employer, insurer or employee.

(b) Charges for hospital services and items supplied by a hospital, including all drugs, supplies, tests and associated chargeable items and events, shall be submitted to the employer or insurer within 60 days of the date on which the medical evaluation, treatment or therapy took place. The bill or invoice for such charges shall be documented in a nationally recognized uniform billing code format, in sufficient detail to document the services or items provided, and any pre-authorization of the services and items shall also be documented. The initial copy of the supporting medical notes or records shall be produced without separate or additional charge to the employer, insurer or employee.

(c) Pre-authorized evaluations, treatments or therapy shall be paid at the agreed fee within 30 days of the date of submission of the bill, unless the compliance with the pre-authorization is contested, in good faith, to the workers' compensation medical dispute resolution system.

(d) Treatments, evaluations and therapy provided by a certified health care provider shall be paid within 30 days of receipt of the health care provider's bill or invoice together with medical records or notes as provided in this section, unless compliance with the medical fee schedule or medical practice guidelines adopted pursuant to §2322 A is contested, in good faith, to the workers' compensation medical dispute resolution system.

(e) In the event that a portion of a medical bill is contested, pursuant to this section, the uncontested portion shall be paid without prejudice to the right to contest the remainder. The time limits set forth in this Section shall apply to payment of all uncontested portions of medical payments.

(f) The Department of Labor, Office of Workers' Compensation shall adopt, by rule, pursuant to the provisions of § 2301G, criteria, procedures, and regulations for the implementation of the requirements of this section, including, but not limited to, sanctions of up to the charge for the medical evaluation or treatment, plus a sum of up to $5000.00 for each instance of failure to make timely payments, delaying payments through multiple or unreasonable

requests for medical notes or records or denial of payments by personnel that are not medically qualified to make medical judgments.

§2323B. Reports concerning the employee's condition and physical limitations

(a) Every health care provider who evaluates or treats an injured employee shall complete, within 5 days of the date of first evaluation or treatment, a report of employee condition and limitations, on a form adopted for that purpose by the Department of Labor, Office of Workers' Compensation, and shall expeditiously provide copies of the report of employee condition and limitations to the employee, the employer and the employer's insurer, if applicable. In the event that an employee is treated and released from the emergency department of a hospital, the health care provider most responsible for follow up care, if applicable, or the emergency room attending physician, shall provide the report of employee condition and limitations to the employee upon release, and the employee shall be responsible for provision of the report to the employer and the employer's insurer, if applicable, within the time period provided by the rules adopted pursuant to this section.

(b) Every health care provider shall prepare supplemental reports of employee condition and limitations, and shall expeditiously provide copies of the report of employee condition and limitations to the employee, the employer and the employer's insurer, if applicable, upon the occasion to the employee reaching maximum medical improvement, or upon the request of the employee, employer or employer's insurer.

(c) The Department of Labor, Office of Workers' Compensation shall adopt, by rule, pursuant to the provisions of §2301 G criteria, procedures, and regulations for the implementation of the requirements of this section, including establishment of a fee for completion, copying and transmission of the form. The employer or the employer's insurer shall be liable for payment of the fee for all such reports of employee condition and limitations, provided however, that the employer or insurer shall not be liable for any such reports, requested by an employee, more frequently than once during each three month period.

§2323C. Emergency medical services

The Department of Labor, Office of Workers' Compensation shall adopt, by rule, pursuant to the provisions of §2301 G shall adopt a definition of emergency services. Not withstanding any provision to the contrary, emergency services for compensable injuries, as defined, shall not be subject to the requirement that a health care provider be certified pursuant to § 2322 C, requirements for pre-authorization of services or the medical practice guidelines adopted pursuant to §2322 A, and shall be paid within 30 days of the submission of a bill accompanied by medical records or notes documenting the employees' condition and the appropriateness of the evaluation, treatment or therapy at the rates provided

for by the medical fee schedule adopted pursuant to §2322 A, or the usual and customary fee of the health care provider, whichever is less.

§2323D. Referrals and change of health care providers

(a) A health care provider certified pursuant to §2322 C may refer an employee suffering from an injury or occupational disease to another health care provider certified pursuant to §2322 C subject to the following limitations:

(1) The referring certified health care provider may make only one referral of the employee to another certified health care provider for specialized care for each area of medical specialty for which a referral is made.

(2) The referring certified health care provider may make only one referral of the employee to another certified health care provider for a rating of physical impairment or determination of maximum medical improvement.

(b) The employee shall be allowed to change health care providers without the agreement of the employer or insurer once during the entire period of treatment for the injury or occupational disease. In the event that the employee wishes subsequent changes of health care provider without the agreement of the employer or insurer, the change of health care provider shall not be effective until the Industrial Accident Board issues an order resolving the disputed change, upon a showing of good cause.

(c) The employer or insurer shall not be liable for the services of health care providers chosen or referred in violation of the provisions of this section, and no health care provider chosen or referred in violation of this section shall be allowed to rate the permanent impairment or disability of an employee, express a medical opinion concerning the presence or absence of a permanent impairment or disability, directly or through any report or medical record, in any dispute resolution proceedings before the Office of Workers' Compensation or the Industrial Accident Board, or to give testimony in person or through deposition concerning the existence or extent of permanent impairment or disability before the Office of Workers' Compensation or the Industrial Accident Board.

§2323E. Disclosure of financial interests.

No health care provider providing treatments to injured employees under sections 2322, 2322 A, B, C and D, 2323, 2323A, B, C, and D shall refer an employee to, or encourage an employee to utilize, any in-patient or out- patient facility or any medical or therapeutic practice, laboratory, diagnostic testing or radiological imaging machinery, equipment, practice or facility without first disclosing in writing to the employee and the employer any financial interest the health care provider has in such in-patient or out- patient facility, any medical or therapeutic practice, laboratory, diagnostic testing or radiological imaging machinery, equipment, practice or facility.

§2323F. Sanctions

(a) Violation of the provisions of sections 2322, 2322 A, B, C and D, 2323, 2323A, B, C, and D, or of any rule or regulation adopted for the implementation or enforcement of those provisions shall be sanctioned by the imposition of a fine of up to $5000.00 per occurrence, imposition of an injunction to cause the violation to cease and desist, de-certification of health care provider or other sanction designed to obtain compliance with the provisions of law.

(b) The Department of Labor, Office of Workers' Compensation shall adopt, by rule, pursuant to the provisions of § 2301 G, criteria, procedures, and regulations for the implementation of the requirements of this section.

§2324. Disability Benefits; Intent

It is the intent of the General Assembly that indemnity payments to injured employees be designed, interpreted and implemented so as to provide a balance between adequate support for employees during their recovery from injury and reasonable cost for employers, and a balance between encouraging previously injured employees to return to work at the earliest safe opportunity and providing compensation for loss of wages. Specifically, the General Assembly intends that temporary total disability be utilized only during that period when the injured or disabled employee is receiving active medical treatment prior to maximum medical improvement; that vocational rehabilitation benefits be utilized only to provide support for the injured employee during the period of active pursuit of vocational rehabilitation services; that permanent partial disability benefits be utilized as the exclusive mechanism by which any loss of future earning capacity suffered by the employee is approximated and compensated; and that permanent total disability benefits be reserved for the small proportion of the injured employee population that requires support for life.

§ 2324A. Temporary Total Disability Benefits

For injuries or occupational disease disabilities occurring after the effective date of this enactment, an injured employee shall be compensated at the rate of 66 2/3% of the employees' average weekly wage, as calculated pursuant to §2302, from the date of the fourth consecutive day of lost work time until the employee reaches maximum medical improvement, as defined in §2301 (17), provided, however, that the compensation shall not be more than 100 % of the Delaware average weekly wage per week as announced by the Secretary of Labor for the last calendar year for which a determination of the average weekly wage has been made. This benefit level shall be known as the worker's 'compensation rate'. In no event shall temporary total disability be paid for longer than 300 weeks. No employee shall be paid temporary total disability payments and any other indemnity benefit at the same time. If the employer and employee dispute the date of maximum medical improvement, the employer shall continue to pay temporary total disability benefits during the pendency of the dispute, provided however, that the employer will be credited, on a dollar for dollar basis for all

payments of temporary total disability benefits paid during the pendency of the dispute against any other liability remaining to the employer after the dispute is resolved

§2324B. Duty to report return to work

Every employee who has received temporary total disability payments has a duty to report his or her return to work in a full or part time capacity, regardless of the wages paid, to his employer between the date of return to work and the acceptance of any further payments of temporary total disability payments.

§2324C. Vocational Rehabilitation Benefits

(a) The Legislature finds that the provision of limited vocational rehabilitation benefits to address the needs of employees who are unable to return to pre-injury employment is in the best interests of the public, if precautions are taken to prevent abuse of the benefit. It is therefore the intent of the Legislature that the provisions of this Section be strictly construed to assure that vocational rehabilitation benefits are used solely for the purpose of providing bona fide employment opportunities to previously injured employees, at reasonable cost to employers, as provided in this section.

(b) Definitions:

(1) 'Vocational rehabilitation benefits' means payments to an employee to provide financial support to the employee during vocational rehabilitation activities as provided for and limited in this Section.

(2) 'Vocational rehabilitation services' means goods and services, including, but not limited to, assistive technology, education and training rendered to the employee for the purpose of facilitating return to employment.

(3) 'Vocational assessment' means an assessment by the Department of Labor, Division of Vocational Rehabilitation , to determine the skills, capabilities and other relevant information concerning the employee that impacts his or her ability to return to work and the goods and services needed to facilitate return to work in an occupation consistent with the employees' skills, capabilities and interests.

(c) No vocational rehabilitation benefit shall valued as having any cash value or being the equivalent of wages for any purpose, including settlements, payments in lieu of benefits, commutations, computation of attorneys fees, collections pursuant to § 2357, or any other purpose.

(d) No payment for vocational rehabilitation services shall be made to an employee, and all payments for vocational rehabilitation services shall be made directly to the provider of the service upon an attestation that the services have been provided. No payments of vocational rehabilitation services shall be made to an employee or any other person or entity for the purpose of purchasing for, or on behalf of, the employee a business, an interest in a business, business equipment, or business tools, materials or supplies of any kind.

(e) Within 90 days of reaching maximum medical improvement, or 90 days of receiving actual or constructive notice of the achievement of maximum medical improvement, whichever is later, an injured employee who has not returned to work may elect to receive a vocational assessment from the Department of Labor Division of Vocational Rehabilitation. The employer shall compensate the Division for the reasonable cost of the vocational assessment. If, as a result of the vocational assessment, the Division elects to recommend that vocational rehabilitation services be provided to the employee, the employee may elect, within 10 days of such recommendation, to pursue vocational rehabilitation. An employee who has returned to work may request that the employer certify that the employee is not able to perform the functions of the job, due to the employee's physical limitations. An employee who has obtained such a certification may elect to receive a vocational assessment within 90 days of the certification by the employer, subject to the limitations set forth in subsection (H) of this section. Such an employee will henceforth be treated as if they had not returned to work with respect to benefits and services under this section.

(f) If the employee elects to pursue vocational rehabilitation, the employee and the Division will execute an agreement setting forth the recommendation of the Division, the employees' commitment to pursue the recommendation and the recommended vendor, or vendors, for the vocational rehabilitation services. The agreement shall require the employee to report to the Division and the employer any failure to attend and pursue the agreed vocational rehabilitation program. In all instances, the Division shall be considered the preferred vender for services that it is able to provide. The Division shall monitor the employee's compliance with the agreement and notify the employee and employer of any substantive non-compliance.

(g) Upon execution of the agreement, the employee will be eligible for vocational rehabilitation benefits during the period the employee is actively pursuing vocational rehabilitation pursuant to the agreement, up to a maximum of 90 days. Vocational rehabilitation benefits shall be equal to 66 2/3% of the employee's average weekly wage as calculated pursuant to §2302, provided, however, that the compensation shall not be more than the average weekly wage per week as announced by the Secretary of Labor for the last calendar year for which a determination of the average weekly wage has been made. The employees' vocational rehabilitation benefit may be extended for an additional period of up to 90 days upon the written certification by the Division that the employee is successfully pursuing the agreed program in a timely manner and that an additional period of vocational rehabilitation benefits is necessary to allow continued progress in the program. No further extensions of vocational rehabilitation benefits shall be considered.

(h) The employee shall be eligible for vocational rehabilitation benefits and vocational rehabilitation services only once for any discernable occupational injury or disablement, whether or not there is subsequent re-injury or

aggravation of the original injury. Nothing in this section shall preclude an employee from receiving benefits through the Vocational Rehabilitation program, provided that the employer's liability during the period of eligibility under this section shall be that of the primary payer.

(i) The employer shall pay all reasonable and necessary costs of vocational rehabilitation services within 30 days of receipt of an invoice for services rendered, and shall pay vocational rehabilitation benefits subject to the same requirements concerning timeliness as apply to payments of temporary total disability benefits. The employer shall not be liable for payments of vocational rehabilitation services or vocational rehabilitation benefits in any instance where the services rendered to the employee were provided by a vendor that was not specified in the agreement between employee and the Division, provided for in subsection (F) of this section. The employer shall not be liable for payment of vocational rehabilitation benefits for any period during which the employee is out of compliance with the agreement between employee and the Division, provided in subsection (F) of this section.

(j) Any employee suffering an amputation of a thumb, a great toe, an upper extremity or lower extremity or the loss of an eye shall qualify for a vocational rehabilitation assessment to be performed at the employer's expense by the Division of Vocational Rehabilitation, and benefits as provided in this section, provided the election to pursue such benefits is made within 90 days of achieving maximum medical improvement or 90 days of receiving actual or constructive notice of the achievement of maximum medical improvement, whichever is later.

(k) The Department of Labor, Office of Workers' Compensation shall adopt, pursuant to Section 2301G, rules and procedures for the administration of the benefits and services provided in this section.

(l) The provisions of this section shall only apply to injuries or occupational disease disabilities that occur after the date of enactment.

§ 2325. Temporary partial disability benefits

If an employee, prior to reaching maximum medical improvement as defined in §2301 (17), returns to work at less than their pre-injury wage, the compensation to be paid shall be 66 2/3 percent of the difference between the wages received by the injured employee before the injury and the wages earned by the employee thereafter, but not more than the Delaware average weekly wage per week as announced by the Secretary of Labor for the last calendar year for which a determination of the average weekly wage has been made. This compensation shall be paid during the period of such partial disability for work, prior to the achievement of maximum medical improvement. No employee may be paid temporary partial disability payments and any other indemnity payment at the same time. The provisions of this section shall only apply to injuries or occupational disease disabilities that occur after the date of enactment.

§ 2326. Permanent partial disability benefits

(a) As a guide to the interpretation and application of this section, the policy and intent of the General Assembly is declared to be that every person who suffers a compensable injury with resulting permanent partial disability should be provided with the opportunity to return to gainful employment as soon as possible with minimal dependence on compensation awards.

(b) As used in this Title, 'partial disability' means a condition whereby an employee, by reason of injury arising out of and in the course of employment, suffers a permanent impairment.

(c) As used in this Title, 'impairment' means an anatomical or functional abnormality existing after the date of maximum medical improvement as determined by a medically or scientifically demonstrable finding and based upon the most recent edition of the American Medical Association's guide to the evaluation of permanent impairment or comparable publications of the American Medical Association. In all instances, the calculated value of the employee's 'whole body' impairment, as defined in the American Medical Association's guide to the evaluation of permanent impairment shall be used as the measure of impairment used to calculate partial disability.

(d) Permanent partial disability shall be determined by calculating the product of the employee's impairment as modified by his future earnings multiplier and job related disfigurement, if any, pursuant to Sections 2326A through D; provided that, regardless of the actual calculation of impairment as modified by the employee's future earnings multiplier and job related disfigurement, if any, the percentage of disability awarded shall not exceed ninety-nine percent.

(e) If any portion of the permanent partial disability calculation is disputed by the employer or employee, the employer shall pay the undisputed portion of the benefit during the resolution of the dispute.

(f) Permanent partial disability payments shall be paid periodically except as provided in §2326 G, pertaining to acceleration of benefits upon r return to work and § 2358 pertaining to commutation of compensation

(h) No employee shall be paid permanent partial disability benefits and any other indemnity benefit at the same time.

(i) The provisions of this section shall only apply to injuries or occupational disease disabilities that occur after the date of enactment.

§2326A. Calculation of Disability

(a) For the purpose of determining the percentage of disability pursuant to §2326, whole body impairment as found by a Level 2 certified health care provider shall constitute the base value.

(b) The appropriate value for the employee's future earnings multiplier, as determined in Section 2326 B, shall be multiplied by the workers' whole body impairment. The product shall be known as the 'disability rate'.

(c) If, on or before the tenth day after the employer is given written notice of the determination of the worker's loss of physical abilities, pursuant to Section 2326B, the employer fails to offer to return the employee to employment at a job the employee is physically qualified to perform, or if the offered employment pays less than 80% of the employee's pre-injury wages, the employees disability rate will be increased by 10%. This provision shall not apply to employees of employers who employed less than 10 full or part time workers on the date of the worker's impairment rating.

(d) If, on or before the tenth day after the employer is given written notice of the determination of the worker's loss of physical abilities, pursuant to Section 2326B, the employer offers to return the employee to employment at a job the employee is physically qualified to perform, and if the offered employment pays less than 80% of the employee's pre-injury wages, the employees disability rate will be decreased by 10%. This provision shall not apply to employees of employers who employed less than 10 full or part time workers on the date of the worker's impairment rating.

(e) The disability rate, as defined in this section, shall be multiplied by the worker's compensation rate, as defined in §2324A. The product shall be the employee's weekly permanent partial disability benefit. The permanent partial disability benefit is payable for 300 weeks, unless the employee's percentage of permanent partial disability is over 75%, in which case it shall be paid for 450 weeks.

§2326B. Future Earnings multiplier

(a) Within 10 days of the acceptance of the compensability of a claim, the employee and employer will attempt to reach an agreement concerning the correct classification of the employee's job in the Occupational Information Network classification system sponsored by the United States Department of Labor. If the parties cannot agree on the proper job classification, the employer will record both the employee's suggested job classification and the employer's suggested job classification. If the compensability of the claim is contested, the Industrial Accident Board shall determine the correct job classification in the Occupational Information Network system after any finding of compensability.

(b) The health care provider rating the employee's physical impairment pursuant to §2326 A (a) shall, not later than 10 days after the rating of physical impairment, be provided by the employer with the list of abilities corresponding to the employee's pre-injury job title, as listed in the Occupational Information Network 'O*Net' website. These abilities shall be known as the employee's 'job related abilities.' In the event of a disagreement concerning the

applicable job title, lists of the job related abilities for both the employer's and employee's selected designation of the employee's job title on the date of injury will be provided to the health care provider.

(c) The health care provider shall make a determination of whether the employee has completely or partially lost each of the job related abilities, or whether the job related ability remains after the worker's injury. The determination shall be separately made for each of the workers' individual job related abilities, as provided to the health care provider, above. The health care provider shall provide a written report of his or her findings concerning the loss of job related abilities to the employee and employer, not later than 5 working days after the determination is made. The Department of Labor, Office of Workers' Compensation shall adopt a fee schedule, for the performance of the ratings described in this section, pursuant to §2301 G.

§2326C. Calculation of modification for reduction in job related abilities

(a) Loss of abilities shall be assigned the following values:

(1) Complete loss of an ability shall be assigned a value of 2

(2) Partial loss of an ability shall be assigned a value of 1

(3) Abilities for which there has been neither partial nor complete loss shall be assigned a value of 0.

(b) The points assigned to each of the abilities associated with the employee's pre-injury employment shall be added together and divided by the product of the number of individual abilities listed in the 'O*Net' for that specific job classification times two. The value calculated shall be known as the worker's 'percentage of lost abilities'. In the event that the worker and employer disagree as to the proper job classification for the employee, the calculations set forth in this subsection shall be independently conducted for each job classification.

(c) The workers' future earnings multiplier shall be determined according to the following table:

Percentage of lost abilities	Future earnings multiplier
0-10%	1.1
10-20%	1.133
20-30%	1.166
30-40 %	1.20
40- 50 %	1.233
50-60 %	1.266
60-7O%	1.3
70-80%	1.333

80-90 1.366

90-100 1.4

§2326D. Modification for job related disfigurements

If the employee, as a direct result of a work related injury or disease suffers a serious disfigurement to the hands, neck, head or face that is immediately and obviously visible when observed in normal working conditions for the employee's pre-injury job, up to 5 percent may be added to the employee's disability calculation, depending on the seriousness of the disfigurement.

§2326E. Permanent total disability benefits

(a) 'Permanent total disability' means:

(1) the permanent and total loss or loss of use of both hands or both arms or both feet or both legs or both eyes or any two of them; or

(2) a brain injury resulting from a single traumatic work-related injury that causes,

exclusive of the contribution to the impairment rating arising from any other impairment to any other body part, or any preexisting impairments of any kind, a permanent impairment of thirty percent or more as determined by the current American medical association guide to the evaluation of permanent impairment

(3) Permanent total disability benefits shall be paid for the natural life of the injured employee at the rate of 66 2/3% of the employees average weekly wage, but not more than the average weekly wage per week as announced by the Secretary of Labor for the last calendar year for which a determination of the average weekly wage has been made. No employee may be paid permanent partial indemnity benefits and any other indemnity benefit at the same time.

§2326F. Limitations on benefits

(a) Unless otherwise contracted for by the employee and employer, workers' compensation benefits shall be limited so that no employee receives more in total payments, including wages and benefits from his employer, by not working than by continuing to work. Compensation benefits under this chapter shall accordingly be reduced, if necessary, to account for any wages and employer-financed disability benefits an employee receives after the time of injury. For the purposes of this section, total payments shall be determined on an after-tax basis. This section does not apply to social security payments, employee-financed disability benefits, benefits or payments an employee received from a prior employer, payments for medical or related expenses or general retirement payments, except it does apply to disability retirement benefits.

(b) In no event shall the employee receive any combination of indemnity benefits, except for permanent total disability benefits as provided in § 2326E, for a cumulative total of more than 520 weeks for any single discernable industrial accident or occupational disease disablement.

(c) In no case shall compensation benefits for disability continue after the disability ends or after the death of the injured employee

(d) The compensation benefits payable by reason of disability caused by accidental injury shall be reduced by the compensation benefits paid or payable on account of any prior injury suffered by the employee if compensation benefits in both instances are for injury to the same member or function or different parts of the same member or function or for disfigurement and if the compensation benefits payable on account of the subsequent injury would, in whole or in part, duplicate the benefits paid or payable on account of such prior injury.

(e) This section shall only apply to injuries that occur after the effective date of this section; it shall not reduce benefits received or due or affect the benefits due for injuries that occur before the effective date of this section.

§2326G. Acceleration of Permanent Partial Disability Benefits

(a) On one occasion, during the entire life of a claim arising from an accidental injury or occupational disease disablement, regardless of aggravation, re-injury or deterioration of the employee's condition, the employee may elect to receive an acceleration of permanent partial indemnity benefits pursuant to this section. The eligibility for this one-time acceleration shall be strictly construed.

(1) Upon the employee's return to work and report of return to work to the employer, and to the Division of Vocational Rehabilitation, if such employee has obtained vocational rehabilitation services or benefits, the employee may elect to receive up to 52 weeks of permanent partial disability benefits in one lump sum. The employee may elect how many weeks of accelerated benefits to receive, provided that this election is limited to the number of weeks of benefits otherwise remaining to the employee pursuant to the provisions of this Chapter.

(2) The number of weeks paid as a lump sum shall reduce the total weeks of eligibility for permanent partial disability benefits on a ration of one week of lump sum payment to one week of reduction of permanent partial disability eligibility.

(3) The Department of Labor, Office of Workers' Compensation shall promulgate forms and procedures, which shall be utilized on a mandatory basis for the implementation of this Section.

(4) The employer or the employer's insurer shall pay any uncontested request for a lump sum acceleration of permanent partial disability benefits within 14 days of receipt of a properly completed and

executed form requesting the acceleration. The payment of benefits pursuant to this section shall not be subject to the provisions of § 2357.

(5) Nothing in this section shall be construed as granting, expanding or creating any right for payment of benefits not otherwise specifically provided for in this Title.

§ 2328. Compensation for death or disability from occupational disease.

The compensation payable for death or disability total in character and permanent in quality resulting from an occupational disease shall be the same in amount and duration and shall be payable in the same manner and to the same persons as would have been entitled thereto had the death or disability been caused by an accident arising out of and in the course of the employment. In determining the duration of temporary total and/or temporary partial and/or permanent partial disability, and the duration of such payments for the disabilities due to occupational diseases, the same rules and regulations as are applicable to accidents or injuries shall apply.

§ 2329. Compensation for disability resulting from occupational and other preexisting disease.

Whenever any disability from which any employee is suffering following the contraction of a compensable occupational disease is due in part to such occupational disease and in part to a preexisting disease or infirmity, the Board shall determine the proportion of such disability which is reasonably attributable to the occupational disease and the proportion which is reasonably attributable to the preexisting disease or infirmity and such employee shall be entitled to compensation only for the proportion of the disability which is reasonably attributable solely to the occupational disease.

§ 2330. Compensation for death.

(a) In case of death, compensation shall be computed on the following basis and distributed to the following persons:

(1) To the child or children if there is no surviving spouse entitled to compensation, 66 2/3% of the wages of the deceased, with 10% additional for each child in excess of 2, with a maximum of 80% to be paid to their guardian;

(2) To the surviving spouse, if there are no children, 66 2/3% of wages provided that the minimum amount payable shall not be less than $15 per week;

(3) To the surviving spouse, if there is 1 child, 66 2/3% of the wages;

(4) To the surviving spouse, if there are 2 children, 70% of wages;

(5) To the surviving spouse, if there are 3 children, 75% of wages;

(6) To the surviving spouse, if there are 4 or more children, 80% of wages;

(7) If there is no surviving spouse or children, then to the parents, or the survivor of them, if actually dependent upon the employee for at least 50% of their support at the time of the employee's death, 20% of wages;

(8) If there is no surviving spouse, children or dependent parent, then to the siblings, if actually dependent upon the decedent for at least 50% of their support at the time of the employee's death, 15% of wages for 1 sibling, and 5% additional for each additional sibling, with a maximum of 25%, such compensation to be paid to their guardian.

(b) The wages upon which death compensation shall be based shall not in any case be taken to exceed the average weekly wage per week as announced by the Secretary of the Department of Labor for the last calendar year for which a determination of the average weekly wage has been made. However, the minimum amount payable to a surviving spouse entitled to compensation shall not be less than 22 2/9% of the said average weekly wage per week. Subject to § 2332 of this title, this compensation shall be paid during 400 weeks and in case of children entitled to compensation under this section, the compensation of each child shall continue after such period of 400 weeks until such child reaches the age of 18 years, or if enrolled as a full-time student in an accredited educational institution, until such child ceases to be so enrolled or reaches the age of 25 years, and in the case of a surviving spouse entitled to compensation under this section the compensation shall continue after such period of 400 weeks until the surviving spouse dies or remarries. Children are not entitled to compensation during the period that compensation is payable to their parent, except as provided in this section; provided, however, that the compensation for any child shall not be less than $10 per week unless the total maximum benefits are being paid.

(c) Compensation shall be payable under this section to or on account of any sibling only if and while such sibling is under the age of 18 years. Compensation shall be payable under this section to or on account of any child only if and while such child is under the age of 18 years, or if over 18 years and enrolled as a full-time student, until such time as such child ceases to be so enrolled or reaches the age of 25 years. Compensation shall be payable under this section to or on account of any child beyond the age of 18 years if and while mentally or physically handicapped and actually dependent upon the deceased for at least 50 percent of their support at the time of the employee's death.

(d) Compensation shall be payable under this section to a surviving spouse: (1) If living with deceased at the time of death; (2) if receiving or had the right to receive support at the time of death; (3) if deserted prior to and continued at the time of death; otherwise, compensation shall be distributed to the persons who would be dependents in case there was no surviving spouse.

(e) Compensation payable to the surviving spouse shall be for the use and benefit of such surviving spouse and of the dependent children, and the Board may from time to time apportion such compensation between them in such way as it deems best. The Board may require payments to be made directly to a minor who has been injured and may also require payments to be made to the person caring for any dependent minor, when, in the opinion of the Board, the expense of securing the appointment of a guardian would be disproportionate to the amount of compensation payable to such minor.

(f) If the compensation payable under this section to or on account of any person shall for any cause cease, the compensation of the remaining persons entitled thereunder shall thereafter be computed at the same rate as would have been payable to the remaining persons had they been the only persons entitled to compensation at the time of the death of the deceased, which computation shall be based upon the rates in effect at the time of the death of the deceased.

(g) Should any dependent of a deceased employee die, or should the surviving spouse remarry, the right of such dependent or such surviving spouse to compensation under this section shall cease. However, 2 years' indemnity benefits in 1 lump sum shall be payable to a surviving spouse upon remarriage.

(h) In no event shall death benefits be paid pursuant to this section if the employee would not have been eligible for payment of disability benefits at the time of death, had the employee survived.

§ 2331. Burial expenses where death results from injury.

If death results from the injury, the employer shall pay the reasonable burial expenses of an injured employee, not exceeding $5,000, but without deduction of any amount theretofore paid for compensation or medical expense, except that any bill for reasonable funeral expenses resulting from the death of an injured employee contracted for in an amount in excess of $5,000 may be approved by the Industrial Accident Board.

§ 2332. Death of employee as affecting compensation and other benefits.

Should the employee die as a result of the injury, the employer shall nonetheless be liable for medical, surgical, dental, optometric, chiropractic or hospital services and medicines and for the expense of last sickness and burial as provided in this chapter. Upon the death of an employee any claim for compensation shall not abate, but the personal representative of the deceased may be substituted for the employee and prosecute the claim for the benefit of the deceased's dependent or dependents only. Payments in such event shall be made as otherwise provided in this chapter.

§ 2333. Compensation of nonresident alien dependents; representation consular officers.

(a) Compensation under this chapter to alien dependent surviving spouses and children not residents of the United States shall be one half of the amount provided in each case for residents, and the employer may at any time

commute all future installments of compensation payable to alien dependents not residents of the United States by paying to such alien dependents the then value thereof, calculated in accordance with § 2358 of this title. Alien parents, siblings not residents of the United States shall not be entitled to any compensation.

(b) Nonresident alien dependents may be officially represented by the consular officers of the nation of which such alien or aliens may be citizens or subjects and in such cases the consular officers may receive for distribution to such nonresident alien dependents all compensation awarded hereunder and the receipt of such consular officers shall be a full discharge of all sums paid to and received by them.

§2334. Benefit adjustment.

(a) Any person who is totally disabled on or after May 27, 1971, or any surviving spouse or dependent who is receiving benefits under § 2330 of this title, on or after May 27, 1971, shall be entitled to an additional amount of compensation as calculated under subsections (b) and (c) of this section, provided that the total amount to be received shall not exceed the maximum weekly benefit rate in § 2324 of this title effective on July 1, 1975, or the benefit derived from § 2330 of this title as of July 1, 1975.

(b) In any case where a totally disabled person, or a surviving spouse or a dependent is presently receiving the maximum weekly income benefit rate applicable at the time such award was made, the supplemental allowance shall be an amount which when added to such award would equal the maximum weekly benefit rate effective on July 1, 1975, or the benefit derived from § 2330 of this title as of July 1, 1975.

(c) In any case where a totally disabled person, or a surviving spouse or dependent is presently receiving less than the maximum weekly income benefit rate applicable at the time such award was made, the supplemental allowance shall be an amount equal to the difference between the amount the claimant is presently receiving and a percentage of the maximum weekly benefit rate effective on July 1, 1975, or the benefit derived from § 2330 of this title as of July 1, 1975, determined by multiplying it by a fraction, the numerator of which is the claimant's present award and the denominator of which is the maximum weekly rate applicable at the time such award was made.

SUBCHAPTER III. DETERMINATION AND PAYMENT OF BENEFITS; PROCEDURES

§ 2341. Notice of injury; employer’s notice; time of; and failure to give.

Unless the employer has actual knowledge of the occurrence of the injury or unless the employee, or someone on the employee's behalf, or some of the dependents, or someone on their behalf gives notice thereof to the employer within 45 days after the accident no compensation shall be due until such notice is given or knowledge obtained. Every employer is required to give notice to its insurer or any third party claims administrator managing claims for the employer, of any

accident concerning which the employee has given notice, or of which the employer has actual knowledge, within 72 hours of the notice or knowledge. This requirement shall apply whether or not the employer agrees that the employee was injured, or agrees that the injury happened in the course and scope of the employees' employment, and shall not constitute an admission of liability for any purpose.

§ 2342. Notice of occupational disease; time of; failure to give.

Unless the employer during the continuance of the employment has actual knowledge that the employee has contracted a compensable occupational disease or unless the employee, or someone in the employee's behalf, or some of the employee's dependents, or someone on their behalf, gives the employer written notice or claim that the employee has contracted one of the compensable occupational diseases, which notice to be effective shall be given within a period of 6 months after the date on which the employee first acquired such knowledge that the disability was, could have been caused or had resulted from the employee's employment, no compensation shall be payable on account of the death or disability by occupational disease of such employee. Every employer is required to give notice to its insurer or any third party claims administrator managing claims for the employer, of any occupational disease disablement concerning which the employee has given notice, or of which the employer has actual knowledge, within 72 hours of the notice or knowledge. This requirement shall apply whether or not the employer agrees that the employee was disabled, or agrees that the disablement happened in the course and scope of the employees' employment, and shall not constitute an admission of liability for any purpose.

§2342A. Notice to insurer

Within 72 hours of the notice from employer to insurer or third party administrator provided in Sections 2342 and 2343, the insurer or third party administrator shall transmit to the injured employee, in a manner reasonably calculated to reach the employee expeditiously, a form that has been approved by the Department of Labor, advising the employee of their rights under this Chapter, and directing the employee to the Office of Workers' Compensation for further assistance.

§ 2343. Physical examination of employee; refusal to submit; communications not privileged.

(a) After an injury, and during the period of resulting disability, the employee, if so requested by the employee's employer or ordered by the Board, shall submit the employee's own self for examination at reasonable times and places and as often as reasonably requested to a physician legally authorized to practice the employee's profession under the laws of such place, who shall be selected and paid by the employer. Such medical examination shall not be referred to as an 'Independent Medical Examination' or 'IME' in any proceeding or on any document relating to a matter under this Chapter; nor shall any examination, required by the employer, by any other doctor, who is an employee of an

insurance company, or who is paid by an insurance company, or who is under contract to an insurance company, be referred to as an 'Independent Medical Examination' or 'IME' If the employee requests, the employee shall be entitled to have a physician, qualified as specified in this section, of the employee's own selection, to be paid by the employee, present to participate in such examination. For all examinations, after the first, the employer shall pay the reasonable traveling expenses and loss of wages incurred by the employee in order to submit to such examination. The Board may impose a fine not to exceed $500.00 for each use of the term 'Independent Medical Exam' or 'IME' in violation of this subsection.

(b) The refusal of the employee to submit to the examination required by subsection (a) of this section or the employee's obstruction of such examination shall deprive the employee of the right to compensation under this chapter during the continuance of such refusal or obstruction and the period of such refusal or obstruction shall be deducted from the period during which compensation would otherwise be payable.

(c) No fact communicated to or otherwise learned by any physician or surgeon who has attended or examined the employee or who has been present at any examination shall be privileged either in the hearings provided for in this chapter or in any action at law.

§ 2344. Treatment of undisputed claims; payment without prejudice; agreements on compensation or benefits

(a) The General Assembly declares that it is the policy of the State of Delaware to discourage utilization of the Industrial Accident Board and the informal dispute resolution mechanism of the Department of Labor, Office of Workers' Compensation for workers' compensation issues that are not a matter of bona fide dispute.

(1) The Industrial Accident Board shall not award any attorney fee to an attorney representing an employee for any matter brought by that attorney before the Industrial Accident Board that is not in bona fide dispute.

(2) The Industrial Accident Board, the informal dispute resolution mechanism of the Department of Labor, Office of Workers' Compensation or the Superior Courts shall decline to issue any order or award concerning any matter brought before it that is not in bona fide dispute.

(3) No attorney may charge a client a fee for litigation of an issue or matter that is not in bona fide dispute.

(4) The Industrial Accident Board, the informal dispute resolution mechanism of the Department of Labor, Office of Workers' Compensation or the Superior Courts shall make specific findings concerning any determination that a matter brought before it for consideration is not a matter of bona fide dispute.

(b) An employer or insurer may pay any medical or indemnity benefit without prejudice to their right to contest the compensability of the underlying claim or the appropriateness of future payments of medical or indemnity benefits. All payments issued under such a reservation of rights shall be clearly marked as 'paid without prejudice'.

(1) Partial payment of the uncontested portion of a partially contested medical bill shall be considered a payment without prejudice to the right to contest the unpaid portion of a medical bill.

(2) No payment without prejudice made under a reservation of rights pursuant to this subsection shall be subject to return, recapture or offset, absent a showing that the claim for payment was fraudulent, in violation of §2348.

(c) If the employer and the injured employee, or the employee's dependents in case of the employee's death, reach an agreement in regard to compensation or other benefits in accordance with this chapter, a memorandum of such agreement signed by the parties in interest may be filed with the Department and shall be final and binding unless modified as provided in § 2347 of this title. The agreement as to compensation shall require the employee to give notice to the employer or insurer of any change in employment status which may affect indemnity benefits. The agreement as to compensation shall include a clear recitation of the legal requirements for eligibility for benefits and shall require the claimant's acknowledgment of and agreement to abide by such requirements. This form, which shall bear a notarized signature of the employee or the signature of a witness, shall accompany the agreement and shall be filed with the Department of Labor.

§ 2345. General dispute resolution procedures

(a) Except for any dispute enumerated in §2322D, all disputes between the employee and employer arising under this Chapter shall be resolved pursuant to the provisions of this Section.

(1) When a dispute arises under this Chapter, any party may file a complaint with the Department of Labor, Office of Workers' Compensation not sooner than 30 days from the date of injury or occurrence of disabling disease. The Administrator shall establish by rule a form of claim that shall be available to all parties. The complaint shall state concisely, in numbered paragraphs, the matters that are the subject of bona fide dispute with sufficient particularity to inform the Administrator and the responding or opposing party of the nature of the disputed matters.

(2) The Department of Labor, Office of Workers' Compensation shall establish by rule, promulgated pursuant to § 2301 G, procedures for the acceptance of complaints, establishment of complaint dispute files,

notice to responding and opposing parties and all other procedures needed to ensure the orderly processing of complaints.

(3) The Department of Labor, Office of Workers' Compensation shall establish by rule, promulgated pursuant to § 2301 G, procedures for the informal resolution of disputes.

a. Within 45 days of the filing of a complaint, the Department of Labor, Office of Workers' Compensation shall hold an informal arbitration hearing in an attempt to resolve all bona fide contested issues in the case. The time for conducting an arbitration hearing shall not be extended except upon a finding of good cause. The arbitrator shall hear the presentations of parties and be empowered to do all things needful to ensure the orderly resolution of disputes and safety of the participants.

b. At the conclusion of the arbitration hearing, if the parties have agreed to a resolution of all or part of the disputed issues, the arbitrator shall record the agreement of the parties and obtain their signatures to verify the agreement. Any agreement reached in an arbitration shall be binding on the parties to the same extent as an agreement filed pursuant to §2344 (c).

c. At the conclusion of the arbitration hearing, if the parties have not agreed to the resolution of all matters in dispute, the arbitrator shall issue a recommended resolution detailing the issues upon which the parties have agreed, and recommending a resolution of the remaining issues in dispute.

(i.) Each party shall be served with a copy of the recommended resolution, and if the recommended resolution is not effectively rejected, in writing, within ten days from the date of receipt of the recommended resolution, the party failing to reject the recommended resolution waives any right to reject the recommended resolution and is bound conclusively to its terms, unless the complaint is bound over for hearing before the Industrial Accident Board, pursuant to Subsection (d) of this section.

(ii) Every written rejection of a recommended resolution shall specify the matters objected to and the reasons for the objection.

(iii) The time for filing a rejection of a recommended resolution shall not be extended, except upon a showing of good cause to the Administrator.

(iv) Untimely filings of rejections of recommended resolutions shall not be effective unless the Administrator finds, after a hearing, that the untimely rejection was caused by excusable neglect.

c. If either party files a timely rejection of the recommended resolution, in whole or in part, the complaint shall be bound over for a resolution of those matters still in dispute by the Industrial Accident Board.

§2345A. Hearings by the Industrial Accident Board; Sanctions; Appeals

(a) The Department of Labor, Office of Workers' Compensation shall establish by rule, promulgated pursuant to § 2301 G, procedures for the resolution of disputed issues by the Industrial Accident Board.

(b) The Industrial Accident Board shall hold a hearing to attempt to resolve the disputed issues and to narrow the disputed issues to the extent possible prior to formal hearing.

(c) The Industrial Accident Board shall conduct a formal hearing of all unresolved and bona fide disputed matters within 45 days of the timely and effective rejection of a recommended resolution, pursuant to §2345, which time period shall not be extended, except as provided in §2345B.

(d) In all hearings before the Board, the Board shall make such inquiries and investigations as it deems necessary. Unless otherwise stipulated by counsel and approved by the Department, the hearings shall be held in the Division of Industrial Affairs Office nearest the site where the injury occurred or, if the accident occurred out of the State, in any county designated by the Department as convenient for the parties.

(e) Upon concluding the formal hearing, the Industrial Accident Board shall issue within 14 days a compensation order resolving all remaining issues raised in the complaint and any matters properly raised by the parties or the Industrial Accident Board during the proceedings.

(f) Unless excused for good cause shown, failure of any or all parties in interest to appear at a duly scheduled hearing or to petition for a continuance shall bar such parties from any further action concerning an adverse decision, a decision by default, or a dismissal of a petition for hearing and award.

(g) Subpoenas provided for in accordance with this chapter shall be effective throughout the State.

(h) Whenever a cause shall be remanded to the Board for a rehearing, all evidence theretofore taken before the Board in a previous hearing, or hearings, shall become part of the evidence in the hearing upon remand.

(i) The Industrial Accident Board shall have the power to preserve and enforce order during hearings; administer oaths; issue subpoenas to compel the attendance and testimony of witnesses, the production of books, papers, documents and other evidence or the taking of depositions before a designated individual competent to administer oaths; examine witnesses; enter noncriminal sanctions for misconduct; and do all things conformable to law which may be necessary to enable them to discharge their duties effectively.

(j) In addition to the noncriminal sanctions that may be ordered by the Industrial Accident Board, any person committing any of the following acts in a proceeding before the Industrial Accident Board may be held accountable for his conduct in accordance with the provisions of Subsection D of this section:

(1) disobedience of or resistance to any lawful order or process;

(2) misbehavior during a hearing or so near the place of the hearing as to obstruct it;

(3) failure to produce any pertinent book, paper or document after having been ordered to do so;

(4) refusal to appear after having been subpoenaed;

(5) refusal to take the oath or affirmation as a witness; or

(6) refusal to be examined according to law.

(k) The Administrator may certify to the Superior court of the county in which the acts were committed the facts constituting any of the acts specified in Paragraphs (1) through (6) of Subsection 3 of this section. The court shall hold a hearing and if the evidence so warrants may punish the offending person in the same manner and to the same extent as for contempt committed before the court, or it may commit the person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of or in the presence of the court.

(l) Appeals from the Industrial Accident Board shall be filed within 30 days of the entry of the compensation order before the Superior Court, which shall examine the record of the hearing below pursuant to rules and procedures adopted by it, and shall uphold the order of the Industrial Accident Board if it is supported by substantial evidence and not contrary to law.

(m) In any case where the Constitutionality of any provision of Title 19 is challenged, or where any provision of the law is sought to be set aside, or substantially altered, with respect to its interpretation or application, the General Assembly declares that the interests of the State of Delaware are sufficiently implicated to require that notice be given to the Department of Labor of the nature of the proceedings and a reasonable opportunity be afforded the State of Delaware, through the Department of Labor, to be heard as a party with standing to defend Legislative intent reflected in this Title.

(n) If the decision of the Board is affirmed by an appellate court, the employee shall be entitled to all compensation plus interest at the legal rate from the time of the award by the Board.

(o) The Superior Court may at its discretion allow a reasonable fee to claimant's attorney for services on an appeal from the Board to the Superior Court and from the Superior Court to the Supreme Court where the claimant's position in the hearing before the Board is affirmed on appeal. Such fee shall be taxed in the costs and become a part of

the final judgment in the cause and may be recovered against the employer and the employer's insurance carrier as provided in this subchapter.

§ 2345B. Timeliness of hearings

(a) In those instances where an expedited hearing is requested, the petition for hearing shall set forth the facts in sufficient detail to support the request for an expedited hearing. If such a request is uncontested, the request shall be granted by the Department. If such a request is contested, the Board shall determine the matter.

(b) Requests for a continuance may be granted only upon good cause shown by the party requesting the continuance. Good cause shall be set forth in the Rules of Procedure of the Industrial Accident Board. A request for a continuance may be granted or denied by the Department. If a party objects to the Department's decision or another party's motion, it may, by motion, seek Board review, and the Board shall determine the matter.

(c) Where a petitioner's or respondent's lack of diligence has caused the motion for a continuance, to remedy such lack of diligence and to ensure a speedy, efficient, and just resolution of the matter, the Board shall consider dismissing the petition or provisionally awarding the relief sought by the petition.

§2346. Subpoena of witnesses; oaths; service of process; medical examination and testimony; various fees.

(a) At the request of any party, subpoenas shall be issued under authority of the Department of Labor. The party requesting the subpoena shall obtain a blank subpoena from the Department and shall complete the necessary information.

(1) Every subpoena shall:

a. state the name of the Industrial Accident Board;

b. state the title of the action and the IAB hearing number;

c. state the last known address of the person(s) to be served;

d. command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents, or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified;

e. command each person directed to give testimony, or to appear at hearing or at deposition at a time and place therein specified;

f. identify the name, address, and phone number of the person issuing the subpoena;

g. state the following in boldface:

(2) 'If you object to this subpoena, you must immediately contact the Department of Labor, Office of Workers' Compensation and request a hearing to present your objections. Objections may be made if the subpoena (a) fails to allow reasonable time for compliance; (b) requires disclosure of privileged or other protected matter and no exception or waiver applies; or (c) subjects a person to undue burden.'

(b) The following shall apply to the service of a subpoena:

(1) A party issuing a subpoena shall be responsible for service of the subpoena and shall provide a copy of the completed subpoena to the Department of Labor.

(2) A subpoena may be served by the Sheriff or by any person who is not a party and is not less than 18 years of age or by certified/return receipt requested mail to the last known address of the person listed on the subpoena.

(3) Proof of service when necessary shall be made by filing with the Department of Labor a statement of the date and manner of service and of the names of the persons served.

(4) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The Board shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(c) Response to subpoena(s):

(1) A person commanded to produce and permit inspection and copying may object to the inspection or copying of any or all designated materials or of the premises. If objection is made, the party serving the subpoena may, upon notice to the person commanded to produce, move at anytime for an order to compel production.

(2) If a party objects to a subpoena, they must immediately contact the Department of Labor and request a hearing before the Board to present the objections. The Board may quash or modify a subpoena if it (a) fails to allow reasonable time for compliance; (b) requires disclosure of privileged or other protected matter and no exception or waiver applies; or (c) subjects a person to undue burden.

(3) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(4) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description

of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(d) Any process or order of the Department or any notice or paper requiring service may be served by any sheriff, deputy sheriff, constable or any employee of the Department and return thereof made to the Department. Such officer shall receive the same fees as are provided by law for like service in civil actions, except that if service is made by an employee of the Department, the employee shall not receive any fee but shall be paid the employee's actual expenses.

(e) If any person, in proceedings before the Board disobeys or resists any lawful order or process, misbehaves during a hearing or so near the place thereof as to obstruct the hearing, neglects to produce after having been ordered to do so any pertinent document, 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 Board shall certify the facts to any Judge of the Superior Court, who shall thereupon hear the evidence as to the acts complained of. If the evidence so warrants the Judge shall punish such person in the same manner and to the same extent as for a contempt committed before the Superior Court, or shall commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of or in the presence of the Superior Court.

(f) The board may in any case, upon the application of either party or on its own motion, appoint a disinterested and certified physician to make any necessary medical examination of the employee and testify in respect thereto. Such medical examination shall not be referred to as an 'Independent Medical Examination' or 'IME' in any proceeding or on any document relating to a matter under this Chapter; nor shall any examination, required by the employer, by any other doctor, who is an employee of an insurance company, or who is paid by an insurance company, or who is under contract to an insurance company, be referred to as an 'Independent Medical Examination' or 'IME' The physician will be allowed a reasonable fee subject to the approval of the Board, which fee shall be taxed as costs. The Board may impose a fine not to exceed $500.00 for each use of the term 'Independent Medical Exam' or 'IME' in violation of this subsection.

(g) Live, in- person testimony by health care providers shall only be allowed upon a showing of necessity to the satisfaction of the Industrial Accident Board. Deposition testimony shall be admissible and the introduction of an authenticated written report of the health care provider shall be permitted, notwithstanding any rule of evidence to the contrary, in any case where medical issues are not disputed.

(h) Witness fees and mileage shall be computed at the rate allowed to witnesses in the Superior Court. Costs legally incurred may be taxed against either party or apportioned between parties at the sound discretion of the Board, as the justice of the case may require.

§ 2347. Review by Board of agreements or awards; grounds; modifications of award.

(a) Compensation orders issued pursuant to §2345A (e), agreements filed pursuant to §2344 (c) and arbitration orders that have not been timely and effectively rejected pursuant to §2345 (c), are reviewable subject to the conditions stated in this section upon application of any party in interest in accordance with the procedures relating to hearings. The Industrial Accident Board, after a hearing, may issue a compensation order to terminate, continue, reinstate, increase, decrease or otherwise properly affect indemnity or medical benefits provided by this Chapter or in any other respect, consistent with those acts, modify any previous decision, award or action.

(1) A review may be obtained upon application of a party in interest filed with the Administrator at any time within two years after the date of the last payment or the denial of benefits only upon the following grounds:

a. change in condition;

b. mistake, inadvertence, surprise or excusable neglect;

c. clerical error or mistake in mathematical calculations;

d. newly discovered evidence which by due diligence could not have been discovered prior to the issuance of the compensation order;

e. fraud, misrepresentation or other misconduct of an adverse party;

f. the compensation order is void; or

g. the compensation order has been satisfied, released or discharged or a prior order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the order should have prospective application.

(2) The Industrial Accident Board shall make a written finding of the conditions justifying the review as part of any compensation order issued pursuant to this section.

§ 2348. Fraud

(a) For all payments of indemnity or vocational rehabilitation benefits to claimants under this chapter, the insurance carrier or self-insured shall cause to be printed upon the reverse side of the check, above the endorsement, the following language: 'Your acceptance of this check is a representation by you that you are legally entitled to such payment and a false representation is punishable under federal and state laws.' The negotiation of a check for total or partial

disability by an attorney or an agent of the attorney on behalf of a client is a representation that the attorney has printed the language set forth in this subsection for printing on claimant checks on checks distributed by the attorney to the attorney's clients.

(b) Any person who makes a false statement or misrepresentation with regard to his or her eligibility for workers' compensation benefits or a false statement or misrepresentation affecting the amount of benefits due, or any attorney who makes a false representation pursuant to subsection (1)) of this section; any employer who intentionally misreports employee payroll or classifications or who artificially suppresses their experience modification factor by failing to report an injury to their insurance carrier; or any health care provider that misrepresents that treatments have been provided to an injured employee, is punishable pursuant to Title 18, Delaware Code, Chapter 24, and/or Title 11, Delaware Code, Section 913.

(c) If the Department or Board has reason to believe that any person is committing or has committed an act of insurance fraud, the Department or Board shall notify the Fraud Prevention Bureau of the Delaware Insurance Department.

(d) The provisions of this Section shall also apply to Workers' Compensation payments made pursuant to §2347 and §2327.

§2351. Attorney's fees.

(a) The General Assembly finds that proper allocation of adequate benefits to injured employees can only be assured when diversions of benefits intended for employees are limited and controlled, when the cost of attorney fees in the Workers' compensation system is known, when the impact of attorney fees and the timing of their collection upon the injured employee is fully considered and when the conduct of the parties and the novelty and complexity of the case are considered in the establishment of a fee. The General Assembly further finds that unregulated fees for attorneys add unjustified expense to the workers' compensation system, particularly in light of the fact that the system is not based upon findings of fault.

(b) The General Assembly therefore declares that all private contracts between an attorney and an employee or employee's estate, entered into after the effective date of this enactment, that provide for fees to be paid by the employee or estate to an attorney, a person employed by an attorney or an entity employing an attorney, for services in securing workers' compensation benefits for the employee or estate under this Chapter, are against public policy and void.

(c) No attorney may collect any fee for representation of an employee or employees' estate in securing workers' compensation benefits under this Chapter except by filing a petition before, and obtaining an award of attorney's

fees from, the Industrial Accident Board. In no event shall any fee awarded by the Board until the case is settled, adjudged or otherwise substantially completed. Any withholding of benefits by an attorney in anticipation of a fee award, or prior to the issuance of an award of attorney fees by the Board, is unlawful. The collection of a fee by any person or entity for representation of, or provision of assistance to, an injured employee or employees' estate in securing workers' compensation benefits under this Chapter, except as provided by this Section, is prohibited.

(d) An attorney representing an employee may petition the Industrial Accident Board for an order granting attorney fees only on the increment of benefits obtained as a result of the attorney's efforts. The Department of Labor shall provide forms and promulgate rules to govern the procedures for such petitions.

(e) The Board may hold hearings, take evidence, and otherwise do all acts needed to justly determine appropriate attorney fees. Except upon a written finding of exceptional circumstances, the Board shall not award more than one attorney fee in any case arising out of one discernable industrial accident or occupational disease disablement.

(f) The Board shall award a reasonable attorney's fee in an amount not to exceed twenty percent of the benefit obtained by the attorney on behalf of the employee or ten times the average weekly wage in Delaware as announced by the Secretary of Labor at the time of the award, whichever is smaller. The Board may specifically consider the conduct of the parties in the course of dispute resolution in consideration of an appropriate fee.

(g) In exceptional circumstances, and upon a written finding setting forth the circumstances and the necessity for additional fees, the Board may award fees is excess of the standard set forth in subsection (6) of this Section. The Department of Labor, shall promulgate rules giving regulatory guidance to the Board concerning the circumstances justifying additional fees, and shall providing procedures for consideration of such fee requests. Such rules shall provide that for personal notice the injured employee and an opportunity for the injured employee to be heard.

(h) The Industrial Accident Board shall, in addition to the determination of an appropriate attorney fee, determine an appropriate apportionment of responsibility for payment of the fee. Deviations from an equal apportionment of attorney fees between employee and employer shall be supported by written findings.

(i) In the event an offer to settle an issue pending before the Industrial Accident Board is communicated to the claimant or the claimant's attorney in writing at least 30 days prior to the trial date established by the Board on such issue, and the offer thus communicated is equal to or greater than the amount ultimately awarded by the Board at the trial on that issue, the provisions of paragraph (6) of this subsection shall have no application and the Industrial Accident Board shall not issue a fee award. If multiple issues are pending before the Board, said offer of settlement shall address each issue

pending, and shall state explicitly whether or not the offer on each issue is severable. The written offer shall also unequivocally state whether or not it includes medical witness fees and expenses, and/or late cancellation fees relating to such medical witness fees and expenses.

(j) In the event an offer to settle an issue pending before the Industrial Accident Board is communicated to the employer or the employer's attorney in writing at least 30 days prior to the trial date established by the Board on such issue, and the offer thus communicated is equal to or less than the amount ultimately awarded by the Board at the trial on that issue, the employee shall be relieved of the responsibility to pay for his attorney's fees, and the entire fee awarded by the Board shall be paid by the employer. If multiple issues are pending before the Board, said offer of settlement shall address each issue pending, and shall state explicitly whether or not the offer on each issue is severable. The written offer shall also unequivocally state whether or not it includes medical witness fees and expenses, and/or late cancellation fees relating to such medical witness fees and expenses.

§ 2352. Persons entitled to institute proceedings for minors; notice to.Proceedings for compensation may be instituted by the surviving parent, guardian or next friend in the case of minors claiming to be entitled to compensation, and all notices thereafter shall be given in the manner provided in this chapter to such parent, guardian or next friend.

§ 2353. Forfeiture of right to compensation.

(a) If the employee refuses reasonable surgical, medical and hospital services, medicines and supplies tendered to the employee by the claimant's employer, the claimant shall forfeit all right to compensation for any injury or any increase in the claimant's incapacity shown to have resulted from such refusal. Reasonable medical services shall include, if the Board so finds, vocational rehabilitation services offered by any public or private agency. Where rehabilitation services require residence at or near the public or private agency away from the employee's customary residence, reasonable costs of board, lodging and travel shall be paid for by the employer. Refusal to accept rehabilitation services pursuant to order of the Board shall result in a loss of compensation for each week of the period of refusal.

(b) If any employee be injured as a result of the employee's own intoxication or use of controlled substances that have not been prescribed by a health care provider, because of the employee's deliberate and reckless indifference to danger, because of the employee's willful intention to bring about the injury or death of the employee or of another, because of the employee's willful failure or refusal to use a reasonable safety appliance provided for the employee or to perform a duty required by statute, the employee shall not be entitled to recover damages in an action at law or to receipt of any indemnity benefits or medical, dental, optometric, chiropractic or hospital service under the compensatory provisions of this chapter. The burden of proof under this subsection shall be on the employer.

(c) If any injury to an employee is contributed to by the employee's intoxication, or use of controlled substances, they shall be paid compensation at a rate of 90% of the indemnity benefits that would otherwise be due, for the life of the claim. An employee is presumed to have contributed to their injury by intoxication or use of controlled substances for purposes of this section if they test as positive for controlled substances or test as having a blood alcohol level above the current legal limit for the operation of a motor vehicle in Delaware, provided that such testing is conducted in accordance with the current standards for drug and alcohol testing of the United States Department of Transportation.

(d) If an injured employee refuses employment procured for the employee and suitable to the employee's capacity, the employee shall not be entitled to any compensation at any time during the continuance of such refusal, unless in the opinion of the Board such refusal was justifiable.

§ 2354. Contribution by 2 or more employers.

(a) Whenever any employee, for whose injury or death compensation is payable under this chapter, at the time of the injury is in the joint service of 2 or more employers subject to this chapter, such employers shall contribute to the payment of such compensation in proportion to their wage liability to such employee, regardless of for whom such employee was actually working at the time of the injury.

(b) Whenever a petition to determine benefits is pending and one of two or more employers or two or more insurance carriers shall be liable for undisputed benefits arising under § 2322 or § 2324 of this title, the employer or insurance carrier which paid benefits for the 1st occurrence shall pay all interim benefits arising under § 2322 of this title and temporary total disability benefits at the lower rate, which may be applicable under § 2324 of this title, without a hearing. When the claim is resolved thereafter by agreement or by award after a hearing, the responsible party shall indemnify the payor for benefits paid.

§ 2355. Assignment of compensation prohibited; exemption from creditors, claims; child support exception.

Except for attachments pursuant to child support orders entered under Chapters 4, 5 or 6 of Title 13, claims or payment for compensation due or to become due under this chapter shall not be assignable and all compensation and claims therefore shall be exempt from all claims of creditors.

§ 2356. Priority of compensation claims.

The right of compensation granted by this chapter shall have the same preference or priority for the whole amount thereof against the assets of the employer allowed by law for unpaid wages for labor.

§ 2357. Collection of payments in default.

If default is made by the employer for 30 days after demand in the payment of any amount of temporary total disability, temporary partial disability or permanent partial disability benefits due under this chapter, the amount may be recovered in the same manner as claims for wages are collectible.

§ 2358. Commutation of compensation.

Upon application of either party, and on due notice to the other, the compensation contemplated by this chapter may be commuted by the Board at its present value when discounted at 5% interest, with annual rests, disregarding, except in commuting payments due under § 2324 of this title, the probability of the beneficiary's death. Such commutation may be allowed if it appears that it will be for the best interest of the employee or the dependents of the deceased employee, or that it will avoid undue expense or hardship to either party, or that such employee or dependent has removed or is about to remove from the United States or that the employer has sold or otherwise disposed of the whole or the greater part of the injured employee's or the dependents of a deceased employee's business or assets. It shall not be allowed for the purpose of enabling the injured employee or the dependents of a deceased employee to satisfy a debt created before the accident, other than a mortgage upon the injured employee's or the dependents of a deceased employee's or their home or household furniture.

§ 2359. Payment of award to bank in trust for employee or dependents.

(a) At any time after the entry of the award or after the filing of the agreement for compensation, a sum equal to all future installments of compensation may by leave of the Board where death or the nature of the injury renders the amount of future payments certain be paid by the employer to any savings bank or trust company approved by the Board which is chartered and doing business in this State and has an office in the county in which the award was entered. Such sum, together with all interest arising from the investment thereof, shall thereafter be held in trust for the employee, or the employee's dependents, who shall have no further recourse against the employer.

(b) Payment by the employer pursuant to subsection (a) of this section shall operate as a satisfaction of the award or agreement as to the employer.

(c) Payments from the fund established pursuant to subsection (a) of this section shall be made by the trustee on orders from the Board in the same amounts and at the same periods as are required of the employer by this chapter. If, after liability has ceased, any balance of the fund remains, it shall be returned to the employer who deposited it, on a signed order of the Board.

§ 2360. Installment payments of compensation.

Except as otherwise provided in this chapter, all compensation payable under the compensatory provisions of this chapter shall be payable in periodic installments, as the wages of the employee were payable before the accident. The Board may, however, having regard to the welfare of the employee and the convenience of the employer, authorize the monthly or quarterly payment of compensation, instead of weekly.

§ 2361. Limitation periods for claims.

(a) If an employer or his insurer fails or refuses to pay an employee any installment of compensation to which the employee is entitled after notice has been given as required by §2342 A, it is the duty of the employee insisting on the payment of compensation to file a complaint for such benefits not later than two years after the failure or refusal of the employer or insurer to pay compensation. If the employee fails to give notice in the manner and within the time required by §2342 A or if the employee fails to file a complaint for compensation within the time required by this section, his claim for compensation, all his right to the recovery of compensation and the bringing of any proceeding for the recovery of compensation are forever barred.

(b) In case of the death of an employee who would have been entitled to receive compensation if death had not occurred, complaint for compensation may be filed on behalf of his eligible dependents to recover compensation from the employer or his insurer. Payment may be received or complaint filed by any person whom the Administrator or the Industrial Accident Board may authorize or permit on behalf of the eligible beneficiaries. No complaint shall be filed, however, to recover compensation benefits for the death of the employee unless he or someone on his behalf or on behalf of his eligible dependents has given notice in the manner and within the time required by §2342 A and unless the complaint is filed within two years from the date of the employee's death.

(c) Where payments of compensation have been made in any case arising under this chapter, no statute of limitation shall take effect until the expiration of 5 years from the time of the making of the last payment of compensation. Where payments for medical benefits for the treatment of the employee have been made, no statute of limitations pertaining to medical benefits shall take effect until five years after the employee has, or should have been, declared to have reached maximum medical improvement, unless a health care provider certifies that, due to change in the employees' physical condition supported by objective clinical finding, the employee is no longer at maximum medical improvement. Upon expiration of the five- year period provided in this subsection, all complaints for compensation benefits or medical benefits are forever barred.

(d) All claims for compensation for compensable occupational disease or for an ionizing radiation injury shall be forever barred unless a petition is filed in duplicate with the Department within 1 year after the date on which the

employee first acquired such knowledge that the disability was or could have been caused or had resulted from employment. In case of death, all claims for compensation for compensable occupational disease or for an ionizing radiation injury shall be forever barred unless a petition is filed in duplicate with the Department within 1 year after the date on which the person or persons entitled to file such claims know, or by the exercise of reasonable diligence should know, the possible relationship of the death to the employment.

§ 2362. Notice of Denial of Liability; Penalty for Delay in Payment of Compensation.

(a) An employer or its insurance carrier shall within 15 days after receipt of knowledge of a work-related injury or disablement notify the Department and the claimant in writing of: the date the notice of the claimant's alleged industrial accident or exposure was received; whether the claim is accepted or denied; if denied, the reason for the denial. If the employer or its insurance carrier fails to make a determination accepting or denying the claim within the period provided by this subsection, the employer or insurer shall make timely payment of all benefits due and owing on or after the 15th day after receipt of knowledge of a work-related injury or disablement, without prejudice to their right to contest liability for all or any portion of for the claim, or liability for any future benefit claimed, provided, until the claim is denied or accepted. No payment without prejudice made under a reservation of rights pursuant to this subsection shall be subject to return, recapture or offset, absent a showing that the claim for payment was fraudulent, in violation of § 2348.

(b) Following an agreement concerning benefits, acceptance or constructive acceptance of a recommended resolution or an award by the Board, the first payment of compensation shall be paid by the employer or its insurance carrier no later than 14 days after the award becomes final and binding pursuant to § 2347.

(c) If, following a hearing, the Administrator determines that the employer or its insurance carrier failed to make timely payments under this Section or Section 2326 G (D), or denied a claim without just cause pertaining to the specific facts of the claim, or failed to make a determination of acceptance or denial of a claim and timely transmit the notification of decision to the employee without just cause pertaining to the specific facts of the claim, he or she shall assess a fine no less than $500 and no more than $2,500. Each day of violation may be considered a separate violation, in the discretion of the Administrator. The fine shall be payable to the Workers' Compensation Fund.

§ 2363. Third person liable for injury; right of employee to sue and seek compensation; right of employer and insurer to enforce liability; notice of action; settlement and release of claim and effect hereof; amount of recovery; reimbursement of employer or insurer; expenses of recovery; apportionment; compensation benefits.

(a) Where the injury for which compensation is payable under this chapter was caused under circumstances creating a legal liability in some person other than a natural person in the same employ or the employer to pay damages in

respect thereof, the acceptance of compensation benefits or the taking of proceedings to enforce compensation payments shall not act as an election of remedies, but such injured employee or the employee's dependents or their personal representative may also proceed to enforce the liability of such third party for damages in accordance with this section. If the injured employee or the employee's dependents or personal representative does not commence such action within 260 days after the occurrence of the personal injury, then the employer or its compensation insurance carrier may, within the period of time for the commencement of actions prescribed by statute, enforce the liability of such other person in the name of that person. Not less than 30 days before the commencement of suit by any party under this section, such party shall notify by registered mail at their last known address, the Industrial Accident Board, the injured employee or, in the event of the employee's death, the employee's known dependents or personal representative or the employee's known next of kin, the employee's employer and the workers' compensation insurance carrier. Any party in interest shall have a right to join in said suit.

(b) Prior to the entry of judgment, either the employer or the employer's insurance carrier or the employee or the employee's personal representative may settle their claims as their interest shall appear and may execute releases therefore.

(c) Such settlement and release by the employee shall not be a bar to action by the employer or its compensation insurance carrier to proceed against said third party for any interest or claim it might have, and such settlement and release by the employer or its compensation insurance carrier shall not be a bar to action by the employee to proceed against said third party for any interest or claim the employee may have.

(d) In the event the injured employee or the employee's dependents or personal representative shall settle their claim for injury or death, or commence proceedings thereon against the third party before the payment of workers' compensation, such recovery or commencement of proceedings shall not act as an election of remedies and any moneys so recovered shall be applied as provided in this section.

(e) In an action to enforce the liability of a third party, the plaintiff may recover any amount which the employee or the employee's dependents or personal representative would be entitled to recover in an action in tort. Any recovery against the third party for damages resulting from personal injuries or death only, after deducting expenses of recovery, shall first reimburse the employer or its workers' compensation insurance carrier for any amounts paid or payable under the Workers' Compensation Act to date of recovery, and the balance shall forthwith be paid to the employee or the employee's dependents or personal representative and shall be treated as an advance payment by the employer on account of any future payment of compensation benefits, except that for items of expense which are precluded from being

introduced into evidence at trial by § 2118 of Title 21, reimbursement shall be had only from the third party liability insurer and shall be limited to the maximum amounts of the third party's liability insurance coverage available for the injured party, after the injured party's claim has been settled or otherwise resolved.

(f) Expenses of recovery shall be the reasonable expenditures, including attorney fees, incurred in effecting such recovery. Attorney fees, unless otherwise agreed upon, shall be divided among the attorneys for the plaintiff as directed by the court. The expenses of recovery above mentioned shall be apportioned by the court between the parties as their interests appear at the time of said recovery.

§ 2365. Employee entitled to exercise rights; relief to be granted.

It shall be unlawful for any employer or the duly authorized agent of any employer to discharge or to retaliate or discriminate in any manner against an employee as to the employee's employment because such employee has claimed or attempted to claim workers' compensation benefits from such employer, because such employee reported an employer's noncompliance with a provision of this chapter, or because such employee has testified or is about to testify in any proceeding under this chapter. Any claim of an employee alleging such action by an employer shall be filed with the Superior Court within 2 years of the employer's alleged action. If the Court, after hearing, finds in favor of the employee, the employee shall be restored to employment or to the position, privilege, right or other condition of employment denied by such action and shall be compensated for any loss of compensation and damages caused thereby, as well as for all costs and attorney's fees, as fixed by the Court, except that if the employee shall cease to be qualified to perform the duties of employment, the employee shall not be entitled to such restoration and compensation. An employer who violates this section shall be liable to pay a penalty of not less than $500 and not more than $3,000, as may be determined by the Court and which shall be paid to the Workers' Compensation Fund. Any party shall have the right to appeal as in other cases before the Court, but if the employee's claim ultimately is sustained, the employer also shall be liable for all costs and attorney's fees on appeal.

SUBCHAPTER IV. COMPULSORY INSURANCE, SELF-INSURANCE AND SUBSTITUTE COMPENSATION SYSTEMS

§ 2371. Insurance of employer's compensation liability.

Every employer to whom this chapter applies shall insure the payment of compensation to the employees, or their dependents, in the manner provided in § 2372 of this title. While such insurance remains in force, the employer shall be liable to any employee, or the employee's dependents, for personal injury or death by accident only to the extent and in the manner specified in this chapter.

§ 2372. Duty of employer to carry compensation liability insurance or to qualify as a self-insurer; deposit of security; premiums for certain summer employees.

(a) Every employer to whom this chapter applies shall insure and keep insured the employer's liability for compensation in some corporation, association or organization approved by the Department and authorized to transact the business of workers' compensation insurance in this State or shall furnish to the Department satisfactory proof of the employer's financial ability to pay directly the compensation, in the amount and manner and when due, as provided in this chapter.

(b) In any case, the Department may require the deposit of an acceptable security, indemnity or bond to secure the payment of compensation liabilities as they are incurred. All bonds of insurance carriers and self-insurers deposited to secure their obligations under this chapter shall be deposited with the State Insurance Commissioner.

(c) Every insurer licensed to issue workers' compensation and employers' liability insurance by the Insurance Department pursuant to Title 18, may offer to write each such policy subject to a deductible applying only to medical reimbursement and death benefits. The insured employer shall be permitted to accept or reject such deductible at the time the policy is issued or renewed. Any applicable deductible shall be subject to the following provisions:

(1) The deductible shall apply separately to each occurrence during the policy term regardless of the number of employees injured in the occurrence;

(2) The deductible shall be subject to a minimum of $500 and a maximum of $5,000, with intermediate deductible increments of $500;

(3) The premium charged for a deductible form of policy shall be subject to an actuarily sound credit related to the amount of the deductible;

(4) In the event of a claim under a deductible form of policy, the insurer shall administer the claim as though no deductible applied and shall then be entitled to reimbursement from the employer for the amount of said deductible.

(d) Every insurer licensed to issue workers' compensation and employers' liability insurance by the Insurance Department pursuant to Title 18 shall write a policy and base its rates upon the limited term of employment rather than on an annual basis, for summer employees employed by various civic and nonprofit associations whose wages are funded through grants awarded by the Department of Community Affairs.

§ 2373. Payment of compensation by self-insurer.

Whenever an employer who is a self-insurer under this chapter enters into an agreement to pay compensation to an injured employee or the employee's dependents in case of the employee's death or whenever an award is made by the Board in favor of such injured employee or the employee's dependents in case of the employee's death, the employer shall pay the full liability under the agreement or award to a savings bank or trust company in accordance with § 2359 of this title. Such fund, together with all interest arising from the investment thereof, shall be held and paid out in accordance with § 2359 of this title. Failure on the part of a self-insured employer to make such payment within 30 days after the making of an agreement or award shall forthwith terminate the right of such employer to carry the employer's own insurance.

§ 2374. Proof of compliance with insurance requirements; liability on failure of compliance; defenses unavailable; injunction.

(a) Every employer to whom this chapter applies shall file with the Department in form prescribed by it, annually or as often as may be required by the Department, evidence of the employer's compliance with §2372 and §2373 of this title and all other sections relating thereto and evidence of any cancellation or non-renewal of insurance coverage. The Department may promulgate rules requiring the electronic transmission of such filings, provided that mandatory electronic filing shall not commence sooner than one year after the adoption of the rule requiring such transmissions. The Department shall coordinate the transmission, processing and storage of such data with the Delaware Compensation Rating Board.

(b) Whoever, being an employer, refuses or neglects to comply with the sections referred to in subsection (a) of this section shall be subject to a civil penalty of $100 per day for each employee in the employer's service at the time when the insurance became due, but not less than $500 for each day of such refusal or neglect and until the same ceases. The employer shall also be liable to the employer's injured employees during continuance of such neglect or refusal, either for compensation under this chapter or in an action at law for damages. In such action upon proof that the employer has not complied with this section, it shall not be a defense that the:

(1) Employee was negligent; or

(2) Employee had assumed the risk of the injury; or

(3) Injury was caused by the negligence of a fellow employee.

(c) In addition to any other sanction imposed upon the employer, if any employer is in default under §2372 or §2373 of this title for a period of 30 days, then upon a showing of the facts above recited, the employer shall be enjoined by the Court of Chancery of this State from carrying on business within the State of Delaware while such default continues

(d) Notwithstanding any other provision of law, but subject to the appropriations of the General Assembly, the Department of Labor is authorized to employ or contract with such personnel as are necessary to efficiently and effectively investigate and enforce the provisions of this section, including, but not limited to, undertaking administrative prosecutions and legal actions in Superior and Chancery Court.

§ 2375. Certificate of self-insurance; revocation.

(a) The Administrator shall adopt rules to determine the qualifications necessary to become and maintain status as an approved self-insurer. To qualify to be a self-insurer, a private employer must show to the satisfaction of the Administrator that the employer is financially solvent and that providing workers' compensation and occupational disease disablement insurance coverage is unnecessary. The Administrator may require an employer applying for the privilege of self-insurance to provide an independent actuarial report of the current financial condition of the employer, at the employer's expense. The Administrator shall consider the employer's financial ability to pay promptly workers' compensation and occupational disease disablement benefits, the arrangements made for the adjustment of claims, the security required to ensure payment of all claims and claims administration expenses in the event of the employer's insolvency, the employer's safety program and accident history and all other factors relevant to the assessment of the risk of uncompensated injury by employees. The application shall contain a commitment undertaken by the employer to honor all claims made against the self insurance program during its existence, whether or not its self-insured status is maintained, and to maintain adequate security for it's self-insured liabilities whether or not it's self-insured status is maintained.

(b) The Administrator shall certify each private employer who, in the Administrator's discretion, qualifies to be a self-insurer. The Administrator may condition the certification of a private employer as a self-insurer on performance of any reasonable requirement not inconsistent with the intent of this section.

(c) To maintain status as a self-insurer, a private employer must demonstrate continued compliance with the requirements of the self-insurance program, including high standards of claims administration, continued financial stability as demonstrated through periodic audits conducted by the Department of Labor or an independent auditor approved by the Department of Labor, and adequate security to pay all claims and the cost of claims administration in the event of insolvency. The Administrator may require an employer exercising the privilege of self-insurance to provide an independent actuarial report of the current financial condition of the employer, at the employer's expense.

(d) The rules adopted by the Administrator shall also provide for procedures for the voluntary or involuntary decertification of a self-insurer and shall provide for a waiting period of not less than one year before a decertified self-insurer may apply for reinstatement of the privilege of self-insurance.

(e) Each application for certification as a self-insurer shall be on a form approved by the Administrator and shall be submitted with such additional documentation as the Administrator requires. Each application shall be accompanied by payment of a fee not to exceed one hundred fifty dollars ($150). The fee shall be set by the Administrator as necessary to cover the administrative costs of evaluating the applicants' qualifications. The fee shall be deposited in the workers' compensation fund.

§ 2376. Evidence of compliance with self-insurance requirements.

For the purpose of complying with § 2372 of this title, groups of employers may form mutual insurance associations under the laws of this State, subject to such reasonable conditions and restrictions as may be fixed by the Department of Insurance. Membership in such mutual insurance associations, approved and regulated by the Commissioner of Insurance, together with evidence of the payment of premium dues, shall be evidence of compliance with § 2372 of this title.

§ 2377. Substitute compensation systems; approval and termination.

(a) Subject to the approval of the Department, any employer may enter into or continue any agreement with employees to provide a system of compensation, benefit or insurance in lieu of the compensation and insurance provided by this chapter.

(b) No such substitute system shall be approved unless it confers benefits upon injured employees at least equivalent to the benefits provided by this chapter, nor, if it requires contribution from the employees, unless it confers benefits in addition to those provided under this chapter at least commensurate with such contributions.

(c) Such substitute system may be terminated by the Department on reasonable notice and hearing to the interested parties, if it is shown that the system is not fairly administered or if its operation discloses latent defects threatening its solvency or if for any substantial reason it fails to accomplish the purposes of this chapter. Upon such termination the Department shall determine upon the proper distribution of all remaining assets, if any, subject to the right of any party in interest to take an appeal to the Superior Court.

§ 2378. Standard provisions of compensation insurance policies.

(a) All policies insuring the payment of compensation under this chapter shall contain a clause to the effect that as between the employee and the insured the notice to or knowledge of the occurrence of the injury or death on the part of the insured shall be deemed notice or knowledge, as the case may be, on the part of the insurer, that jurisdiction of the insured for the purposes of this chapter shall be jurisdiction of the insurer and that the insurer shall in all things be bound by and subject to the awards, judgments or decisions rendered against such insured.

(b) No policy of insurance against liability arising under this chapter shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to them all benefits conferred by this chapter and all installments of the compensation that may be awarded or agreed upon and that the obligation shall not be affected by any default of the insured after the injury or by any default in the giving of any notice required by such policy or otherwise. Such agreement shall be construed to be a direct promise by the insurer to the person entitled to compensation enforceable in the person's name.

(c) All policies insuring the payment of compensation under this chapter shall contain a clause to the effect that when an insurer intends not to renew a policy, notice of such nonrenewable shall be given to the named insured, in writing, not less than 60 days prior to the end of the policy period. For the purposes of this subsection, 'renew' means the issuance and delivery by an insurer of a policy superseding at the end of the policy period a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term. Mailing of notice of intention not to renew to the named insured at the insured's address last of record with the insurer shall be by certified mail.

§ 2386. Violations by insurers or self-insurers; penalties.

(a) If any insurance corporation, mutual association or company interinsurance exchange or self-insurer:

(1) Violates this chapter; or

(2) Neglects or refuses to comply with this chapter; or

(3) Willfully makes any false or fraudulent statement of its business or condition or a false or fraudulent return, it shall be fined not less than $100 nor more than $1,000 for each such offense. The fine shall be assessed by the Industrial Accident Board after the insurance corporation, mutual association or company, interinsurance exchange or self-insurer is given notice and a hearing on the violation. The fine shall be payable to the State Treasurer.

(b) Whoever in this State:

(1) Acts or assumes to act as an agent in any capacity whatsoever for any insurance corporation, mutual association or company or interinsurance exchange, which is not authorized to do business in this State, or, if such authority to do business in this State has been suspended, so acts or assumes to act while such suspension is in force; or

(2) Neglects or refuses to comply with any obligatory provisions of this section; or

(3) Willfully makes any false or fraudulent statement of the business or condition of any such insurance carrier or false or fraudulent return, shall be fined not less than $100 nor more than $1,000 or imprisoned for not more than 90 days, or both.

SUBCHAPTER V. TAXES AND CHARGES UPON INSURANCE CARRIERS AND SELF-INSURERS; WORKERS' COMPENSATION FUND

§ 2391. Taxes on premiums of insurance carriers and payrolls of self-insurers.

(a) For the privilege of carrying on the business of workers' compensation insurance in this State, every insurance carrier and every employer carrying the employer's own risk and thereby insuring the employer's own self under this chapter shall pay the taxes imposed by this section.

(b) Every insurance carrier, insuring employers who are or may be liable under this chapter to pay for compensation for personal injuries to or death of their employees, shall pay a tax upon all workers' compensation or employers' liability premiums received, whether in cash or notes, in this State or on account of business done in this State or on account of premiums for compensation payable under this chapter for such insurance in this State at the rate of 2% of the amount of such premiums, which tax shall be in lieu of all other taxes on such premiums. The tax shall be assessed and collected as provided in subsection (c) of this section. The insurance carrier shall be credited with all cancelled or returned premiums actually refunded during the year on such insurance and premiums on reinsurance received from other insurance carriers, except that mutual insurance companies shall be taxed upon the gross premium charged and collected and shall not be credited with unabsorbed premiums or dividends.

(c) (1) Every insurance carrier subject to this section shall on or before March 1 of each year make a return verified by the affidavit of its president and secretary or other chief officers or agents to the Secretary of Finance stating the amount of all premiums and credits for the preceding calendar year. Each insurance carrier required to make such return shall pay to the Secretary of Finance a tax of $2 per hundred on such premiums ascertained as provided in subsection (b) of this section, less return premiums on cancelled policies actually refunded during the year and reinsurance premiums received from other insurance carriers.

(2) If any insurance carrier subject to this section shall fail to make the return required by this subsection, the Secretary of Finance shall assess the tax against such insurance carrier at the rate provided in paragraph (1) of this subsection on such amounts of premiums the Secretary believes just, and the proceedings thereon shall be the same as if the return had been made.

(3) If any insurance carrier subject to this section withdraws from business in this State before the tax falls due, as herein provided, or fails or neglects to pay such tax, the Secretary of Finance shall at once proceed to collect the same. The action may be brought by the Secretary of Finance in the Secretary's official capacity in any court having jurisdiction, and reasonable attorney's fees may be taxed by the court as costs in such action.

(d) Every employer carrying the employer's own risk, and thereby insuring the employer's self under this chapter, shall annually on or before the 30th day of January report under oath to the Department the total amount of the employer's payroll for the preceding calendar year, classified in accordance with classifications approved by the Department for the purpose of fixing compensation rates. The Department may verify such classifications and such statement of payroll by inspection and audit at the expense of the employer, and such verification shall be made by the rating bureau or association provided for in § 2382 of this title. The charges to self-insurers shall be the same charges which other insurance carriers are required to pay under this chapter. The Department shall assess against such payroll a tax computed by taking 4% of the amount of premium payable upon the payroll so ascertained in accordance with the classifications and premium rates approved by the Department for insurance against liability under this chapter. No employer shall become or continue a self-insurer under this chapter, except upon the payment of the tax for the previous calendar year. The moneys so assessed against and paid by insurers who carry their own risks shall be paid to the Secretary of Finance.

(e) The taxes imposed under this section shall be payable as follows: Twenty-five percent of the estimated tax liability for the current year shall be paid on each April 1, June 15 and September 15 of the current taxable year and the remaining balance on March 1 of the following year.

(f) In the case of any under payment of installment of estimated tax required by this section, there shall be added to the tax for the taxable year an amount determined at the rate of 2% per month, or fraction thereof, upon the amount of underpayment for the period of underpayment. The period of underpayment shall run from the date the tentative tax or installment was required to be paid to the 1st day of the 4th month following the close of the taxable year, or the date on which paid, whichever is earlier. For the purposes of this subsection, the amount of the underpayment shall be the excess of:

(1) The amount of the estimated tax installment which would be required to be made if the estimated tax were equal to 80% of the tax shown on the report required under subsection (a) of this section, over

(2) The amount, if any, of the estimated tax installment paid on or before the last date prescribed for payment.

§ 2392. Assessments for administrative expenses on insurance carriers.

(a) For the purpose of securing to the State the moneys necessary for paying the salaries and necessary expenses of the State in administering and carrying out this title relating to workers' compensation, insurance carriers shall pay the assessments imposed by this section.

(b) Semi-annually, on or before September 30 and March 31, every insurance carrier, insuring employees who are or may be liable under this chapter to pay for compensation for personal injuries to or death of their employees, shall report, under oath, or, in the case of a corporation, verified by the affidavit of its president and secretary or other chief officers or agents, to the Secretary of Finance, the amount of all compensation payments and awards actually paid by said carrier during the preceding calendar year, excluding payments made under § 2395 of this title and reimbursements received under § 2396 of this title.

(c) The Division of Industrial Affairs semi-annually as soon as practicable after January 1, 1996, and July 1 shall ascertain and report to the Secretary of Finance the total amount of the following expenses:

(1) 100% of the expenses of the Industrial Accident Board;

(2) 66.6% of all expenses of the inspection function of the Division of Industrial Affairs;

(3) 66.6% of all expenses of the safety function of the Division of Industrial Affairs; and

(4) A portion of the Division of Industrial Affairs' administration costs which shall be computed by first adding paragraphs (1), (2) and (3) of this subsection set forth immediately above; this sum shall then be divided by the amount of all expenses of the Division of Industrial Affairs; the quotient yielded shall be set forth as a percentage rate which shall then be multiplied by the total expenses of the administrative function of the Division of Industrial Affairs, and the product shall be the portion of the Division's administration costs. In determining these expenses, the Division of Industrial Affairs shall include in addition to the direct cost of personal service, the cost of maintenance and operation, the cost of retirement contributions made and workers' compensation premiums paid by the State for and on account of personnel, rentals for space occupied in state-owned or state-leased buildings and all other direct and indirect costs incurred during the preceding calendar year. An itemized statement of the expenses so ascertained shall be open to public inspection in the office of the Department from January 16 to January 31 and from July 16 to July 31 at which time any insurance carrier may challenge said amount of expenses. An appeal of said expenses must be made in writing and received by the Secretary of Labor within five days of the closing date of the inspection period. The Secretary or his/her designee shall render a decision of the appeal in writing.

(d) The Department shall then determine for each insurer the proportion/percentage of the expense determined in subsection (c) of this section that the total compensation or payments made by each insurer bore to the total of such expenses. Using these proportions/percentages, the Department shall then assess each insurer its proportion/percentage of such expenses. The amounts so secured shall be paid to the Department of Labor, Division of Industrial Affairs for the expenses of administering this chapter. Such sums shall not be part of the General Fund of the State.

§ 2393. Notice to insurance carrier.

Whenever any officer of the State is required to give any notice to an insurance carrier subject to this title, it may be given by personal delivery or by mailed registered letter properly addressed and stamped to the principal office or chief agent of such insurance carrier within this State or to its home office or to the secretary, general agent or chief officer thereof in the United States or to the Insurance Commissioner of the State.

§ 2394. Exemption from other taxes upon premiums.

Any insurance carrier liable to pay a tax upon premiums under this subchapter shall not be liable to pay any other or further tax upon such premiums or on account thereof under any other law of this State.

§ 2395. Workers' Compensation Fund; payments by insurance carriers.

(a) Every insurance carrier insuring employers who are or may be liable under this chapter to pay for compensation for personal injuries to or death of their employees under this chapter shall pay to the Department annually, on or before March 1 and October 1 of each year, a sum not to exceed 1 percent at each date on all workers' compensation or employer liability premiums received by the carrier during the calendar year next preceding the due date of such payment.

(b) Such sums shall be paid by the Department to the State Treasurer, to be deposited in a special account known as ‘Workers' Compensation Fund.’ Such sums shall not be a part of the General Fund of the State. Any balance remaining in such special account at the end of any fiscal year shall not revert to the General Fund.

(c) The amounts paid under this section shall constitute an element of loss for the purpose of establishing workers' compensation premium rates.

(d) Should the Department subsequently determine that the amounts assessed are insufficient to meet the Fund's obligations during a calendar year, it may assess insurance carriers to cover any anticipated deficiency, based upon the allocations for that calendar year as determined pursuant to subsection (a) of this section.

(e) Should the Department subsequently determine that the amounts assessed are sufficient to meet the Fund's obligations during a calendar year, it shall not assess insurance carriers until a deficiency is projected based upon the anticipated expenditures for the next calendar year as determined pursuant to subsection (a) of this section.

§ 2396. Workers' Compensation Fund; reimbursement of carriers.

(a) The Workers' Compensation Fund is created for the purpose of making payments under, §2334, of this title by any insurance carrier.

(b) The Department shall perform the administrative, ministerial, fiscal, and clerical functions of the Workers' Compensation Fund. The Fund shall be a party to and shall be represented by a Deputy Attorney General in any proceeding involving possible reimbursement to or from the Fund, and if the decision is against the Fund, the Fund may secure judicial review thereof by commencing an action in Superior Court in the county in which the hearing was held. Any expenses incurred in defense of the Fund are payable from said Fund.

(c) With respect to payments made subject to reimbursement under subsection (a), insurance carriers, on or before December 15 and July 1 of each year, shall file with the Department a report setting forth the money expended for said payments during the previous six months. Reimbursement to such insurance carrier shall be made on the fifteenth day of January and the first day of August each year."

Section 2. If any provision of this Act or the application thereof to any person at circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or applications, and to that end the provisions of this Act are declared to be severable.

Section 3. This Act shall be known as the 'Workers' Compensation Reform Act of 2006.'Section 4. The provisions of this Act shall be effective July 1, 2007".

SYNOPSIS

This Act comprehensively reforms Delaware's workers' compensation law. The objectives of this Act are to reduce the costs of workers' compensation insurance in Delaware while ensuring that workers receive fair and adequate benefits for injuries suffered during the course of employment, and to ensure that the system as a whole will encourage prompt recovery and return to work for employees injured on the job. Among other things, the Act limits medical costs by providing for: a comprehensive fee and cost schedule for medical expenses and utilization costs; the certification of health care providers providing care for workers' compensation injuries; and a medical dispute resolution process. The Act clarifies concepts of temporary disability and permanent partial disability and sets standards for determining when an employee has reached maximum medical improvement from a work related injury. The Act provides a process for injured workers to receive vocational rehabilitation to aid their return to work. The Act also provides for an informal arbitration process to resolve disputed workers' compensation claims, and implements controls for attorneys' fees incurred in the workers' compensation process to ensure that all such fees are reasonable. The Act improves data collection practices and requires certain safety measures, particularly for firms with high rates of industrial accidents.