



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:

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

3 "CHAPTER 23. WORKERS' COMPENSATION

4 SUBCHAPTER I. GENERAL PROVISIONS

5 § 2301. Definitions.

6 As used in this chapter:

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

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

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

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

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

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

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

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

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

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

40 (11) 'Employee' means, every person in service of any corporation (private, public, municipal or quasi-public),  
41 association, firm or person, excepting those employees excluded by this subchapter, under any contract of hire, express or implied,  
42 oral or written, or performing services for a valuable consideration, excluding spouse and minor children of a farm employer unless  
43 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  
44 contract of insurance, and excluding any person whose employment is casual and not in the regular course of the trade, business,  
45 profession or occupation of his employer, and not including persons to whom articles or materials are furnished or repaired, or  
46 adopted for sale in the employee's own home, or on the premises not under the control or management of the employer. 'Casual  
47 employment,' as used in this subdivision, means employment for not over 2 weeks or a total salary during the employment not to  
48 exceed \$100 and, subject to the above, repairs and maintenance of employer's regular business shall not be construed as casual  
49 employment; except, however, that everyone assigned to work under §§ 901-905 of Title 31 is specifically designated an employee,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 108 (21) 'Department' means the Department of Labor.
- 109 (22) 'Hearing Officer' means a Hearing Officer appointed pursuant to § 2301B of this title.
- 110 (23) 'Immediate Family' means a parent, spouse, child or sibling of a sole proprietor or partner.

111 § 2301A. Industrial Accident Board.

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

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

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

128 (d) The Board, any Board panel, or any Board member empowered to decide any matter of this title shall act  
129 in conformity with applicable provisions of the Administrative Procedures Act set forth in chapter 101 of Title 29,  
130 including, but not limited to, § 10129 of Title 29. Lawyers representing clients before the Board shall act in conformity  
131 with applicable provisions of The Delaware Lawyers' Rules of Professional Conduct, including, but not limited to, Rule  
132 3.5 thereof. Disputes regarding pre-hearing or post-hearing matters shall be presented by written motion and decided by  
133 written order.

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

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

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

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

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

149 § 2301B. Hearing Officers.

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

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

154 (2) The power to administer oaths and affirmations;

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

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

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

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

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

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

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

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

188 § 2301C. Workers' Compensation Specialist.

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

193 § 2301D. Annual Review of Industrial Accident Board Case Management.

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

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

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

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

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

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



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

224 §2301E. Legislative Intent for Workers' Compensation Benefits

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

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

244 §2301F. Data Collection

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

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

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

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

260 (c) The Department of Labor, in cooperation with the an advisory organization designated pursuant to Title  
261 18, Chapter 26, shall adopt rules establishing the standardized data collection protocol, the data elements that will be mandated for  
262 collection, and the schedule for implementation of mandatory data submission and sanctions for non-compliance, provided  
263 however, that no requirement for mandatory data submission shall become effective until at least two years from the effective date  
264 of the rules. The electronic collection of data concerning first reports of injuries or occupational disease, and the electronic  
265 collection of information concerning compliance with the mandatory workers' compensation insurance requirement shall receive  
266 the highest priority for implementation.

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

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

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

276 §2301G. Authority to adopt rules and procedures

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

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

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

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

296 §2301H. Penalties

297 The Administrator shall impose a penalty on any person who fails to file a report required by, or who violates any provision of, this  
298 chapter or any rule adopted pursuant to Section 2301G or any specific statutory authority. Unless specified otherwise in this  
299 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)  
300 for each act omission or occurrence, subject to the Administrator's discretion.

301 § 2302. Wages: definition and computation; valuation of board and lodging.

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

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

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

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

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

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

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

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

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

327 § 2303. Territorial application of chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

384 (d) As used in this section:

385 (1) 'United States' includes only the states of the United States and the District of Columbia.

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

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

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

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

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

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

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

401 § 2304. Compensation as exclusive remedy.

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

405 § 2305. Exemption from liability prohibited; exception.

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

408 § 2306. Applicability - Employers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

461 § 2307. Same Domestic servants and farm laborers.

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

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

468 § 2308. Same Executive officers; sole proprietors and partners.

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

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

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

478 § 2309. Same State, counties and political subdivisions.

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

483 § 2310. Applicability to persons engaged in interstate or foreign commerce.

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

486 § 2311. Contractors, subcontractors and lessees of motor vehicles transporting passengers for hire as employers.

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

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

492 § 2312. Volunteer firefighters treated as State employees; election by volunteer fire companies; revocation; wage  
493 as basis for compensation.

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

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

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

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

509 § 2313. Record and report of injuries by employers; penalty; admissibility as evidence.

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

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

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

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

530 § 2314. Defenses unavailable in action for compensation.

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

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

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

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

538                   § 2315. Compensation to illegally employed minors.

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

542                   § 2316. Licensed real estate salespersons and licensed associate real estate brokers who are independent  
543 contractors.

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

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

557                   § 2317. HAZMAT team members treated as State employees; wage as basis for compensation.

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

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

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

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

567 §2320. Disposition of monies received

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

570 §2320A. Educational Outreach

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

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

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

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

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

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

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

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

591 §2320B. Extra-Hazardous Employers

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

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

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

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

606 § 2321. Minimum duration of incapacity.

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

611 § 2322. Medical and other services, and supplies as furnished by employer.

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

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

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

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

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

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

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

- 633 (1) Reasonable and necessary surgical, medical, dental, optometric, chiropractic, and  
634 (2) hospital services; and  
635 (3) Medicine and supplies, including repairing and replacing damaged dentures, false eyes or eyeglasses,  
636 and providing hearing aids and prosthetic devices.

637 §2322A. Legislative intent with regard to medical benefits

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

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

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

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

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

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

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

656 §2322B. Medical cost containment

657 (a) Medical fee schedule

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

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

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

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

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



676 (6) Unbundling of service units is prohibited.

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

678 a. The usual and customary fee of the provider;

679 b. The maximum allowable payment under the fee schedule

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

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

684 (9) All fees for all medical services provided by health care providers that are not certified pursuant to  
685 §2322 D shall be pre-authorized by the employer or insurer.

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

689 (b) Medical practice guidelines

690 (1) The Department of Labor, Office of Workers' Compensation shall adopt, by rule, pursuant to the  
691 provisions of §2301G a coordinated set of medical practice guidelines and associated regulations and procedures  
692 to guide utilization of medical treatments in workers' compensation, including, but not limited to care provided  
693 for the treatment of injured employees by, or under the supervision of a licensed health care provider as defined in  
694 §2323, prescription drug utilization, inpatient hospitalization and length of stay, diagnostic testing, physical  
695 therapy, chiropractic care and palliative care. The medical practice guidelines shall apply to all treatments  
696 provided after the effective date of the rule, regardless of the date of injury.

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

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

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

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

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

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

724 (c) Hospital fee determination mechanism

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

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

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

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

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

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

757 (1) Prescription drugs and other pharmaceuticals

758 (2) Implantable surgical hardware

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

760 (4) Durable medical equipment

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

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

766 §2322C. Certification of health care providers

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

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

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

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

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

793 §2322D. Medical dispute resolution

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

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

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

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

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

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

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

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

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

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

830 § 2323. Selection of physician, surgeon, dentist, optometrist, physical therapist or chiropractor by employee.  
831 Any employee who alleges an industrial injury shall have the right, subject to the provisions of §2322 C and D, to employ  
832 a health care provider of the employee's own choosing. The Department of Labor, Office of Workers' Compensation shall  
833 adopt, by rule, pursuant to the provisions of § 2301 G, a list of approved categories of health care provider which shall  
834 include physicians, surgeons, dentists, optometrists and chiropractors who are licensed to practice within the State of  
835 Delaware, and shall further provide for a mechanism for health care providers who are not approved, including health care  
836 providers who are not licensed in the State of Delaware, to obtain approval for provision of services to injured employees.  
837 No employer or insurer shall be liable for payments to a medical professional who is not an approved health care provider,  
838 unless the evaluation and treatment giving rise to such charges was pre-approved by the employer or insurer. Notice of the  
839 employee's intention to employ medical aid as aforesaid shall be given to the employee's employer or its insurance carrier.  
840 Notice that medical aid was employed as aforesaid shall be given as provided in §2323 A. If the alleged injury is  
841 subsequently held to be compensable, the employer shall be liable for the usual and customary fee for the services of any  
842 physician, surgeon, dentist, optometrist or chiropractor certified pursuant to § 2322 C whose employment was utilized by  
843 the employee provided notice of said employment was given to the employer or its insurance carrier, or the fee provided  
844 for in the medical fee schedule adopted pursuant to § 2322 A, whichever is less. In the event the physician, surgeon,  
845 dentist, optometrist or chiropractor is not certified pursuant to §2322 C, the employer shall be liable for the pre-authorized  
846 fee, or a fee determined by the medical dispute resolution system.

847 §2323A. Billing and Payment for medical treatment

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

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

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

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

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

872 (f) The Department of Labor, Office of Workers' Compensation shall adopt, by rule, pursuant to the  
873 provisions of § 2301G, criteria, procedures, and regulations for the implementation of the requirements of this section,  
874 including, but not limited to, sanctions of up to the charge for the medical evaluation or treatment, plus a sum of up to  
875 \$5000.00 for each instance of failure to make timely payments, delaying payments through multiple or unreasonable

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

878 §2323B. Reports concerning the employee's condition and physical limitations

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

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

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

898 §2323C. Emergency medical services

899 The Department of Labor, Office of Workers' Compensation shall adopt, by rule, pursuant to the provisions of  
900 §2301 G shall adopt a definition of emergency services. Notwithstanding any provision to the contrary, emergency  
901 services for compensable injuries, as defined, shall not be subject to the requirement that a health care provider be certified  
902 pursuant to § 2322 C, requirements for pre-authorization of services or the medical practice guidelines adopted pursuant to  
903 §2322 A, and shall be paid within 30 days of the submission of a bill accompanied by medical records or notes  
904 documenting the employees' condition and the appropriateness of the evaluation, treatment or therapy at the rates provided



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

907 §2323D. Referrals and change of health care providers

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

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

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

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

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

927 §2323E. Disclosure of financial interests.

928 No health care provider providing treatments to injured employees under sections 2322, 2322 A, B, C and D,  
929 2323, 2323A, B, C, and D shall refer an employee to, or encourage an employee to utilize, any in-patient or out- patient  
930 facility or any medical or therapeutic practice, laboratory, diagnostic testing or radiological imaging machinery,  
931 equipment, practice or facility without first disclosing in writing to the employee and the employer any financial interest  
932 the health care provider has in such in-patient or out- patient facility, any medical or therapeutic practice, laboratory,  
933 diagnostic testing or radiological imaging machinery, equipment, practice or facility.

934 §2323F. Sanctions

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

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

941 §2324. Disability Benefits; Intent

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

952 § 2324A. Temporary Total Disability Benefits

953 For injuries or occupational disease disabilities occurring after the effective date of this enactment, an injured  
954 employee shall be compensated at the rate of 66 2/3% of the employees' average weekly wage, as calculated pursuant to  
955 §2302, from the date of the fourth consecutive day of lost work time until the employee reaches maximum medical  
956 improvement, as defined in §2301 (17), provided, however, that the compensation shall not be more than 100 % of the  
957 Delaware average weekly wage per week as announced by the Secretary of Labor for the last calendar year for which a  
958 determination of the average weekly wage has been made. This benefit level shall be known as the worker's  
959 'compensation rate'. In no event shall temporary total disability be paid for longer than 300 weeks. No employee shall be  
960 paid temporary total disability payments and any other indemnity benefit at the same time. If the employer and employee  
961 dispute the date of maximum medical improvement, the employer shall continue to pay temporary total disability benefits  
962 during the pendency of the dispute, provided however, that the employer will be credited, on a dollar for dollar basis for all

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

965 §2324B. Duty to report return to work

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

969 §2324C. Vocational Rehabilitation Benefits

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

975 (b) Definitions:

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

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

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

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

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

992 (e) Within 90 days of reaching maximum medical improvement, or 90 days of receiving actual or  
993 constructive notice of the achievement of maximum medical improvement, whichever is later, an injured employee who  
994 has not returned to work may elect to receive a vocational assessment from the Department of Labor Division of  
995 Vocational Rehabilitation. The employer shall compensate the Division for the reasonable cost of the vocational  
996 assessment. If, as a result of the vocational assessment, the Division elects to recommend that vocational rehabilitation  
997 services be provided to the employee, the employee may elect, within 10 days of such recommendation, to pursue  
998 vocational rehabilitation. An employee who has returned to work may request that the employer certify that the employee  
999 is not able to perform the functions of the job, due to the employee's physical limitations. An employee who has obtained  
1000 such a certification may elect to receive a vocational assessment within 90 days of the certification by the employer,  
1001 subject to the limitations set forth in subsection (H) of this section. Such an employee will henceforth be treated as if they  
1002 had not returned to work with respect to benefits and services under this section.

1003 (f) If the employee elects to pursue vocational rehabilitation, the employee and the Division will execute an  
1004 agreement setting forth the recommendation of the Division, the employees' commitment to pursue the recommendation  
1005 and the recommended vendor, or vendors, for the vocational rehabilitation services. The agreement shall require the  
1006 employee to report to the Division and the employer any failure to attend and pursue the agreed vocational rehabilitation  
1007 program. In all instances, the Division shall be considered the preferred vendor for services that it is able to provide. The  
1008 Division shall monitor the employee's compliance with the agreement and notify the employee and employer of any  
1009 substantive non-compliance.

1010 (g) Upon execution of the agreement, the employee will be eligible for vocational rehabilitation benefits  
1011 during the period the employee is actively pursuing vocational rehabilitation pursuant to the agreement, up to a maximum  
1012 of 90 days. Vocational rehabilitation benefits shall be equal to 66 2/3% of the employee's average weekly wage as  
1013 calculated pursuant to §2302, provided, however, that the compensation shall not be more than the average weekly wage  
1014 per week as announced by the Secretary of Labor for the last calendar year for which a determination of the average  
1015 weekly wage has been made. The employees' vocational rehabilitation benefit may be extended for an additional period of  
1016 up to 90 days upon the written certification by the Division that the employee is successfully pursuing the agreed program  
1017 in a timely manner and that an additional period of vocational rehabilitation benefits is necessary to allow continued  
1018 progress in the program. No further extensions of vocational rehabilitation benefits shall be considered.

1019 (h) The employee shall be eligible for vocational rehabilitation benefits and vocational rehabilitation  
1020 services only once for any discernable occupational injury or disablement, whether or not there is subsequent re-injury or

1021 aggravation of the original injury. Nothing in this section shall preclude an employee from receiving benefits through the  
1022 Vocational Rehabilitation program, provided that the employer's liability during the period of eligibility under this section  
1023 shall be that of the primary payer.

1024 (i) The employer shall pay all reasonable and necessary costs of vocational rehabilitation services within 30  
1025 days of receipt of an invoice for services rendered, and shall pay vocational rehabilitation benefits subject to the same  
1026 requirements concerning timeliness as apply to payments of temporary total disability benefits. The employer shall not be  
1027 liable for payments of vocational rehabilitation services or vocational rehabilitation benefits in any instance where the  
1028 services rendered to the employee were provided by a vendor that was not specified in the agreement between employee  
1029 and the Division, provided for in subsection (F) of this section. The employer shall not be liable for payment of vocational  
1030 rehabilitation benefits for any period during which the employee is out of compliance with the agreement between  
1031 employee and the Division, provided in subsection (F) of this section.

1032 (j) Any employee suffering an amputation of a thumb, a great toe, an upper extremity or lower extremity or  
1033 the loss of an eye shall qualify for a vocational rehabilitation assessment to be performed at the employer's expense by the  
1034 Division of Vocational Rehabilitation, and benefits as provided in this section, provided the election to pursue such  
1035 benefits is made within 90 days of achieving maximum medical improvement or 90 days of receiving actual or  
1036 constructive notice of the achievement of maximum medical improvement, whichever is later.

1037 (k) The Department of Labor, Office of Workers' Compensation shall adopt, pursuant to Section 2301G,  
1038 rules and procedures for the administration of the benefits and services provided in this section.

1039 (l) The provisions of this section shall only apply to injuries or occupational disease disabilities that occur  
1040 after the date of enactment.

1041 § 2325. Temporary partial disability benefits

1042 If an employee, prior to reaching maximum medical improvement as defined in §2301 (17), returns to work at  
1043 less than their pre-injury wage, the compensation to be paid shall be 66 2/3 percent of the difference between the wages  
1044 received by the injured employee before the injury and the wages earned by the employee thereafter, but not more than the  
1045 Delaware average weekly wage per week as announced by the Secretary of Labor for the last calendar year for which a  
1046 determination of the average weekly wage has been made. This compensation shall be paid during the period of such  
1047 partial disability for work, prior to the achievement of maximum medical improvement. No employee may be paid  
1048 temporary partial disability payments and any other indemnity payment at the same time. The provisions of this section  
1049 shall only apply to injuries or occupational disease disabilities that occur after the date of enactment.

1050 § 2326. Permanent partial disability benefits

1051 (a) As a guide to the interpretation and application of this section, the policy and intent of the General  
1052 Assembly is declared to be that every person who suffers a compensable injury with resulting permanent partial disability  
1053 should be provided with the opportunity to return to gainful employment as soon as possible with minimal dependence on  
1054 compensation awards.

1055 (b) As used in this Title, 'partial disability' means a condition whereby an employee, by reason of injury  
1056 arising out of and in the course of employment, suffers a permanent impairment.

1057 (c) As used in this Title, 'impairment' means an anatomical or functional abnormality existing after the date  
1058 of maximum medical improvement as determined by a medically or scientifically demonstrable finding and based upon the  
1059 most recent edition of the American Medical Association's guide to the evaluation of permanent impairment or comparable  
1060 publications of the American Medical Association. In all instances, the calculated value of the employee's 'whole body'  
1061 impairment, as defined in the American Medical Association's guide to the evaluation of permanent impairment shall be  
1062 used as the measure of impairment used to calculate partial disability.

1063 (d) Permanent partial disability shall be determined by calculating the product of the employee's impairment  
1064 as modified by his future earnings multiplier and job related disfigurement, if any, pursuant to Sections 2326A through D;  
1065 provided that, regardless of the actual calculation of impairment as modified by the employee's future earnings multiplier  
1066 and job related disfigurement, if any, the percentage of disability awarded shall not exceed ninety-nine percent.

1067 (e) If any portion of the permanent partial disability calculation is disputed by the employer or employee, the  
1068 employer shall pay the undisputed portion of the benefit during the resolution of the dispute.

1069 (f) Permanent partial disability payments shall be paid periodically except as provided in §2326 G,  
1070 pertaining to acceleration of benefits upon r return to work and § 2358 pertaining to commutation of compensation

1071 (h) No employee shall be paid permanent partial disability benefits and any other indemnity benefit at the  
1072 same time.

1073 (i) The provisions of this section shall only apply to injuries or occupational disease disabilities that occur  
1074 after the date of enactment.

1075 §2326A. Calculation of Disability

1076 (a) For the purpose of determining the percentage of disability pursuant to §2326, whole body impairment as  
1077 found by a Level 2 certified health care provider shall constitute the base value.

1078 (b) The appropriate value for the employee's future earnings multiplier, as determined in Section 2326 B,  
1079 shall be multiplied by the workers' whole body impairment. The product shall be known as the 'disability rate'.

1080 (c) If, on or before the tenth day after the employer is given written notice of the determination of the  
1081 worker's loss of physical abilities, pursuant to Section 2326B, the employer fails to offer to return the employee to  
1082 employment at a job the employee is physically qualified to perform, or if the offered employment pays less than 80% of  
1083 the employee's pre-injury wages, the employees disability rate will be increased by 10%. This provision shall not apply to  
1084 employees of employers who employed less than 10 full or part time workers on the date of the worker's impairment  
1085 rating.

1086 (d) If, on or before the tenth day after the employer is given written notice of the determination of the  
1087 worker's loss of physical abilities, pursuant to Section 2326B, the employer offers to return the employee to employment  
1088 at a job the employee is physically qualified to perform, and if the offered employment pays less than 80% of the  
1089 employee's pre-injury wages, the employees disability rate will be decreased by 10%. This provision shall not apply to  
1090 employees of employers who employed less than 10 full or part time workers on the date of the worker's impairment  
1091 rating.

1092 (e) The disability rate, as defined in this section, shall be multiplied by the worker's compensation rate, as  
1093 defined in §2324A. The product shall be the employee's weekly permanent partial disability benefit. The permanent  
1094 partial disability benefit is payable for 300 weeks, unless the employee's percentage of permanent partial disability is over  
1095 75%, in which case it shall be paid for 450 weeks.

1096 §2326B. Future Earnings multiplier

1097 (a) Within 10 days of the acceptance of the compensability of a claim, the employee and employer will  
1098 attempt to reach an agreement concerning the correct classification of the employee's job in the Occupational Information  
1099 Network classification system sponsored by the United States Department of Labor. If the parties cannot agree on the  
1100 proper job classification, the employer will record both the employee's suggested job classification and the employer's  
1101 suggested job classification. If the compensability of the claim is contested, the Industrial Accident Board shall determine  
1102 the correct job classification in the Occupational Information Network system after any finding of compensability.

1103 (b) The health care provider rating the employee's physical impairment pursuant to §2326 A (a) shall, not  
1104 later than 10 days after the rating of physical impairment, be provided by the employer with the list of abilities  
1105 corresponding to the employee's pre-injury job title, as listed in the Occupational Information Network 'O\*Net' website.  
1106 These abilities shall be known as the employee's 'job related abilities.' In the event of a disagreement concerning the

1107 applicable job title, lists of the job related abilities for both the employer's and employee's selected designation of the  
1108 employee's job title on the date of injury will be provided to the health care provider.

1109 (c) The health care provider shall make a determination of whether the employee has completely or partially  
1110 lost each of the job related abilities, or whether the job related ability remains after the worker's injury. The determination  
1111 shall be separately made for each of the workers' individual job related abilities, as provided to the health care provider,  
1112 above. The health care provider shall provide a written report of his or her findings concerning the loss of job related  
1113 abilities to the employee and employer, not later than 5 working days after the determination is made. The Department of  
1114 Labor, Office of Workers' Compensation shall adopt a fee schedule, for the performance of the ratings described in this  
1115 section, pursuant to §2301 G.

1116 §2326C. Calculation of modification for reduction in job related abilities

1117 (a) Loss of abilities shall be assigned the following values:

1118 (1) Complete loss of an ability shall be assigned a value of 2

1119 (2) Partial loss of an ability shall be assigned a value of 1

1120 (3) Abilities for which there has been neither partial nor complete loss shall be assigned a value of 0.

1121 (b) The points assigned to each of the abilities associated with the employee's pre-injury employment shall  
1122 be added together and divided by the product of the number of individual abilities listed in the 'O\*Net' for that specific job  
1123 classification times two. The value calculated shall be known as the worker's 'percentage of lost abilities'. In the event  
1124 that the worker and employer disagree as to the proper job classification for the employee, the calculations set forth in this  
1125 subsection shall be independently conducted for each job classification.

1126 (c) The workers' future earnings multiplier shall be determined according to the following table:

1127 Percentage of lost abilities Future earnings multiplier

1128 0-10% 1.1

1129 10-20% 1.133

1130 20-30% 1.166

1131 30-40 % 1.20

1132 40- 50 % 1.233

1133 50-60 % 1.266

1134 60-70% 1.3

1135 70-80% 1.333



1136 80-90 1.366

1137 90-100 1.4

1138 §2326D. Modification for job related disfigurements

1139 If the employee, as a direct result of a work related injury or disease suffers a serious disfigurement to the hands, neck,  
1140 head or face that is immediately and obviously visible when observed in normal working conditions for the employee's  
1141 pre-injury job, up to 5 percent may be added to the employee's disability calculation, depending on the seriousness of the  
1142 disfigurement.

1143 §2326E. Permanent total disability benefits

1144 (a) 'Permanent total disability' means:

1145 (1) the permanent and total loss or loss of use of both hands or both arms or both feet or both legs or both  
1146 eyes or any two of them; or

1147 (2) a brain injury resulting from a single traumatic work-related injury that causes,  
1148 exclusive of the contribution to the impairment rating arising from any other impairment to any other body part,  
1149 or any preexisting impairments of any kind, a permanent impairment of thirty percent or more as determined by  
1150 the current American medical association guide to the evaluation of permanent impairment

1151 (3) Permanent total disability benefits shall be paid for the natural life of the injured employee at the rate  
1152 of 66 2/3% of the employees average weekly wage, but not more than the average weekly wage per week as  
1153 announced by the Secretary of Labor for the last calendar year for which a determination of the average weekly  
1154 wage has been made. No employee may be paid permanent partial indemnity benefits and any other indemnity  
1155 benefit at the same time.

1156 §2326F. Limitations on benefits

1157 (a) Unless otherwise contracted for by the employee and employer, workers' compensation benefits shall be  
1158 limited so that no employee receives more in total payments, including wages and benefits from his employer, by not  
1159 working than by continuing to work. Compensation benefits under this chapter shall accordingly be reduced, if necessary,  
1160 to account for any wages and employer-financed disability benefits an employee receives after the time of injury. For the  
1161 purposes of this section, total payments shall be determined on an after-tax basis. This section does not apply to social  
1162 security payments, employee-financed disability benefits, benefits or payments an employee received from a prior  
1163 employer, payments for medical or related expenses or general retirement payments, except it does apply to disability  
1164 retirement benefits.

1165 (b) In no event shall the employee receive any combination of indemnity benefits, except for permanent total  
1166 disability benefits as provided in § 2326E, for a cumulative total of more than 520 weeks for any single discernable  
1167 industrial accident or occupational disease disablement.

1168 (c) In no case shall compensation benefits for disability continue after the disability ends or after the death  
1169 of the injured employee

1170 (d) The compensation benefits payable by reason of disability caused by accidental injury shall be reduced  
1171 by the compensation benefits paid or payable on account of any prior injury suffered by the employee if compensation  
1172 benefits in both instances are for injury to the same member or function or different parts of the same member or function  
1173 or for disfigurement and if the compensation benefits payable on account of the subsequent injury would, in whole or in  
1174 part, duplicate the benefits paid or payable on account of such prior injury.

1175 (e) This section shall only apply to injuries that occur after the effective date of this section; it shall not  
1176 reduce benefits received or due or affect the benefits due for injuries that occur before the effective date of this section.

1177 §2326G. Acceleration of Permanent Partial Disability Benefits

1178 (a) On one occasion, during the entire life of a claim arising from an accidental injury or occupational  
1179 disease disablement, regardless of aggravation, re-injury or deterioration of the employee's condition, the employee may  
1180 elect to receive an acceleration of permanent partial indemnity benefits pursuant to this section. The eligibility for this  
1181 one-time acceleration shall be strictly construed.

1182 (1) Upon the employee's return to work and report of return to work to the employer, and to the Division  
1183 of Vocational Rehabilitation, if such employee has obtained vocational rehabilitation services or benefits, the  
1184 employee may elect to receive up to 52 weeks of permanent partial disability benefits in one lump sum. The  
1185 employee may elect how many weeks of accelerated benefits to receive, provided that this election is limited to  
1186 the number of weeks of benefits otherwise remaining to the employee pursuant to the provisions of this Chapter.

1187 (2) The number of weeks paid as a lump sum shall reduce the total weeks of eligibility for permanent  
1188 partial disability benefits on a ration of one week of lump sum payment to one week of reduction of permanent  
1189 partial disability eligibility.

1190 (3) The Department of Labor, Office of Workers' Compensation shall promulgate forms and procedures,  
1191 which shall be utilized on a mandatory basis for the implementation of this Section.

1192 (4) The employer or the employer's insurer shall pay any uncontested request for a lump sum  
1193 acceleration of permanent partial disability benefits within 14 days of receipt of a properly completed and

1194 executed form requesting the acceleration. The payment of benefits pursuant to this section shall not be subject to  
1195 the provisions of § 2357.

1196 (5) Nothing in this section shall be construed as granting, expanding or creating any right for payment of  
1197 benefits not otherwise specifically provided for in this Title.

1198 § 2328. Compensation for death or disability from occupational disease.

1199 The compensation payable for death or disability total in character and permanent in quality resulting from an  
1200 occupational disease shall be the same in amount and duration and shall be payable in the same manner and to the same  
1201 persons as would have been entitled thereto had the death or disability been caused by an accident arising out of and in the  
1202 course of the employment. In determining the duration of temporary total and/or temporary partial and/or permanent  
1203 partial disability, and the duration of such payments for the disabilities due to occupational diseases, the same rules and  
1204 regulations as are applicable to accidents or injuries shall apply.

1205 § 2329. Compensation for disability resulting from occupational and other preexisting disease.

1206 Whenever any disability from which any employee is suffering following the contraction of a compensable  
1207 occupational disease is due in part to such occupational disease and in part to a preexisting disease or infirmity, the Board  
1208 shall determine the proportion of such disability which is reasonably attributable to the occupational disease and the  
1209 proportion which is reasonably attributable to the preexisting disease or infirmity and such employee shall be entitled to  
1210 compensation only for the proportion of the disability which is reasonably attributable solely to the occupational disease.

1211 § 2330. Compensation for death.

1212 (a) In case of death, compensation shall be computed on the following basis and distributed to the following  
1213 persons:

1214 (1) To the child or children if there is no surviving spouse entitled to compensation, 66 2/3% of the  
1215 wages of the deceased, with 10% additional for each child in excess of 2, with a maximum of 80% to be paid to  
1216 their guardian;

1217 (2) To the surviving spouse, if there are no children, 66 2/3% of wages provided that the minimum  
1218 amount payable shall not be less than \$15 per week;

1219 (3) To the surviving spouse, if there is 1 child, 66 2/3% of the wages;

1220 (4) To the surviving spouse, if there are 2 children, 70% of wages;

1221 (5) To the surviving spouse, if there are 3 children, 75% of wages;

1222 (6) To the surviving spouse, if there are 4 or more children, 80% of wages;

1223 (7) If there is no surviving spouse or children, then to the parents, or the survivor of them, if actually  
1224 dependent upon the employee for at least 50% of their support at the time of the employee's death, 20% of wages;

1225 (8) If there is no surviving spouse, children or dependent parent, then to the siblings, if actually  
1226 dependent upon the decedent for at least 50% of their support at the time of the employee's death, 15% of wages  
1227 for 1 sibling, and 5% additional for each additional sibling, with a maximum of 25%, such compensation to be  
1228 paid to their guardian.

1229 (b) The wages upon which death compensation shall be based shall not in any case be taken to exceed the  
1230 average weekly wage per week as announced by the Secretary of the Department of Labor for the last calendar year for  
1231 which a determination of the average weekly wage has been made. However, the minimum amount payable to a surviving  
1232 spouse entitled to compensation shall not be less than 22 2/9% of the said average weekly wage per week. Subject to §  
1233 2332 of this title, this compensation shall be paid during 400 weeks and in case of children entitled to compensation under  
1234 this section, the compensation of each child shall continue after such period of 400 weeks until such child reaches the age  
1235 of 18 years, or if enrolled as a full-time student in an accredited educational institution, until such child ceases to be so  
1236 enrolled or reaches the age of 25 years, and in the case of a surviving spouse entitled to compensation under this section  
1237 the compensation shall continue after such period of 400 weeks until the surviving spouse dies or remarries. Children are  
1238 not entitled to compensation during the period that compensation is payable to their parent, except as provided in this  
1239 section; provided, however, that the compensation for any child shall not be less than \$10 per week unless the total  
1240 maximum benefits are being paid.

1241 (c) Compensation shall be payable under this section to or on account of any sibling only if and while such  
1242 sibling is under the age of 18 years. Compensation shall be payable under this section to or on account of any child only if  
1243 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  
1244 such child ceases to be so enrolled or reaches the age of 25 years. Compensation shall be payable under this section to or  
1245 on account of any child beyond the age of 18 years if and while mentally or physically handicapped and actually dependent  
1246 upon the deceased for at least 50 percent of their support at the time of the employee's death.

1247 (d) Compensation shall be payable under this section to a surviving spouse: (1) If living with deceased at the  
1248 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  
1249 at the time of death; otherwise, compensation shall be distributed to the persons who would be dependents in case there  
1250 was no surviving spouse.

1251 (e) Compensation payable to the surviving spouse shall be for the use and benefit of such surviving spouse  
1252 and of the dependent children, and the Board may from time to time apportion such compensation between them in such  
1253 way as it deems best. The Board may require payments to be made directly to a minor who has been injured and may also  
1254 require payments to be made to the person caring for any dependent minor, when, in the opinion of the Board, the expense  
1255 of securing the appointment of a guardian would be disproportionate to the amount of compensation payable to such  
1256 minor.

1257 (f) If the compensation payable under this section to or on account of any person shall for any cause cease,  
1258 the compensation of the remaining persons entitled thereunder shall thereafter be computed at the same rate as would have  
1259 been payable to the remaining persons had they been the only persons entitled to compensation at the time of the death of  
1260 the deceased, which computation shall be based upon the rates in effect at the time of the death of the deceased.

1261 (g) Should any dependent of a deceased employee die, or should the surviving spouse remarry, the right of  
1262 such dependent or such surviving spouse to compensation under this section shall cease. However, 2 years' indemnity  
1263 benefits in 1 lump sum shall be payable to a surviving spouse upon remarriage.

1264 (h) In no event shall death benefits be paid pursuant to this section if the employee would not have been  
1265 eligible for payment of disability benefits at the time of death, had the employee survived.

1266 § 2331. Burial expenses where death results from injury.

1267 If death results from the injury, the employer shall pay the reasonable burial expenses of an injured employee, not  
1268 exceeding \$5,000, but without deduction of any amount theretofore paid for compensation or medical expense, except that  
1269 any bill for reasonable funeral expenses resulting from the death of an injured employee contracted for in an amount in  
1270 excess of \$5,000 may be approved by the Industrial Accident Board.

1271 § 2332. Death of employee as affecting compensation and other benefits.

1272 Should the employee die as a result of the injury, the employer shall nonetheless be liable for medical, surgical,  
1273 dental, optometric, chiropractic or hospital services and medicines and for the expense of last sickness and burial as  
1274 provided in this chapter. Upon the death of an employee any claim for compensation shall not abate, but the personal  
1275 representative of the deceased may be substituted for the employee and prosecute the claim for the benefit of the  
1276 deceased's dependent or dependents only. Payments in such event shall be made as otherwise provided in this chapter.

1277 § 2333. Compensation of nonresident alien dependents; representation consular officers.

1278 (a) Compensation under this chapter to alien dependent surviving spouses and children not residents of the  
1279 United States shall be one half of the amount provided in each case for residents, and the employer may at any time

1280 commute all future installments of compensation payable to alien dependents not residents of the United States by paying  
1281 to such alien dependents the then value thereof, calculated in accordance with § 2358 of this title. Alien parents, siblings  
1282 not residents of the United States shall not be entitled to any compensation.

1283 (b) Nonresident alien dependents may be officially represented by the consular officers of the nation of  
1284 which such alien or aliens may be citizens or subjects and in such cases the consular officers may receive for distribution  
1285 to such nonresident alien dependents all compensation awarded hereunder and the receipt of such consular officers shall be  
1286 a full discharge of all sums paid to and received by them.

1287 §2334. Benefit adjustment.

1288 (a) Any person who is totally disabled on or after May 27, 1971, or any surviving spouse or dependent who  
1289 is receiving benefits under § 2330 of this title, on or after May 27, 1971, shall be entitled to an additional amount of  
1290 compensation as calculated under subsections (b) and (c) of this section, provided that the total amount to be received shall  
1291 not exceed the maximum weekly benefit rate in § 2324 of this title effective on July 1, 1975, or the benefit derived from §  
1292 2330 of this title as of July 1, 1975.

1293 (b) In any case where a totally disabled person, or a surviving spouse or a dependent is presently receiving  
1294 the maximum weekly income benefit rate applicable at the time such award was made, the supplemental allowance shall  
1295 be an amount which when added to such award would equal the maximum weekly benefit rate effective on July 1, 1975, or  
1296 the benefit derived from § 2330 of this title as of July 1, 1975.

1297 (c) In any case where a totally disabled person, or a surviving spouse or dependent is presently receiving  
1298 less than the maximum weekly income benefit rate applicable at the time such award was made, the supplemental  
1299 allowance shall be an amount equal to the difference between the amount the claimant is presently receiving and a  
1300 percentage of the maximum weekly benefit rate effective on July 1, 1975, or the benefit derived from § 2330 of this title as  
1301 of July 1, 1975, determined by multiplying it by a fraction, the numerator of which is the claimant's present award and the  
1302 denominator of which is the maximum weekly rate applicable at the time such award was made.

1303 SUBCHAPTER III. DETERMINATION AND PAYMENT OF BENEFITS; PROCEDURES

1304 § 2341. Notice of injury; employer's notice; time of; and failure to give.

1305 Unless the employer has actual knowledge of the occurrence of the injury or unless the employee, or someone on  
1306 the employee's behalf, or some of the dependents, or someone on their behalf gives notice thereof to the employer within  
1307 45 days after the accident no compensation shall be due until such notice is given or knowledge obtained. Every employer  
1308 is required to give notice to its insurer or any third party claims administrator managing claims for the employer, of any

1309 accident concerning which the employee has given notice, or of which the employer has actual knowledge, within 72 hours  
1310 of the notice or knowledge. This requirement shall apply whether or not the employer agrees that the employee was  
1311 injured, or agrees that the injury happened in the course and scope of the employees' employment, and shall not constitute  
1312 an admission of liability for any purpose.

1313 § 2342. Notice of occupational disease; time of; failure to give.

1314 Unless the employer during the continuance of the employment has actual knowledge that the employee has  
1315 contracted a compensable occupational disease or unless the employee, or someone in the employee's behalf, or some of  
1316 the employee's dependents, or someone on their behalf, gives the employer written notice or claim that the employee has  
1317 contracted one of the compensable occupational diseases, which notice to be effective shall be given within a period of 6  
1318 months after the date on which the employee first acquired such knowledge that the disability was, could have been caused  
1319 or had resulted from the employee's employment, no compensation shall be payable on account of the death or disability  
1320 by occupational disease of such employee. Every employer is required to give notice to its insurer or any third party  
1321 claims administrator managing claims for the employer, of any occupational disease disablement concerning which the  
1322 employee has given notice, or of which the employer has actual knowledge, within 72 hours of the notice or knowledge.  
1323 This requirement shall apply whether or not the employer agrees that the employee was disabled, or agrees that the  
1324 disablement happened in the course and scope of the employees' employment, and shall not constitute an admission of  
1325 liability for any purpose.

1326 §2342A. Notice to insurer

1327 Within 72 hours of the notice from employer to insurer or third party administrator provided in Sections 2342 and  
1328 2343, the insurer or third party administrator shall transmit to the injured employee, in a manner reasonably calculated to  
1329 reach the employee expeditiously, a form that has been approved by the Department of Labor, advising the employee of  
1330 their rights under this Chapter, and directing the employee to the Office of Workers' Compensation for further assistance.

1331 § 2343. Physical examination of employee; refusal to submit; communications not privileged.

1332 (a) After an injury, and during the period of resulting disability, the employee, if so requested by the  
1333 employee's employer or ordered by the Board, shall submit the employee's own self for examination at reasonable times  
1334 and places and as often as reasonably requested to a physician legally authorized to practice the employee's profession  
1335 under the laws of such place, who shall be selected and paid by the employer. Such medical examination shall not be  
1336 referred to as an 'Independent Medical Examination' or 'IME' in any proceeding or on any document relating to a matter  
1337 under this Chapter; nor shall any examination, required by the employer, by any other doctor, who is an employee of an

1338 insurance company, or who is paid by an insurance company, or who is under contract to an insurance company, be  
1339 referred to as an 'Independent Medical Examination' or 'IME' If the employee requests, the employee shall be entitled to  
1340 have a physician, qualified as specified in this section, of the employee's own selection, to be paid by the employee,  
1341 present to participate in such examination. For all examinations, after the first, the employer shall pay the reasonable  
1342 traveling expenses and loss of wages incurred by the employee in order to submit to such examination. The Board may  
1343 impose a fine not to exceed \$500.00 for each use of the term 'Independent Medical Exam' or 'IME' in violation of this  
1344 subsection.

1345 (b) The refusal of the employee to submit to the examination required by subsection (a) of this section or the  
1346 employee's obstruction of such examination shall deprive the employee of the right to compensation under this chapter  
1347 during the continuance of such refusal or obstruction and the period of such refusal or obstruction shall be deducted from  
1348 the period during which compensation would otherwise be payable.

1349 (c) No fact communicated to or otherwise learned by any physician or surgeon who has attended or  
1350 examined the employee or who has been present at any examination shall be privileged either in the hearings provided for  
1351 in this chapter or in any action at law.

1352 § 2344. Treatment of undisputed claims; payment without prejudice; agreements on compensation or benefits

1353 (a) The General Assembly declares that it is the policy of the State of Delaware to discourage utilization of  
1354 the Industrial Accident Board and the informal dispute resolution mechanism of the Department of Labor, Office of  
1355 Workers' Compensation for workers' compensation issues that are not a matter of bona fide dispute.

1356 (1) The Industrial Accident Board shall not award any attorney fee to an attorney representing an  
1357 employee for any matter brought by that attorney before the Industrial Accident Board that is not in bona fide  
1358 dispute.

1359 (2) The Industrial Accident Board, the informal dispute resolution mechanism of the Department of  
1360 Labor, Office of Workers' Compensation or the Superior Courts shall decline to issue any order or award  
1361 concerning any matter brought before it that is not in bona fide dispute.

1362 (3) No attorney may charge a client a fee for litigation of an issue or matter that is not in bona fide  
1363 dispute.

1364 (4) The Industrial Accident Board, the informal dispute resolution mechanism of the Department of  
1365 Labor, Office of Workers' Compensation or the Superior Courts shall make specific findings concerning any  
1366 determination that a matter brought before it for consideration is not a matter of bona fide dispute.



1367 (b) An employer or insurer may pay any medical or indemnity benefit without prejudice to their right to  
1368 contest the compensability of the underlying claim or the appropriateness of future payments of medical or indemnity  
1369 benefits. All payments issued under such a reservation of rights shall be clearly marked as 'paid without prejudice'.

1370 (1) Partial payment of the uncontested portion of a partially contested medical bill shall be considered a  
1371 payment without prejudice to the right to contest the unpaid portion of a medical bill.

1372 (2) No payment without prejudice made under a reservation of rights pursuant to this subsection shall be  
1373 subject to return, recapture or offset, absent a showing that the claim for payment was fraudulent, in violation of  
1374 §2348.

1375 (c) If the employer and the injured employee, or the employee's dependents in case of the employee's death,  
1376 reach an agreement in regard to compensation or other benefits in accordance with this chapter, a memorandum of such  
1377 agreement signed by the parties in interest may be filed with the Department and shall be final and binding unless modified  
1378 as provided in § 2347 of this title. The agreement as to compensation shall require the employee to give notice to the  
1379 employer or insurer of any change in employment status which may affect indemnity benefits. The agreement as to  
1380 compensation shall include a clear recitation of the legal requirements for eligibility for benefits and shall require the  
1381 claimant's acknowledgment of and agreement to abide by such requirements. This form, which shall bear a notarized  
1382 signature of the employee or the signature of a witness, shall accompany the agreement and shall be filed with the  
1383 Department of Labor.

1384 § 2345. General dispute resolution procedures

1385 (a) Except for any dispute enumerated in §2322D, all disputes between the employee and employer arising  
1386 under this Chapter shall be resolved pursuant to the provisions of this Section.

1387 (1) When a dispute arises under this Chapter, any party may file a complaint with the Department of  
1388 Labor, Office of Workers' Compensation not sooner than 30 days from the date of injury or occurrence of  
1389 disabling disease. The Administrator shall establish by rule a form of claim that shall be available to all parties.  
1390 The complaint shall state concisely, in numbered paragraphs, the matters that are the subject of bona fide dispute  
1391 with sufficient particularity to inform the Administrator and the responding or opposing party of the nature of the  
1392 disputed matters.

1393 (2) The Department of Labor, Office of Workers' Compensation shall establish by rule, promulgated  
1394 pursuant to § 2301 G, procedures for the acceptance of complaints, establishment of complaint dispute files,

1395 notice to responding and opposing parties and all other procedures needed to ensure the orderly processing of  
1396 complaints.

1397 (3) The Department of Labor, Office of Workers' Compensation shall establish by rule, promulgated  
1398 pursuant to § 2301 G, procedures for the informal resolution of disputes.

1399 a. Within 45 days of the filing of a complaint, the Department of Labor, Office of Workers'  
1400 Compensation shall hold an informal arbitration hearing in an attempt to resolve all bona fide contested  
1401 issues in the case. The time for conducting an arbitration hearing shall not be extended except upon a  
1402 finding of good cause. The arbitrator shall hear the presentations of parties and be empowered to do all  
1403 things needful to ensure the orderly resolution of disputes and safety of the participants.

1404 b. At the conclusion of the arbitration hearing, if the parties have agreed to a resolution of all or  
1405 part of the disputed issues, the arbitrator shall record the agreement of the parties and obtain their  
1406 signatures to verify the agreement. Any agreement reached in an arbitration shall be binding on the  
1407 parties to the same extent as an agreement filed pursuant to §2344 (c).

1408 c. At the conclusion of the arbitration hearing, if the parties have not agreed to the resolution of  
1409 all matters in dispute, the arbitrator shall issue a recommended resolution detailing the issues upon which  
1410 the parties have agreed, and recommending a resolution of the remaining issues in dispute.

1411 (i.) Each party shall be served with a copy of the recommended resolution, and if the  
1412 recommended resolution is not effectively rejected, in writing, within ten days from the date of  
1413 receipt of the recommended resolution, the party failing to reject the recommended resolution  
1414 waives any right to reject the recommended resolution and is bound conclusively to its terms,  
1415 unless the complaint is bound over for hearing before the Industrial Accident Board, pursuant to  
1416 Subsection (d) of this section.

1417 (ii) Every written rejection of a recommended resolution shall specify the matters  
1418 objected to and the reasons for the objection.

1419 (iii) The time for filing a rejection of a recommended resolution shall not be extended,  
1420 except upon a showing of good cause to the Administrator.

1421 (iv) Untimely filings of rejections of recommended resolutions shall not be effective  
1422 unless the Administrator finds, after a hearing, that the untimely rejection was caused by  
1423 excusable neglect.

1424 c. If either party files a timely rejection of the recommended resolution, in whole or in part, the  
1425 complaint shall be bound over for a resolution of those matters still in dispute by the Industrial Accident Board.

1426 §2345A. Hearings by the Industrial Accident Board; Sanctions; Appeals

1427 (a) The Department of Labor, Office of Workers' Compensation shall establish by rule,  
1428 promulgated pursuant to § 2301 G, procedures for the resolution of disputed issues by the Industrial Accident  
1429 Board.

1430 (b) The Industrial Accident Board shall hold a hearing to attempt to resolve the disputed issues and  
1431 to narrow the disputed issues to the extent possible prior to formal hearing.

1432 (c) The Industrial Accident Board shall conduct a formal hearing of all unresolved and bona fide  
1433 disputed matters within 45 days of the timely and effective rejection of a recommended resolution, pursuant to  
1434 §2345, which time period shall not be extended, except as provided in §2345B.

1435 (d) In all hearings before the Board, the Board shall make such inquiries and investigations as it  
1436 deems necessary. Unless otherwise stipulated by counsel and approved by the Department, the hearings shall be  
1437 held in the Division of Industrial Affairs Office nearest the site where the injury occurred or, if the accident  
1438 occurred out of the State, in any county designated by the Department as convenient for the parties.

1439 (e) Upon concluding the formal hearing, the Industrial Accident Board shall issue within 14 days a  
1440 compensation order resolving all remaining issues raised in the complaint and any matters properly raised by the  
1441 parties or the Industrial Accident Board during the proceedings.

1442 (f) Unless excused for good cause shown, failure of any or all parties in interest to appear at a duly  
1443 scheduled hearing or to petition for a continuance shall bar such parties from any further action concerning an  
1444 adverse decision, a decision by default, or a dismissal of a petition for hearing and award.

1445 (g) Subpoenas provided for in accordance with this chapter shall be effective throughout the State.

1446 (h) Whenever a cause shall be remanded to the Board for a rehearing, all evidence theretofore taken  
1447 before the Board in a previous hearing, or hearings, shall become part of the evidence in the hearing upon remand.

1448 (i) The Industrial Accident Board shall have the power to preserve and enforce order during  
1449 hearings; administer oaths; issue subpoenas to compel the attendance and testimony of witnesses, the production  
1450 of books, papers, documents and other evidence or the taking of depositions before a designated individual  
1451 competent to administer oaths; examine witnesses; enter noncriminal sanctions for misconduct; and do all things  
1452 conformable to law which may be necessary to enable them to discharge their duties effectively.

1453 (j) In addition to the noncriminal sanctions that may be ordered by the Industrial Accident Board,  
1454 any person committing any of the following acts in a proceeding before the Industrial Accident Board may be  
1455 held accountable for his conduct in accordance with the provisions of Subsection D of this section:

- 1456 (1) disobedience of or resistance to any lawful order or process;
- 1457 (2) misbehavior during a hearing or so near the place of the hearing as to obstruct it;
- 1458 (3) failure to produce any pertinent book, paper or document after having been ordered to do so;
- 1459 (4) refusal to appear after having been subpoenaed;
- 1460 (5) refusal to take the oath or affirmation as a witness; or
- 1461 (6) refusal to be examined according to law.

1462 (k) The Administrator may certify to the Superior court of the county in which the acts were committed the  
1463 facts constituting any of the acts specified in Paragraphs (1) through (6) of Subsection 3 of this section. The court shall  
1464 hold a hearing and if the evidence so warrants may punish the offending person in the same manner and to the same extent  
1465 as for contempt committed before the court, or it may commit the person upon the same conditions as if the doing of the  
1466 forbidden act had occurred with reference to the process of or in the presence of the court.

1467 (l) Appeals from the Industrial Accident Board shall be filed within 30 days of the entry of the  
1468 compensation order before the Superior Court, which shall examine the record of the hearing below pursuant to rules and  
1469 procedures adopted by it, and shall uphold the order of the Industrial Accident Board if it is supported by substantial  
1470 evidence and not contrary to law.

1471 (m) In any case where the Constitutionality of any provision of Title 19 is challenged, or where any provision  
1472 of the law is sought to be set aside, or substantially altered, with respect to its interpretation or application, the General  
1473 Assembly declares that the interests of the State of Delaware are sufficiently implicated to require that notice be given to  
1474 the Department of Labor of the nature of the proceedings and a reasonable opportunity be afforded the State of Delaware,  
1475 through the Department of Labor, to be heard as a party with standing to defend Legislative intent reflected in this Title.

1476 (n) If the decision of the Board is affirmed by an appellate court, the employee shall be entitled to all  
1477 compensation plus interest at the legal rate from the time of the award by the Board.

1478 (o) The Superior Court may at its discretion allow a reasonable fee to claimant's attorney for services on an  
1479 appeal from the Board to the Superior Court and from the Superior Court to the Supreme Court where the claimant's  
1480 position in the hearing before the Board is affirmed on appeal. Such fee shall be taxed in the costs and become a part of

1481 the final judgment in the cause and may be recovered against the employer and the employer's insurance carrier as  
1482 provided in this subchapter.

1483 § 2345B. Timeliness of hearings

1484 (a) In those instances where an expedited hearing is requested, the petition for hearing shall set forth the  
1485 facts in sufficient detail to support the request for an expedited hearing. If such a request is uncontested, the request shall  
1486 be granted by the Department. If such a request is contested, the Board shall determine the matter.

1487 (b) Requests for a continuance may be granted only upon good cause shown by the party requesting the  
1488 continuance. Good cause shall be set forth in the Rules of Procedure of the Industrial Accident Board. A request for a  
1489 continuance may be granted or denied by the Department. If a party objects to the Department's decision or another party's  
1490 motion, it may, by motion, seek Board review, and the Board shall determine the matter.

1491 (c) Where a petitioner's or respondent's lack of diligence has caused the motion for a continuance, to remedy  
1492 such lack of diligence and to ensure a speedy, efficient, and just resolution of the matter, the Board shall consider  
1493 dismissing the petition or provisionally awarding the relief sought by the petition.

1494 §2346. Subpoena of witnesses; oaths; service of process; medical examination and testimony; various fees.

1495 (a) At the request of any party, subpoenas shall be issued under authority of the Department of Labor. The  
1496 party requesting the subpoena shall obtain a blank subpoena from the Department and shall complete the necessary  
1497 information.

1498 (1) Every subpoena shall:

- 1499 a. state the name of the Industrial Accident Board;
- 1500 b. state the title of the action and the IAB hearing number;
- 1501 c. state the last known address of the person(s) to be served;
- 1502 d. command each person to whom it is directed to attend and give testimony or to produce and  
1503 permit inspection and copying of designated books, documents, or tangible things in the  
1504 possession, custody or control of that person, or to permit inspection of premises, at a time and  
1505 place therein specified;
- 1506 e. command each person directed to give testimony, or to appear at hearing or at deposition at a  
1507 time and place therein specified;
- 1508 f. identify the name, address, and phone number of the person issuing the subpoena;
- 1509 g. state the following in boldface:

1510 (2) 'If you object to this subpoena, you must immediately contact the Department of Labor, Office of  
1511 Workers' Compensation and request a hearing to present your objections. Objections may be made if the subpoena (a)  
1512 fails to allow reasonable time for compliance; (b) requires disclosure of privileged or other protected matter and no  
1513 exception or waiver applies; or (c) subjects a person to undue burden.'

1514 (b) The following shall apply to the service of a subpoena:

1515 (1) A party issuing a subpoena shall be responsible for service of the subpoena and shall provide a copy  
1516 of the completed subpoena to the Department of Labor.

1517 (2) A subpoena may be served by the Sheriff or by any person who is not a party and is not less than 18  
1518 years of age or by certified/return receipt requested mail to the last known address of the person listed on the  
1519 subpoena.

1520 (3) Proof of service when necessary shall be made by filing with the Department of Labor a statement of  
1521 the date and manner of service and of the names of the persons served.

1522 (4) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable  
1523 steps to avoid imposing undue burden or expense on a person subject to that subpoena. The Board shall enforce  
1524 this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include,  
1525 but is not limited to, lost earnings and a reasonable attorney's fee.

1526 (c) Response to subpoena(s):

1527 (1) A person commanded to produce and permit inspection and copying may object to the inspection or  
1528 copying of any or all designated materials or of the premises. If objection is made, the party serving the subpoena  
1529 may, upon notice to the person commanded to produce, move at anytime for an order to compel production.

1530 (2) If a party objects to a subpoena, they must immediately contact the Department of Labor and request  
1531 a hearing before the Board to present the objections. The Board may quash or modify a subpoena if it (a) fails to  
1532 allow reasonable time for compliance; (b) requires disclosure of privileged or other protected matter and no  
1533 exception or waiver applies; or (c) subjects a person to undue burden.

1534 (3) A person responding to a subpoena to produce documents shall produce them as they are kept in the  
1535 usual course of business or shall organize and label them to correspond with the categories in the demand.

1536 (4) When information subject to a subpoena is withheld on a claim that it is privileged or subject to  
1537 protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description

1538 of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding  
1539 party to contest the claim.

1540 (d) Any process or order of the Department or any notice or paper requiring service may be served by any  
1541 sheriff, deputy sheriff, constable or any employee of the Department and return thereof made to the Department. Such  
1542 officer shall receive the same fees as are provided by law for like service in civil actions, except that if service is made by  
1543 an employee of the Department, the employee shall not receive any fee but shall be paid the employee's actual expenses.

1544 (e) If any person, in proceedings before the Board disobeys or resists any lawful order or process,  
1545 misbehaves during a hearing or so near the place thereof as to obstruct the hearing, neglects to produce after having been  
1546 ordered to do so any pertinent document, refuses to appear after having been subpoenaed or upon appearing, refuses to  
1547 take the oath as a witness or, after having taken the oath, refuses to be examined according to law, the Board shall certify  
1548 the facts to any Judge of the Superior Court, who shall thereupon hear the evidence as to the acts complained of. If the  
1549 evidence so warrants the Judge shall punish such person in the same manner and to the same extent as for a contempt  
1550 committed before the Superior Court, or shall commit such person upon the same conditions as if the doing of the  
1551 forbidden act had occurred with reference to the process of or in the presence of the Superior Court.

1552 (f) The board may in any case, upon the application of either party or on its own motion, appoint a  
1553 disinterested and certified physician to make any necessary medical examination of the employee and testify in respect  
1554 thereto. Such medical examination shall not be referred to as an 'Independent Medical Examination' or 'IME' in any  
1555 proceeding or on any document relating to a matter under this Chapter; nor shall any examination, required by the  
1556 employer, by any other doctor, who is an employee of an insurance company, or who is paid by an insurance company, or  
1557 who is under contract to an insurance company, be referred to as an 'Independent Medical Examination' or 'IME' The  
1558 physician will be allowed a reasonable fee subject to the approval of the Board, which fee shall be taxed as costs. The  
1559 Board may impose a fine not to exceed \$500.00 for each use of the term 'Independent Medical Exam' or 'IME' in  
1560 violation of this subsection.

1561 (g) Live, in- person testimony by health care providers shall only be allowed upon a showing of necessity to  
1562 the satisfaction of the Industrial Accident Board. Deposition testimony shall be admissible and the introduction of an  
1563 authenticated written report of the health care provider shall be permitted, notwithstanding any rule of evidence to the  
1564 contrary, in any case where medical issues are not disputed.

1565 (h) Witness fees and mileage shall be computed at the rate allowed to witnesses in the Superior Court. Costs  
1566 legally incurred may be taxed against either party or apportioned between parties at the sound discretion of the Board, as  
1567 the justice of the case may require.

1568 § 2347. Review by Board of agreements or awards; grounds; modifications of award.

1569 (a) Compensation orders issued pursuant to §2345A (e), agreements filed pursuant to §2344 (c) and  
1570 arbitration orders that have not been timely and effectively rejected pursuant to §2345 (c), are reviewable subject to the  
1571 conditions stated in this section upon application of any party in interest in accordance with the procedures relating to  
1572 hearings. The Industrial Accident Board, after a hearing, may issue a compensation order to terminate, continue, reinstate,  
1573 increase, decrease or otherwise properly affect indemnity or medical benefits provided by this Chapter or in any other  
1574 respect, consistent with those acts, modify any previous decision, award or action.

1575 (1) A review may be obtained upon application of a party in interest filed with the Administrator at any  
1576 time within two years after the date of the last payment or the denial of benefits only upon the following grounds:

- 1577 a. change in condition;
- 1578 b. mistake, inadvertence, surprise or excusable neglect;
- 1579 c. clerical error or mistake in mathematical calculations;
- 1580 d. newly discovered evidence which by due diligence could not have been discovered prior to  
1581 the issuance of the compensation order;
- 1582 e. fraud, misrepresentation or other misconduct of an adverse party;
- 1583 f. the compensation order is void; or
- 1584 g. the compensation order has been satisfied, released or discharged or a prior order upon which  
1585 it is based has been reversed or otherwise vacated, or it is no longer equitable that the order should have  
1586 prospective application.

1587 (2) The Industrial Accident Board shall make a written finding of the conditions justifying the review as  
1588 part of any compensation order issued pursuant to this section.

1589 § 2348. Fraud

1590 (a) For all payments of indemnity or vocational rehabilitation benefits to claimants under this chapter, the  
1591 insurance carrier or self-insured shall cause to be printed upon the reverse side of the check, above the endorsement, the  
1592 following language: 'Your acceptance of this check is a representation by you that you are legally entitled to such payment  
1593 and a false representation is punishable under federal and state laws.' The negotiation of a check for total or partial



1594 disability by an attorney or an agent of the attorney on behalf of a client is a representation that the attorney has printed the  
1595 language set forth in this subsection for printing on claimant checks on checks distributed by the attorney to the attorney's  
1596 clients.

1597 (b) Any person who makes a false statement or misrepresentation with regard to his or her eligibility for  
1598 workers' compensation benefits or a false statement or misrepresentation affecting the amount of benefits due, or any  
1599 attorney who makes a false representation pursuant to subsection (1)) of this section; any employer who intentionally  
1600 misreports employee payroll or classifications or who artificially suppresses their experience modification factor by failing  
1601 to report an injury to their insurance carrier; or any health care provider that misrepresents that treatments have been  
1602 provided to an injured employee, is punishable pursuant to Title 18, Delaware Code, Chapter 24, and/or Title 11, Delaware  
1603 Code, Section 913.

1604 (c) If the Department or Board has reason to believe that any person is committing or has committed an act  
1605 of insurance fraud, the Department or Board shall notify the Fraud Prevention Bureau of the Delaware Insurance  
1606 Department.

1607 (d) The provisions of this Section shall also apply to Workers' Compensation payments made pursuant to  
1608 §2347 and §2327.

1609 §2351. Attorney's fees.

1610 (a) The General Assembly finds that proper allocation of adequate benefits to injured employees can only be  
1611 assured when diversions of benefits intended for employees are limited and controlled, when the cost of attorney fees in  
1612 the Workers' compensation system is known, when the impact of attorney fees and the timing of their collection upon the  
1613 injured employee is fully considered and when the conduct of the parties and the novelty and complexity of the case are  
1614 considered in the establishment of a fee. The General Assembly further finds that unregulated fees for attorneys add  
1615 unjustified expense to the workers' compensation system, particularly in light of the fact that the system is not based upon  
1616 findings of fault.

1617 (b) The General Assembly therefore declares that all private contracts between an attorney and an employee  
1618 or employee's estate, entered into after the effective date of this enactment, that provide for fees to be paid by the  
1619 employee or estate to an attorney, a person employed by an attorney or an entity employing an attorney, for services in  
1620 securing workers' compensation benefits for the employee or estate under this Chapter, are against public policy and void.

1621 (c) No attorney may collect any fee for representation of an employee or employees' estate in securing  
1622 workers' compensation benefits under this Chapter except by filing a petition before, and obtaining an award of attorney's

1623 fees from, the Industrial Accident Board. In no event shall any fee awarded by the Board until the case is settled, adjudged  
1624 or otherwise substantially completed. Any withholding of benefits by an attorney in anticipation of a fee award, or prior to  
1625 the issuance of an award of attorney fees by the Board, is unlawful. The collection of a fee by any person or entity for  
1626 representation of, or provision of assistance to, an injured employee or employees' estate in securing workers'  
1627 compensation benefits under this Chapter, except as provided by this Section, is prohibited.

1628 (d) An attorney representing an employee may petition the Industrial Accident Board for an order granting  
1629 attorney fees only on the increment of benefits obtained as a result of the attorney's efforts. The Department of Labor shall  
1630 provide forms and promulgate rules to govern the procedures for such petitions.

1631 (e) The Board may hold hearings, take evidence, and otherwise do all acts needed to  
1632 justly determine appropriate attorney fees. Except upon a written finding of exceptional circumstances, the Board shall not  
1633 award more than one attorney fee in any case arising out of one discernable industrial accident or occupational disease  
1634 disablement.

1635 (f) The Board shall award a reasonable attorney's fee in an amount not to exceed twenty percent of the  
1636 benefit obtained by the attorney on behalf of the employee or ten times the average weekly wage in Delaware as  
1637 announced by the Secretary of Labor at the time of the award, whichever is smaller. The Board may specifically consider  
1638 the conduct of the parties in the course of dispute resolution in consideration of an appropriate fee.

1639 (g) In exceptional circumstances, and upon a written finding setting forth the circumstances and the  
1640 necessity for additional fees, the Board may award fees in excess of the standard set forth in subsection (6) of this Section.  
1641 The Department of Labor, shall promulgate rules giving regulatory guidance to the Board concerning the circumstances  
1642 justifying additional fees, and shall providing procedures for consideration of such fee requests. Such rules shall provide  
1643 that for personal notice the injured employee and an opportunity for the injured employee to be heard.

1644 (h) The Industrial Accident Board shall, in addition to the determination of an appropriate attorney fee, determine an  
1645 appropriate apportionment of responsibility for payment of the fee. Deviations from an equal apportionment of attorney  
1646 fees between employee and employer shall be supported by written findings.

1647 (i) In the event an offer to settle an issue pending before the Industrial Accident Board is communicated to the  
1648 claimant or the claimant's attorney in writing at least 30 days prior to the trial date established by the Board on such issue,  
1649 and the offer thus communicated is equal to or greater than the amount ultimately awarded by the Board at the trial on that  
1650 issue, the provisions of paragraph (6) of this subsection shall have no application and the Industrial Accident Board shall  
1651 not issue a fee award. If multiple issues are pending before the Board, said offer of settlement shall address each issue

1652 pending, and shall state explicitly whether or not the offer on each issue is severable. The written offer shall also  
1653 unequivocally state whether or not it includes medical witness fees and expenses, and/or late cancellation fees relating to  
1654 such medical witness fees and expenses.

1655 (j) In the event an offer to settle an issue pending before the Industrial Accident Board is communicated to the  
1656 employer or the employer's attorney in writing at least 30 days prior to the trial date established by the Board on such  
1657 issue, and the offer thus communicated is equal to or less than the amount ultimately awarded by the Board at the trial on  
1658 that issue, the employee shall be relieved of the responsibility to pay for his attorney's fees, and the entire fee awarded by  
1659 the Board shall be paid by the employer. If multiple issues are pending before the Board, said offer of settlement shall  
1660 address each issue pending, and shall state explicitly whether or not the offer on each issue is severable. The written offer  
1661 shall also unequivocally state whether or not it includes medical witness fees and expenses, and/or late cancellation fees  
1662 relating to such medical witness fees and expenses.

1663 § 2352. Persons entitled to institute proceedings for minors; notice to.Proceedings for compensation may be  
1664 instituted by the surviving parent, guardian or next friend in the case of minors claiming to be entitled to compensation,  
1665 and all notices thereafter shall be given in the manner provided in this chapter to such parent, guardian or next friend.

1666 § 2353. Forfeiture of right to compensation.

1667 (a) If the employee refuses reasonable surgical, medical and hospital services, medicines and supplies  
1668 tendered to the employee by the claimant's employer, the claimant shall forfeit all right to compensation for any injury or  
1669 any increase in the claimant's incapacity shown to have resulted from such refusal. Reasonable medical services shall  
1670 include, if the Board so finds, vocational rehabilitation services offered by any public or private agency. Where  
1671 rehabilitation services require residence at or near the public or private agency away from the employee's customary  
1672 residence, reasonable costs of board, lodging and travel shall be paid for by the employer. Refusal to accept rehabilitation  
1673 services pursuant to order of the Board shall result in a loss of compensation for each week of the period of refusal.

1674 (b) If any employee be injured as a result of the employee's own intoxication or use of controlled substances  
1675 that have not been prescribed by a health care provider, because of the employee's deliberate and reckless indifference to  
1676 danger, because of the employee's willful intention to bring about the injury or death of the employee or of another,  
1677 because of the employee's willful failure or refusal to use a reasonable safety appliance provided for the employee or to  
1678 perform a duty required by statute, the employee shall not be entitled to recover damages in an action at law or to receipt of  
1679 any indemnity benefits or medical, dental, optometric, chiropractic or hospital service under the compensatory provisions  
1680 of this chapter. The burden of proof under this subsection shall be on the employer.

1681 (c) If any injury to an employee is contributed to by the employee's intoxication, or use of controlled  
1682 substances, they shall be paid compensation at a rate of 90% of the indemnity benefits that would otherwise be due, for the  
1683 life of the claim. An employee is presumed to have contributed to their injury by intoxication or use of controlled  
1684 substances for purposes of this section if they test as positive for controlled substances or test as having a blood alcohol  
1685 level above the current legal limit for the operation of a motor vehicle in Delaware, provided that such testing is conducted  
1686 in accordance with the current standards for drug and alcohol testing of the United States Department of Transportation.

1687 (d) If an injured employee refuses employment procured for the employee and suitable to the employee's  
1688 capacity, the employee shall not be entitled to any compensation at any time during the continuance of such refusal, unless  
1689 in the opinion of the Board such refusal was justifiable.

1690 § 2354. Contribution by 2 or more employers.

1691 (a) Whenever any employee, for whose injury or death compensation is payable under this chapter, at the  
1692 time of the injury is in the joint service of 2 or more employers subject to this chapter, such employers shall contribute to  
1693 the payment of such compensation in proportion to their wage liability to such employee, regardless of for whom such  
1694 employee was actually working at the time of the injury.

1695 (b) Whenever a petition to determine benefits is pending and one of two or more employers or two or more  
1696 insurance carriers shall be liable for undisputed benefits arising under § 2322 or § 2324 of this title, the employer or  
1697 insurance carrier which paid benefits for the 1st occurrence shall pay all interim benefits arising under § 2322 of this title  
1698 and temporary total disability benefits at the lower rate, which may be applicable under § 2324 of this title, without a  
1699 hearing. When the claim is resolved thereafter by agreement or by award after a hearing, the responsible party shall  
1700 indemnify the payor for benefits paid.

1701 § 2355. Assignment of compensation prohibited; exemption from creditors, claims; child support exception.

1702 Except for attachments pursuant to child support orders entered under Chapters 4, 5 or 6 of Title 13, claims or  
1703 payment for compensation due or to become due under this chapter shall not be assignable and all compensation and  
1704 claims therefore shall be exempt from all claims of creditors.

1705 § 2356. Priority of compensation claims.

1706 The right of compensation granted by this chapter shall have the same preference or priority for the whole amount  
1707 thereof against the assets of the employer allowed by law for unpaid wages for labor.

1708 § 2357. Collection of payments in default.

1709            If default is made by the employer for 30 days after demand in the payment of any amount of temporary total  
1710 disability, temporary partial disability or permanent partial disability benefits due under this chapter, the amount may be  
1711 recovered in the same manner as claims for wages are collectible.

1712            § 2358. Commutation of compensation.

1713            Upon application of either party, and on due notice to the other, the compensation contemplated by this chapter  
1714 may be commuted by the Board at its present value when discounted at 5% interest, with annual rests, disregarding, except  
1715 in commuting payments due under § 2324 of this title, the probability of the beneficiary's death. Such commutation may  
1716 be allowed if it appears that it will be for the best interest of the employee or the dependents of the deceased employee, or  
1717 that it will avoid undue expense or hardship to either party, or that such employee or dependent has removed or is about to  
1718 remove from the United States or that the employer has sold or otherwise disposed of the whole or the greater part of the  
1719 injured employee's or the dependents of a deceased employee's business or assets. It shall not be allowed for the purpose  
1720 of enabling the injured employee or the dependents of a deceased employee to satisfy a debt created before the accident,  
1721 other than a mortgage upon the injured employee's or the dependents of a deceased employee's or their home or household  
1722 furniture.

1723            § 2359. Payment of award to bank in trust for employee or dependents.

1724            (a)        At any time after the entry of the award or after the filing of the agreement for compensation, a sum  
1725 equal to all future installments of compensation may by leave of the Board where death or the nature of the injury renders  
1726 the amount of future payments certain be paid by the employer to any savings bank or trust company approved by the  
1727 Board which is chartered and doing business in this State and has an office in the county in which the award was entered.  
1728 Such sum, together with all interest arising from the investment thereof, shall thereafter be held in trust for the employee,  
1729 or the employee's dependents, who shall have no further recourse against the employer.

1730            (b)        Payment by the employer pursuant to subsection (a) of this section shall operate as a satisfaction of the  
1731 award or agreement as to the employer.

1732            (c)        Payments from the fund established pursuant to subsection (a) of this section shall be made by the trustee  
1733 on orders from the Board in the same amounts and at the same periods as are required of the employer by this chapter. If,  
1734 after liability has ceased, any balance of the fund remains, it shall be returned to the employer who deposited it, on a  
1735 signed order of the Board.

1736            § 2360. Installment payments of compensation.

1737           Except as otherwise provided in this chapter, all compensation payable under the compensatory provisions of this  
1738 chapter shall be payable in periodic installments, as the wages of the employee were payable before the accident. The  
1739 Board may, however, having regard to the welfare of the employee and the convenience of the employer, authorize the  
1740 monthly or quarterly payment of compensation, instead of weekly.

1741           § 2361. Limitation periods for claims.

1742           (a)       If an employer or his insurer fails or refuses to pay an employee any installment of compensation to  
1743 which the employee is entitled after notice has been given as required by §2342 A, it is the duty of the employee insisting  
1744 on the payment of compensation to file a complaint for such benefits not later than two years after the failure or refusal of  
1745 the employer or insurer to pay compensation. If the employee fails to give notice in the manner and within the time  
1746 required by §2342 A or if the employee fails to file a complaint for compensation within the time required by this section,  
1747 his claim for compensation, all his right to the recovery of compensation and the bringing of any proceeding for the  
1748 recovery of compensation are forever barred.

1749           (b)       In case of the death of an employee who would have been entitled to receive compensation if death had  
1750 not occurred, complaint for compensation may be filed on behalf of his eligible dependents to recover compensation from  
1751 the employer or his insurer. Payment may be received or complaint filed by any person whom the Administrator or the  
1752 Industrial Accident Board may authorize or permit on behalf of the eligible beneficiaries. No complaint shall be filed,  
1753 however, to recover compensation benefits for the death of the employee unless he or someone on his behalf or on behalf  
1754 of his eligible dependents has given notice in the manner and within the time required by §2342 A and unless the  
1755 complaint is filed within two years from the date of the employee's death.

1756           (c)       Where payments of compensation have been made in any case arising under this chapter, no statute of  
1757 limitation shall take effect until the expiration of 5 years from the time of the making of the last payment of compensation.  
1758 Where payments for medical benefits for the treatment of the employee have been made, no statute of limitations  
1759 pertaining to medical benefits shall take effect until five years after the employee has, or should have been, declared to  
1760 have reached maximum medical improvement, unless a health care provider certifies that, due to change in the employees'  
1761 physical condition supported by objective clinical finding, the employee is no longer at maximum medical improvement.  
1762 Upon expiration of the five- year period provided in this subsection, all complaints for compensation benefits or medical  
1763 benefits are forever barred.

1764           (d)       All claims for compensation for compensable occupational disease or for an ionizing radiation injury  
1765 shall be forever barred unless a petition is filed in duplicate with the Department within 1 year after the date on which the

1766 employee first acquired such knowledge that the disability was or could have been caused or had resulted from  
1767 employment. In case of death, all claims for compensation for compensable occupational disease or for an ionizing  
1768 radiation injury shall be forever barred unless a petition is filed in duplicate with the Department within 1 year after the  
1769 date on which the person or persons entitled to file such claims know, or by the exercise of reasonable diligence should  
1770 know, the possible relationship of the death to the employment.

1771 § 2362. Notice of Denial of Liability; Penalty for Delay in Payment of Compensation.

1772 (a) An employer or its insurance carrier shall within 15 days after receipt of knowledge of a work-related  
1773 injury or disablement notify the Department and the claimant in writing of: the date the notice of the claimant's alleged  
1774 industrial accident or exposure was received; whether the claim is accepted or denied; if denied, the reason for the denial.  
1775 If the employer or its insurance carrier fails to make a determination accepting or denying the claim within the period  
1776 provided by this subsection, the employer or insurer shall make timely payment of all benefits due and owing on or after  
1777 the 15th day after receipt of knowledge of a work-related injury or disablement, without prejudice to their right to contest  
1778 liability for all or any portion of for the claim, or liability for any future benefit claimed, provided, until the claim is denied  
1779 or accepted. No payment without prejudice made under a reservation of rights pursuant to this subsection shall be subject  
1780 to return, recapture or offset, absent a showing that the claim for payment was fraudulent, in violation of § 2348.

1781 (b) Following an agreement concerning benefits, acceptance or constructive acceptance of a recommended  
1782 resolution or an award by the Board, the first payment of compensation shall be paid by the employer or its insurance  
1783 carrier no later than 14 days after the award becomes final and binding pursuant to § 2347.

1784 (c) If, following a hearing, the Administrator determines that the employer or its insurance carrier failed to  
1785 make timely payments under this Section or Section 2326 G (D), or denied a claim without just cause pertaining to the  
1786 specific facts of the claim, or failed to make a determination of acceptance or denial of a claim and timely transmit the  
1787 notification of decision to the employee without just cause pertaining to the specific facts of the claim, he or she shall  
1788 assess a fine no less than \$500 and no more than \$2,500. Each day of violation may be considered a separate violation, in  
1789 the discretion of the Administrator. The fine shall be payable to the Workers' Compensation Fund.

1790 § 2363. Third person liable for injury; right of employee to sue and seek compensation; right of employer and  
1791 insurer to enforce liability; notice of action; settlement and release of claim and effect hereof; amount of recovery;  
1792 reimbursement of employer or insurer; expenses of recovery; apportionment; compensation benefits.

1793 (a) Where the injury for which compensation is payable under this chapter was caused under circumstances  
1794 creating a legal liability in some person other than a natural person in the same employ or the employer to pay damages in

1795 respect thereof, the acceptance of compensation benefits or the taking of proceedings to enforce compensation payments  
1796 shall not act as an election of remedies, but such injured employee or the employee's dependents or their personal  
1797 representative may also proceed to enforce the liability of such third party for damages in accordance with this section. If  
1798 the injured employee or the employee's dependents or personal representative does not commence such action within 260  
1799 days after the occurrence of the personal injury, then the employer or its compensation insurance carrier may, within the  
1800 period of time for the commencement of actions prescribed by statute, enforce the liability of such other person in the  
1801 name of that person. Not less than 30 days before the commencement of suit by any party under this section, such party  
1802 shall notify by registered mail at their last known address, the Industrial Accident Board, the injured employee or, in the  
1803 event of the employee's death, the employee's known dependents or personal representative or the employee's known next  
1804 of kin, the employee's employer and the workers' compensation insurance carrier. Any party in interest shall have a right  
1805 to join in said suit.

1806 (b) Prior to the entry of judgment, either the employer or the employer's insurance carrier or the employee or  
1807 the employee's personal representative may settle their claims as their interest shall appear and may execute releases  
1808 therefore.

1809 (c) Such settlement and release by the employee shall not be a bar to action by the employer or its  
1810 compensation insurance carrier to proceed against said third party for any interest or claim it might have, and such  
1811 settlement and release by the employer or its compensation insurance carrier shall not be a bar to action by the employee to  
1812 proceed against said third party for any interest or claim the employee may have.

1813 (d) In the event the injured employee or the employee's dependents or personal representative shall settle  
1814 their claim for injury or death, or commence proceedings thereon against the third party before the payment of workers'  
1815 compensation, such recovery or commencement of proceedings shall not act as an election of remedies and any moneys so  
1816 recovered shall be applied as provided in this section.

1817 (e) In an action to enforce the liability of a third party, the plaintiff may recover any amount which the  
1818 employee or the employee's dependents or personal representative would be entitled to recover in an action in tort. Any  
1819 recovery against the third party for damages resulting from personal injuries or death only, after deducting expenses of  
1820 recovery, shall first reimburse the employer or its workers' compensation insurance carrier for any amounts paid or payable  
1821 under the Workers' Compensation Act to date of recovery, and the balance shall forthwith be paid to the employee or the  
1822 employee's dependents or personal representative and shall be treated as an advance payment by the employer on account  
1823 of any future payment of compensation benefits, except that for items of expense which are precluded from being



1824 introduced into evidence at trial by § 2118 of Title 21, reimbursement shall be had only from the third party liability  
1825 insurer and shall be limited to the maximum amounts of the third party's liability insurance coverage available for the  
1826 injured party, after the injured party's claim has been settled or otherwise resolved.

1827 (f) Expenses of recovery shall be the reasonable expenditures, including attorney fees, incurred in effecting  
1828 such recovery. Attorney fees, unless otherwise agreed upon, shall be divided among the attorneys for the plaintiff as  
1829 directed by the court. The expenses of recovery above mentioned shall be apportioned by the court between the parties as  
1830 their interests appear at the time of said recovery.

1831 § 2365. Employee entitled to exercise rights; relief to be granted.

1832 It shall be unlawful for any employer or the duly authorized agent of any employer to discharge or to retaliate or  
1833 discriminate in any manner against an employee as to the employee's employment because such employee has claimed or  
1834 attempted to claim workers' compensation benefits from such employer, because such employee reported an employer's  
1835 noncompliance with a provision of this chapter, or because such employee has testified or is about to testify in any  
1836 proceeding under this chapter. Any claim of an employee alleging such action by an employer shall be filed with the  
1837 Superior Court within 2 years of the employer's alleged action. If the Court, after hearing, finds in favor of the employee,  
1838 the employee shall be restored to employment or to the position, privilege, right or other condition of employment denied  
1839 by such action and shall be compensated for any loss of compensation and damages caused thereby, as well as for all costs  
1840 and attorney's fees, as fixed by the Court, except that if the employee shall cease to be qualified to perform the duties of  
1841 employment, the employee shall not be entitled to such restoration and compensation. An employer who violates this  
1842 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  
1843 and which shall be paid to the Workers' Compensation Fund. Any party shall have the right to appeal as in other cases  
1844 before the Court, but if the employee's claim ultimately is sustained, the employer also shall be liable for all costs and  
1845 attorney's fees on appeal.

1846 SUBCHAPTER IV. COMPULSORY INSURANCE, SELF-INSURANCE AND SUBSTITUTE  
1847 COMPENSATION SYSTEMS

1848 § 2371. Insurance of employer's compensation liability.

1849 Every employer to whom this chapter applies shall insure the payment of compensation to the employees, or their  
1850 dependents, in the manner provided in § 2372 of this title. While such insurance remains in force, the employer shall be  
1851 liable to any employee, or the employee's dependents, for personal injury or death by accident only to the extent and in the  
1852 manner specified in this chapter.

1853 § 2372. Duty of employer to carry compensation liability insurance or to qualify as a self-insurer; deposit of  
1854 security; premiums for certain summer employees.

1855 (a) Every employer to whom this chapter applies shall insure and keep insured the employer's liability for  
1856 compensation in some corporation, association or organization approved by the Department and authorized to transact the  
1857 business of workers' compensation insurance in this State or shall furnish to the Department satisfactory proof of the  
1858 employer's financial ability to pay directly the compensation, in the amount and manner and when due, as provided in this  
1859 chapter.

1860 (b) In any case, the Department may require the deposit of an acceptable security, indemnity or bond to  
1861 secure the payment of compensation liabilities as they are incurred. All bonds of insurance carriers and self-insurers  
1862 deposited to secure their obligations under this chapter shall be deposited with the State Insurance Commissioner.

1863 (c) Every insurer licensed to issue workers' compensation and employers' liability insurance by the  
1864 Insurance Department pursuant to Title 18, may offer to write each such policy subject to a deductible applying only to  
1865 medical reimbursement and death benefits. The insured employer shall be permitted to accept or reject such deductible at  
1866 the time the policy is issued or renewed. Any applicable deductible shall be subject to the following provisions:

1867 (1) The deductible shall apply separately to each occurrence during the policy term regardless of the  
1868 number of employees injured in the occurrence;

1869 (2) The deductible shall be subject to a minimum of \$500 and a maximum of \$5,000, with intermediate  
1870 deductible increments of \$500;

1871 (3) The premium charged for a deductible form of policy shall be subject to an actuarially sound credit  
1872 related to the amount of the deductible;

1873 (4) In the event of a claim under a deductible form of policy, the insurer shall administer the claim as  
1874 though no deductible applied and shall then be entitled to reimbursement from the employer for the amount of  
1875 said deductible.

1876 (d) Every insurer licensed to issue workers' compensation and employers' liability insurance by the  
1877 Insurance Department pursuant to Title 18 shall write a policy and base its rates upon the limited term of employment  
1878 rather than on an annual basis, for summer employees employed by various civic and nonprofit associations whose wages  
1879 are funded through grants awarded by the Department of Community Affairs.

1880 § 2373. Payment of compensation by self-insurer.

1881 Whenever an employer who is a self-insurer under this chapter enters into an agreement to pay compensation to  
1882 an injured employee or the employee's dependents in case of the employee's death or whenever an award is made by the  
1883 Board in favor of such injured employee or the employee's dependents in case of the employee's death, the employer shall  
1884 pay the full liability under the agreement or award to a savings bank or trust company in accordance with § 2359 of this  
1885 title. Such fund, together with all interest arising from the investment thereof, shall be held and paid out in accordance  
1886 with § 2359 of this title. Failure on the part of a self-insured employer to make such payment within 30 days after the  
1887 making of an agreement or award shall forthwith terminate the right of such employer to carry the employer's own  
1888 insurance.

1889 § 2374. Proof of compliance with insurance requirements; liability on failure of compliance; defenses  
1890 unavailable; injunction.

1891 (a) Every employer to whom this chapter applies shall file with the Department in form prescribed by it,  
1892 annually or as often as may be required by the Department, evidence of the employer's compliance with §2372 and §2373  
1893 of this title and all other sections relating thereto and evidence of any cancellation or non-renewal of insurance coverage.  
1894 The Department may promulgate rules requiring the electronic transmission of such filings, provided that mandatory  
1895 electronic filing shall not commence sooner than one year after the adoption of the rule requiring such transmissions. The  
1896 Department shall coordinate the transmission, processing and storage of such data with the Delaware Compensation Rating  
1897 Board.

1898 (b) Whoever, being an employer, refuses or neglects to comply with the sections referred to in subsection (a)  
1899 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  
1900 when the insurance became due, but not less than \$500 for each day of such refusal or neglect and until the same ceases.  
1901 The employer shall also be liable to the employer's injured employees during continuance of such neglect or refusal, either  
1902 for compensation under this chapter or in an action at law for damages. In such action upon proof that the employer has  
1903 not complied with this section, it shall not be a defense that the:

- 1904 (1) Employee was negligent; or
- 1905 (2) Employee had assumed the risk of the injury; or
- 1906 (3) Injury was caused by the negligence of a fellow employee.

1907 (c) In addition to any other sanction imposed upon the employer, if any employer is in default under §2372  
1908 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  
1909 by the Court of Chancery of this State from carrying on business within the State of Delaware while such default continues

1910 (d) Notwithstanding any other provision of law, but subject to the appropriations of the General Assembly,  
1911 the Department of Labor is authorized to employ or contract with such personnel as are necessary to efficiently and  
1912 effectively investigate and enforce the provisions of this section, including, but not limited to, undertaking administrative  
1913 prosecutions and legal actions in Superior and Chancery Court.

1914 § 2375. Certificate of self-insurance; revocation.

1915 (a) The Administrator shall adopt rules to determine the qualifications necessary to become and maintain  
1916 status as an approved self-insurer. To qualify to be a self-insurer, a private employer must show to the satisfaction of the  
1917 Administrator that the employer is financially solvent and that providing workers' compensation and occupational disease  
1918 disablement insurance coverage is unnecessary. The Administrator may require an employer applying for the privilege of  
1919 self-insurance to provide an independent actuarial report of the current financial condition of the employer, at the  
1920 employer's expense. The Administrator shall consider the employer's financial ability to pay promptly workers'  
1921 compensation and occupational disease disablement benefits, the arrangements made for the adjustment of claims, the  
1922 security required to ensure payment of all claims and claims administration expenses in the event of the employer's  
1923 insolvency, the employer's safety program and accident history and all other factors relevant to the assessment of the risk  
1924 of uncompensated injury by employees. The application shall contain a commitment undertaken by the employer to honor  
1925 all claims made against the self insurance program during its existence, whether or not its self-insured status is maintained,  
1926 and to maintain adequate security for it's self-insured liabilities whether or not it's self-insured status is maintained.

1927 (b) The Administrator shall certify each private employer who, in the Administrator's discretion, qualifies to  
1928 be a self-insurer. The Administrator may condition the certification of a private employer as a self-insurer on performance  
1929 of any reasonable requirement not inconsistent with the intent of this section.

1930 (c) To maintain status as a self-insurer, a private employer must demonstrate continued compliance with the  
1931 requirements of the self-insurance program, including high standards of claims administration, continued financial stability  
1932 as demonstrated through periodic audits conducted by the Department of Labor or an independent auditor approved by the  
1933 Department of Labor, and adequate security to pay all claims and the cost of claims administration in the event of  
1934 insolvency. The Administrator may require an employer exercising the privilege of self-insurance to provide an  
1935 independent actuarial report of the current financial condition of the employer, at the employer's expense.

1936 (d) The rules adopted by the Administrator shall also provide for procedures for the voluntary or involuntary  
1937 decertification of a self-insurer and shall provide for a waiting period of not less than one year before a decertified self-  
1938 insurer may apply for reinstatement of the privilege of self-insurance.

1939 (e) Each application for certification as a self-insurer shall be on a form approved by the Administrator and  
1940 shall be submitted with such additional documentation as the Administrator requires. Each application shall be  
1941 accompanied by payment of a fee not to exceed one hundred fifty dollars (\$150). The fee shall be set by the Administrator  
1942 as necessary to cover the administrative costs of evaluating the applicants' qualifications. The fee shall be deposited in the  
1943 workers' compensation fund.

1944 § 2376. Evidence of compliance with self-insurance requirements.

1945 For the purpose of complying with § 2372 of this title, groups of employers may form mutual insurance  
1946 associations under the laws of this State, subject to such reasonable conditions and restrictions as may be fixed by the  
1947 Department of Insurance. Membership in such mutual insurance associations, approved and regulated by the  
1948 Commissioner of Insurance, together with evidence of the payment of premium dues, shall be evidence of compliance with  
1949 § 2372 of this title.

1950 § 2377. Substitute compensation systems; approval and termination.

1951 (a) Subject to the approval of the Department, any employer may enter into or continue any agreement with  
1952 employees to provide a system of compensation, benefit or insurance in lieu of the compensation and insurance provided  
1953 by this chapter.

1954 (b) No such substitute system shall be approved unless it confers benefits upon injured employees at least  
1955 equivalent to the benefits provided by this chapter, nor, if it requires contribution from the employees, unless it confers  
1956 benefits in addition to those provided under this chapter at least commensurate with such contributions.

1957 (c) Such substitute system may be terminated by the Department on reasonable notice and hearing to the  
1958 interested parties, if it is shown that the system is not fairly administered or if its operation discloses latent defects  
1959 threatening its solvency or if for any substantial reason it fails to accomplish the purposes of this chapter. Upon such  
1960 termination the Department shall determine upon the proper distribution of all remaining assets, if any, subject to the right  
1961 of any party in interest to take an appeal to the Superior Court.

1962 § 2378. Standard provisions of compensation insurance policies.

1963 (a) All policies insuring the payment of compensation under this chapter shall contain a clause to the effect  
1964 that as between the employee and the insured the notice to or knowledge of the occurrence of the injury or death on the  
1965 part of the insured shall be deemed notice or knowledge, as the case may be, on the part of the insurer, that jurisdiction of  
1966 the insured for the purposes of this chapter shall be jurisdiction of the insurer and that the insurer shall in all things be  
1967 bound by and subject to the awards, judgments or decisions rendered against such insured.

1968 (b) No policy of insurance against liability arising under this chapter shall be issued unless it contains the  
1969 agreement of the insurer that it will promptly pay to the person entitled to them all benefits conferred by this chapter and  
1970 all installments of the compensation that may be awarded or agreed upon and that the obligation shall not be affected by  
1971 any default of the insured after the injury or by any default in the giving of any notice required by such policy or otherwise.  
1972 Such agreement shall be construed to be a direct promise by the insurer to the person entitled to compensation enforceable  
1973 in the person's name.

1974 (c) All policies insuring the payment of compensation under this chapter shall contain a clause to the effect  
1975 that when an insurer intends not to renew a policy, notice of such nonrenewable shall be given to the named insured, in  
1976 writing, not less than 60 days prior to the end of the policy period. For the purposes of this subsection, 'renew' means the  
1977 issuance and delivery by an insurer of a policy superseding at the end of the policy period a policy previously issued and  
1978 delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of a policy beyond  
1979 its policy period or term. Mailing of notice of intention not to renew to the named insured at the insured's address last of  
1980 record with the insurer shall be by certified mail.

1981 § 2386. Violations by insurers or self-insurers; penalties.

1982 (a) If any insurance corporation, mutual association or company interinsurance exchange or self-insurer:

1983 (1) Violates this chapter; or

1984 (2) Neglects or refuses to comply with this chapter; or

1985 (3) Willfully makes any false or fraudulent statement of its business or condition or a false or fraudulent  
1986 return, it shall be fined not less than \$100 nor more than \$1,000 for each such offense. The fine shall be assessed  
1987 by the Industrial Accident Board after the insurance corporation, mutual association or company, interinsurance  
1988 exchange or self-insurer is given notice and a hearing on the violation. The fine shall be payable to the State  
1989 Treasurer.

1990 (b) Whoever in this State:

1991 (1) Acts or assumes to act as an agent in any capacity whatsoever for any insurance corporation, mutual  
1992 association or company or interinsurance exchange, which is not authorized to do business in this State, or, if such  
1993 authority to do business in this State has been suspended, so acts or assumes to act while such suspension is in  
1994 force; or

1995 (2) Neglects or refuses to comply with any obligatory provisions of this section; or

1996 (3) Willfully makes any false or fraudulent statement of the business or condition of any such insurance  
1997 carrier or false or fraudulent return, shall be fined not less than \$100 nor more than \$1,000 or imprisoned for not  
1998 more than 90 days, or both.

1999 SUBCHAPTER V. TAXES AND CHARGES UPON INSURANCE CARRIERS AND SELF-INSURERS; WORKERS'  
2000 COMPENSATION FUND

2001 § 2391. Taxes on premiums of insurance carriers and payrolls of self-insurers.

2002 (a) For the privilege of carrying on the business of workers' compensation insurance in this State, every  
2003 insurance carrier and every employer carrying the employer's own risk and thereby insuring the employer's own self under  
2004 this chapter shall pay the taxes imposed by this section.

2005 (b) Every insurance carrier, insuring employers who are or may be liable under this chapter to pay for  
2006 compensation for personal injuries to or death of their employees, shall pay a tax upon all workers' compensation or  
2007 employers' liability premiums received, whether in cash or notes, in this State or on account of business done in this State  
2008 or on account of premiums for compensation payable under this chapter for such insurance in this State at the rate of 2% of  
2009 the amount of such premiums, which tax shall be in lieu of all other taxes on such premiums. The tax shall be assessed and  
2010 collected as provided in subsection (c) of this section. The insurance carrier shall be credited with all cancelled or returned  
2011 premiums actually refunded during the year on such insurance and premiums on reinsurance received from other insurance  
2012 carriers, except that mutual insurance companies shall be taxed upon the gross premium charged and collected and shall  
2013 not be credited with unabsorbed premiums or dividends.

2014 (c) (1) Every insurance carrier subject to this section shall on or before March 1 of each year make a return  
2015 verified by the affidavit of its president and secretary or other chief officers or agents to the Secretary of Finance stating  
2016 the amount of all premiums and credits for the preceding calendar year. Each insurance carrier required to make such  
2017 return shall pay to the Secretary of Finance a tax of \$2 per hundred on such premiums ascertained as provided in  
2018 subsection (b) of this section, less return premiums on cancelled policies actually refunded during the year and reinsurance  
2019 premiums received from other insurance carriers.

2020 (2) If any insurance carrier subject to this section shall fail to make the return required by this subsection,  
2021 the Secretary of Finance shall assess the tax against such insurance carrier at the rate provided in paragraph (1) of  
2022 this subsection on such amounts of premiums the Secretary believes just, and the proceedings thereon shall be the  
2023 same as if the return had been made.

2024 (3) If any insurance carrier subject to this section withdraws from business in this State before the tax  
2025 falls due, as herein provided, or fails or neglects to pay such tax, the Secretary of Finance shall at once proceed to  
2026 collect the same. The action may be brought by the Secretary of Finance in the Secretary's official capacity in any  
2027 court having jurisdiction, and reasonable attorney's fees may be taxed by the court as costs in such action.

2028 (d) Every employer carrying the employer's own risk, and thereby insuring the employer's self under this  
2029 chapter, shall annually on or before the 30th day of January report under oath to the Department the total amount of the  
2030 employer's payroll for the preceding calendar year, classified in accordance with classifications approved by the  
2031 Department for the purpose of fixing compensation rates. The Department may verify such classifications and such  
2032 statement of payroll by inspection and audit at the expense of the employer, and such verification shall be made by the  
2033 rating bureau or association provided for in § 2382 of this title. The charges to self-insurers shall be the same charges  
2034 which other insurance carriers are required to pay under this chapter. The Department shall assess against such payroll a  
2035 tax computed by taking 4% of the amount of premium payable upon the payroll so ascertained in accordance with the  
2036 classifications and premium rates approved by the Department for insurance against liability under this chapter. No  
2037 employer shall become or continue a self-insurer under this chapter, except upon the payment of the tax for the previous  
2038 calendar year. The moneys so assessed against and paid by insurers who carry their own risks shall be paid to the  
2039 Secretary of Finance.

2040 (e) The taxes imposed under this section shall be payable as follows: Twenty-five percent of the estimated  
2041 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  
2042 remaining balance on March 1 of the following year.

2043 (f) In the case of any under payment of installment of estimated tax required by this section, there shall be  
2044 added to the tax for the taxable year an amount determined at the rate of 2% per month, or fraction thereof, upon the  
2045 amount of underpayment for the period of underpayment. The period of underpayment shall run from the date the  
2046 tentative tax or installment was required to be paid to the 1st day of the 4th month following the close of the taxable year,  
2047 or the date on which paid, whichever is earlier. For the purposes of this subsection, the amount of the underpayment shall  
2048 be the excess of:

2049 (1) The amount of the estimated tax installment which would be required to be made if the estimated tax  
2050 were equal to 80% of the tax shown on the report required under subsection (a) of this section, over

2051 (2) The amount, if any, of the estimated tax installment paid on or before the last date prescribed for  
2052 payment.



2053 § 2392. Assessments for administrative expenses on insurance carriers.

2054 (a) For the purpose of securing to the State the moneys necessary for paying the salaries and necessary  
2055 expenses of the State in administering and carrying out this title relating to workers' compensation, insurance carriers shall  
2056 pay the assessments imposed by this section.

2057 (b) Semi-annually, on or before September 30 and March 31, every insurance carrier, insuring employees  
2058 who are or may be liable under this chapter to pay for compensation for personal injuries to or death of their employees,  
2059 shall report, under oath, or, in the case of a corporation, verified by the affidavit of its president and secretary or other chief  
2060 officers or agents, to the Secretary of Finance, the amount of all compensation payments and awards actually paid by said  
2061 carrier during the preceding calendar year, excluding payments made under § 2395 of this title and reimbursements  
2062 received under § 2396 of this title.

2063 (c) The Division of Industrial Affairs semi-annually as soon as practicable after January 1, 1996, and July 1  
2064 shall ascertain and report to the Secretary of Finance the total amount of the following expenses:

2065 (1) 100% of the expenses of the Industrial Accident Board;

2066 (2) 66.6% of all expenses of the inspection function of the Division of Industrial Affairs;

2067 (3) 66.6% of all expenses of the safety function of the Division of Industrial Affairs; and

2068 (4) A portion of the Division of Industrial Affairs' administration costs which shall be computed by first  
2069 adding paragraphs (1), (2) and (3) of this subsection set forth immediately above; this sum shall then be divided  
2070 by the amount of all expenses of the Division of Industrial Affairs; the quotient yielded shall be set forth as a  
2071 percentage rate which shall then be multiplied by the total expenses of the administrative function of the Division  
2072 of Industrial Affairs, and the product shall be the portion of the Division's administration costs. In determining  
2073 these expenses, the Division of Industrial Affairs shall include in addition to the direct cost of personal service,  
2074 the cost of maintenance and operation, the cost of retirement contributions made and workers' compensation  
2075 premiums paid by the State for and on account of personnel, rentals for space occupied in state-owned or state-  
2076 leased buildings and all other direct and indirect costs incurred during the preceding calendar year. An itemized  
2077 statement of the expenses so ascertained shall be open to public inspection in the office of the Department from  
2078 January 16 to January 31 and from July 16 to July 31 at which time any insurance carrier may challenge said  
2079 amount of expenses. An appeal of said expenses must be made in writing and received by the Secretary of Labor  
2080 within five days of the closing date of the inspection period. The Secretary or his/her designee shall render a  
2081 decision of the appeal in writing.

2082 (d) The Department shall then determine for each insurer the proportion/percentage of the expense  
2083 determined in subsection (c) of this section that the total compensation or payments made by each insurer bore to the total  
2084 of such expenses. Using these proportions/percentages, the Department shall then assess each insurer its  
2085 proportion/percentage of such expenses. The amounts so secured shall be paid to the Department of Labor, Division of  
2086 Industrial Affairs for the expenses of administering this chapter. Such sums shall not be part of the General Fund of the  
2087 State.

2088 § 2393. Notice to insurance carrier.

2089 Whenever any officer of the State is required to give any notice to an insurance carrier subject to this title, it may  
2090 be given by personal delivery or by mailed registered letter properly addressed and stamped to the principal office or chief  
2091 agent of such insurance carrier within this State or to its home office or to the secretary, general agent or chief officer  
2092 thereof in the United States or to the Insurance Commissioner of the State.

2093 § 2394. Exemption from other taxes upon premiums.

2094 Any insurance carrier liable to pay a tax upon premiums under this subchapter shall not be liable to pay any other  
2095 or further tax upon such premiums or on account thereof under any other law of this State.

2096 § 2395. Workers' Compensation Fund; payments by insurance carriers.

2097 (a) Every insurance carrier insuring employers who are or may be liable under this chapter to pay for  
2098 compensation for personal injuries to or death of their employees under this chapter shall pay to the Department annually,  
2099 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  
2100 or employer liability premiums received by the carrier during the calendar year next preceding the due date of such  
2101 payment.

2102 (b) Such sums shall be paid by the Department to the State Treasurer, to be deposited in a special account  
2103 known as 'Workers' Compensation Fund.' Such sums shall not be a part of the General Fund of the State. Any balance  
2104 remaining in such special account at the end of any fiscal year shall not revert to the General Fund.

2105 (c) The amounts paid under this section shall constitute an element of loss for the purpose of establishing  
2106 workers' compensation premium rates.

2107 (d) Should the Department subsequently determine that the amounts assessed are insufficient to meet the  
2108 Fund's obligations during a calendar year, it may assess insurance carriers to cover any anticipated deficiency, based upon  
2109 the allocations for that calendar year as determined pursuant to subsection (a) of this section.

2110 (e) Should the Department subsequently determine that the amounts assessed are sufficient to meet the  
2111 Fund's obligations during a calendar year, it shall not assess insurance carriers until a deficiency is projected based upon  
2112 the anticipated expenditures for the next calendar year as determined pursuant to subsection (a) of this section.

2113 § 2396. Workers' Compensation Fund; reimbursement of carriers.

2114 (a) The Workers' Compensation Fund is created for the purpose of making payments under, §2334, of this  
2115 title by any insurance carrier.

2116 (b) The Department shall perform the administrative, ministerial, fiscal, and clerical functions of the  
2117 Workers' Compensation Fund. The Fund shall be a party to and shall be represented by a Deputy Attorney General in any  
2118 proceeding involving possible reimbursement to or from the Fund, and if the decision is against the Fund, the Fund may  
2119 secure judicial review thereof by commencing an action in Superior Court in the county in which the hearing was held.  
2120 Any expenses incurred in defense of the Fund are payable from said Fund.

2121 (c) With respect to payments made subject to reimbursement under subsection (a), insurance carriers, on or  
2122 before December 15 and July 1 of each year, shall file with the Department a report setting forth the money expended for  
2123 said payments during the previous six months. Reimbursement to such insurance carrier shall be made on the fifteenth day  
2124 of January and the first day of August each year.”

2125 Section 2. If any provision of this Act or the application thereof to any person at circumstance is held invalid, such  
2126 invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or  
2127 applications, and to that end the provisions of this Act are declared to be severable.

2128 Section 3. This Act shall be known as the ‘Workers’ Compensation Reform Act of 2006.’Section 4. The provisions of this  
2129 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.