

TITLE 130
WORKMEN'S COMPENSATION LAW

TABLE OF CONTENTS

PART I 6

ARTICLE 8306. DAMAGES AND COMPENSATION FOR PERSONAL INJURIES...... 6

Section 1. Defenses. 6

Section 2. Application of Law; Exceptions..... 6

Section 2a. Nonresidents; Employment of Labor; Service of Process on Chairman of Industrial Accident Board. 6

Section 2b. Application to Farm or Ranch Laborers; Liability of Labor Agent and Employer. 7

Section 3. Exclusiveness of Remedy; Exemption of Compensation from Legal Process; Assignability; Recovery from Third Persons; Liability of Subscriber. 9

Section 3a. Waiver of Common Law or Statutory Right of Action..... 10

Section 3b. Compensation, When to be Paid..... 11

Section 3c. Notice of Provision for Compensation. 11

Section 4. Rights of Employees When Employer Not Subscriber..... 11

Section 5. Exemplary Damages. 11

Section 6. Accrual of Compensation; Medical Aid, Etc. 11

Section 7. Medical Services. 12

Section 7a. Change in Medical Aid, Hospital Services, Chiropractic Services and Medicines. 13

Section 7b. Guidelines for Fees, Necessary Treatment, and Charges for Medical Aid, Hospital Services, Chiropractic Services or Medicines; Interest. 13

Section 7c. Attorneys' Fees Regulated by the Board..... 15

Section 7d. Attorneys' Fees Regulated by the Court. 16

Section 7-e. Artificial Appliances. 16

Section 8. Death Benefit..... 17

Section 8a. Persons to Whom Death Benefits Payable; Exemptions; Distribution; Payments. 18

Section 8b. Death After Period of Total or Partial Incapacity. 18

Section 9. Funeral Expenses. 18

Section 10. Total Incapacity. 19

Section 11. Partial Incapacity. 19

Section 11a. Injuries Constituting Total and Permanent Incapacity..... 20

Section 12. Specific Compensation..... 20

Section 12a. Injured Employee, Refusal of Employment. 22

Section 12b. Hernia. 23

Section 12c. Subsequent Injury; Second Injury Fund. 23

Section 12c-1. Permanent and Total Incapacity Through Loss of or Loss of Use of, Another Member or Organ..... 24

Section 12c-2. Second Injury Fund; How Created; Presumptions. 24

Section 12d. Change of Condition, Mistake or Fraud; Review..... 25

Section 12e. Surgical Operation..... 25

Section 12f. Physicians or Chiropractors Employed by Subscriber or Association. 25

Section 12g. Insurance Premiums. 26

Section 12h. Indemnity or Insurance Contracts. 26

Section 12i. Minors. 26

Section 13. Minor or Incompetent Injured Employee. 27

Section 14. Waiver of Right to Compensation.	27
Section 15. Lump Sum Settlement.	27
Section 15a. Increase of Weekly Compensation.	27
Section 16. Death, Survival of Cause of Action.	27
Section 17. Non-Resident and Resident Alien Beneficiaries.	28
Section 18. Weekly Compensation; Non-Payment; Forfeiture or Revocation of Association's License.	28
Section 18a. Timeliness of Commencement of Benefits or Filing of Controversion; Suspension of Benefits; Penalties.	28
Section 19. Injuries Sustained Outside State; Venue.	30
Section 20. 'Injury' or 'Personal Injury', and 'Occupational Disease', Defined; Ordinary Diseases.	30
Section 21. False Representations as to Previous Disease.	30
Section 22. Aggravation of Previously Existing Diseases.	31
Section 23. Retroactive Effect of Statute.	31
Section 24. Employer; Who Deemed.	31
Sections 25 To 27. Repealed by Acts 1971, 62 nd Leg., P. 2540, Ch. 834, § 2, Eff. Aug. 30, 1971.	31
Section 28. Maintenance Tax; Acceptance of Grant, Gift, or Payment.	31
Section 29. Maximum and Minimum Weekly Benefits.	32
ARTICLE 8306A. DISCOUNT FOR PRESENT PAYMENT.	32
ARTICLE 8306B. 'WORKMEN'S COMPENSATION' – NAME CHANGE.	33
Section 1.	33
Section 2.	33
PART II 	34
ARTICLE 8307, SECTION 1, INDUSTRIAL ACCIDENT BOARD; MEMBERS; POWERS:	34
Section 1a, Application of Sunset Act:	34
Section 2, Eligibility of Members:	34
Section 2a, Board Members, Removal:	34
Section 3, Secretary; Clerical Services; Expenses; Office:	35
Section 3a, Accounting, Career Programs, Performance Evaluations, Equal Employment, Public Complaints:	35
Section 3b, Qualifications And Performance Standards:	36
Section 3c, Audits:	36
Section 3d, Public Complaints:	36
Section 4, Rules; Physical Examination; Suspension Of Compensation; Procedures And Powers:	36
Section 4a, Notice Of Injury; Claim For Compensation:	37
Section 4b, Application of Administrative Procedure and Texas Register Act to IAB:	37
Section 5, Determination of Questions: Suit to Set Aside Final Ruling and Decision: Revocation of Association's License	37
Section 5a, Rights And Remedies:	39
Section 5b, Computation of Time for Notice or Suit:	39
Section 5c, Multiple Subscribers; Payment of Claims:	40
Section 6, Employee of Sub-Contractor:	40
Section 6a, Recovery from Third Person; Subrogation; Attorney's Fees:	41
Section 7; Record of Injuries; Reports:	42
Section 7a, Failure to File Report; Limitation on Filing Claim:	43
Section 7b, Claim Forms to Employee, Filing Requirements:	43
Section 8, Quorum of Board; Seal; Proceedings as Evidence:	43
Section 9, Certified Copy of Records; Fees:	43
Section 9a, Worker's File Confidential:	44
Section 10, Hearings; Investigations; Adjusters:	49
Section 11, Association Suspending Payments:	50

Section 12, Compensation Payments; Compromise; Commutation:	50
Section 12a, Court Approved Settlements:	50
SECTION 12b, Future Medical Benefits, Settlement Agreements:.....	50
Section 13, Medical Committee; Examination of Employee; Report:.....	50
Section 14, Autopsy:.....	52
ARTICLE 8307A, SUIT TO SET ASIDE DECISION OF INDUSTRIAL ACCIDENT BOARD; TRANSFER TO COUNTY WHERE INJURY OCCURRED OR EMPLOYEE RESIDED:	52
ARTICLE 8307B, PRESUMPTIONS ON APPEAL FROM BOARD:.....	52
DENIAL BY VERIFIED PLEADINGS:.....	52
ARTICLE 8307C, PROTECTION OF CLAIMANTS:.....	53
Section 1:.....	53
Section 2:.....	53
Section 3:.....	53
ARTICLE 8307D, NONSUIT:.....	53
PART III	54
ARTICLE 8308, EMPLOYERS' INSURANCE ASSOCIATION:	54
Section 1: (Creates TEIA.).....	54
Section 2 Through 16a: (Internal Management Of TEIA.).....	54
Section 17: (Repealed.).....	54
Section 18, Compensation for Additional Employees:	54
Section 18a, Information to be Furnished when Employer becomes Subscriber:	54
Section 19, Notice by Subscriber to Persons Under Contract:	55
Section 20, Notice by Subscriber of Insurance; Notice of Expiration:	55
Section 20a, Cancellation of Policies; Extension of Coverage:.....	55
Section 21, Payment of Judgment and Costs:	55
Section 22, Failure to Issue Policies:	56
Section 23, Reserves:	56
PART IV	57
ARTICLE 8309. DEFINITIONS AND GENERAL PROVISIONS;	57
WORDS AND PHRASES DEFINED	57
Section 1, Definitions:.....	57
Section 1a, Officers May be Deemed as Employees:	59
Section 1b, Transportation or Travel:	59
Section 2, Insurance Companies May Insure:.....	59
Section 3, Termination of Status as Subscriber:	59
Section 3a, Liability for Misrepresentation of Payroll:	60
Section 3b, Effect of Amendments on Existing Right, Remedies, Etc.	60
Section 4, Advance Payments of Compensation:	60
Section 5, Reports of Accidents as Admissions and Evidence:	61
Section 6, Podiatrists:.....	61
Section 7, Notice by Clerk on Appeal:.....	61

ARTICLE 8309A, HEARING OF CLAIM BY INDUSTRIAL ACCIDENT BOARD; POSTPONEMENT OF HEARING:	62
ARTICLE 8309B, TEXAS A&M UNIVERSITY:	62
Section 1, Law Passed Pursuant to Constitution:	62
Section 2, Definitions:.....	62
Section 3, Group Life and Accident Insurance:.....	63
Section 4, Compensation for Injury in Course of Employment:.....	63
Section 5, Actions; Defenses:.....	63
Section 6, Exclusiveness of Remedy; Exemption of Compensation from Legal Process; Assignability:.....	63
Section 7, Laws Governing:.....	64
Section 8: (Specifically Repealed).....	64
Section 9, Payment of Compensation; Exhaustion of Earned Annual and Sick Leave:	64
Section 10, Examination by Physicians or Chiropractors; Process and Procedure:.....	64
Section 11, Decisions of the Board; Suits; Enforcement of Award:	65
Section 12, Record of Injuries; Reports:.....	66
Section 13, Rules and Regulations; Examinations; Medical Records and Reports:.....	66
Section 14, Physical Examination:	67
Section 15, Certification of Workers Failing to Pass Physical Exam; Waiver of Coverage:	67
Section 16, Certified Copies of Orders, Awards and Decisions:	67
Section 17, Suit to Set Aside Final Decision:	67
Section 18, Hearing of Claim:.....	68
Section 19, Amounts to be Set Aside for Awards and Expenses:	68
Section 20, Attorney General as Legal Representative:	68
Section 21, Notice by Clerk on Appeal:.....	68
Section 22, Partial Invalidity:	68
ARTICLE 8309C	69
ARTICLE 8309C-1	69
ARTICLE 8309D, UNIVERSITY OF TEXAS EMPLOYEES	69
Section 1, Law Passed Pursuant to Constitution:	69
Section 2, Definitions:.....	69
Section 3, Group Insurance of Employees Other Than Workmen; Compensation for Workmen; Acceptance of Provisions:	70
Section 4, Compensation for Injury in Course of Employment:.....	70
Section 5, Defenses:	70
Section 6, Exclusiveness of Remedy: Exemptions and Non-Assignability:	70
Section 7, Applicability of Existing Laws:	71
Section 8. Repealed.	71
Section 9. Weekly Payments; Annual and Sick Leave:.....	71
Section 10, Medical Examinations; Insanitary or Injurious Practices; Process and Procedure:	71
Section 11, Board to Determine Questions; Suits to Set Aside or Enforce Rulings; Failure to Make Payments:.....	72
Section 12, Records and Reports:	73
Section 13, Rules and Regulations; Designation of Physicians and Surgeons; Reports of Examinations:	73
Section 15. Waiver of Rights:	74
Section 16. Evidence; Certified Copies:	74
Section 17, Venue of Suits; Transfer to Proper County:	74
Section 18, Time for Hearing:.....	74
Section 19, Setting Aside Funds; Account; Reports:	74
Section 20, Legal Representative:	75
Section 21, Duties of Clerk of Court and Attorneys:.....	75

Section 22, Partial Unconstitutionality:	75
ARTICLE 8309E-1	75
ARTICLE 8309E-2	75
ARTICLE 8309F	75
ARTICLE 8309G. WORKERS' COMPENSATION INSURANCE.....	76
FOR STATE EMPLOYEES	76
Section 1. Definitions:	76
Section 2. State Self-Insuring:	76
Section 3. State Employees Division; Director:	76
Section 4. Director's Standing as Employer and Insurer:.....	77
Section 5. Procedural Rules:	77
Section 6. Rules for Accident Prevention:	77
Section 7. Distribution of Copies of Rules:	77
Section 8. Records and Reports of Injuries:	77
Section 9. Reports to Legislature:	77
Section 10. Director Subject to Actions of Board:	78
Section 11. Right to Compensation:	78
Section 12. Effect of Sick Leave and Emergency Leave:	78
Section 13. Beneficiaries of Deceased Employee:	78
Section 14. Notice By Clerk On Appeal:.....	78
Section 15. Adoption of General Workers' Compensation Laws:	79
Section 16, Entitlement to Benefits:	79
Section 17, Coverage for Out-Of-State Employees:	79
Section 18:.....	80
ARTICLE 8309G-1. TEXAS TECH UNIVERSITY	80
ARTICLE 8309H. WORKERS' COMPENSATION INSURANCE.....	80
FOR EMPLOYEES OF POLITICAL SUBDIVISIONS	80
Section 1. Definitions:	80
Section 2. Self-Insurance; Effective Date; Notice to Board and Employees; Municipal Utilities:	81
Section 3. Adoption of General Workmen's Compensation Laws:.....	81
Section 4. Establishment of Joint Fund:	82
Section 5. Purpose:	82
Section 6. Rules and Regulations; Form:.....	82
Section 7. Appropriations for Disbursements; Separate Account; Report:	83
Section 8. Suits and Proceedings; Municipal Utilities:	83
Section 9, Federal Ceta Employees:	83
ARTICLE 8309I. PENALTIES, ATTORNEYS' FEES ON MANDAMUS	83
TO COLLECT COMPENSATION JUDGMENT	83
Section 1:.....	83

Workers' Compensation Act

(Old Law – Pre-1991)

PART I

Article 8306. Damages and Compensation for Personal Injuries.

Section 1. Defenses.

In an action to recover damages for personal injuries sustained by an employee in the course of his employment, or for death resulting from personal injury so sustained, it shall not be a defense:

1. That the employee was guilty of contributory negligence.
2. That the injury was caused by the negligence of a fellow employee.
3. That the employee had assumed the risk of the injury incident to his employment; but such employer may defend in such action on the ground that the injury was caused by the willful intention of the employee to bring about the injury, or was so caused while the employee was in a state of intoxication.
4. In all such actions against an employer who is not a subscriber, as defined hereafter in this law, it shall be necessary to a recovery for the plaintiff to prove negligence of such employer or some agent or servant of such employer acting within the general scope of his employment.

Section 2. Application of Law; Exceptions.

The provisions of this law shall not apply to actions to recover damages for personal injuries nor for death resulting from personal injuries sustained by domestic servants or casual employees engaged in employment incidental to a personal residence, farm or ranch laborers (except as provided by Section 2b of this article), nor to the employees of any person, firm or corporation operating any steam, electric, street, or interurban railway as a common carrier.

Section 2a. Nonresidents; Employment of Labor; Service of Process on Chairman of Industrial Accident Board.

The acceptance by a nonresident of this State of the rights, privileges and benefits extended by law to such persons of employing labor within the State of Texas shall be deemed equivalent to an appointment by such nonresident of the Chairman of the Industrial Accident Board of this State, or his successor in office, to be his true and lawful attorney and agent upon whom may be served all lawful process in any civil action or proceeding now pending or hereafter instituted against said nonresident growing out of any accident resulting in the injury or death of any employee of said nonresident, occurring in the course of employment of the employee in this State, or occurring in the course of employment of the employee in a foreign jurisdiction when the employee is a Texas resident recruited in this State, when the action or proceeding is brought by the employee, his heirs or legal representative. Service of process under this Section shall be in the same manner and method as that prescribed in Chapter 125, Acts of the Forty-first Legislature, Regular Session, 1929, as last amended by Chapter 502, Acts of the Fifty-sixth Legislature, Regular Session, 1959 (compiled as Article

2039a of Vernon's Texas Civil Statutes), which relates to citation of nonresident motor vehicle operators by serving the Chairman of the State Highway Commission.

Section 2b. Application to Farm or Ranch Laborers; Liability of Labor Agent and Employer.

- (a) The provisions of this law apply to actions to recover damages for personal injuries or death sustained by farm or ranch laborers who are migrant workers, who are seasonal workers covered by Subsection (b) of this section, or who are employed by an employer with a gross annual payroll for the preceding year in the amount provided by Subsection (c) of this section.
- (b) To be covered by this law, a farm or ranch laborer who is a seasonal worker must be employed on a truck farm, orchard, or vineyard or employed by an employer with a gross annual payroll for the preceding year in an amount provided by this subsection. For 1985, the preceding year's gross annual payroll must be at least \$25,000. For subsequent years, the preceding year's gross annual payroll must be equal to or exceed the prior year's required payroll adjusted for inflation. To adjust for inflation, the comptroller of public accounts shall develop a consumer price index for the State of Texas. Before October 1 of each year, the comptroller shall certify the applicable index factor to the Industrial Accident Board, which shall adjust the gross annual payroll requirement accordingly. A seasonal worker is covered by this law as if the seasonal worker were a migrant worker provided the following conditions are met:
 - (1) the seasonal worker is working for a farmer, ranch operator, or labor agent who employs migrant workers; and
 - (2) the seasonal worker is doing the same work at the same time at the same location as migrant workers.
- (c) To be covered by this law, a farm or ranch laborer other than a migrant or seasonal worker must:
 - (1) for the years before 1991, be employed by an employer with a gross annual payroll for the preceding year in the amount provided by the following schedule:
 - (A) for 1985, 1986, or 1987, the preceding year's gross annual payroll must be at least \$75,000; and
 - (B) for 1988, 1989, or 1990, the preceding year's gross annual payroll must be at least \$50,000; and
 - (2) for 1991 and thereafter, be employed by an employer:
 - (A) with a gross annual payroll in the amount required for coverage of seasonal workers under Subsection (b) of this section; or
 - (B) who employs three or more farm or ranch laborers other than migrant or seasonal workers.
- (d) For purposes of Subsections (b) and (c) of this section, the gross annual payroll of an employer includes any amount paid by the employer to a labor agent for his services and for the services of migrant or seasonal workers, but does not include:

(1) wages paid to the employer or a member of the employer's family, if the employer is a sole proprietor;

(2) wages paid to a partner or a member of a partner's family, if the employer is a partnership; or

(3) wages paid to a shareholder or a member of a shareholder's family, if the employer is a corporation in which all shareholders are family members.

(e) If a labor agent furnishes migrant or seasonal workers, the labor agent is liable under this law as if the labor agent were the employer of the workers, without regard to the right of control or other factors used to determine an employer-employee relationship. However, if the labor agent is not a subscriber, the person with whom the labor agent contracts for the services of the migrant or seasonal workers is jointly and severally liable with the labor agent in an action to recover damages for personal injuries or death suffered by any of the migrant or seasonal workers, as provided by the workers' compensation law. For that purpose, the migrant or seasonal workers shall be considered the employees of the person with whom the labor agent contracts, and that person may subscribe in regard to those workers in accordance with this law.

(f) A labor agent must notify each person with whom he contracts of whether he subscribes to workers' compensation insurance. If he does subscribe, he must present evidence of the insurance to each person with whom he contracts.

(g) If migrant or seasonal workers are covered by a workers' compensation insurance policy, the person with whom the labor agent contracts is not liable in a separate action for injury or death except to the extent provided by the workers' compensation law.

(h) A person who subscribes to a workers' compensation insurance policy covering farm or ranch laborers may cover himself, a partner, a corporate officer, or a family member in that policy. The insurance policy must specifically name the individual to be covered, and the elected coverage continues while the policy is in effect and the named individual is endorsed on the policy. A member of an employer's family is exempt from coverage under the policy unless covered voluntarily as provided by this section.

(i) In this section:

(1) 'Agricultural labor' means the planting, cultivating, or harvesting of an agricultural or horticultural commodity in its unmanufactured state.

(2) 'Family' means persons related within the third degree by consanguinity or affinity.

(3) 'Labor agent' means a person who:

(A) is a labor agent for purposes of Chapter 234, Acts of the 51st Legislature, Regular session, 1949 (Article 5221a-5, Vernon's Texas Civil Statutes);

(B) is a farm labor contractor for purposes of the federal Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C.A. Sec. 1801 et seq.); or

(C) otherwise recruits, solicits, hires, employs, furnishes, or transports migrant or seasonal agricultural workers who labor for the benefit of a third party.

(4) 'Migrant worker' means an individual who is employed 'in agricultural labor of a seasonal or temporary nature and who is required to be absent overnight from his or her permanent 'place of residence.

(5) 'Person' means an individual, corporation, or association.

(6) 'Seasonal worker' means an individual who is employed in agricultural or ranch labor of a seasonal or temporary nature and is not required to be absent overnight from his or her permanent place of residence.

(7) 'Truck farm' means a farm on which fruits, garden vegetables for human consumption, potatoes, sugar beets, or vegetable seeds are produced for market. The term includes a farm primarily devoted to one of those crops that also has incidental acreage of other crops.

(j) This section does not affect the application or interpretation of the workers' compensation law as it relates to persons engaged in activities previously determined not to be farm or ranch labor.

(k) A farm or ranch worker who performs work or provides a service for the benefit of a farm or ranch employer subject to this section is an employee of that employer unless the worker is hired to perform the work or provide the service as an employee of a person acting as an independent contractor. For the purposes of this section, 'independent contractor' means a person, other than a labor agent, who contracts with a farm or ranch employer to perform work or provide a service for the benefit of that employer and who ordinarily:

(1) acts as the employer of the worker by paying wages, directing worker activities, and performing other similar functions characteristic of an employer/ employee relationship;

(2) is free to determine the manner in which the work or service is performed, including but not limited to the hours of labor or the method of payment;

(3) is required to furnish necessary tools, supplies, or materials to perform the work or service; and

(4) possesses skills required for the specific work or service.

Section 3. Exclusiveness of Remedy; Exemption of Compensation from Legal Process; Assignability; Recovery from Third Persons; Liability of Subscriber.

(a) The employees of a subscriber and the parents of minor employees shall have no right of action against their employer or against any agent, servant or employee of said employer for damages for personal injuries, and the representatives and beneficiaries of deceased employees shall have no right of action against such subscribing employer or his agent, servant or employee for damages for injuries resulting in death, but such employees and their representatives and beneficiaries shall look for compensation solely to the association, as the same is hereinafter provided for.

(b) All compensation allowed under the succeeding sections herein shall be exempt from garnishment, attachment, judgment and all other suits or claims, and no such right of action and no such compensation and no part thereof or of either shall be assignable,

except as otherwise herein provided, and any attempt to assign the same shall be void.

(c) In the event the association denies liability in a claim and an accident or health insurance company provides benefits to the employee for medical aid, hospital services, nursing services or medicine, then the right to recover such amount may be assigned by the employee to the health or accident insurance company.

(d) If an action for damages on account of injury to or death of an employee of a subscriber is brought by such employee, or by the representatives or beneficiaries of such deceased employee, or by the association for the joint use and benefit of itself and such employee or such representatives or beneficiaries, against a person other than the subscriber, as provided in Section 6a, Article 8307, Revised Civil Statutes of Texas, 1925, and if such action results in a judgment against such other person, or results in a settlement by such other person, the subscriber, his agent, servant or employee, shall have no liability to reimburse or hold such other person harmless on such judgment or settlement, nor shall the subscriber, his agent, servant or employee, have any tort or contract liability for damages to such other person because of such judgment or settlement, in, the absence of a written agreement expressly assuming such liability, executed by the subscriber prior to such injury or death.

(e) The Association, its agent, servant or employee, shall have no liability with respect to any accident based on the allegation that such accident was caused or could have been prevented by a program, inspection, or other activity or service undertaken by the association for the prevention of accidents in connection with operations of its subscriber; provided, however, this immunity shall not affect the liability of the association for compensation or as otherwise provided in this law.

(f) No part of this Section is intended to lessen or alter the employee's existing rights or cause of action either against his employer, its subscriber, or any third party.

Section 3a. Waiver of Common Law or Statutory Right of Action.

An employee of a subscriber shall be held to have waived his right of action at common law or under any statute of this State to recover damages for injuries sustained in the course of his employment if he shall not have given his employer, at the time of his contract of hire, notice in writing that he claimed said right or if the contract of hire was made before the employer became a subscriber, if the employee shall not have given the said notice within five days of notice of such subscription. An employee who has given notice to his employer that he claimed his right of action at common law or under any statute may thereafter waive such claim by notice in writing, which shall take effect five days after its delivery to his employer or his agent. Any employee of a subscriber who has not waived his right of action at common law or under any statute to recover damages for injury sustained in the course of his employment, as above provided in this section, shall, as well as his legal beneficiaries and representatives have his or their cause of action for such injuries as now exist by the common law and statutes of this State, which action shall be subject to all defenses under the common law and statutes of this State.

Section 3b. Compensation, When to be Paid.

If an employee who has not given notice of his claim of common law or statutory rights of action, or who has given such notice and waived the same, sustains an injury in the course of his employment, he shall be paid compensation by the association as hereinafter provided, if his employer is a subscriber at the time of the injury.

Section 3c. Notice of Provision for Compensation.

From and after the time of the receipt by the Industrial Accident Board of notice from any employer that the latter has become a subscriber under this law, all employees of said subscriber then and thereafter employed, shall be conclusively deemed to have notice of the fact that such subscriber has provided with the association for the payment of compensation under this law. If any employer ceases to be a subscriber he shall on or before the date on which his policy expires give notice to that effect to the Industrial Accident Board, and to such subscribers' employees by posting notices to that effect in three public places around such subscribers' plant.

Section 4. Rights of Employees When Employer Not Subscriber.

Employees whose employers are not at the time of the injury subscribers to said association, and the representatives and beneficiaries of deceased employees who at the time of the injury were working for nonsubscribing employers can not participate in the benefits of said insurance association, but they shall be entitled to bring suit and may recover judgment against such employers, or any of them, for all damages, sustained by reason of any personal injury received in the course of employment or by reason of death resulting from such injury, and the provisions of section 1 of this law shall be applied in all such actions.

Section 5. Exemplary Damages.

Nothing in this law shall be taken or held to prohibit the recovery of exemplary damages by the surviving husband, wife, heirs of his or her body, or such of them as there may be of any deceased employee whose death is occasioned by homicide from the willful act or omission or gross negligence of any person, firm or corporation from the employer of such employee at the time of the injury causing the death of the latter. In any suit so brought for exemplary damages the trial shall be de novo, and no presumption shall exist that any award, ruling or finding of the Industrial Accident Board was correct. In any such suit, such award, ruling or finding shall neither be pleaded nor offered in evidence.

Section 6. Accrual of Compensation; Medical Aid, Etc.

No compensation shall be paid under this law for an injury which does not incapacitate the employee for a period of at least one week from earning full wages, but if incapacity extends beyond one week compensation shall begin to accrue on the eighth day after the injury. The medical aid, hospital services, chiropractic services, and medicines; as provided for in Section 7 hereof, shall be supplied as and when needed and according to the terms and provisions of said Section 7. If incapacity does not follow at once after the infliction of the injury or within eight days thereof but does result subsequently, compensation shall begin to accrue with the eighth day after the date incapacity commenced. In any event the employee shall be entitled to the medical aid, hospital service, chiropractic service, and medicines provided in this law. Provided further, that if such incapacity continues for four (4) weeks or longer, compensation shall be computed from the inception date of such incapacity.

Section 7. Medical Services.

The employee shall have the sole right to select or choose the persons or facilities to furnish medical aid, chiropractic services, hospital services, and nursing and the association shall be obligated for same or, alternatively, at the employee's option; the association shall furnish such medical aid, hospital services, nursing, chiropractic services, and medicines as may reasonably be required at the time of the injury and at any time thereafter to cure and relieve from the effects naturally resulting from the injury. Such treatment shall include treatments necessary to physical rehabilitation, including proper fitting and training in the use of prosthetic appliances, for such period as the nature of the injury may require or as necessary to reasonably restore the employee to his normal level of physical capacity or as necessary to give reasonable relief from pain, but shall not include any other phase of vocational rehabilitation. The obligation of the association to be responsible for hospital services as herein provided shall not be held to include any obligation on the part of the association to pay for medical, nursing or surgical services not ordinarily provided by hospitals as a part of their services.

Upon receipt thereof, the Board shall promptly analyze each notice of injury incurred by an injured employee covered under this law. If the Board concludes that vocational rehabilitation is indicated in any such case, it immediately shall take the necessary steps to inform the injured employee of the services and facilities available to him under the Texas Rehabilitation Commission and the Board immediately shall notify said Commission of such case. In each such case recommendation of services and facilities shall be made after consultation by the Board with the physician or chiropractor furnishing medical aid or chiropractic services as required by this Section, who shall retain general supervision of treatment of the injured employee and, should the employee request it, the Board shall consult with a physician or chiropractor specially trained in such treatment. The Board shall cooperate with said Texas Rehabilitation Commission with reference to the work of said Commission in providing said services and facilities to injured employees covered under the provisions of this law.

Provided that any physician or chiropractor rendering medical or chiropractic care to any injured worker shall render an initial report as soon as practical identifying the injured worker and stating the nature and extent of the injury and thereafter shall render subsequent reports reasonably necessary to keep the status of the claimant's condition known.

Hospitals shall, upon request of either the injured worker, his attorney, or the association, furnish records pertaining to treatment or hospitalization for which compensation is being sought. All reports and records requested hereunder shall be made to the association and the injured worker or his attorney. The failure of the physician or chiropractor to make such reports or of the hospital to furnish requested records shall relieve the association and the injured worker from any obligation to pay for the services rendered by the physician, chiropractor, or hospital. All charges for the furnishing of reports and records hereunder shall be subject to regulation by the Board in accordance with Section 7b hereof, provided however, such charges shall in no event be less than the fair and reasonable charge for the furnishing of said reports and records. If the furnishing of said reports and records is required under this Section, the association shall pay the fair and reasonable charge for furnishing said reports and records. There shall be no additional charge for furnishing a copy of the required reports and records to the injured worker or his attorney.

In the event that the association shall contend before the Board that charges for medical aid, hospital services, chiropractic services, nursing services, or medicines are not fair and reasonable, the Board's award shall make an express finding of the amounts which are fair and reasonable charges for the aid or services rendered or the medicines provided. If the amount found is less than those charges submitted by the provider of the aid, services, or medicines, then said provider shall be entitled to appeal the Board's determination as if it were a party to the action. In any subsequent appeal from the award of the Board, if the person or facility providing medical aid, hospital services, chiropractic services, nursing services, or medicines recovers an amount equal to or in excess of the charges submitted to the Board, such person or facility shall be entitled to recover from the association an additional amount equal to 12 percent of the amount unpaid and reasonable attorney's fees. If the amount so recovered is less than the charges submitted to the Board, the association shall be entitled to recover its reasonable attorney's fees from the person or facility providing the medical aid, hospital services, chiropractic services, nursing services, or medicines.

In order to assist the Board in its regulation of fees and charges under Section 7b of Article 8806, the Board shall cause to be established voluntary arbitration panels to the extent it deems necessary or appropriate. The panels shall be composed of representatives of provider groups and the insurance industry for the purpose of the voluntary arbitration of disputed fees and charges. The Board shall actively supervise the voluntary arbitration panels so established. Nothing herein shall alter the rights of the injured employee under Article 8309a. No finding by any voluntary arbitration panel shall be admissible in evidence in any trial de novo.

Section 7a. Change in Medical Aid, Hospital Services, Chiropractic Services and Medicines.

If it be shown that the employee is receiving medical aid, hospital services, chiropractic services, and medicines provided for by Section 7 hereof in such manner that there is reasonable ground for believing that the life, health or recovery of the employee is being endangered or impaired thereby, the Board may order a change in the physician, chiropractor or other requirements of said section after holding a hearing on the change. If the employee fails promptly to comply with such order after receiving it, the Board may relieve the association from its responsibility to pay for or alternatively furnish medical aid, hospital services, chiropractic services, and medicines until such time as the employee complies with the order of the Board.

Section 7b. Guidelines for Fees, Necessary Treatment, and Charges for Medical Aid, Hospital Services, Chiropractic Services or Medicines; Interest.

(a) The board shall establish guidelines as to charges and utilization of medical services under Sections 7 and 7a of this Act.

(b) All fees and charges shall be fair and reasonable and shall be no more than fees and charges for similar treatment of injured persons of a like standard of living where the cost of the treatment is paid by the injured person or someone acting for the injured person.

(c) To facilitate the purpose of this section, the board shall establish and maintain:

(1) a guideline of fair and reasonable fees and charges;

(2) guidelines of necessary treatment; and

(3) an internal program of systematic monitoring of medical charges to ensure that the guidelines are not exceeded. An annual report shall be made to the legislature which shall indicate the degree to which the fees paid comply with the guidelines.

(d) The board shall adopt these guidelines as rules. The board shall give due consideration to a relative value scale in developing a guideline for fees and charges for physicians.

(e) The board is authorized to contract with a qualified, recognized professional organization or entity which includes as an integral part of the review process members of the category of licensee being reviewed to develop, maintain, or review the guidelines.

(f) The board is authorized to contract with a qualified, recognized professional organization or entity which includes as an integral part of the review process members of the category of licensee being reviewed to review a fee, charge, or treatment for compliance with a guideline. All reviews shall be done in a reasonable time but in no event to exceed 31 days.

(g) In developing and maintaining the guidelines for fees and charges, the board shall consider the increased security of payment afforded by this Act.

(h) A fee or charge consistent with the guideline for fees and charges shall earn interest at a rate computed by the Industrial Accident Board by taking the auction rate quoted on a discount basis for 52-week treasury bills issued by the United States government, as published by the Federal Reserve Board on the most recent date preceding the date of computation, from 60 days after the date the health care provider submits the bill to the association to the date the bill is paid. The rate shall be computed on December 15 and June 15 for the following six-month period beginning January 1 and July 1, respectively.

(i) The following special advisory committees shall be created to assist the board in establishing and maintaining the guidelines under this section:

- (1) the hospital care advisory committee;
- (2) the physician advisory committee for fees and charges;
- (3) the physician advisory committee for utilization;
- (4) the chiropractic care advisory committee;
- (5) the podiatric care advisory committee;
- (6) the physical therapy advisory committee; and
- (7) the pharmaceutical advisory committee.

(j) The board shall appoint five members to each special advisory committee who are health care providers and are licensees of that provider group who are knowledgeable and qualified in a worker's compensation practice. These members shall be appointed with the advice of the respective professional associations, The board shall also appoint four members to each advisory committee with one being a representative of the

association, one being a representative of the employers, one being a representative of the employees, and one being a representative of the association of attorneys that represent claimants in workers compensation.

(k) A health care advisory committee shall be created to assist the board in establishing and maintaining the guidelines under this section. The committee shall have 15 members:

- (1) one member elected from each of the special advisory committees; and
- (2) eight members appointed by the board.

(l) The chairman of the committee shall be designated by the board. The committee shall meet at times and places determined by the chairman of the committee.

(m) The board shall refer any health care provider or facility to the appropriate regulatory agency for investigation and action on an allegation of repeated overutilization or overcharging.

(n) The board is authorized to make rules necessary to implement this section including:

- (1) the right to charge the association a reasonable fee for access to or evaluation of health care treatment, fees, or charges pursuant to this Act;
- (2) the right to charge the health care provider who overutilizes the guideline and treatment utilization system instituted under this Act a reasonable fee for access to or evaluation of health care treatment, fees, or charges pursuant to this Act; and;
- (3) the right to compel production of documents as related to the board's duties under this section.

(o) It shall be presumed that all charges for services that are consistent with the guidelines adopted by the board are reasonable as to amount, and the guidelines may be admissible as evidence in any proceeding before the board or a court of competent jurisdiction.

No such presumption shall arise as to the necessity of any service or treatment.

(p) The board and the members of the board are immune from any and all liability in any action arising out of the exercise of their duties in their official capacity as a board under this section.

(q) The review of fees, charges, or treatment in individual cases shall be undertaken only after the fee, charge, or treatment has been incurred and the association has admitted liability.

(r) Any contract entered into by the Industrial Accident Board under this section shall be on a competitive-bid basis.

Section 7c. Attorneys' Fees Regulated by the Board.

All fees of attorneys for representing claimants before the Board under the provisions of this law shall be subject to the approval of the Board. No attorneys' fees for representing claimants before the Board shall be allowed or approved against any party or parties not represented by such attorney, nor exceeding an amount equal to twenty-five percent (25%) of the total recovery, in addition to the reasonable expenses incurred

by the attorney in the preparation and presentation of the said claim before the Board, such expenses to be allowed by the Board. Where an attorney represents only a part of those interested in the allowance of a claim before the Board and his services in prosecuting such claim and obtaining an award there insures to the benefit of others jointly interested therein, then the Board may take these facts into consideration and allow the attorney a reasonable charge, to be assessed against the interest of those receiving benefits from the service of such attorney. The attorneys' fees herein provided for may be redeemed by the association by the payment of a lump sum or may be commuted by the agreement of the parties subject to the approval of the Board, but not until the claim represented by said attorney has been finally determined by the Board and recognized and accepted by the association. After the approval, as first above provided for, if the association be notified in writing of such claim or agreement for legal services, the same shall be a lien against any amount thereafter to be paid as compensation; provided, that where the employee's compensation is payable by the association in periodical installments, the Board shall fix at the time of approval the Proportion Of Each Installment To Be Paid On Account Of Said Legal Services.

Section 7d. Attorneys' Fees Regulated by the Court.

For representing the interest of any claimant in any manner carried from the Board into the courts, it shall be lawful for the attorney representing such interest to contract with any beneficiary under this law for an attorneys' fee for such representation, not to exceed twenty-five percent (25%) of the amount recovered, such fee for services so rendered to be fixed and allowed by the trial court in which such matter may be heard and determined.

In fixing and allowing such attorneys' fees the court must take into consideration the benefit accruing to the beneficiary as a result of such services. No attorneys' fees (other than the amount which the Board may have approved) shall be allowed for representing a claimant in the trial court unless the court finds that benefits have accrued to the claimant by virtue of such representation, and then such attorneys' fees may be allowed only on a basis of services performed and benefits accruing to the beneficiary.

Provided, however, that in all cases involving fatal injuries where the Association admits liability on all issues involved and tenders payments of maximum benefits in writing under this Act while the death benefits claim of such beneficiaries is pending before the Board, then no attorney fee shall be allowed.

Section 7-e. Artificial Appliances.

(a) In all cases where liability for compensation exists for an injury sustained by an employee in the course of his employment where artificial appliances of any kind would materially and beneficially improve the future usefulness and occupational opportunities of such injured employee, the association shall furnish such employee with the artificial appliance or appliances needed by him for such occupational opportunities and shall continue to furnish the needed artificial appliance or appliances until a satisfactory fit is obtained in the judgment of the attending physician or physicians. The association shall also be liable for replacing or repairing any artificial appliances so furnished, when needed as determined by the physician or physicians, unless the need for such repair or replacement is due to lack of proper care by the employee. The cost of such artificial

appliances so furnished to any such employee shall be in keeping with the salary or wages received by such employee.

(b) In the event the association shall fail or refuse to furnish or provide such artificial appliances, such employee shall make application to the Board for such artificial appliances. On receipt of such application the Board shall order a medical examination of the employee and obtain such other evidence as in their opinion they may deem necessary, after which the Board shall determine whether or not the artificial appliances would materially and beneficially improve the future usefulness and occupational opportunities of the injured employee and in the event they find that such improvement would exist, then the Board shall order the association to furnish the artificial appliances.

Section 8. Death Benefit.

(a) If death results from the injury, the association shall pay the legal beneficiaries of the deceased employee a weekly payment equal to sixty-six and two-thirds per cent (66-2/3%) of the employee's average weekly wage, but not less than the minimum weekly benefit nor more than the maximum weekly benefit set forth in Section 29 of this article.

(b) The weekly benefits payable to the widow or widower of a deceased employee shall be continued until the death or remarriage of the beneficiary. In the event of remarriage a lump sum payment equal in amount to the benefits due for a period of two (2) years shall be paid to the widow or widower. The weekly benefits payable to a child shall be continued until the child reaches eighteen (18) years of age, or beyond such age if actually dependent, or until twenty-five (25) years of age if enrolled as a full-time student in any accredited educational institution. All other legal beneficiaries are entitled to weekly benefits for a period of three hundred and sixty (360) weeks.

(c) Upon the termination of the eligibility of any child to receive benefits, the portion of compensation paid to such child shall thereafter be paid to any remaining child or children entitled to benefits under the provisions of this Act. If there is no other eligible child then such benefits shall be added to those being paid to the surviving spouse entitled to receive benefits under the provisions of this Act.

(d) The benefits payable to a widow, widower, or children under this section shall not be paid in a lump sum except in events of remarriage or in case of bona fide disputes as to the liability of the association for the death. Any settlement of a disputed case shall be approved by the board or court only upon an express finding that a bona fide dispute exists as to such liability.

If the association fails to admit liability prior to the final award, decision, or ruling of the board or disputes liability subsequent to such award, decision, or ruling, the court shall award reasonable attorney's fees, in a lump sum, not to exceed 25 percent of the recovery.

Upon settlement of all cases where the carrier admits liability for the death but a dispute exists as to the proper beneficiary or beneficiaries, the settlement shall be paid in periodic payments as provided by the law, with a reasonable attorney's fee not to

exceed twenty-five per cent (25%) of the settlement. The attorney's fee shall be paid periodically and not in a lump sum.

Section 8a. Persons to Whom Death Benefits Payable; Exemptions; Distribution; Payments.

The compensation provided for in the foregoing section of this law shall be for the sole and exclusive benefit of the surviving husband who has not, for good cause and for a period of three years prior thereto, abandoned his wife at the time of the injury, and of the wife who has not, at the time of the injury without good cause and for a period of three years prior thereto, abandoned her husband, and of the minor children, parents and stepmother, without regard to the question of dependency, dependent grandparents, dependent children, dependent grandchildren and dependent brothers and sisters of the deceased employee; and the amount recovered thereunder shall not be liable for the debts of the deceased nor the debts of the beneficiary or beneficiaries and shall be distributed among the beneficiaries as may be entitled to the same as hereinbefore provided, according to the laws of descent and distribution of this State; provided, the right in such beneficiary or beneficiaries to recover compensation for death be determined by the facts that exist at the date of the death of the deceased and that said right be a complete, absolute and vested one. Any parent who, during a substantial period of the minority of the deceased worker, shall have abandoned the worker shall be deemed to have waived any entitlement to benefits, and such parent's benefits shall be paid as if the parent had predeceased the deceased worker. The burden of proof shall be upon any beneficiary seeking to disqualify the parent on the grounds of abandonment or failure to support. Such compensation shall not pass to the estate of the deceased to be administered upon, but shall be paid directly to said beneficiaries when the same are capable of taking, under the laws of this State, or to their guardian in case of mental disability, infancy or other disqualifying cause; except payments may be made directly to the person having custody of the person of such beneficiary, who shall be entitled to receive and receipt for such payments unless or until the association is notified that a guardian has been appointed, in which event payment shall thereafter be made to such guardian. The compensation provided for in this law shall be paid weekly to the beneficiaries herein specified, subject to the provisions of this law.

Section 8b. Death After Period of Total or Partial Incapacity.

(a) In case death occurs as a result of the injury after a period of total or partial incapacity, for which compensation has been paid, the period of incapacity shall be deducted from the total period of compensation and the benefits paid thereunder from the maximum allowed for the death.

(b) Section 8b does not apply to lifetime death benefits as provided by Section 8 of this article but applies only to those beneficiaries receiving 360 weeks of benefits.

Section 9. Funeral Expenses.

(a) If the deceased employee leaves no legal beneficiaries, the association shall pay all expenses incident to his last sickness as a result of the injury, and in addition a funeral benefit not to exceed \$2,500.

(b) If the deceased employee leaves a legal beneficiary or beneficiaries, and is buried at the expense of the beneficiary or beneficiaries, or is buried at the expense of his

employer or any other person, the expense of such burial, not to exceed \$2,500, shall be payable without discount for present payment to the person or persons at whose expense the burial occurred, subject to the approval of the Board; and such burial expense, regardless of to whom it is paid, shall be in addition to the compensation due the beneficiary or beneficiaries of such deceased employee.

Section 10. Total Incapacity.

(a) While the incapacity for work resulting from the injury is total, the association shall pay the injured employee a weekly compensation equal to sixty-six and two-thirds percent (66-2/3%) of his average weekly wages, but not more than the maximum weekly benefit nor less than the minimum weekly benefit set forth in Section 29 of this article.

(b) If the injury is one of the six (6) enumerated in Section 11a of this article as constituting conclusive total and permanent incapacity, the association shall pay the compensation for the life of the employee, but in no other case of total and permanent incapacity shall the period covered by such compensation be greater than four hundred and one (401) weeks from the date of injury. For the purpose of this section only, the total and permanent loss of use of a member shall be considered to be the total and permanent loss of the member.

(c) No attorney's fee may be allowed in a case involving lifetime benefits under Subsection (b) of this section if the association admits liability while the case is pending before the Board and makes payments. If liability is not admitted before the Board, an attorney representing the claimant is entitled to a reasonable attorney's fee not to exceed twenty-five percent (25%) of the compensation recovered. The association shall deduct attorney's fees allowed by the Board or court in equal periodic payments not to exceed twenty-five percent (25%) of the compensation payment. If compensation is being paid in periodic payments, any attorney's fee allowed by the Board or court shall be paid in periodic payments.

(d) The lifetime benefits to the employee payable under this section may not be paid in a lump sum except in a case of bona fide disputes as to liability of the association. Any settlement of a disputed case shall be approved by the Board or court only upon an express finding that a bona fide dispute exists as to such liability. In any lifetime benefit case under this section where the association has admitted liability and is making weekly payments and a dispute arises over medical benefits, the Board may make an award that shall be appealable in accordance with Section 5, Article 8307, Revised Statutes, but only to the extent of the medical benefits in question. In such cases of medical benefit disputes, recovery for penalties and attorney's fees shall be as provided in Section 7 of this article.

Section 11. Partial Incapacity.

While the incapacity for work resulting from the injury is partial, the association shall pay the injured employee a weekly compensation equal to sixty-six and two-thirds per cent (66-2/3%) of the difference between his average weekly wages before the injury and his average weekly wage earning capacity during the existence of such partial incapacity, but in no case more than the maximum weekly benefit set forth in Section 29

of this article. The period covered by such compensation shall be in no case greater than three hundred (300) weeks; provided that in no case shall the period of compensation for total and partial incapacity exceed four hundred and one (401) weeks from the date of injury. Compensation for all partial incapacity resulting from a general injury shall be computed in the manner provided in this Section, and shall not be computed on a basis of a percentage of disability.

Section 11a. Injuries Constituting Total and Permanent Incapacity.

In cases of the following injuries, the incapacity shall conclusively be held to be total and permanent, to-wit:

- (1) The total and permanent loss of the sight of both eyes.
- (2) The loss of both feet at or above the ankle.
- (3) The loss of both hands at or above the wrist.
- (4) A similar loss of one hand and one foot.
- (5) An injury to the spine resulting in permanent and complete paralysis of both arms or both legs or of one arm and one leg.
- (6) An injury to the skull resulting in incurable insanity or imbecility.

In any of the above enumerated cases it shall be considered that the total loss of the use of a member shall be equivalent to and draw the same compensation during the time of such total loss of the use thereof as for the total and permanent loss of such member.

The above enumeration is not to be taken as exclusive but in all other cases the burden of proof shall be on the claimant to prove that his injuries have resulted in permanent, total incapacity.

Section 12. Specific Compensation.

For the injuries enumerated in the following schedule the employee shall receive in lieu of all other compensation except medical aid, hospital services and medicines as elsewhere herein provided, a weekly compensation equal to sixty-six and two-thirds percent (66-2/3%) of the average weekly wages of such employee, but not less than the minimum weekly benefit per week nor exceeding the maximum weekly benefit set forth in Section 29 of this article, for the respective periods stated herein, to wit:

For the loss of a thumb, sixty-six and two-thirds per cent (66-2/3%) of the average weekly wages during sixty (60) weeks.

For the loss of a first finger, commonly called the index finger, sixty-six and two-thirds per cent (66-2/3%) of the average weekly wages during forty-five (45) weeks.

For the loss of a second finger, sixty-six and two-thirds per cent (66-2/3%) of the average weekly wage during thirty (30) weeks.

For the loss of a third finger, sixty-six and two-thirds per cent (66-2/3%) of the average weekly wages during twenty-one (21) weeks.

For the loss of a fourth finger, commonly known as the little finger, sixty-six and two-thirds per cent (66-2/3%) of the average weekly wages during fifteen (15) weeks.

The loss of the second or distal phalange of the thumb shall be considered to be equal to the loss of one-half (1/2) of such thumb; the loss of more than one-half (1/2) of such thumb shall be considered to be equal to the loss of the whole thumb.

The loss of the third or distal phalange of any finger shall be considered to be equal to the loss of one-third (1/3) of such finger.

The loss of more than the middle and distal phalange of any finger shall be considered to be equal to the loss of the whole finger, provided that in no case shall the amount received for the loss of a thumb and more than one (1) finger on the same hand exceed the amount provided in this schedule for the loss of a hand.

For the loss of the metacarpal bone (bone or palm) for the corresponding thumb, finger or fingers above, add ten (10) weeks to the number of weeks as above subject to the limitation that in no case shall the amount received for the loss or injury to anyone (1) hand be more than for the loss of the hand.

For ankylosis (total stiffness of) or contracture (due to scars or injuries) which make the fingers useless, the same number of weeks shall apply to such finger or fingers or parts of fingers (not thumb) as given above.

For the loss of a hand, sixty-six and two-thirds per cent (66-2/3%) of the average weekly wage during one hundred and fifty (150) weeks.

For the loss of an arm at or above the elbow, sixty-six and two-thirds per cent (66-2/3%) of the average weekly wage during two hundred (200) weeks.

For the loss of one (1) of the toes other than the great toe, sixty-six and two-thirds percent (66-2/3%) of the average weekly wages during ten (10) weeks.

For the loss of the great toe, sixty-six and two-thirds percent (66-2/3%) of the average weekly wages during thirty (30) weeks.

The loss of more than two-thirds of any toe shall be considered to be equal to the loss of the whole toe.

The loss of less than two-thirds of any toe shall be considered to be equal to the loss of one-half (1/2) of the toe.

For the loss of a foot, sixty-six and two-thirds percent (66-2/3%) of the average weekly wages during one hundred and twenty-five (125) weeks.

For the loss of a leg, at or above the knee, sixty-six and two-thirds percent (66-2/3%) of the average weekly wages during two hundred (200) weeks.

For the total and permanent loss of the sight of one eye, sixty-six and two-thirds percent (66-2/3%) of the average weekly wages during one hundred (100) weeks.

In the foregoing enumerated cases of permanent, partial incapacity, it shall be considered that the permanent loss of the use of a member shall be equivalent to and draw the same compensation as the loss of that member.

For the complete and permanent loss of the hearing in both ears, sixty-six and two-thirds percent (66-2/3%) of the average weekly wages during one hundred and fifty (150) weeks.

For the loss of an eye and leg above the knee, sixty-six and two-thirds percent (66-2/3%) of the average weekly wages during a period of three hundred and fifty (350) weeks.

For the loss of an eye and an arm above the elbow, sixty-six and two-thirds per cent (66-2/3%) of the average weekly wages during a period of three hundred and fifty (350) weeks.

For the loss of an eye and a hand, sixty-six and two-thirds per cent (66-2/3%) of the average weekly wages during a period of three hundred and twenty-five (325) weeks.

For the loss of an eye and a foot, sixty-six and two-thirds per cent (66-2/3%) of the average weekly wages during a period of three hundred (300) weeks.

“Where the employee sustains concurrent injuries resulting in concurrent incapacities, he shall receive compensation only for the injury which produces the longest period of incapacity; but this Section shall not affect liability for the concurrent loss or the loss of the use thereof of more than one (1) member, for which member compensation is provided in this schedule, compensation for specific injuries under this law shall be cumulative as to time and not concurrent. In all cases of permanent partial incapacity it shall be considered that the permanent loss of the use of the member is equivalent to, and shall draw the same compensation as the loss of that member; but the compensation in and by said schedule provided shall be in lieu of all other compensation in such cases.

In all other cases of partial incapacity, including any disfigurement which will impair the future usefulness or occupational opportunities of the injured employee, compensation shall be determined according to the percentage of incapacity, taking into account among other things any previous incapacity, the nature of the physical injury or disfigurement, the occupation of the injured employee, and the age at the time of the injury. The compensation paid therefore shall be calculated by first determining a basic figure amounting to sixty-six and two-thirds percent (66-2/3%) of the average weekly wages of the employee, but which basic figure shall not exceed the maximum weekly benefit set forth in Section 29 of this article; such basic figure shall then be multiplied by the percentage of incapacity caused by the injury, and the result shall be the weekly compensation which shall be paid for such period not exceeding three hundred (300) weeks as the Board may determine. Whenever the weekly payments under this paragraph would be less than three dollars (\$3) per week, the period may be shortened, and the payments correspondingly increased by the Board.

Section 12a. Injured Employee, Refusal of Employment.

If the injured employee refuses employment reasonably suited to his incapacity and physical condition, procured for him in the locality where injured or at a place agreeable to him, he shall not be entitled to compensation during the period of such refusal, unless in opinion of the board such refusal is justifiable. This section shall not apply in cases of specific injuries for which a schedule is fixed by this law.

Section 12b. Hernia.

In all claims for hernia resulting from injury sustained in the course of employment, it must be definitely proven to the satisfaction of the board:

1. That there was an injury resulting in hernia.
2. That the hernia appeared suddenly and immediately following the injury.
3. That the hernia did not exist in any degree prior to the injury for which compensation is claimed.
4. That the injury was accompanied by pain.

In all such cases where liability for compensation exists, the association shall provide competent surgical treatment by radical operation. In case the injured employee refuses to submit to the operation, the board shall immediately order a medical examination of such employee by a physician or physicians of its own selection at a time and place to be by them named, at which examination the employee and the association, or either of them, shall have the right to have his or their physician present. The physician or physicians so selected shall make to the board a written report, signed and sworn to, setting forth the facts developed at such examination and giving his or their opinion as to the advisability or non-advisability of an operation. If it be shown to the board by such examination and such report thereof and the expert opinions thereon that the employee has any chronic disease or is otherwise in such physical condition as to render it more than ordinarily unsafe to submit to such operation he shall, if unwilling to submit to the operation, be entitled to compensation for incapacity under the general provisions of this law. If the examination and the written report thereof and the expert opinions thereon then on file before the board do not show to the board the existence of disease or other physical condition rendering the operation more than ordinarily unsafe and the board shall unanimously so find and so reduce its findings to writing and file the same in the case and furnish the employee and the association with a copy of its findings, then if the employee with the knowledge of the result of such examination, such report, such opinions and such findings, thereafter refuses to submit within a reasonable time, which time shall be fixed in the findings of the board, to such operation, he shall be entitled to compensation for incapacity under the general provisions of this law for a period not exceeding one year.

If the employee submits to the operation and the same is successful, which shall be determined by the board, he shall in addition to the surgical benefits herein provided for be entitled to compensation for twenty-six weeks from the date of the operation. If such operation is not successful and does not result in death, he shall be paid compensation under the general provisions of this law the same as if such operation had not been had; other than in determining the compensation to be paid to the employee, the board may take into consideration any minor benefits that accrued to the employee by reason thereof or any aggravation or increased injury which accrued to him by reason thereof.

If the hernia results in death within one year after it is sustained, or the operation results in death, such death shall be held a result of the injury causing such hernia and compensated accordingly under this law, This paragraph shall not apply where the employee has willfully refused to submit to an operation which has been found by the examination herein provided for not to be more than ordinarily unsafe.

Section 12c. Subsequent Injury; Second Injury Fund.

(a) If an employee who has suffered a previous injury shall suffer a subsequent injury

which results in a condition of incapacity to which both injuries or their effects have contributed, the association shall be liable because of such injury only for the compensation to which the subsequent injury would have entitled the injured employee had there been no previous injury; provided that there shall be created a fund known as the 'Second Injury Fund,' hereinafter described, from which an employee who has suffered a subsequent injury shall be compensated for the combined incapacities resulting from both injuries. Provided further, however, that notice of injury to the employer and filing of a claim with the Industrial Accident Board as required by law shall also be deemed and considered notice to and filing of a claim against the 'Second Injury Fund'.

(b) In regard to claims paid from the Second Injury Fund, the Board has the same rights and obligations as the association under Section 6a, Article 8307, Revised Statutes, including the right to subrogation, the right to recover from third persons, and the right to attorney's fees.

Section 12c-1. Permanent and Total Incapacity Through Loss of or Loss of Use of, Another Member or Organ.

If an employee who has previously lost, or lost the use of, one hand, one arm, one foot, one leg, or one eye, becomes permanently and totally incapacitated through the loss or loss of use of another member or organ, the association shall be liable only for the compensation payable for such second injury; provided, however, that in addition to such compensation and after the combination of the payments therefore, the employee shall be paid the remainder of the compensation that would be due for the total permanent incapacity out of the special fund known as 'Second Injury Fund,' hereinafter defined.

Section 12c-2. Second Injury Fund; How Created; Presumptions.

The special fund known as the 'Second Injury Fund' shall be created in the following manner:

(a) In every case of the death of an employee under this Act where there is no person entitled to compensation surviving said employee, the association shall pay to the Industrial Accident Board the full death benefits, but not to exceed 360 weeks of compensation, as provided in Section 8, of Article 8306, Revised Civil Statutes of Texas, 1925, as amended, to be deposited with the Treasurer of the State for the benefit of said Fund and the Board shall direct the distribution thereof.

(b) Unless a claim for fatal benefits is filed with the Board by a beneficiary or beneficiaries within eight (8) months following the date of death of the employee, it shall be presumed for purposes of this section only that no person entitled to compensation under Section 8a of this article survived the deceased employee; provided, however, that the presumption created hereby shall not apply against minor beneficiaries or to beneficiaries of unsound mind for whom no guardian has been appointed.

(c) If the Board enters an initial award ordering payments to the Fund hereunder and it is determined by a subsequent final award of the Board or judgment of a court of

competent jurisdiction that a beneficiary under Section 8a of the article is entitled to fatal benefits, the Board shall order reimbursement from the Fund to the association of the amounts paid by it to the Fund in good faith by reason of the initial award of the Board.

Section 12d. Change of Condition, Mistake or Fraud; Review.

Upon its own motion or upon the application of any person interested showing a change of condition, mistake or fraud, the Board at any time within the compensation period, may review any award or order, ending, diminishing or increasing compensation previously awarded, within the maximum and minimum provided in this Law, or change or revoke its previous order denying compensation sending immediately to the parties a copy of its subsequent order or award. Provided, when such previous order has denied compensation, application to review same shall be made to the Board within twelve months after its entry, and not afterward. Review under this Section shall be only upon notice to the parties interested.

Section 12e. Surgical Operation.

In all cases where liability for compensation exists for an injury sustained by an employee in the course of his employment and a surgical operation for such injury will effect a cure of the employee or will materially and beneficially improve his condition, the association or the employee may demand that a surgical operation be had upon the employee as herein provided, and the association, shall provide and pay for all necessary surgical treatment, medicines and hospital services incident to the performance of said operation, provided the same is had. In case either of said parties demands in writing to the board such operation, the board shall immediately order a medical examination of the employee in the same manner as is provided for in the section of this law relating to hernia. If it be shown by the examination, report of facts and opinions of experts, all reduced to writing and filed with the board, that such operation is advisable and will relieve the condition of the injured employee or will materially benefit him, the board shall so state in writing and upon unanimous order of said board in writing, a copy of which shall be delivered to the employee and the association, shall direct the employee at a time and place therein stated to submit himself to an operation for said injury. If the board should find that said operation is not advisable, then the employee shall continue to be compensated for his incapacity under the general provisions of this law. If the board shall unanimously find and so state in writing that said operation is advisable, it shall make its order to that effect, stating the time and place when and where such operation is to be performed, naming the physicians therein who shall perform said operation, and if the employee refuses to submit to such operation, the board may order or direct the association to suspend the whole or any part of his compensation during the time of said period of refusal. The results of such operation, the question as to whether the injured employee shall be required to submit thereto and the benefits and liabilities arising therefrom shall attach, be treated, handled and determined by the board in the same way as is provided in the case of hernia in this law.

Section 12f. Physicians or Chiropractors Employed by Subscriber or Association.

In all cases where a subscriber or the association has in his or its employ a physician or physicians, a chiropractor or chiropractors, regularly paid in any manner whatsoever by such subscriber or association to administer to or treat injured employees, the name or names of such physicians or chiropractors at the date of employment of the same shall

be filed with the Board together with a copy of the contract of such employment. If the contract of such physician or physicians, chiropractor or chiropractors is not in writing, then the same shall be reduced to writing and a copy thereof filed with the Board. Such contract shall state fully the extent and scope of the employment and the compensation to be paid such physicians or chiropractors. If the association or subscriber willfully fails or refuses to comply with this provision of this law, then an injured employee or any person acting for him shall have the right to provide hospital services, chiropractic services, medical aid and medicine for said injured employee, at the expense of and the same shall be charged to the association, and the subscriber or association shall notify the employee at or before the time of injury what physician or physicians, chiropractor or chiropractors are contracted with to attend and render professional services to his or its employees.

Section 12g. Insurance Premiums.

It shall be unlawful for any subscriber or any employer who seeks to comply with the provisions of this law to either directly or indirectly collect of or from his employees by any means or pretense whatever any premium under this law, or part thereof paid or to be paid upon any policy of such insurance under this law which covers such employees, or any intended policy of such insurance designed to cover such employees. If any such subscriber or any employer of labor in this State violates this provision of this law, then any employee or the legal beneficiary of any employee of such employer or subscriber shall be entitled to all the benefits of this law and in addition thereto shall have a separate right of action to recover damages against such employer without regard to the compensation paid or to be paid to such employee or beneficiary under this law. The association shall in no wise be responsible because of such separate action by such employee or beneficiary against such employer on such separate cause of action.

Section 12h. Indemnity or Insurance Contracts.

Every contract or agreement of an employer, the purpose of which is to indemnify him from loss or damage on account of the injury of an employee by accidental means or on account of the negligence of such employer or his officer, agent or servant. Shall be absolutely void unless it also covers liability for the payment of the compensation provided for by this law. This section shall not apply to employers of labor who are not eligible under the terms hereof to become subscribers thereto, nor to employers whose employees have elected to reject the provisions of this law, nor to employers eligible to come under the terms of this law who do not elect to do so, but who choose to carry insurance upon their employees independently of this law and without attempting in such insurance to provide compensation under the terms of this law. Any evasion of this section whereby an insurance company shall undertake, under the guise of writing insurance against the risk of the employers who do not see proper to come under this law, to write insurance substantially or in any material respect similar to the insurance provided for by this law shall render such insurance void as provided for in this section.

Section 12i. Minors.

If it be established that the injured employee were a minor when injured and that under normal condition his wages would be expected to increase, that fact may be considered in arriving at his average weekly wages, and compensation may be fixed accordingly.

A minor who has been employed in any hazardous or other employment which is prohibited by any Statute of this State, shall nevertheless be entitled to receive compensation under the terms and provisions of this Act. Provided, that this Section

shall not be construed to excuse or justify any person, firm or corporation employing or permitting to be employed a minor in any hazardous or other employment prohibited by any Statute of this State.

Section 13. Minor or Incompetent Injured Employee.

If an injured employee is mentally incompetent or is a minor or is under any other disqualifying use at the time when any right or privileges accrue to him or exist under this law, his guardian or next friend may in his behalf claim and exercise such rights and privileges except as otherwise herein provided. In case of partial incapacity or temporary total incapacity, payment of compensation may be made direct to the minor and his receipt taken therefore, if the authority to so pay and receipt therefore is first obtained from the board.

Section 14. Waiver of Right to Compensation.

No agreement by any employee to waive his rights to compensation under this law shall be valid.

Section 15. Lump Sum Settlement.

(a) In cases where death or incapacity in any degree results from an injury, the liability of the association may be redeemed by the payment of a lump sum by agreement of the parties thereto subject to the approval of the Industrial Accident Board. Where in the judgment of the Board manifest hardship and injury would otherwise result, the Board may compel the association to redeem the liability by payment of the award of the Board in a lump-sum, and a discount shall be allowed for present payment in accordance with Article 8306a, of the Revised Civil Statutes of 1925, as amended.

(b) Notwithstanding Subsection (a) of this section, a lump sum settlement, award, or judgment may not be made in violation of Section 8(b) or 8(d), Article 8306, Revised Statutes.

Section 15a. Increase of Weekly Compensation.

In any case where compensation is payable weekly at a definite sum and for a definite period, and it appears to the Board that the amount of compensation being paid is inadequate to meet the necessities of the employee or beneficiary, the Board shall have the power to increase the amount of compensation by correspondingly decreasing the number of weeks for which the same is to be paid, allowing discount for present payment at the rate of four (4%) percent, compounded annually; provided that in no case shall the amount to which it is increased exceed the amount of the average weekly wages upon which the compensation is based; provided it is not intended hereby to prevent lump sum settlement when approved by the Board.

The provisions of this section shall also apply to compensation which is payable under any law enacted pursuant to Section 59, Section 60, or Section 61 of Article III of the Constitution of Texas.

Section 16. Death, Survival of Cause of Action.

In all cases of injury resulting in death, where such injury was sustained in the course of employment, cause of action shall survive.

Section 17. Non-Resident and Resident Alien Beneficiaries.

Non-resident alien beneficiaries and resident alien beneficiaries shall be entitled to compensation under this law. Non-resident alien beneficiaries may be officially represented by the consular officers of the nation of which such alien or aliens may be citizens or subjects, and in such cases the consular officers shall have the right to receive for distribution for such non-resident alien beneficiaries all compensation awarded hereunder, and the receipt of such consular officers shall be a full discharge of all sums paid to and received by them. The association may at any time, subject to the approval of the board, commute all future installments of compensation payable to alien beneficiaries, not residents of the United States, by paying to such alien beneficiaries the sum agreed upon and filing receipts therefore with the board.

Section 18. Weekly Compensation; Non-Payment; Forfeiture or Revocation of Association's License.

It is the purpose of this law that the compensation herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto, unless the liability is redeemed as in such cases provided elsewhere herein. If the association willfully fails or refuses to pay compensation as and when the same matures and accrues, the board shall notify said association that such is the course it is pursuing. If after such notice the association continues to willfully refuse and fail to meet these payments of compensation as provided for in this law, the board shall have the power to hold that such association is not complying with the provisions of this law, and shall certify such fact to the Commissioner of Insurance, and said certificate shall be sufficient cause to justify said Commissioner to revoke or forfeit the license or permit of such association to do business in Texas; provided, said power of the board shall not be held to deny the association the right to bring suit or suits to set aside any ruling, order or decision of the board.

Section 18a. Timeliness of Commencement of Benefits or Filing of Controversion; Suspension of Benefits; Penalties.

(a) Within 20 days from the receipt of written notice of injury which produces compensable lost time the association, including self-insureds, shall either initiate weekly indemnity compensation or file with the Board a statement of controversion, or in claims of fatal benefits, a statement of position. The statement of controversion or statement of position shall fully set forth in writing the reasons why the association or self-insured has failed or refused to commence the payment of weekly indemnity compensation. When a statement of controversion has been filed, the Board shall promptly set such claim for a pre-hearing conference on the merits. If the association or self-insured fails to initiate weekly indemnity compensation or file a statement of controversion or statement of position within the allotted time, the Board shall notify the association or self-insured in writing to its designated Austin Industrial Accident Board representative of its possible violation of the Workers' Compensation Act. If within 10 days from receipt of such Board notice the association or self-insured has still failed to either commence the payment of weekly indemnity benefits or to file a statement of controversion or in claims for fatal benefits, a statement of position, the Board shall promptly set such claim for a pre-hearing conference on the merits and thereafter the Board after notice and hearing thereon, by majority vote, may assess a penalty not to exceed 15 percent of the weekly indemnity compensation then past due.

(b) If the association, including self-insureds, suspends or stops the payment of weekly indemnity compensation or medical benefits, the association including self-insureds, shall within 10 days file with the Board a statement which fully sets out the reasons why such benefits have been suspended. If the association, including self-insureds, fails to take any such action within the allotted time, the Board shall notify the association, including self-insureds, in writing to its designated Austin Industrial Accident Board representative of its possible violation of the Workers' Compensation Act. If within 10 days from receipt of such Board notice, the association or self-insured has still failed to act, the Board shall promptly set such claim for a pre-hearing conference on the merits and thereafter the Board after notice and hearing thereon, by majority vote, may assess a penalty not to exceed 15 percent of the weekly indemnity compensation and medical benefits then past due.

(c) All penalties provided under Subsections (a) and (b) shall be for the benefit of the employee, subject to attorney's fees as allowed by the Act.

(d) If it appears to the Board that the association, or self-insured, may be, as a general business practice, controverting claims by reason of its failure to promptly and adequately investigate such claims, or is controverting claims when the evidence then available clearly indicates compensability, or is suspending the payment of weekly indemnity compensation or medical benefits without stating fully in writing the reasons therefore, the Board, after notice and hearing, may, upon a finding by a majority of the members of the Board that the association or self-insured is in fact engaging in such conduct, issue an order directing the association or self-insured to cease and desist from such pattern of conduct or may fine the association or self-insured an amount not to exceed \$10,000 or both. A cease and desist order may be imposed for a period not to exceed 12 months. If the association or self-insured violates a cease and desist order while the same is in effect, the Board, after notice and hearing, upon a finding by a majority of the members of the Board that such violation occurred, may certify such fact to the commissioner of insurance, and said certificate shall be sufficient cause for the said commissioner to conduct a hearing into the facts relevant to the revocation of the license or permit of such association to do business in Texas or the revocation of the certificate of self-insurance of such self-insured; provided, said power of the Board shall not be held to deny the association or self-insured the right to bring suit or suits to set aside any ruling, order, or decision of the Board rendered pursuant to this section.

(e) Appeals arising from the assessment of any penalty under Subsection (a) or (b) of this section shall be de novo and according to the provisions of Section 5, Article 8307, Revised Statutes, either as to the assessment of any penalty alone and/or as to any ruling, decision, award on the merits, but no decision of the Board as to any penalty shall be admissible before the jury. Appeals arising from Subsection (d) of this section shall be according to the provisions of Section 5, Article 8307, Revised Statutes, except venue for such appeals under Subsection (d) shall lie solely in any of the District Courts of Travis County; Texas.

(f) Nothing in this section shall be considered in lieu of or in substitution of any other right or remedy as provided by law.

Section 19. Injuries Sustained Outside State; Venue.

If an employee who has been hired or, if a Texas resident, recruited in this State, sustain injury in the course of his employment he shall be entitled to compensation according to the Law of this State even though such injury was received outside of the State, and that such employee, though injured out of the State of Texas, shall be entitled to the same rights and remedies as if injured within the State of Texas, except that in such cases of injury outside of Texas, the suit of either the injured employee or his beneficiaries, or of the Association, to set aside an award of the Industrial Accident Board of Texas, or to enforce it, as mentioned in Article 8307, Sections 5-5a, shall be brought either

- a. In the county of Texas where the contract of hiring was made or where the employee was recruited; or
- b. In the county of Texas where such employee or his beneficiaries or any of them reside when the suit is brought, or
- c. In the county where the employee or the employer resided when the contract of hiring was made or when the employee was recruited, as the one filing such suit may elect.

Providing that such injury shall have occurred within one year from the date such injured employee leaves this State; and provided, further, that no recovery can be had by the injured employee hereunder in the event he has elected to pursue his remedy and recovers in the state where such injury occurred.

Section 20. 'Injury' or 'Personal Injury', and 'Occupational Disease', Defined; Ordinary Diseases.

Wherever the terms 'Injury' or 'Personal Injury' are used in the Workmen's Compensation Laws of this State, such terms shall be construed to mean damage or harm to the physical structure of the body and such diseases or infections as naturally result therefrom. The terms 'Injury' and 'Personal Injury' shall also be construed to mean and include 'Occupational Diseases', as hereinafter defined. Whenever the term 'Occupational Disease' is used in the Workmen's Compensation Laws of this State, such term shall be construed to mean any disease arising out of and in the course of employment which causes damage or harm to the physical structure of the body and such other diseases or infections as naturally result therefrom. An 'Occupational Disease' shall also include damage or harm to the physical structure of the body occurring as the result of repetitious physical traumatic activities extending over a period of time and arising in the course of employment; provided, that the date of the cumulative injury shall be the date disability was caused thereby. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where such diseases follow as an incident to an 'Occupational Disease' or 'Injury' as defined in this section.

Section 21. False Representations as to Previous Disease.

If the employee, at the time of his employment, willfully and falsely represents in writing that he has not previously been afflicted with the occupational disease which is the cause of incapacity or death, no compensation shall be payable.

Section 22. Aggravation of Previously Existing Diseases.

Where an occupational disease is aggravated by any other non-compensable disease or infirmity, or where incapacity or death from any other non-compensable cause, is aggravated, prolonged, accelerated or in anywise contributed to by an occupational disease, the number of weeks of compensation payable by the Association shall be reduced and limited to such proportion only of the total number of weeks of compensation that would be payable if the occupational disease were the sole cause of the incapacity or death, as such occupational disease, as a causative factor, bears to all the causes of such incapacity or death, such reduction in compensation to be effected by reducing the number of weekly payments of compensation for which the Association is liable.

Section 23. Retroactive Effect of Statute.

The provisions of this Act do not apply to cases of incapacity or death resulting from a disease in which the last injurious exposure to the hazards of such disease occurred before the date on which this Act takes effect.

Section 24. Employer; Who Deemed.

Where compensation is payable for an occupational disease, the employer in whose employ the employee was last injuriously exposed to the hazards of such disease shall be deemed the employer within the meaning of the Act.

Sections 25 To 27. Repealed by Acts 1971, 62nd Leg., P. 2540, Ch. 834, § 2, Eff. Aug. 30, 1971.

Section 28. Maintenance Tax; Acceptance of Grant, Gift, or Payment.

(a) In addition to all other taxes now being paid, each stock company, mutual company, reciprocal, or inter-insurance exchange or Lloyds Association writing Workers' Compensation insurance in this state, shall pay annually a maintenance tax into the General Revenue Fund in the State Treasury for the support of the Industrial Accident Board an amount not to exceed seven-tenths (7/10) of one percent (1%) of gross premiums collected by such company or association during the preceding year under workers' compensation policies written by such companies or associations covering risks in this state according to the reports made to the State Board of Insurance as required by law. Said amount shall be collected at the same time and in the same manner as provided by law for the collection of taxes on gross premiums of such workers' compensation insurance carriers. All self-insurers under any of the Workers' Compensation Acts of the State of Texas shall report to the State Board of Insurance the total amount of their medical and indemnity costs for the previous year and pay a like amount of tax as provided above on said total amount of medical and indemnity costs. Failure to make any report required by this Section shall be punishable by fine not to exceed One Thousand (\$1,000) Dollars and the failure to pay any tax within thirty (30) days after same is due under this Section shall be punishable by a penalty of ten percent (10%) of the amount, and shall be recovered by the Attorney General in a suit brought by him in the name of the State of Texas and such penalties when collected shall be deposited in the General Revenue Fund in the State Treasury.

(b) The Industrial Accident Board, after taking into account any unexpended funds produced by this tax, shall adjust the rate of assessment each year to produce the amount of funds that it estimates will be necessary to pay the expenses of the board in

regulating workers' compensation insurance during the succeeding year. The Industrial Accident Board shall certify the rate of assessment to be used during the succeeding year to the State Board of Insurance not later than October 31 of each calendar year. The rate of tax for the period September 1, 1985, through December 31, 1985, shall be seven-tenths (7/10) of one percent (1%).

(c) All funds received under this Section shall be deposited to the credit of the Industrial Accident Board in the General Revenue Fund. The funds may be spent as authorized by legislative appropriation on warrants issued by the Comptroller of Public Accounts under requisitions made by the Industrial Accident Board.

(d) The Industrial Accident Board shall additionally be authorized to accept any grant, payment, or gift of money, funds, or property made to it by any individual, association, or corporation, by any state or political subdivision of any state, or by the United States or any department or agency thereof. The Industrial Accident Board shall utilize any such grant, payment, or gift in accordance with the purpose expressly prescribed by the donor. A record of such grants, payments, or gifts shall be maintained in the office of the Industrial Accident Board.

Section 29. Maximum and Minimum Weekly Benefits.

(a) After August 31, 1973, and before September 1, 1974, the maximum weekly benefit shall be Sixty-three Dollars (\$63) and the minimum weekly benefit shall be Fifteen Dollars (\$15).

(b) After August 31, 1974, the maximum weekly benefit shall be Seventy Dollars (\$70) and the minimum weekly benefit shall be Sixteen Dollars (\$16).

(c) If the annual average of the manufacturing production workers average weekly wage in Texas exceeds by Ten Dollars (\$10) the average weekly wage for those workers in 1974 as determined by the Texas Employment Commission and published in its report, 'The Average Weekly Wage,' the maximum weekly benefit shall be increased by Seven Dollars (\$7) and the minimum weekly benefit shall be increased by One Dollar (\$1) above the amounts specified in Subsection (b) of this section beginning with the commencement of the state fiscal year following the publication of the report. Thereafter, each cumulative Ten Dollar (\$10) increase in the average weekly wage for manufacturing production workers in Texas as annually determined and reported by the Texas Employment Commission shall increase cumulatively the maximum weekly benefit by an additional Seven Dollars (\$7) and the minimum weekly benefit by an additional One Dollar (\$1) beginning with the commencement of the state fiscal year following the publication of the report.

Article 8306a. Discount for Present Payment.

In all cases when the payments of weekly compensation due an injured employee or beneficiary coming within the provisions of the Workmen's Compensation Act are accelerated by increasing the amount of compensation by correspondingly decreasing the number of weeks for which the same is to be paid, and when the liability of the

insurance company is redeemed by the payment of a lump sum, by agreement of parties interested, or as a result of an order made by the Industrial Accident Board or a judgment rendered by a court of competent jurisdiction, and when advanced payments of compensation are made, and in all cases when compensation is paid before becoming due, discount shall be allowed for present payment at four (4) percent, compounded annually.

Provided, however, where suits are legally brought by any claimant or beneficiary under any of the provisions of this Act and recovery is had for past due weekly installments, such claimant or beneficiary shall be entitled to recover interest on such past due installments at the rate of four (4) percent, compounded annually. Any judgment rendered pursuant to any of the provisions of this Act shall bear interest from the date it is rendered until paid at the rate of four (4) percent, compounded annually.

Provided, however, future installments of compensation payable to alien beneficiaries, not residents of the United States, may be commuted and paid according to the terms and provisions of Section 17, Article 8306 of the Revised Civil Statutes of 1925; and provided further, when either party shall appeal from the award of the Industrial Accident Board to the District Court, the District Court shall try the matter appealed from only, and shall not in said trial adjudicate in any way any right to exemplary damages, as is granted in Section 26 of Article XVI of the Constitution of Texas.

The provisions of this section shall also apply to compensation which is payable under any law enacted pursuant to Section 59, Section 60, or Section 61 of Article III of the Constitution of Texas.

Article 8306b. 'Workmen's Compensation' – Name Change.

Section 1.

The term 'workmen's compensation' shall hereafter be known as 'workers' compensation,' and references to 'workmen's compensation' in the statutes of this state shall be changed to 'workers' compensation' when sections of those laws are being amended for any purpose.

Section 2.

Forms and printed materials used by any state agency which incorporate the term 'workmen's compensation' shall be modified to substitute the term 'workers' compensation' after the present supply of forms and materials is exhausted. State agencies, including the State Board of Insurance and the Industrial Accident Board, may promulgate reasonable rules and regulations necessary to carry out the intent of this Act.

PART II

Article 8307, Section 1, Industrial Accident Board; Members; Powers:

The Industrial Accidental Board shall consist of three members, one to be biennially appointed by the Governor for a term of six years. Appointments to the Board shall be made without regard to race, creed, sex, religion, or national origin. Said Board shall have the powers, duties and functions hereinafter conferred. (Acts 9/1/83)

Section 1a. Application of Sunset Act:

The Industrial Accident Board is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the Board is abolished, and this Article expires effective September 1, 1995. (Acts 9/1/83)

Section 2. Eligibility of Members:

(a) At the time of the initial appointment one member of the Industrial Accident Board shall be an employer of labor in some industry or business covered by this law; one shall be employed in some business industry as a wage earner, and the third member shall be a practicing attorney of recognized ability, and shall act in the capacity of legal adviser to the board, in addition to his other duties as a member thereof, and be chairman of said board.

(b) A member or employee of the board may not be an executive officer, employee, or paid consultant of an employer-oriented trade association, a labor-oriented trade association, a lawyers' association, a medical association, or an insurance trade association.

(c) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), by virtue of his activities for compensation in or on behalf of a profession related to the operation of the board may not serve as a member of the board or act as general counsel to the board. (Acts 9/1/83)

Section 2a. Board Members, Removal:

(a) It is a ground for removal from the board if a member:

- (1) does not have at the time of initial appointment the qualifications required by Subsection (a) of Section 2 of this article for appointment to the board; or
- (2) violates a prohibition established by Subsection (b) or (c) of Section 2 of this article.

b) The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed. (Acts 9/1/83)

Section 3. Secretary; Clerical Services; Expenses; Office:

The Board may appoint a Secretary, pre-hearing officers and other employees as may be necessary to properly administer this Act. It shall also be allowed a reasonable sum, the amount to be determined by the Legislature, for pre-hearing officers, clerical and other services, office equipment, traveling expenses and all other expenses necessary. (Acts 1969)

Section 3a. Accounting, Career Programs, Performance Evaluations, Equal Employment, Public Complaints:

(a) During January of each year, the board shall file with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding fiscal year.

(b) The executive director or his designee shall develop an intra-agency career ladder program, one part of which shall be the intra-agency posting of all nonentry level positions for at least 10 days before any public posting.

(c) The executive director or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for board employees must be based on the system established under this subsection.

(d) The board shall prepare information describing the functions of the board and describing the board's procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the general public and appropriate state agencies in accordance with Section 9a of Article 8307, as amended.

(e) The executive director or his/her designee shall prepare and maintain a written plan to assure implementation of a program of equal employment opportunity whereby all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The plans shall include:

- (1) a comprehensive analysis of all the agency's work force by race, sex, ethnic origin, class of position, and salary or wage;
- (2) plans for recruitment, evaluation, selection, appointment, training, promotion, and other personnel policies;
- (3) steps reasonably designed to overcome any identified underutilization of minorities and women in the agency's work force; and
- (4) objectives and goals, timetables for the achievement of the objectives and goals, and assignments of responsibility for their achievement.

The plans shall be filed with the governor's office within 60 days of the effective date of this Act, cover an annual period, and be updated at least annually. Progress reports shall be submitted to the governor's office within 30 days of November 1 and April 1 of each year and shall include the steps the agency has taken within the reporting period to comply with these requirements. (Acts 9/1/83)

Section 3b. Qualifications And Performance Standards:

The board shall provide to its members and employees as often as is necessary information regarding their qualifications under Section 2 of this article and their responsibilities under applicable laws relating to standards of conduct for state officers or employees. (Acts 9/1/83)

Section 3c. Audits:

The State Auditor shall audit the financial transactions of the board during each fiscal year. (Acts 9/1/83)

Section 3d. Public Complaints:

(a) The board shall keep an information file about each written complaint from a member of the general public that is unrelated to a specific workers' compensation claim file.

(b) If a member of the general public files such written complaint with the board, the board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation. (Acts 9/1/83)

Section 4. Rules; Physical Examination; Suspension Of Compensation; Procedures And Powers:

The Board may make rules not inconsistent with this law for carrying out and enforcing its provisions, and may require any employee claiming to have sustained injury to submit himself for examination before such Board or someone acting under its authority at some reasonable time and place within the State, and as often as may be reasonably ordered by the Board to a physician or physicians, a chiropractor or chiropractors authorized to practice under the laws of this State. If the employee or the Association requests, he or it shall be entitled to have a physician or physicians, chiropractor or chiropractors of his or its own selection present to participate in such examination.

Refusal of the employee to submit to such examination shall deprive him of his right to compensation during the continuance of such refusal. When a right to compensation is thus suspended, no compensation shall be payable in respect to the period of suspension. If any employee shall persist in insanitary or injurious practices which tend to either imperil or retard his recovery, or shall refuse to submit to such medical or surgical treatment, chiropractic service or other remedial treatment recognized by the State, as is reasonably essential to promote his recovery, the Board may in its discretion order or direct the Association to reduce or suspend the compensation of any such injured employee. No compensation shall be reduced or suspended under the terms of this Section without reasonable notice to the employee and an opportunity to be heard.

When authorized by the Board, the Association shall have the privilege of having any injured employee examined by a physician or physicians, chiropractor or chiropractors of its own selection, at reasonable times, at a place or places suitable to the condition of the injured employee and convenient and accessible to him. The Association shall pay for such examination and the reasonable expense incident to the injured employee in

submitting thereto. The injured employee shall have the privilege to have a physician or chiropractor of his own selection present to participate in such examination. Provided, when such examination is directed by the Board at the request of the Association, the Association shall pay the fee of the physician or chiropractor selected by the employee, such fee to be fixed by the Board.

Process and procedures shall be as summary as may be under this law. The Board or any member thereof shall have the power to subpoena witnesses, administer oaths, inquire into matters of fact, examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute, punish for contempt in the same manner and to the same extent as a District Court may do, and to bar persons guilty of unethical or fraudulent conduct from practicing before the Board. All rulings and decisions of the Board relating to disputed claims shall be upon questions of fact and in accord with the provisions of this law. (Acts 1953)

Section 4a. Notice Of Injury; Claim For Compensation:

Unless the association or subscriber have notice of the injury, no proceeding for compensation for injury under this law shall be maintained unless a notice of the injury shall have been given to the association or subscriber within thirty (30) days after the happening of an injury or the first distinct manifestation of an occupational disease, and unless a claim for compensation with respect to such injury shall have been made within one (1) year after the occurrence of the injury or of the first distinct manifestation of an occupational disease; or, in case of death of the employee or in the event of his physical or mental incapacity, within one (1) year after death or the removal of such physical or mental incapacity. For good cause the Board may, in meritorious cases, waive the strict compliance with the foregoing limitations as to notice, and the filing of the claim before the Board. (Acts 8/29/83)

Section 4b. Application of Administrative Procedure and Texas Register Act to IAB:

(a) Sections 1 through 12 of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) apply to the Industrial Accident Board. However, Section 4(a)(3) and Sections 13 through 20 of the Administrative Procedure and Texas Register Act do not apply, and Section 4(b) of that Act shall not apply to orders and decisions of the Industrial Accident Board.

(b) The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), except that pre-hearing conferences, hearings, and determinations on workers' compensation claims are not open meetings under that law. (Acts 9/1/83)

Section 5. Determination of Questions: Suit to Set Aside Final Ruling and Decision: Revocation of Association's License

All questions arising under this law, if not settled by agreement of the parties interested therein and within the provisions of this law, shall, except as otherwise provided, be determined by the Board. Any interested party who is not willing and does not consent to abide by the final ruling and decision of said Board shall, within twenty (20) days after the rendition of said final ruling and decision by said Board, file with said Board notice that he will not abide by said final ruling and decision. And he shall within twenty (20) days after giving such notice bring suit in the county where the injury occurred, or in the

county where the employee resided at the time the injury occurred (or, if such employee is deceased, then in county where the employee resided at the time of his death), to set aside said final ruling and decision, and said Board shall proceed no further toward the adjustment of such claim, other than hereinafter provided. In all cases of occupational diseases, for the purpose of determining venue when an appeal is effected to set aside the final ruling and decision of the Board, suit shall be brought in a court of competent jurisdiction in the said county in which the employee was last exposed to the disease alleged, prior to the manifestation of the disease, or death therefrom, or in the county in which the adverse party resides, or has a permanent place of business, or by agreement of the parties in a court of competent jurisdiction in any county in this state. Whenever such suit is brought, the rights and liability of the parties thereto shall be determined by the provisions of this law, and the suit of the injured employee or person suing on account of the death of such employee shall be against the association, if the employer of such injured or deceased employee at the time of such injury or death was a subscriber as defined in this law. If the final order of the Board is against the Association, then the Association and not the employer shall bring suit to set aside said final ruling and decision of the Board, if it so desires, and the court shall in either event determine the issues in such cause, instead of the Board, upon trial de novo, and the burden of proof shall be upon the party claiming compensation. The Industrial Accident Board shall furnish any interested party in said claim pending in court, upon request, free of charge, with a certified copy of the notice of the employer becoming a subscriber, filed with the Board, and the same when properly certified to shall be admissible in evidence in any court in this state upon trial of such claim therein pending, and shall be prima facie proof of all facts stated in such notice in the trial of said cause unless same is denied under oath by the opposing party therein. In case of recovery, the same shall not exceed the maximum compensation allowed under the provisions of this law. If any party to such final ruling and decision of the Board, after having given notice as above provided, fails within said twenty (20) days to institute and prosecute a suit to set the same aside, then said final ruling and decision shall be binding upon all parties thereto; and, if the same is against the Association, it shall at once comply with such final ruling and decision; and failing to do so, the Board shall certify the fact to the Commissioner of Insurance, and such certificate shall be sufficient cause to justify said Commissioner to revoke or forfeit the license or permit of such Association to do business in Texas.

Notwithstanding any other provision of this law, as amended, no award of the Board, and no judgment of the court, having jurisdiction of a claim against the association for the cost or expense of items of medical aid, hospital services, nursing, chiropractic services, medicines or prosthetic appliances furnished to an employee under circumstances creating a liability therefore on the part of the association under the provisions of this law, shall include in such award or judgment any cost or expense of any such items not actually furnished to and received by the employee prior to the date of said award or judgment. The first such final award or judgment rendered on such claim shall be res judicata of the liability of the association for all such cost or expense which could have been claimed up to the date of said award or judgment and of the issue that the injury of said employee is subject to the provisions of this law with respect to such items, but shall not be res judicata of the obligation of the association to furnish or pay for any such items after the date of said award or judgment. After the first such final award or judgment, the Board shall have continuing jurisdiction in the same case to render successive awards to determine the liability of the association for the cost or expense of any such items actually furnished to and received by said employee not

more than six (6) months prior to the date of each such successive award, until the association shall have fully discharged its obligation under this law to furnish all such medical aid, hospital services, nursing, chiropractic services, medicines or prosthetic appliances to which said employee may be entitled; provided, each such successive award of the Board shall be subject to a suit to set aside said award by a court of competent jurisdiction, in the same manner as provided in the case of other awards under this law. (Acts 8/29/77)

Section 5a. Rights And Remedies:

In all cases where the Board shall make a final order, ruling or decision as provided in the preceding Section and against the association, and the association shall fail and refuse to obey or comply with the same and shall fail or refuse to bring suit to set the same aside as in said Section is provided, then, in that event, the claimant in addition to the rights and remedies given him and the Board in said Section may bring suit where the injury occurred, upon said order, ruling or decision. If he secures a judgment sustaining such order, ruling or decision in whole or in part, he shall also be entitled to recover the further sum of twelve percent as damages upon the amount of compensation so recovered in said judgment, together with a reasonable attorney's fee for the prosecution and collection of such claim.

Where the Board has made an award against an association requiring the payment to an injured employee or his beneficiaries of any weekly or monthly payments, under the terms of this law, and such association should thereafter fail or refuse, without justifiable cause, to continue to make said payments promptly as they mature, then the said injured employee or his beneficiaries, in case of his death, shall have the right to mature the entire claim and to institute suit thereon to collect the full amount thereof, together with twelve percent penalties and attorney's fees, as herein provided for. Suit may be brought under the provisions of this Section, either in the county where the accident occurred, or in any county where the claimants reside, or where one or more of such claimants may have his place of residence at the time of the institution of the suit.

In all cases where the Board has approved a compromise settlement agreement or where the court has approved an agreed judgment and the association shall, upon receiving written notice of such approval, fail or refuse to pay the indemnity compensation when due, then the claimant or his beneficiaries are entitled to institute suit in a court of competent jurisdiction and, in addition to collecting the full amount of indemnity compensation provided for in the settlement or judgment, shall be entitled to a twelve percent penalty and a reasonable attorney's fee; and such suit may be brought in any county designated in Section 5 of this article. (Acts 1985)

Section 5b. Computation of Time for Notice or Suit:

In computing the twenty (20) days for the filing with the Board notices of unwillingness to abide by the final ruling and decision of the Board, and likewise in computing the twenty (20) days to institute a suit to set aside the final ruling of said Board, if the last day is a legal holiday or is Sunday, then, and in such case, such last day shall not be counted, and the time shall be and the same is hereby extended so as to include the next succeeding business day; but this provision shall not extend to or include any cases now filed or now pending in the trial court or on appeal from the trial court; the rights of the parties in such suits now pending or on appeal from the trial courts shall be determined by the law existing prior to the passage of this Act. (Acts 1937)

Section 5c. Multiple Subscribers; Payment of Claims:

In any proceeding in which it is determined that compensation, including costs for medical services incurred, is allowable in a sum certain for injuries sustained by an employee, but there is a dispute with respect to which of two or more subscribers said, employee was serving at the time of injury, the Association and other workmen's compensation insurer, or insurers, of each such subscriber shall be required to deposit with the Board or court a proportionate share of the compensation awarded, including costs for medical services incurred, for the injuries received. Such proportionate share due from the Association and other workmen's compensation insurer, or insurers, shall be determined by dividing the compensation awarded, including costs for medical services incurred, by the number of subscribers who are alleged to have been the employer of the injured employee at the time of injury, and the Association and workmen's compensation insurer of each such subscriber shall pay such proportionate share, or shares, depending on whether they insure one or more of such subscribers.

The Board or court shall deliver the full amount of the workmen's compensation award, including costs for medical services incurred, in the same manner as if the sum had been paid only by the responsible insurer. Thereafter, upon final determination of liability for compensation, whether by agreement, award of the Board or order of the court, the insurer, or insurers found not to be liable shall be entitled to reimbursement for its, or their, proportionate share deposited with the Board or court from the insurer who is determined to be liable for compensation and medical costs incurred. (Acts 5/11/71)

Section 6. Employee of Sub-Contractor:

(a) A subcontractor and prime contractor may make a written contract whereby the prime contractor will provide workers' compensation benefits to the subcontractor and to employees of the sub-contractor. Notwithstanding the provisions of Section 12(g), Article 8306, Revised Statutes, the contract may provide that the actual premiums (based on payroll) paid or incurred by the prime contractor for workers' compensation insurance coverage for the sub-contractor and employees of the sub-contractor may be deducted from the contract price or any other monies owed to the sub-contractor by the prime contractor. In any such contract, the sub-contractor and his employees shall be considered employees of the prime contractor only for purposes of the workers' compensation laws of this state (Article 8306, Revised Statutes, et seq.) and for no other purpose.

(b) The term "sub-contractor" means a person who has contracted to perform all or any part of the work or services which a prime contractor has contracted with another party to perform.

(c) The term "prime contractor" includes "principal contractor," "original contractor," or "general contractor" as those terms are commonly used and means the person who has undertaken to procure the performance of work or services. The prime contractor may engage sub-contractors to perform all or any part of the work or services.

(d) If any subscriber to this law with the purpose and intention of avoiding any liability imposed by its terms sublets the whole or any part of the work to be performed or done by said subscriber to any sub-contractor, then in the event any employee of such sub-contractor sustains an injury in the course of his employment he shall be deemed to be

and taken for all purposes of this law to be the employee of the subscriber, and in addition thereto such employee shall have an independent right of action against such sub-contractor, which shall in no way be affected by any compensation to be received by him under the provisions of this law. (Acts 8/29/83)

Section 6a. Recovery from Third Person; Subrogation; Attorney's Fees:

(a) If the injury for which compensation is payable under this law was caused under circumstances creating a legal liability in some person other than the subscriber to pay damages in respect thereof, the employee may proceed either at law against that person to recover damages or against the association for compensation under this law, and if he proceeds at law against the person other than the subscriber, then he shall not be held to have waived his rights to compensation under this law.

If the claimant is a beneficiary under the death benefits provisions of Section 8a, Article 8306, Revised Civil Statutes of Texas, 1925, as amended, a judgment shall not constitute an election but the amount of such recovery shall first pay costs and attorney's fees and then reimburse the association, and if there be any excess it shall be paid to the beneficiaries in the same ratio as they received death benefits and the association shall suspend further payments of benefits until the suspended benefits shall equal the amount of such excess at which time benefits shall be resumed.

If compensation be claimed under this law by the injured employee or his legal beneficiaries, then the association shall be subrogated to the rights of the injured employee, and may enforce in the name of the injured employee or of his legal beneficiaries the liability of said other person, and in case the recovery is for a sum greater than that paid or assumed by the association to the employee or his legal beneficiaries, then out of the sum so recovered the association shall reimburse itself and pay said costs and the excess so recovered shall be paid to the injured employee or his beneficiaries.

However, when the claimant is represented by an attorney, and the association's interest is not actively represented by an attorney, the association shall pay such fee to the claimant's attorney not to exceed one-third (1/3) of said subrogation recovery or as may have been agreed upon between the claimant's attorney and the association or in the absence of such agreement the court shall allow a reasonable attorney's fee to the claimant's attorney for recovery of the association's interest which in no case shall exceed thirty-three and one-third percent (33-1/3%) payable out of the association's part of the recovery. In any case where the claimant's attorney is also representing the subrogated association, a full written disclosure must be made to the claimant, prior to actual employment by the association as an attorney, and acknowledged by the claimant, and a signed copy of the same furnished to all concerned parties and made a part of the file in the Industrial Accident Board. A copy of the disclosure with authorization and consent, shall also be filed with the claimant's pleadings prior to any judgment entered and approved by the court. Unless the claimant's attorney complies with all of the requirements as prescribed in this Section, the attorney shall not be entitled to receive any of the fees prescribed in this Section to which he would be entitled pursuant to an agreement with the association.

(b) If the association obtains an attorney to actively represent its interest and if the

attorney actively participates in obtaining a recovery, the court shall award and apportion an attorney's fee allowable out of the association's subrogation recovery between such attorneys taking into account the benefit accruing to the association as a result of each attorney's service, the aggregate of such fees not to exceed thirty-three and one-third percent (33-1/3%) of the subrogated interest.

(c) If at the conclusion of a third party action a workmen's compensation beneficiary is entitled to compensation, the net amount recovered by such beneficiary from the third party action shall be applied to reimburse the association for past benefits and medical expenses paid and any amount in excess of past benefits and medical expenses shall be treated as an advance against future benefit payments of compensation to which the beneficiary is entitled to receive under the Act. When the advance is adequate to cover all future compensation and medical benefit payments as provided by this law, no further payments shall be made by the association but if insufficient, the association shall resume such payments when the advance is exhausted. The reasonable and necessary medical expenses incurred by the claimant on account of the injury shall be deducted from the advance in the same manner as benefit payments.

(d) If a claimant receives compensation from the second injury fund, the Board is considered to be the association under this section for purposes of those benefits and is subrogated to the rights of the injured employee, and is entitled to reimbursement, in the same manner as the association would be. The Board shall remit money recovered under this subsection to the state treasurer for deposit to the credit of the second injury fund. (Acts 9/1/85)

Section 7. Record of Injuries; Reports:

(a) Every subscriber shall keep a record of all injuries, fatal or otherwise, sustained by his employees in the course of their employment. After the occurrence of an accident resulting in an injury to an employee, causing his absence from work for more than one (1) day, or after the employee notifies the employer of a definite manifestation of an occupational disease, a written report thereof shall be made within eight (8) days following the employee's absence from work and notice thereof to the employer or notice of manifestation of an occupational disease to the Board on blanks to be procured from the Board for that purpose. The subscriber shall deliver a copy of the report to the association. Upon the termination of the incapacity of the injured employee, or if such incapacity extends beyond a period of sixty (60) days, the subscriber shall make a supplemental report upon blanks to be procured for that purpose.

(b) The report shall contain the name and nature of the business of the employer, the location of the establishment, the name, age, sex and occupation of the injured employee, and the character of work in which he was engaged at the time of the injury, and shall state the date and hour of receiving such injury or of the definite manifestation of the occupational disease, and the nature and cause of the injury, and such other information as the Board may require.

(c) Any employer shall give the Board any information demanded by the Board relating to any injury to any employee or required by statute, which information is in the possession of or can be ascertained by the employer by the use of reasonable

diligence.

(d) If any employer fails to comply with any of the requirements of Subsection (a), (b), or (c) of this section, the Board shall give such employer written notice by certified mail return receipt requested that such employer shall file the requested report or information with the Board within ten (10) days or shall request a hearing with the Board. If no hearing is requested and the employer fails to comply with the Board's request or order, the Board shall impose a civil penalty against such employer of not more than Five Hundred Dollars (\$500). If a hearing is requested by an employer, the Board shall set such hearing within ten (10) days at its office in Austin, Texas. If the Board determines by majority vote that such employer is not in compliance with Subsection (a), (b), or (c) of this section, the Board shall impose a civil penalty against such employer of not more than Five Hundred Dollars (\$500). Such employer, if dissatisfied with the Board's determination, may sue the Board to set aside the Board's ruling by bringing a de novo suit within twenty (20) days thereafter in the district court in Travis County, Texas. The Board shall be represented by the Attorney General of Texas. (Acts 9/1/83)

Section 7a. Failure to File Report; Limitation on Filing Claim:

Where the association or subscriber has been given notice or the association or subscriber has knowledge of an injury or death of an employee and fails, neglects, or refuses to file a report thereof as required by the provisions of Section 7 of this Article, the limitation in Section 4a of this Article in respect to the filing of a claim for compensation shall not begin to run against the claim of the injured employee or his dependents entitled to compensation, or in favor of either the association or subscriber until such report shall have been furnished as required by Section 7 of this Article. (Acts 8/30/71)

Section 7b. Claim Forms to Employee, Filing Requirements:

Upon receipt of the written report required under Section 7 of this Article the Industrial Accident Board shall immediately furnish the injured employee claim forms which shall clearly inform the employee of the filing requirements of Section 4a of this Article, and if applicable, Section 7a of this Article. (Acts 8/30/71)

Section 8. Quorum of Board; Seal; Proceedings as Evidence:

A majority of the Board shall constitute a quorum to transact business, and the act or decision of any two members thereof shall be held the act or decision of the Board, except as otherwise herein specifically provided. No vacancy shall impair the right of the remaining member or members of the Board to exercise all the powers of the Board. The Board shall provide itself with a seal on which shall be inscribed the words "Industrial Accident Board, State of Texas." Any Order, award or proceeding of said Board when duly attested by any member of the Board or its secretary, shall be admissible as evidence of the act of said Board in any Court of this State. (Acts 1931)

Section 9. Certified Copy of Records; Fees:

Upon the written request and payment of the fees therefore, which fees shall be the same as those charged for similar services in the Secretary of State's office, the Board shall furnish to any person entitled thereto a certified copy of any order, award, decision or paper on file in the office of said Board, and the fees so received for such copies shall be paid into the State Treasury and credited to the general revenue fund. No fee

or salary shall be paid to any person in said department for making such copies in excess of the fees charged for such copies. (Acts 1917)

Section 9a. Worker's File Confidential:

(a) Information in a worker's claim file is confidential and may not be disclosed except as provided in this Section.

(b) If there is a workers' compensation claim for the named claimant open or pending before the Industrial Accident Board or on appeal to a court of competent jurisdiction from the Board or which is the subject matter of a subsequent suit where the carrier is subrogated to the rights of the named claimant at the time a record search or request for information is presented to the Board, the information shall be furnished as provided in this Section. The first, middle, and last name of the claimant, age and social security number, and, if possible, dates of injury and the names of prior employers must be given in the request for information by the requesting party. The Board will furnish the requested information or a record check only to the following:

- (1) the claimant;
- (2) the attorney for the claimant;
- (3) the carrier;
- (4) the employer at the time of the current injury;
- (5) third-party litigants; or
- (6) the State Board of Insurance.

A third-party litigant in a suit arising out of an occurrence with respect to which a workers' compensation claim was filed is entitled to the information without regard to whether or not the compensation claim is still pending.

(c) All information of the Industrial Accident Board concerning any person who has been finally adjudicated to be a fraudulent claimant as provided in this Section is not confidential and shall be furnished any person requesting the information, notwithstanding any other provision of this law.

(d) The Board shall release to any employer with whom a person has made application for employment within the 14 days prior to the request the date of injury and nature of injury to that person if that person has had three or more general injury claims filed in the preceding five years in which weekly compensation payments have been made. The request for information shall give the name, address, and social security number of the person about whom information is sought. The Board shall release this information only if the employer has written authorization from the person about whom information is sought. The Board shall release the information by telephone, but the employer must file the written authorization with the Board within 10 days after the information is released. If the employer requests information about three or more persons at the same time, the Board may refuse to release the information except on written request from the employer and receipt of the written authorization from each person about whom the information is sought. An employer who receives the information but fails to file the authorization within the required period is guilty of a misdemeanor and on conviction shall be fined not more than \$1,000. Failure to file each authorization is a separate offense.

(e) (1) The Attorney General shall promptly investigate any allegation of fraud on the part of an employer, employee, attorney, person or facility furnishing medical services authorized by Section 7 of Article 8306, Revised Civil Statutes of Texas, 1925, or insurance company or its representative relating to any claim. In order to carry out the requirements of this Section, the Attorney General is vested with complete power to investigate and prosecute any and all allegations of fraudulent claim practices which may be submitted to the Board or which may be uncovered through the Attorney General's own efforts. The Attorney General shall cooperate with professional grievance committees, law enforcement officials, the Industrial Accident Board, and other state agencies in the investigation and prosecution of fraudulent practices. It shall be the responsibility of the Attorney General to prosecute those cases in which he finds the reasonable probability that acts of fraud exist before all hearings of the Board or on appeal from the determination of such hearings.

(2) In those cases in which a claimant makes a fifth claim for compensation within any five-year period, the Board shall automatically notify the Attorney General who shall investigate to determine if the probability of fraud exists in connection with the current claim or any of the prior claims.

(3) Whenever the Attorney General believes that any person, facility, or company may be in possession, custody, or control of any documentary material relevant to the subject matter under investigation, an authorized member of the Attorney General's staff may execute in writing and serve on the person, facility, or company a civil investigative demand requiring the person, facility, or company to produce the documentary material and permit inspection and copying.

(A) Each demand shall:

(i) make reference to this section and state the general subject matter of the investigation;

(ii) describe the class or classes of documentary material to be produced with reasonable specificity so as to fairly indicate the material demanded;

(iii) prescribe a return date within which the documentary material is to be produced; and

(iv) identify the members of the Attorney General's staff to whom the documentary material is to be made available for inspection and copying.

(B) A civil investigative demand may contain a requirement or disclosure of documentary material which would be discoverable under the Texas Rules of Civil Procedure.

(C) Service of any demand may be made by:

(i) delivering a duly executed copy of the demand to the person, facility, or company to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of that person, facility, or company;

(ii) delivering a duly executed copy of the demand to the principal place of business in the state of the person, facility, or company to be served;

(iii) mailing by registered mail or certified mail a duly executed copy of the demand addressed in the case of a claimant to his last known address, or in the case of any other person, facility, or company, to the principal place of business in this state, or if the person, facility, or company has no place of business in this state, to the principal office or place of business in any other state.

(D) Documentary material demanded pursuant to this subsection shall be produced for inspection and copying during normal business hours at the principal office or place of business or residence of the person, facility, or company served or at other times and places as may be agreed on by the person served and the Attorney General's staff.

(E) No documentary material produced pursuant to a demand under this subsection, unless otherwise ordered by the Industrial Accident Board for good cause shown, shall be produced for inspection or copying by nor shall its contents be disclosed to any person other than the designated members of the Attorney General's staff without the consent of the person who produced the material. The Attorney General shall prescribe reasonable terms and conditions allowing the documentary material to be available for inspection and copying by the person, facility, or company who produced the material or any duly authorized representative of such person, facility, or company. The Attorney General may use the documentary material or copies of it as he determines necessary in the prosecution of fraudulent claim practices, including presentation before the Industrial Accident Board and any court.

(F) At any time before the return date specified in the demand or within 10 days after the demand has been served, whichever period is shorter, a petition to extend the return date for or to modify or set aside the demand, stating good cause, may be filed with the Industrial Accident Board.

(G) A person, facility, or company on whom a demand is served under this subsection shall comply with the terms of the demand unless otherwise provided by order of the Industrial Accident Board.

(H) Personal service of a similar investigative demand under this subsection may be made on any person, facility, or company outside of this state if the person, facility, or company has engaged in fraudulent claim practices in this state. Such persons, facilities, or companies shall be deemed to have submitted themselves to the jurisdiction of this state within the meaning of this section.

(4) (A) Any person, facility, or company who, with intent to avoid, evade, or prevent compliance, in whole or in part, with Subdivision (3) of Subsection (e) of this section, removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any means falsifies any documentary material is guilty of a Class A misdemeanor.

(B) If a person, facility, or company fails to comply with a civil investigative demand for documentary material served on him under Subdivision (3) of Subsection (e) of this section, or if satisfactory copying or reproduction of the material cannot be done and the person, facility, or company refuses to surrender the material, the Attorney General may file with the Industrial Accident

Board a petition for an order of the Board for enforcement of Subdivision (3) of Subsection (e) of this section.

(C) When a petition is filed with the Industrial Accident Board under Subsection(e) (4) (B) of this section, the Industrial Accident Board shall have jurisdiction to hear and determine the matter presented and to enter any order required to carry into effect the provisions of Subdivision (3) of Subsection (e) of this section. Any final order entered is subject to immediate and preferential review by any district court in Travis County. Failure to comply with any final order entered to carry into effect the provisions of Subdivision (3) of Subsection (e) of this section is punishable by contempt.

- (5) If the Attorney General finds that a reasonable probability of fraud exists, the Attorney General shall request a hearing and the Board shall set the matter for hearing. On the setting of this matter, the Board or any member thereof shall, no later than five days following receipt of the request for hearing, notify the person under investigation, as well as the other parties involved in the case, in writing of the allegation against him and of his rights to attend and offer evidence at the hearing. This notice must be mailed by certified mail to the last known address of the person, must state the time and place for the hearing, which shall be no less than 30 nor more than 45 days after the Attorney General has filed the request for hearing, and must notify the person of his right to counsel and his right of access to the complete Board files relating to the claim or claims under investigation. Provided, however, that the 45-day limitation may be waived by the Industrial Accident Board upon receipt by the Board of a written request for waiver signed by the person under investigation or his attorney. Any investigation initiated under this section shall be concluded within 60 days unless by a unanimous vote of the Board the time is extended. In those cases in which a claimant has a claim pending before the Board, extension may not exceed an additional 60 days.
- (f) In addition to the powers granted under Section 4 of this Article, as amended, the Board or any member thereof has the power to compel the attendance of witnesses, take evidence, and require the production of any records in conjunction with this hearing. The person under investigation has the same power to compel the attendance of witnesses and the production of records and documents.
- (g) After this hearing, the Board shall reduce its findings to writing and provide the person under investigation, as well as the other parties involved in the case, with a copy. If the Board determines that the claimant has been fraudulent in any or all of his claims for compensation, the Board shall then classify that claimant as a fraudulent claimant, which designation is final unless appealed by the claimant as provided in this Section. If the Board determines that any other person except an employer under investigation has been fraudulent in connection with a claim for compensation, the Board may exercise its authority under Section 4 of this Article, as amended, or report its findings to the appropriate professional grievance committee, law enforcement officials, or other state agencies for prosecution, or both. An employer who has been adjudicated to be fraudulent shall be subject to the provisions of Chapter 115, Acts of the 62nd Legislature, Regular Session, 1971

(Article 8307c, Vernon's Texas Civil Statutes), as if he had discriminated against an employee for filing a claim. Actions taken by the Board in accordance with this procedure may be appealed by the aggrieved person by trial de novo to a district court of competent jurisdiction in the county of his residence, whose final judgment shall be determinative of his classification as a fraudulent claimant. Appeal shall be in accordance with Section 5 of this Article, as amended.

- (h) Pending an investigation and hearing or appeal of allegations of fraud under this Section, the Board may not approve a compromise settlement agreement or make a final award in connection with the worker's claims then pending before the Board.
- (i) If any worker shall be finally adjudicated to be a fraudulent claimant, the Board may terminate any compensation which the fraudulent claimant is currently drawing and require repayment to the association of any amounts so drawn.
- (j) If any worker is finally adjudicated to be a fraudulent claimant, that fact shall automatically be furnished to any employer, any insurance carrier, or any attorney for the claimant as regards all claims then pending before the Board and as regards all future claims which that claimant may thereafter file with the Industrial Accident Board; otherwise, the Board shall process the claim as generally provided under the workers' compensation law.
- (k) Nothing in the preceding sections shall diminish the power of the Industrial Accident Board on its own initiative to investigate or punish fraudulent acts.
- (l) This Section does not give authority to withhold information from committees of the legislature to use for legislative purposes.
- (m) Any information pertaining to a worker's compensation file which is confidential by virtue of any of the terms of this Act shall retain such confidentiality when released to any investigative, legislative, or law enforcement agency including the Attorney General, district attorneys, grand juries, or legislative committees. Any individual who shall publish, disclose, or distribute any such confidential information which is possessed by any investigative, legislative, or law enforcement agency to any other individual, corporation or association not entitled to have received such information directly from the Industrial Accident Board under the provisions of this law commits an offense, and any person, corporation, or association who receives any such confidential information when such person was not entitled to have received the same from the Industrial Accident Board under the provisions of this law commits an offense. An offense under this Subsection is a Class A misdemeanor. Any district court of Travis County shall have jurisdiction to enjoin possession and the use by any individual, corporation, or association of any information made confidential by this Act when such possession or use is not authorized by this Act. This Subsection does not prohibit an employer from releasing information about a former employee to another employer with whom the employee has made application for employment, provided such information was lawfully acquired by the employer releasing the same.

(n) Nothing herein prohibits any person from receiving from the Industrial Accident Board all information contained in any record or file of the Industrial Accident Board begun after September 1, 1971, in statistical form and in a manner so as not to disclose the name or identity of any person, except as provided in this Section. (Acts 8/31/81)

Section 10. Hearings; Investigations; Adjusters:

(a) Said Board or any member thereof may hold hearings or take testimony or make investigations at any point within this State, reporting the result thereof, if the same is made by one member, to the Board. The Board shall also employ and use the assistance of a sufficient number of pre-hearing officers for the purpose of adjusting and settling claims for compensation; provided, however, that pre-hearing officers shall not be empowered to take testimony.

Notwithstanding any provision of this Act, no claimant shall be required to appear before the Board or Board Member within a distance greater than one hundred (100) miles from the courthouse of the county of the claimant's residence or within a greater distance than one hundred (100) miles of the courthouse of the county where the injury occurred.

(b) The Board shall examine and review all controverted claims and shall schedule and hold pre-hearing conferences on such claims as the Board may designate. It shall have the power to direct the parties, their attorneys, or authorized agents of the parties to appear before the Board, any member thereof or a pre-hearing officer for pre-hearing conferences to attempt to adjust and settle the claim amicably and to take such other action other than taking of testimony that may aid in the disposition of the claim. Provided, however, that no matter occurring during, or fact developed in, a pre-hearing conference shall be deemed as admissions or evidence or impeachment against the association, employee or the subscriber in any other proceedings except before the Board.

Provided further that pre-hearing officers shall prepare a report to the Board Members on cases not settled at pre-hearing conference, stating the pre-hearing officer's recommendations for the award, and the basis therefore, with copies of said recommendations furnished to all interested parties and the association shall furnish a copy of the recommendation to the subscriber.

The Board shall provide a reasonable time to all interested parties in each case for filing a formal statement of respective positions, both factual and legal, as well as reply to pre-hearing officer's recommendations, all of which evidence shall be duly considered by the Board Members in making said final award. Unrepresented claimants are exempted from the provision requiring formal statement of respective positions.

The association and counsel for claimant shall be required to admit, deny, or qualify each point in the pre-hearing officer's recommendations.

The Board shall promulgate procedural rules and regulations not inconsistent with this law to govern such pre-hearing conferences and provided further, such rules and regulations shall not affect nor change any substantive portion of this law. (Acts 8/29/77)

Section 11. Association Suspending Payments:

When the association suspends or stops payment of compensation, it shall immediately notify the Board of that fact, giving the Board the name, number and style of the claim, the amount paid thereon, the date of the suspension or stopping of payment thereon, and the reason for such suspension or stopping. (Acts 1917)

Section 12. Compensation Payments; Compromise: Commutation:

The Board upon application of either party may, in its discretion, having regard to the welfare of the employee and the convenience of the association, authorize compensation to be paid monthly or quarterly.

Where the liability of the association or the extent of the injury of the employee is uncertain, indefinite or incapable of being satisfactorily established, the Board may approve any compromise, adjustment, settlement or commutation thereof made between the parties. (Acts 1917)

Section 12a. Court Approved Settlements:

On the application of either party to a suit to set aside the award of the Board, the court may approve a settlement agreement presented at any time before the jury has returned in the trial of the suit. In approving the settlement agreement, the court may either conduct a hearing on the agreement or approve it without a hearing if the claimant submits a sworn affidavit acknowledging his agreement to settle the cause of action and evidencing his full understanding of all the provisions of the settlement agreement. (Acts 8/29/77)

Section 12b. Future Medical Benefits, Settlement Agreements:

Whenever in any compromise settlement agreement approved by the board or in any agreed judgment approved by the court, any dispute arises concerning the payment of medical, hospital, nursing, chiropractic or podiatry services or aids or treatment, or for medicines or prosthetic appliances for the injured employee as provided in Section 7, Article 8306, Revised Statutes, as amended, or as provided in such compromise settlement agreements or agreed judgments, all such disputes concerning the payment thereof shall be first presented by any party to the Industrial Accident Board within six months from the time such dispute has arisen (except where "good cause" is shown for any delay) for the board's determination. A dispute arises when a written refusal of payment has been filed with the board. However, when the terms of a compromise settlement agreement or agreed judgment provides an expiration time for the payment of such future health-care benefits, the carrier's payment obligation under the terms of such compromise settlement agreement or agreed judgment to pay such expenses incurred prior to the expiration time provided therein shall cease four years after the expiration time provided under the terms of such compromise settlement agreement or agreed judgment. Any final ruling, decision, denial, or award of the board may be appealed by any party according to and under the provisions of Section 5 of Article 8307 of this Act. The board, however, shall have no jurisdiction to rescind or set aside any compromise settlement agreement approved by the board or any agreed judgment approved by the court. (Acts 8/29/83)

Section 13. Medical Committee; Examination of Employee; Report:

(a) If, on the hearing of a claim for compensation for occupational disease, any controverted medical question or questions shall arise, upon the request of either party,

or its own motion, the Board shall appoint a Medical Committee consisting of three (3) , doctors, duly qualified in the diagnosis and treatment of occupational diseases, and licensed to practice in the state, and the Board shall reserve its decision and award until it shall have received a report from such Medical Committee. The date of incapacity, if in dispute, shall be deemed to be a medical question.

(b) The Medical Committee, upon reference to it of a case of occupational disease, shall notify the employee, or, in case he be dead, his beneficiary or beneficiaries, and the association to appear before the Medical Committee at a time and place stated in the notice. If the employee be living he shall appear before the Medical Committee at the time and place specified, and he shall submit to such examinations including clinical and x-ray examinations as the Medical Committee may require. The employee, or, if he be dead, his beneficiary or beneficiaries, and the association shall be entitled to have present at all such examinations a physician of his or its own selection, who shall be given an opportunity to witness the same, and whose services shall be paid for by the person who engaged his services. The claimant and the association shall produce to the Medical Committee all reports, medical and x-ray examinations which may be in their respective possession or control showing the past or present condition of the employee, to assist the Medical Committee in reaching its conclusion.

(c) The Medical Committee shall, if it deems advisable, inspect or cause to be inspected, the plant or industrial operation or process, where the exposure to the occupational disease is alleged to have occurred, to determine whether such conditions exist in such plant, industrial operation or process as to produce the occupational disease complained of.

(d) The Medical Committee shall, as soon as practicable after it has completed its consideration of a case, report to the Board its opinion regarding all medical questions involved in the case. The Medical Committee shall include in its report a statement of what, if any, physician or physicians were present at the examination on behalf of the claimant or association and what, if any, medical reports and x-rays were produced by or on behalf of the claimant or association.

(e) The Medical Committee shall file its report in triplicate with the Board, which shall send one copy thereof to the claimant and one copy to the association. All fees, costs, and expenses incident to the functioning of said Medical Committee shall be paid by the party requesting same; the Board shall determine the reasonableness of said fees, costs and expenditures.

(f) If the employee refuses to submit to such examination, all action on his claim for compensation shall be suspended during such period as he persists in such refusal.

(g) Where a case of occupational disease is pending in any court of this state, upon the motion of either party, or upon its own motion, the court shall appoint a Medical Committee consisting of three (3) doctors duly qualified in the diagnosis and treatment of occupational diseases and licensed to practice in the State, and shall direct the employee to submit to examination, including clinical and x-ray examination, as the Medical Committee may require or deem advisable. The Medical Committee shall report its findings and conclusions in open court, and such may be rebuttable. The court shall pass on the reasonableness of the fees, costs and other expenditures of the Medical Committee, which fees shall be taxed as costs. (Acts 1947)

Section 14. Autopsy:

Upon the filing of a claim for compensation for death by reason of an occupational disease where an autopsy is necessary to accurately and scientifically determine the cause of death, upon the request of either party, or on its own motion, such autopsy shall be ordered by the Board. The Board shall designate a duly licensed physician who is a specialist in such examinations, to perform or attend such autopsy, and to certify his findings thereon. Such findings are to be filed with the Board and shall be a public record. All proceedings for compensation shall be suspended upon refusal of the beneficiaries of the deceased employee to permit such autopsy when ordered, and no compensation shall be payable for any period during which such autopsy is refused.

No autopsy shall be held in any case, by any person, without notice first being given to the parties in interest (if they reside in this State or their whereabouts can be reasonably ascertained), of the time and place thereof, and reasonable time and opportunity given such parties in interest to have a representative or representatives present to witness the same. If such notice is not given, all evidence obtained by such autopsy shall be suppressed on motion duly made to the Board. (Acts 1947)

Article 8307a, Suit to Set Aside Decision of Industrial Accident Board; Transfer to County Where Injury Occurred or Employee Resided:

Any interested party who is not willing and does not consent to abide by the final ruling and decision of the Industrial Accident Board shall, in the manner and within the time provided by Section 5 of Article 8307, Revised Civil Statutes of 1925, file notice with said Board, and bring suit in the county where the injury occurred, or in the county where the employee resided at the time the injury occurred or, if such employee is deceased, then in the county where the employee resided at the time of his death to set aside said final ruling and decision; however, in the event such suit is brought in any county other than the county where the injury occurred, or in the county of the employee's residence at the time of injury or death, the Court in which same is filed shall, upon ascertaining that it does not have jurisdiction to render judgment upon the merits, transfer the case to a proper Court in the county where the injury occurred or in the county where the employee resided at the time of injury or at the time of death. Provided, however, that notice of said transfer shall be given to the parties and said suit when filed in the court to which the transfer is made, shall be considered for all purposes, the same as if originally filed in said court. (Acts 5/9/79)

Article 8307b, Presumptions on Appeal from Board: Denial by Verified Pleadings:

In the trial of any case appealed to the court from the Board the following, if plead, shall be presumed to be true as plead and have been done and filed in legal time and manner, unless denied by verified pleadings:

- (1) Notice of injury;
- (2) Claim for compensation;
- (3) Award of the Board;
- (4) Notice of intention not to abide by the award of the Board;
- (5) Filing of suit to set aside the award.

Such denial may be made in original or amended pleadings; but if in amended pleadings such must be filed not less than seven days before the case proceeds to trial. In case of such denial the things so denied shall not be presumed to be true, and if essential to the case of the party alleging them must be proved. (Acts 1937)

Article 8307c, Protection of Claimants:

Section 1:

No person may discharge or in any other manner discriminate against any employee because the employee has in good faith filed a claim, hired a lawyer to represent him in a claim, instituted, or caused to be instituted, in good faith, any proceeding under the Texas Workmen's Compensation Act, or has testified or is about to testify in any such proceeding.

Section 2:

A person who violates any provision of Section 1 of this Act shall be liable for reasonable damages suffered by an employee as a result of the violation, and an employee discharged in violation of the Act shall be entitled to be reinstated to his former position. The burden of proof shall be upon the employee.

Section 3:

The district courts of the State of Texas shall have jurisdiction, for cause shown, to restrain violations of this Act. (Acts 8/30/71)

Article 8307d, Nonsuit:

At any time before the jury has retired in the trial of a workmen's compensation case on appeal from an award of the Industrial Accident Board, the plaintiff may take a nonsuit after notice to the other parties to the suit and a hearing held by which time all parties must perfect their cause of action, but he shall not thereby prejudice the right of an adverse party to be heard on his claim for affirmative relief. When the case is tried by the judge of a district or county court, such nonsuit, after notice and hearing, may be taken at any time before the decision is announced. (Acts 6/19/75)

PART III
Article 8308, Employers' Insurance Association:

Section 1: (Creates TEIA.)

Section 2 Through 16a: (Internal Management Of TEIA.)

Section 17: (Repealed.)

Section 18, Compensation for Additional Employees:

(a) Any employer may assume with respect to any employee or classification of employees not within the coverage of this law, other than any such employee or classification of employees for whom a rule of liability or a method of compensation has been or may be established by the Congress of the United States, the liability for compensation imposed upon employers by this law with respect to employees within the coverage of this law, and the purchase and acceptance by such employer of valid workmen's compensation insurance applicable to such employee or classification of employees shall constitute as to such employer subscription to this law without any further act on the part of such employer, but only with respect to such employee or such classification of employees as is within the coverage of said workmen's compensation insurance, and such subscription shall take effect from the effective date of such workmen's compensation insurance and shall continue as long only as such employer remains a subscriber, and each such employee shall be held to have waived his right of action at common law or under any statute of this State to recover damages for injuries sustained in the course of his employment if he shall not have given his employer notice that he claimed such right, in accordance with the provisions of Article 8306, Section 3a. It is specifically provided, however, that under no circumstances shall the failure of any employer to assume with respect to any employee or classification of employees the liability for compensation and to purchase workmen's compensation insurance applicable to such employee or classification of employees, as made optional with the employer by this law, be construed as depriving such employer of the common law, defenses listed in Section 1 of Article 8306, Revised Civil Statutes of the State of Texas.

(b) A claim for compensation under insurance provided under Subsection (a) of this section is subject to the jurisdiction of the Board as other claims for compensation under this law. (Acts 8/31/81)

Section 18a, Information to be Furnished when Employer becomes Subscriber:

(a) Whenever any employer of labor in this State becomes a subscriber to this law, the insurance company shall immediately notify the Board of such fact, stating in such notice the subscriber's name and place of business, the name of the insurance company and the effective date of the policy. No further notice shall be required except as provided in Section 20a of this Article. A subscriber shall notify the Board of a change of name or address.

(b) If the association fails to comply with any of the requirements of Subsection (a) of this section, the Board shall give such association written notice that such association

shall file the requested report or information with the Board within 10 days or shall request a hearing with the Board. If no hearing is requested and the association fails to comply with the Board's request or order, the Board shall impose a civil penalty against such association of not more than \$500 for each offense. If a hearing is requested by the association, the Board shall set such hearing within 10 days at its office in Austin, Texas. If the Board determines by majority vote that such association is not in compliance with Subsection (a) of this section, the Board shall impose a civil penalty against such association of not more than \$500 for each offense.

(c) The association may appeal the Board's ruling de novo as provided in Section 5, Article 8307, Revised Civil Statutes of Texas, 1925, as amended. The Board's ruling if adverse to the association and not appealed as provided above shall be enforced as provided in Section 5a, Article 8307, Revised Civil Statutes of Texas, 1925, as amended. (Acts 9/1/83)

Section 19, Notice by Subscriber to Persons Under Contract:

Every subscriber shall, as soon as he secures a policy, give notice in writing or print, or in such manner or way as may be directed or approved by the Board, to all persons under contract of hire with him that he has provided for payment of compensation for injuries with the association. (Acts 1953)

Section 20, Notice by Subscriber of Insurance; Notice of Expiration:

Every subscriber shall, after receiving a policy, give notice in writing or print, or in such manner or way as may be directed or approved by the Board to all persons with whom he is about to enter into a contract of hire that he has provided for payment of compensation for Injuries by the association. If any employer ceases to be a subscriber, he shall, on or before the date on which his policy expires, give notice to that effect in writing or print or in such other manner or way as the Board may direct or approve to all persons under contract of hire with him. In case of the renewal of his policy no notice shall be required under this law. He shall file a copy of said notice with the Board. (Acts 1953)

Section 20a, Cancellation of Policies; Extension of Coverage:

If the association cancels a policy or does not renew it on its anniversary date, the association shall send notice of the cancellation or nonrenewal to the subscriber by certified mail at least 10 days prior to the effective date of cancellation or non renewal and to the Board by certified mail or in person on or before the date of cancellation or nonrenewal. Failure of the association to give the notice as required by this Section shall extend the policy until the required notice is given to the subscriber and to the Industrial Accident Board, or until a subsequent notice is filed under the provisions of Section 18a of this article, at which time the subsequent insurance company shall be deemed to be the only insurance company liable under the provisions of this Act from and after the effective date of such subsequent policy of insurance. (Acts 9/1/83)

Section 21, Payment of Judgment and Costs:

If a subscriber, who has complied with all the rules, regulations and demands of the association, is required by any Judgment of a Court at Law, or by any Judgment of a Court of Equity or of admiralty and maritime jurisdiction to pay any employee any damages, actual or exemplary, on account of any personal injury sustained by any such

employee in the course of his employment during the period of subscription the association shall pay to the subscriber the full amount of the Judgment and the costs assessed therewith, if the subscriber shall have given the association notice of the bringing of the action upon which the Judgment was recovered and an opportunity to appear and defend the same in his or its name. (Acts 1953)

Section 22, Failure to Issue Policies:

The corporate powers of the association shall not expire because of failure to issue policies or to make insurance. (Acts 1953)

Section 23, Reserves:

The association shall set up and maintain reserves adequate to meet anticipated losses, carry all claims to maturity and policies to termination, which reserves shall be computed in accordance with such rules as shall be approved by the Commissioner of Insurance and may be invested in such securities as are permitted to casualty companies organized under the General Laws; and, for the protection of its reserves and surpluses against the liability herein imposed, shall have the same right to reinsure or be reinsured as casualty companies organized under General Laws. (Acts 1953)

PART IV
Article 8309. Definitions and General Provisions;
Words and Phrases Defined

Section 1, Definitions:

The following words and phrases as used in this Act shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

“Employer” shall mean any person, firm, partnership, association of persons or corporations or their legal representatives that makes contracts of hire.

“Employee” shall mean every person in the service of another under any contract of hire, expressed or implied, oral or written, except masters of or seamen on vessels engaged in interstate or foreign commerce, and except one whose employment is not in the usual course of the trade, business, profession or occupation of his employer; provided that an employee who is employed in the usual course of the trade, business, profession or occupation of an employer and who is temporarily directed or instructed by his employer to perform service outside of the usual course of trade, business, profession or occupation of his employer is also an employee while performing such services pursuant to such instructions or directions; provided further, that such persons, other than independent contractors and their employees, as may be engaged in the work of the employer of enlargement, construction, remodeling or repairing of the premises or buildings used or to be used in the conduct of the business of the employer shall be deemed employees; and provided further, that any person, who may be performing or doing work or service that may be otherwise legally performed or done, shall be deemed an employee as herein defined and shall be entitled to receive compensation under the terms and provisions of this Act despite the fact that such person may not have secured a license, permit or certificate to perform or do such work or service as may be required by any statute or municipal ordinance, or despite the fact that such person may have been performing or doing such work or service in violation of any wage law, hour law or Sunday law. Provided that this Section shall not be construed to relieve from fine or imprisonment any person, firm or corporation employing or performing any work or services prohibited by any statute of this State or any valid municipal ordinance.

The words “legal beneficiaries” as used in this Act shall mean the relatives named in Section 8a, Part I, of this Act.

“Association” shall mean the “Texas Employers’ Insurance Association” or other insurance company authorized under this Act to insure the payment of compensation to injured employees or to the beneficiaries of deceased employees.

“Subscriber” shall mean any employer who has become a member of the association by paying the required premium; provided that the association holds a license issued by the Commissioner of Insurance, as provided for in Section 12, Part III, of this Act.

“Average weekly wages” shall mean:

(1) If the injured employee shall have worked in the employment in which he was; working at the time of the injury, whether for the same employer or not, for at least two hundred ten (210) days of the year immediately preceding the injury, his average weekly wage shall consist of three hundred (300) times the average daily wage or

salary which he shall have earned during the days that he actually worked in such year, divided by fifty-two (52).

(2) If the injured employee shall not have worked in the employment in which he was working at the time of the injury, whether for the same employer or not, for at least two hundred ten (210) days of the year immediately preceding the injury, his average weekly wage shall consist of three hundred (300) times the average daily wage or salary which an employee of the same class, working at least two hundred ten (210) days of such immediately preceding year, in the same or in a similar employment, in the same or a neighboring place, shall have earned during the days that he actually worked in such year, divided by fifty-two (52).

(3) When by reason of the shortness of the time of the employment of the employee, or other employee engaged in the same class of work in the manner and for the length of time specified in the above Subsections 1 and 2, or other good and sufficient reasons, it is impracticable to compute the average weekly wages as above defined, it shall be computed by the Board in any manner which may seem just and fair to both parties, as of the date of injury.

(4) Said wages shall include the market value of board, lodging, laundry, fuel and other advantage which can be estimated in money which the employee receives from the employer as a part of his remuneration.

The term "injury sustained in the course of employment," as used in this Act, shall not include:

(1) An injury caused by an act of God, unless the employee is at the time engaged in the performance of duties that subject him to a greater hazard from an act of God responsible for the injury than ordinarily applies to the general public.

(2) An injury caused by an act of a third person intended to injure the employee, because of reasons personal to him and not directed against him as an employee, or because of his employment.

(3) An injury received while in a state of intoxication.

(4) An injury caused by the employee's willful intention and attempt to injure himself, or to unlawfully injure some other person, but shall include all other injuries of every kind and character having to do with and originating in the work, business, trade or profession of the employer received by an employee while engaged in or about the furtherance of the affairs or business of his employer whether upon the employer's premises or elsewhere.

Any reference to any employee herein who has been injured shall, when the employee is dead, also include the legal beneficiaries, as that term is herein used, of such employee to whom compensation may be payable.

The word "Board" whenever used in this Act shall be held to mean the Industrial Accident Board created by this Act. Whenever in this Act the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be " included. (Acts 1959)

Section 1a, Officers May be Deemed as Employees:

(a) Notwithstanding any other provision of this law, a subscriber may cover in its insurance contract a partner, a sole proprietor, or a corporate executive officer, except an officer of a state educational institution. The insurance contract shall specifically include the partner, sole proprietor, or corporate executive officer; and the elected coverage shall continue while the policy is in effect and while the named individual is endorsed thereon by a subscriber.

(b) Notwithstanding any other provision of this law, a subscriber may cover in its insurance contract a real estate salesman who is compensated solely by commissions. The insurance contract shall specifically include the salesman; and the elected coverage shall continue while the policy is in effect and while the named salesman is endorsed thereon by the subscriber. (Acts 9/1/75)

Section 1b, Transportation or Travel:

Unless transportation is furnished as a part of the contract of employment or is paid for by the employer, or unless the means of such transportation are under the control of the employer, or unless the employee is directed in his employment to proceed from one place to another place, such transportation shall not be the basis for a claim that an injury occurring during the course of such transportation is sustained in the course of employment. Travel by an employee in the furtherance of the affairs or business of his employer shall not be the basis for a claim that an injury occurring during the course of such travel is sustained in the course of employment, if said travel is also in furtherance of personal or private affairs of the employee, unless the trip to the place of occurrence of said injury would have been made even had there been no personal or private affairs of the employee to be furthered by said trip, and unless said trip would not have been made had there been no affairs or business of the employer to be furthered by said trip. (Acts 1957)

Section 2, Insurance Companies May Insure:

Any insurance company, which term shall include mutual and reciprocal companies, lawfully transacting a liability or accident business in this State, shall have the same right to insure the liability and pay the compensation provided for in Part I of this law, and when such company issues a policy conditioned to pay such compensation, the holder of such policy shall be regarded as a subscriber so far as applicable under this law, and when such company insures such payment of compensation it shall be subject to the provisions of Parts I, II and IV and of Sections 10, 17, 18a, 20a, and 21 of Part III of this law. Such company may have and exercise all of the rights and powers conferred by this law on the association created hereby, but such rights and powers shall not be exercised by a mutual or reciprocal organization unless such organization has at least fifty (50) subscribers who have not less than two thousand (2,000) employees. Nothing contained in this or any other law shall require an insurance company or the association to issue a policy to any applicant applying for coverage under this law, except as provided in Article 5.76 of the Insurance Code of Texas. (Acts 6/13/79)

Section 3, Termination of Status as Subscriber:

Any subscriber who has paid a premium as provided in Section 1, Part IV, of this law may upon application to the Board and to the association and after a showing satisfactory to the Board that he has notified all of his employees, in such manner as

may be required by the Board, cease to be a subscriber, and be entitled to a refund of the unearned portion of his premium, subject, however, to any rule approved by the Commissioner of Insurance as to the minimum premiums or short rate cancellation. (Acts 1917)

Section 3a, Liability for Misrepresentation of Payroll:

Any subscriber who shall willfully misrepresent the amount of his payroll to the association writing his insurance upon which any premium under this law is to be based shall be liable to the association insuring the compensation of his employees in an amount not to exceed ten times the amount of the difference between the premium which he paid and the amount which said subscriber should have paid had his payroll been correctly computed; and the liability to said association for such misrepresentation if it was deceived thereby, may be enforced by suit therefor. (Acts 1917)

Section 3b, Effect of Amendments on Existing Right, Remedies, Etc.

No inchoate, vested, matured, existing or other rights, remedies, powers, duties or authority, either of any employee or legal beneficiary, or of the Board, or of the association, or of any other person shall be in any way affected by any of the amendments herein made to the original law hereby amended, but all such rights, remedies, powers, duties and authority shall remain and be in force as under the original law just as if the amendments hereby adopted had never been made, and to that end it is hereby declared that said original law is not repealed, but the same is, and shall remain in full force and effect as to all such rights, remedies, powers, duties and authority; and further this law in so far as it adopts the law of which it is an amendment is a continuation thereof, and only in other respects a new enactment. The maximum weekly benefit and the total amount payable in effect upon the date of injury shall remain the applicable maximum weekly benefit and total amount payable for the injury or death regardless of the increase of any benefits that shall take effect at any later date. (Acts 9/1/73)

Section 4, Advance Payments of Compensation:

(a) In cases of emergency or impending necessity the association may make advanced payments of compensation to any employee during the period of his incapacity or to his beneficiaries within the terms of this law, and when the same is either directed or approved by the Board, it shall be credited as against any unaccrued compensation due said employee or beneficiaries.

(b) In the event the association does not initiate payments of compensation, the employer may for the purpose of this Section voluntarily initiate weekly payments as they accrue to the employee in the amount desired and may continue said weekly payments as they accrue for a period not to exceed ten (10) weeks or until the settlement is approved or the award made by the Board, whichever occurs first. The employer shall notify the Board and association on forms supplied by the Board of the date of the initiation of such payments and the weekly amount thereof.

At the time of any settlement, award or judgment for compensation, such payment previously made by the employer in a sum not to exceed the weekly benefit amount under this Act received by the employee multiplied by the number of weeks, including fractions thereof, for which payments were made and not to exceed ten (10) weeks, during which the employee earned no wages from the employer, shall be construed as employer compensation under this law and such payments of employer compensation

shall be paid by the association directly to the employer. Such employer payments of employer compensation shall not be construed as an admission of liability. The payments of employer compensation provided for herein shall in no way affect the payment of benefits from any other source. (Acts 1969)

Section 5, Reports of Accidents as Admissions and Evidence:

The reports of accidents required by this law to be made by subscribers shall not be, deemed as admissions and evidence against the association or the subscriber in any proceedings before the Board or elsewhere in a contested case where the facts set out therein or in anyone of them is sought to be contradicted by the association or subscriber. (Acts 1917)

Section 6, Podiatrists:

As used in this Act and in Articles 8309g and 8309h, Revised Civil Statutes of Texas, 1925, as amended; Chapter 229, Acts of the 50th legislature, Regular Session, 1947, as amended (Article 8309b, Vernon's Texas Civil Statutes); Chapter 310, Acts of the 52nd legislature, Regular Session, 1951, as amended (Article 8309d, Vernon's Texas Civil Statutes); Chapter 252, Acts of the 55th legislature, Regular Session, 1957 (Article 8309f, Vernon's Texas Civil Statutes), and other applicable provisions of the workmen's compensation laws of this state as now or hereafter enacted or amended, wherein the terms medical aid, medical treatment, medical services, surgical treatment, surgical services, medical costs, physician, or other words of import for the limited purposes of this Act and only in this Act shall be construed to include services performed by a doctor of podiatric medicine, acting within the scope of his or her license, except in Section 13 of Chapter 310, Acts of the 52nd legislature, Regular Session, 1951, as amended (Article 8309d, Vernon's Texas Civil Statutes); Sections 13 and 14 of Chapter 252, Acts of the 55th legislature, Regular Session, 1957 (Article 8309f, Vernon's Texas Civil Statutes); and Sections 13 and 14 of Article 8307, Revised Civil Statutes of Texas, 1925, as amended, provided, further, nothing herein shall be construed to alter, modify, or amend the definition of the practice of medicine or who may be permitted by law to practice medicine in this state, or to allow any person not licensed by the Texas State Board of Medical Examiners to use any title, letter, syllable, word, or words that would tend to lead the public to believe such person was a physician or surgeon authorized to practice medicine as defined in Article 4510, Revised Civil Statutes of Texas, 1925, as now or hereafter amended. (Acts 3/30/77)

Section 7, Notice by Clerk on Appeal:

(a) In every case appealed from the Board to a district or county court, the clerk of the county or district court shall within 20 days after the filing of the suit mail to the Board a notice giving the style, number, and date of filing; and within 20 days after judgment is rendered in the suit, the clerk shall mail to the Board a certified copy of the judgment. The district and county clerk shall be entitled to a reasonable fee for this service which shall be charged as court costs.

(b) The attorney preparing the judgment shall file the original and a copy with the clerk of the court. However, the failure of the attorney to file a copy does not excuse the clerk of the court from the duty to mail a certified copy of the judgment to the Board.

Article 8309a, Hearing of Claim by Industrial Accident Board; Postponement of Hearing:

When an injured employee of a subscriber under the Workmen's Compensation Act has sustained an injury in the course of employment and filed claim for compensation and given notice as required by law, the Industrial Accident Board shall hear his claim for compensation within a reasonable time.

Provided, however, the Industrial Accident Board may, in its discretion, delay or postpone the hearing of such claim under the following circumstances and no appeal shall be taken from any such order of the Board:

- (a) When such injured employee is being paid compensation as provided in the Workmen's Compensation Act, and the insurance association is furnishing either hospitalization, chiropractic service or medical treatment to such employee.
- (b) When the parties have failed to file all written medical reports that are available from a duly licensed physician or chiropractor covering the injury after being directed to do so in writing by the Board. (Acts 1969)

Article 8309b, Texas A&M University:

Section 1, Law Passed Pursuant to Constitution:

By virtue of the provisions of Section 59 of Article III of the Constitution of the State of Texas granting the legislature power to pass such laws as may be necessary to provide for Workers' Compensation Insurance for State employees, as in its judgment is necessary or required, and to provide for the payment of all costs, charges, and premiums on such insurance, provision is made as hereinafter set forth.

Section 2, Definitions:

The following words and phrases as used in this Act shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

1. "Institution" whenever used in this Act shall be held to mean each of the institutions and agencies under the direction or government of the Board of Directors of the Agricultural and Mechanical College of Texas including the following:
 - Agricultural and Mechanical College of Texas
 - Texas Agricultural Experiment Station
 - Extension Service, A. and M. College of Texas
 - Texas Forest Service
 - Rodent Control Service
 - Firemen's Training School
 - John Tarleton Agricultural College, North Texas Agricultural College
 - Prairie View State Normal and Industrial College
 - Any other agencies now or hereafter under the direction and control of said Board Directors.
2. "Workman" shall mean every person employed in the service of any institution as defined above, whose name appears on the payroll thereof.
3. "Insurance" shall mean Workers' Compensation Insurance.
4. "Board" shall mean the Industrial Accident Board of the State of Texas.

5. "Legal Beneficiaries" shall mean the relatives named in Section 8a of Article 8306, Revised Civil Statutes of Texas of 1925, adopted in Section 7 of this Act.

6. "Average weekly wages" shall be as defined in Section 1, Article 8309, Revised Civil Statutes of Texas of 1925.

7. Repealed. Acts 1949, 51st leg., p. 840, ch. 457, §2.

8. Any reference to a workman herein who has been injured shall, when the workman is dead, also include the legal beneficiaries, as that term is herein used, of such workmen to whom compensation may be payable. Whenever in this Act the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be included.

Section 3, Group Life and Accident Insurance:

After the effective date of this Act the Board of Directors of the Agricultural and Mechanical College of Texas is hereby authorized to require, as a condition of employment, all employees, except those persons who are paid on a piecework basis, or on any basis other than by the hour, day, week, month, or year, to acquire protection under a group life and accident insurance plan approved by it.

After the effective date any workman, as defined in this Act, who sustains an injury in the course of his employment shall be paid compensation as hereinafter provided.

The institution is hereby authorized to be self-insuring and is charged with the administration of this Act. The institution shall notify the Board of the effective date of such insurance, stating in such notice the nature of the work performed by the workmen of the institution, the approximate number of workmen, and the estimated amount of payroll.

The institution shall give notice to all workmen that, effective at the time stated in such notice, the institution has provided for payment of insurance.

Section 4, Compensation for Injury in Course of Employment:

If a workman of the institution sustains an injury in the course of his employment, he shall be paid compensation by the institution as herein provided except that compensation for any person employed on less than a full workday basis shall not exceed sixty percent (60%) of his average weekly earning.

Section 5, Actions; Defenses:

If an action to recover damages for personal injuries sustained by a workman in the course of his employment, or for death resulting from personal injuries so sustained, the institution may defend in such action on the ground that the injury was caused by the willful intention of the workman to bring about the injury, or was so caused while the workman was in a state of intoxication.

Section 6, Exclusiveness of Remedy; Exemption of Compensation from Legal Process; Assignability:

Workmen of the institution and parents of minor workmen shall have no right of action against the agents, servants, or employees of the institution for damages for personal injuries nor shall representatives and beneficiaries of deceased workmen have a right of action against the agents, servants or employees of the institution for injuries resulting

in death, but such workmen and their representatives and beneficiaries shall look for compensation solely to the institution as is provided in this Act. All compensation allowed herein shall be exempt from garnishment, attachment, judgment, and all other suits or claims, and no such right of action and no such compensation and no part thereof nor of either shall be assignable, except as otherwise herein provided, and any attempt to assign the same shall be void.

Section 7, Laws Governing:

Unless otherwise provided herein, Sections 1; 6; 7; 7b; 7c; 7d; 7e; 8; 8a; 8b; 9; 10; 11; 11a; 12; 12a; 12b; 12c; 12d; 12e 12f; 12i; 13; 15; 15a; 16; 17; 19; 20; 21; 22; 23; 24; 25; 26; and 27 of Article 8306, Revised Civil Statutes of Texas, 1925, as amended, and Article 8306a, Acts 1931, 42nd Legislature, as amended, and Sections 4a; 6a; 11; 12; 13; and 14 of Article 8307, of the Revised Civil Statutes of Texas, 1925, as amended, and Sections 4, and 5, of Article 8309, of the Revised Civil Statutes of Texas, 1925, as amended, are hereby adopted and shall govern insofar as applicable under the provisions of this law. Provided that whenever in the above adopted Sections of Articles 8306, 8307, and 8309 of the Revised Civil Statutes of Texas, 1925, as amended, or herein amended, the word "association," "subscriber," or "employer," or their equivalents appear in such Articles, they shall be construed to and shall mean "the institution."

Section 8: (Specifically Repealed)

Section 9, Payment of Compensation; Exhaustion of Earned Annual and Sick Leave:

It is the purpose of this Act that the compensation herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto, unless the liability is redeemed as in such cases provided elsewhere herein; except that the institution may provide that an injured workman may remain on the payroll until his earned annual sick leave is exhausted, during which time the services provided in Section 7, Article 8306, as amended, will remain available to the workman but no workers' compensation payment will accrue or become due and payable to the injured workman.

Section 10, Examination by Physicians or Chiropractors; Process and Procedure:

The Board may require any workman claiming to have sustained injury to submit himself for examination before such Board or someone acting under its authority at some reasonable time and place within the State, and as often as may be reasonably ordered by the Board to a physician or physicians, chiropractor or chiropractors, authorized to practice under the Laws of this State. If the workman or the institution requests, he or it shall be entitled to have a physician or physicians, a chiropractor or chiropractors of his or its own selection present to participate in such examination. Refusal of the workman to submit to such examination shall deprive him of his right to compensation during the continuance of such refusal. When a right to compensation is thus suspended no compensation shall be payable in respect to the period of suspension. If any workman shall persist in insanitary or injurious practices which tend to either imperil or retard his recovery, or shall refuse to submit to such medical or surgical treatment, chiropractic, or other remedial treatment recognized by the State, as is reasonably essential to promote his recovery, the Board may in its discretion order or direct the Institution to reduce or suspend the compensation of any such injured workman. No compensation shall be

reduced or suspended under the terms of this Section without reasonable notice to the workman and an opportunity to be heard.

The institution shall have the privilege of having any injured workman examined by a physician or physicians, a chiropractor or chiropractors of its own selection, at reasonable times, at a place or places suitable to the condition of the injured workman and convenient and accessible to him. The institution shall pay for such examination and the reasonable expense incident to the injured workman in submitting thereto. The injured workman shall have the privilege to have a physician or chiropractor of his own selection present to participate in such examination. Provided, when such examination is directed by the Board or the institution, the institution shall pay the fee of the physician or chiropractor selected by the workman, such fee to be fixed by the Board. Process and procedure shall be as summary as may be under this Act. The Board or any member thereof shall have power to subpoena witnesses, administer oaths, inquire into matters of fact, examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute. All rulings and decisions of the Board relating to disputed claims shall be upon questions of fact and in accord with the provisions of this Act.

Section 11, Decisions of the Board; Suits; Enforcement of Award:

All questions arising under this Act, if not settled by agreement of the parties interested therein and within the provisions of this Act, shall, except as otherwise provided, be determined by the Board. Any interested party who is not willing and does not consent to abide by the final ruling and decision of said Board shall within twenty (20) days after the rendition of said final ruling and decision by said Board, file with said Board notice that he will not abide by said final ruling and decision. And he shall within twenty (20) days after giving such notice bring suit in the county where the injury occurred to set aside said final ruling and decision and said Board shall proceed no further toward the adjustment of such claim, other than hereinafter provided. Whenever such suit is brought, the rights and liability of the parties thereto shall be determined by the provisions of this Act and the suit of the injured workman or person suing on account of the death of such workman shall be against the institution. If the final order of the Board is against the institution, then the institution shall bring suit to set aside said final ruling and decision of the Board, if it so desires, and the court shall in either event determine the issues in such cause instead of the Board upon trial de novo and the burden of proof shall be upon the party claiming compensation. The Board shall furnish any interested party in said claim pending in court upon request free of charge, with a certified copy of the notice of the institution becoming an insurer filed with the Board and the same when properly certified to shall be admissible in evidence in any court in this State upon trial of such claim therein pending and shall be prima-facie proof of all facts stated in such notice in the trial of said cause unless same is denied under oath by the opposing party therein. In case of recovery the same shall not exceed the maximum compensation allowed under the provisions of this Act. If any party to any such final ruling and decision of the Board, after having given notice as above provided, fails within said twenty (20) days to institute and prosecute a suit to set the same aside, then said final ruling and decision shall be binding upon all parties thereto, and, if the same is against the institution, it shall at once comply with such final ruling and decision.

In all cases where the Board shall make a final order, ruling, or decision, as provided in the preceding Section and against the institution, and the institution shall willfully fail and refuse to obey or comply with the same and shall fail or refuse to bring suit to set the

same as in said Section is provided, then in that event the claimant in addition to the rights and remedies given him and the Board in said Section may, after demanding compliance, bring suit in a court of competent jurisdiction, upon said order, ruling, or decision. If he secures a judgment sustaining such order, ruling, or decision in whole or in part, he shall also be entitled to recover the further sum of twelve percent (12%) as damages upon the amount of compensation so recovered in said judgment, together with a reasonable attorney's fee for the prosecution and collection of such claim.

Where the Board has made an award against the institution requiring the payment to an injured workman or his beneficiaries of any weekly or monthly payments, under the terms of this Act, and the institution should thereafter fail or refuse, without justifiable cause, to continue to make said payments promptly as they mature, then the said injured workman or his beneficiaries, in case of his death, shall have the right to mature the entire claim and to institute suit thereon to collect the full amount thereof, together with twelve percent (12%) penalties and attorney's fees as herein provided for. Suit may be brought under provisions of this Section, either in the county where the accident occurred, or in any county where the claimants reside, or where one or more of such claimants may have his place of residence at the time of the institution of the suit.

Section 12, Record of Injuries; Reports:

The institution shall hereafter keep a record of all injuries fatal or otherwise, sustained by its workmen in the course of their employment. Within eight (8) days after the occurrence of an accident resulting in an injury to a workman, causing his absence from work for more than one day, a written report thereof shall be made to the Board on blanks to be procured from the Board for that purpose. Upon the termination of the incapacity of the injured workman, or if such incapacity extends beyond a period of sixty (60) days, the institution shall make a supplemental report upon blanks to be procured for that purpose. The said report shall contain the name, age, sex and occupation of the injured workman and the character of work in which he was engaged at the time of the injury, and shall state the place, date and hour of receiving such injury and the nature and cause of the injury, and such other information as the Board may require. The institution shall be responsible for the submission of the reports in the time specified in this Section.

Section 13, Rules and Regulations; Examinations; Medical Records and Reports:

The institution is authorized to promulgate and publish such rules and regulations and to prescribe and furnish such forms as may be necessary to the effective administration of this Act, and the institution shall have authority to make and enforce such rules for the prevention of accidents and injuries as may be deemed necessary. The institution may obtain and record, on a form and in a manner prescribed by the institution, the medical history of a person to be employed in the service of the institution. The institution may designate a convenient number of regularly licensed practicing physicians, surgeons and chiropractors for the purpose of making physical examinations of persons to be employed in the service of the institution to determine who may be physically fit to be classified as "workman" as that term is defined in Subsection 2 of Section 2 of this Act, and said physicians, surgeons and chiropractors so designated and so conducting such examinations shall make and file with the institution a complete transcript of said examination in writing and sworn to upon a form to be furnished by the institution. The institution, in a form and manner prescribed by the institution, shall preserve as a part of

the permanent records of the institution all reports of such examinations and medical histories so filed with it.

Section 14, Physical Examination:

The institution may require that no person be certified as a workman in the institution, under the terms and provisions of this Act until he has submitted himself for a physical examination as provided in Section 13 herein and has been certified by the examining physician, surgeon, or chiropractor, to be physically fit to perform the duties and services to which he is to be assigned.

Section 15, Certification of Workers Failing to Pass Physical Exam; Waiver of Coverage:

In the discretion of the institution, any person who indicates a pre-existing disqualifying physical condition in a medical history provided under Section 13, or any person found to have a pre-existing disqualifying medical condition in a physical examination as provided in Section 14 may be certified as a workman on the condition that such person shall execute in writing, prior to his employment, a waiver of coverage under the provisions of this Act for the pre-existing disqualifying physical condition. Such waiver shall be valid and binding on the workman so executing it and in the event of injury or death of the workman suffered in the course of his employment and attributable to the condition for which coverage was waived, no compensation or death benefits shall be paid to him or his beneficiaries.

Section 16, Certified Copies of Orders, Awards and Decisions:

Any order, award, or proceeding of said Board when duly attested by any member of the Board or its Secretary shall be admissible as evidence of the act of said Board in any court of this State.

Upon the written request and payment of the fees therefor, which fees shall be the same as those charged for similar services in the Secretary of State's Office, the Board shall furnish to any person entitled thereto a certified copy of any order, award, decision, or, paper on file in the office of said Board and the fees so received for such copies shall be paid into the State Treasury and credited to the General Revenue Fund; provided that the institution shall be furnished such certified copies without charge. No fee or salary shall be paid to any person in said Board for making such copies in excess of the fees charged for such copies.

Section 17, Suit to Set Aside Final Decision:

Any interested party who is not willing and does not consent to abide by the final ruling and decision of the Board shall, in the manner and within the time provided by Section 11 of this Act, file notice with said Board, and bring suit in the county where the injury occurred to set aside said final ruling and decision; however, in the event such suite is, brought in any county other than the county where the injury occurred, the court in which same is filed shall, upon ascertaining that it does not have jurisdiction to render judgment upon the merit, transfer the case to the proper court in the county where the injury occurred. Provided, however, that notice of said transfer shall be given to the parties and said suit when filed in the court to which the transfer is made, shall be considered for all purposes, the same as if originally filed in said court.

Section 18, Hearing of Claim:

When an injured workman has sustained an injury in the course of his employment, and filed claim for compensation and given notice as required by law, the Board shall hear his claim for compensation within a reasonable time; provided, however, when such injured workman is being paid compensation as provided in this Act, and the institution is furnishing either hospitalization, medical treatment, or chiropractic care to such workman, the Board may, within its discretion, delay or postpone the hearing of his claim, and no appeal shall be taken from any such order made by the Board.

Section 19, Amounts to be Set Aside for Awards and Expenses:

The institutions covered by this Act are hereby authorized to set aside from available appropriations other than itemized salary appropriations an amount not to exceed two percent (2%) of the annual workman payroll of the institution for the payment of all costs, administrative expense, charges, benefits, and awards authorized by this Act.

The amounts so set aside shall be set up in a separate account in the records of the institution, which account shall show the disbursements authorized by this Act; provided the amounts so set aside in this account shall not exceed two percent (2%) of the annual workman payroll at anyone time. A statement of the amounts set aside for and disbursements from said account shall be included in reports made to the Governor and the Legislature as required by the Statutes.

Section 20, Attorney General as Legal Representative:

The Attorney General of the State of Texas shall be the legal representative of the institution and is hereby given power and authority to bring and defend all suits and hearings necessary to carry out the purposes of this Act.

Section 21, Notice by Clerk on Appeal:

In every case appealed from the Board to any District or County Court, the Clerk of such Court shall, within twenty (20) days after the filing thereof, mail to the Board a notice giving the style, number, and date of filing such suit, and shall, within twenty (20) days after judgment is rendered in such suit, mail to the Board a certified copy of such judgment. The duties devolving upon District and County Clerks under this Act shall constitute a part of their ex officio duties and for such services they shall not be entitled to any fee.

In every such case the attorney preparing the judgment shall file the original and a copy of same with the Clerk of the Court. However, the failure of such attorney to comply with this provision shall not excuse the failure of the Clerk of a District or County Court to mail a certified copy of such judgment to the Board as above provided.

Any Clerk of a District or County Court who fails to comply with the provisions of this Act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than Two Hundred and Fifty Dollars (\$250).

Section 22, Partial Invalidity:

If any section, paragraph, or provision of this Act be declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining sections, paragraphs, or provisions of this Act, but the same shall remain in full force and effect. (Acts 1977)

Article 8309c

Specifically repealed 1973; see ARTICLE 8309h.

Article 8309c-1

Specifically repealed 1973; see ARTICLE 8309h.

Article 8309d, University Of Texas Employees

Section 1, Law Passed Pursuant to Constitution:

By virtue of the provisions of Section 59 of Article III of the Constitution of the State of Texas granting the Legislature power to pass such laws as may be necessary to provide Workers' Compensation Insurance for State employees, as in its judgment is necessary or required, and to provide for the payment of all costs, charges, and premiums on such insurance, provision is made as hereinafter set forth.

Section 2, Definitions:

The following words and phrases as used in this Act shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

1. "Institution" whenever used in this Act shall be held to mean each of the institutions and agencies under the direction or government of the Board of Regents of The university of Texas including the following:

Main University, Austin

Medical Branch, Galveston

Dental Branch, Houston

M. D. Anderson Hospital for Cancer Research, Houston

Southwestern Medical School, Dallas

Texas Western College, El Paso

Postgraduate School of Medicine, Houston

Any other agencies now or hereafter under the direction and control of said Board of Regents.

2. "Workman" shall mean every person in the service of The University of Texas System under any appointment or expressed contract of hire, oral or written, whose name appears upon the payroll of The University of Texas System.

3. "Insurance" shall mean Workmen's Compensation Insurance.

4. "Board" shall mean the Industrial Accident Board of the State of Texas.

5. "Legal beneficiaries" shall mean the relatives named in Section 8a of Article 8306, Revised Civil Statutes of Texas of 1925, adopted in Section 7 of this Act.

6. "Average weekly rates" shall be as defined in Section 1, Article 8309, Revised Civil Statutes of Texas of 1925.

7. Any reference to a workman herein who has been injured shall, when the workman is dead, also include the legal beneficiaries, as that term is herein used, of such workmen to whom compensation may be payable. Whenever in this Act the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and

neuter shall be included.

Section 3, Group Insurance of Employees Other Than Workmen; Compensation for Workmen; Acceptance of Provisions:

After the effective date of this Act the Board of Regents of The University of Texas is hereby authorized to require as a condition of employment, all employees except workmen as defined above, to acquire protection under a group life and accident insurance plan approved by it.

After the effective date, any workman, as defined in this Act, who sustains an injury in the course of his employment shall be paid compensation as hereinafter provided.

The institution is hereby authorized to be self-insuring and is charged with the administration of this Act. The institution shall notify the Board of the effective date of such insurance, stating in such notice the nature of the work performed by the workmen of the institution, the approximate number of workmen, and the estimated amount of payroll.

The institution shall give notice to all workmen that, effective at the time stated in such notice, the institution has provided for payment of insurance.

Workmen of the institution shall be conclusively deemed to have accepted the provisions hereof in lieu of common law or statutory causes of action, if any, for injuries resulting in the course of their employment.

Section 4, Compensation for Injury in Course of Employment:

If a workman of the institution sustains an injury in the course of his employment, he shall be paid compensation by the institution as herein provided except that compensation for any person employed on less than a full workday basis shall not exceed sixty percent (60%) of his average weekly earning.

Section 5, Defenses:

In an action to recover damages for personal injuries sustained by a workman in the course of his employment, or for death resulting from personal injuries so sustained, the institution may defend in such action on the ground that the injury was caused by the willful intention of the workman to bring about the injury, or was so caused while the workman was in a state of intoxication.

Section 6, Exclusiveness of Remedy: Exemptions and Non-Assignability:

Workmen of the institution and parents of minor workmen shall have no right of action against the agents, servants, or employees of the institution for damages for personal injuries, nor shall representatives and beneficiaries of deceased workmen have a right of action against the agents, servants or employees of the institution for injuries resulting in death, but such workmen and their representatives and beneficiaries shall look for compensation solely to the institution as is provided in this Act. All compensation allowed herein shall be exempt from garnishment, attachment, judgment, and all other suits or claims, and no such right of action and no such compensation and no part thereof nor of either shall be assignable, except as otherwise herein provided, and any attempt to assign the same shall be void.

Section 7, Applicability of Existing Laws:

The following Sections are adopted and shall govern as applicable under the provisions of this Act: Sections 1, 6, 7, 7b, 7c, 7d, 7e, 8, 8a, 8b, 9, 10, 11, 11a, 12, 12a, 12b, 12c, 12d, 12e, 12f, 12i, 13, 15, 15a, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, and 27 of Article 8306, Revised Civil Statutes of Texas, 1925, as amended, and as may be hereafter amended; Section 1, Chapter 248, Acts of the 42nd Legislature, Regular Session, 1931 (Article 8306a, Vernon's Texas Civil Statutes), as last amended by Section 2, Chapter 26, Acts of the 54th Legislature, Regular Session, 1955, and as may be hereafter amended; Sections 4a, 6a, 10, 11, 12, 13, and 14 of Article 8307, Revised Civil Statutes of Texas, 1925, as amended, and as may be hereafter amended; Sections 4 and 5, Article 8309, Revised Civil Statutes of Texas, 1925, as amended, and as may be hereafter amended; Section 1, Chapter 179, Acts of the 42nd Legislature, Regular Session, 1931 (Article 8309a, Vernon's Texas Civil Statutes), as amended by Section 7, Chapter 178, Acts of the 53rd Legislature, Regular Session, 1953, and as may be hereafter amended.

Whenever the words "association," "subscriber," or "employer," or the equivalent of any of these words, are used in Article 8306, 8307, or 8309, Revised Civil Statutes of Texas, as amended, or as may be hereafter amended, and in Section 1, Chapter 179, Acts of the 42nd Legislature, Regular Session, 1931 (Article 8309a, Vernon's Texas Civil Statutes), as amended by Section 7, Chapter 178, Acts of the 53rd Legislature, Regular Session, 1953, and as may be hereafter amended, for the purpose of this Act they mean "the institution." (Acts 1969)

Section 8. Repealed.

Section 9. Weekly Payments; Annual and Sick Leave:

It is the purpose of this Act that compensation herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto, unless the liability is redeemed as in such cases provided elsewhere herein; except that the institution may provide that an injured workman may remain on the payroll until his earned annual and sick leave is exhausted, during which time the services in Section 7, Article 8306, Revised Civil Statutes of Texas, 1925, as amended, and as may be hereafter amended, will remain available to the workman, but no workers' compensation payment will accrue or become due and payable to the injured employee.

Section 10, Medical Examinations; Insanitary or Injurious Practices; Process and Procedure:

The Board may require any workman claiming to have sustained injury to submit himself for examination before such Board or someone acting under its authority at some reasonable time and place within the State, and as often as may be reasonably ordered by the Board to a physician or physicians authorized to practice under the Laws of this State. If the workman or the institution requests, he or it shall be entitled to have a physician or physicians of his or its own selection present to participate in such examination. Refusal of the workman to submit to such examination shall deprive him of his right to compensation during the continuance of such refusal. When a right to compensation is thus suspended no compensation shall be payable in respect to the period of suspension. If any workman shall persist in insanitary or injurious practices which tend to either imperil or retard his recovery, or shall refuse to submit to such medical or surgical treatment or other remedial treatment recognized by the State, as is reasonably essential to promote his recovery, the Board may in its discretion order or

direct the institution to reduce or suspend the compensation of any such injured workman. No compensation shall be reduced or suspended under the terms of this Section without reasonable notice to the workman and an opportunity to be heard.

The institution shall have the privilege of having any injured workman examined by a physician or physicians of its own selection, at reasonable times, at a place or places suitable to the condition of the injured workman and convenient and accessible to him. The institution shall pay for such examination and the reasonable expense incident to the injured workman in submitting thereto. The injured workman shall have the privilege to have a physician of his own selection present to participate in such examination. Provided, when such examination is directed by the Board or the institution, the institution shall pay the fee of the physician selected by the workman, such fee to be fixed by the Board.

Process and procedure shall be as summary as may be under this Act. The Board or any member thereof shall have power to subpoena witnesses, administer oaths, inquire into matters of fact, examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute. All rulings and decisions of the Board relating to disputed claims shall be upon questions of fact and in accord with the provisions of this Act.

Section 11, Board to Determine Questions; Suits to Set Aside or Enforce Rulings; Failure to Make Payments:

All questions arising under this Act, if not settled by agreement of the parties interested therein and within the provisions of this Act, shall, except as otherwise provided, be determined by the Board. Any interested party who is not willing and does not consent to abide by the final ruling and decision of said Board shall within twenty (20) days after the rendition of said final ruling and decision by the said Board, file with said Board notice that he will not abide by said final ruling and decision. And he shall within twenty (20) days after giving such notice bring suit in the county where the injury occurred to set aside said final ruling and decision and said Board shall proceed no further toward the adjustment of such claim, other than hereinafter provided. Whenever such suit is brought, the rights and liability of the parties thereto shall be determined by the provisions of this Act and the suit of the injured workman or person suing on account of the death of such workman shall be against the institution. If the final order of the Board is against the institution, then the institution shall bring suit to set aside said final ruling and decision of the Board, if it so desires, and the court shall in either event determine the issues in such cause instead of the Board upon trial de novo and the burden of proof shall be upon the party claiming compensation. The Board shall furnish any interested party in said claim pending in court upon request free of charge, with a certified copy of the notice of the institution becoming an insurer filed with the Board and the same when properly certified to shall be admissible in evidence in any court in this State upon trial of such claim therein pending and shall be prima-facie proof of all facts stated in such notice in the trial of said cause unless same is denied under oath by the opposing party therein. In case of recovery the same shall not exceed the maximum compensation allowed under the provisions of this Act. If any party to any such final ruling and decision of the Board, after having given notice as above provided, fails within said twenty (20) days to institute and prosecute a suit to set the same aside, then said final ruling and decision shall be binding upon all parties thereto, and, if the same is against the institution, it shall at once comply with such final ruling and decision.

In all cases where the Board shall make a final order, ruling, or decision, as provided in the preceding Section and against the institution, and the institution shall willfully fail and refuse to obey or comply with the same and shall fail or refuse to bring suit to set the same aside as in said Section is provided, then in that event the claimant in addition to the rights and remedies given him and the Board in said Section may, after demanding compliance, bring suit in a court of competent jurisdiction, upon said order, ruling, or decision. If he secures a judgment sustaining such order, ruling, or decision in whole or in part, he shall also be entitled to recover the further sum of twelve percent (12%) as damages upon the amount of compensation so recovered in said judgment, together with a reasonable attorney's fee for the prosecution and collection of such claim.

Where the Board has made an award against the institution requiring the payment to an injured workman or his beneficiaries of any weekly or monthly payments, under the terms of this Act, and the institution should thereafter fail or refuse, without justifiable cause, to continue to make said payments promptly as they mature, then the said injured workman or his beneficiaries, in case of his death, shall have the right to mature the entire claim and to institute suit thereon to collect the full amount thereof, together with twelve percent (12%) penalties and attorneys' fees as herein provided for. Suit may be brought under provisions of this Section, either in the county where the accident occurred, or in any county where the claimants reside, or where one or more of such claimants may have his place of residence at the time of the institution of the suit.

Section 12, Records and Reports:

The institution shall hereafter keep a record of all injuries fatal or otherwise, sustained by its workmen in the course of their employment. Within eight (8) days after the occurrence of an accident resulting in an injury to a workman, causing his absence from work for more than one day, a written report thereon shall be made to the Board on blanks to be procured from the Board for that purpose. Upon the termination of the incapacity of the injured workman, or if such incapacity extends beyond a period of sixty (60) days, the institution shall make a supplemental report upon blanks to be procured for that purpose. The said report shall contain the name, age, sex and occupation of the injured workman and the character of work in which he was engaged at the time of the injury, and shall state the place, date and hour of receiving such injury and the nature and cause of the injury, and such other information as the Board may require. The institution shall be responsible for the submission of the reports in the time specified in this Section.

Section 13, Rules and Regulations; Designation of Physicians and Surgeons; Reports of Examinations:

The institution is authorized to promulgate and publish such rules and regulations and to prescribe and furnish such forms as may be necessary to the effective administration of this Act, and the institution shall have authority to make and enforce such rules for the prevention of accidents and injuries as may be deemed necessary. It shall be the duty of the institution to designate a convenient number of regularly licensed practicing physicians and surgeons for the purpose of making physical examinations of all persons employed or to be employed in the service of the institution to determine who may be physically fit to be classified as "workman" as that term is defined in Subsection 2 of Section 2 of this Act, and said physicians and surgeons so designated and so conducting such examinations shall make and file with the institution a complete transcript of said examination in writing and sworn to upon a form to be furnished by the

institution. It shall be the duty of the institution to preserve as a part of the permanent records of the institution all reports of such examinations so filed with it.

Section 14. Repealed.

Section 15. Waiver of Rights:

An agreement to waive his rights under this Act made in writing by any workman prior to his employment shall be valid.

Section 16. Evidence; Certified Copies:

Any order, award, or proceeding of said Board when duly attested by any member of the Board or its secretary shall be admissible as evidence of the Act of said Board in any Court of this State.

Upon written request and payment of the fees therefor, which fees shall be the same as those charged for similar services in the Secretary of State's Office, the Board shall furnish to any person entitled thereto a certified copy of any order, award, decision, or paper on file in the office of said Board and the fees so received for such copies shall be paid into the State Treasury and credited to the General Revenue Fund; provided that the institution shall be furnished such certified copies without charge. No fee or salary shall be paid to any person in said Board for making such copies in excess of the fees charged for such copies.

Section 17, Venue of Suits; Transfer to Proper County:

Any interested party who is not willing and does not consent to abide by the final ruling and decision of the Board shall, in the manner and within the time provided by Section 11 of this Act, file notice with said Board, and bring suit in the county where the injury occurred to set aside said final ruling and decision; however, in the event such suit is brought in any county other than the county where the injury occurred, the court in which same is filed shall, upon ascertaining that it does not have jurisdiction to render judgment upon the merit, transfer the case to the proper court in the county where the injury occurred. Provided, however, that notice of said transfer shall be given to the parties and said suit when filed in the court to which the transfer is made, shall be considered for all purposes, the same as if originally filed in said court.

Section 18, Time for Hearing:

When an injured workman has sustained an injury in the course of employment and filed claim for compensation and given notice as required by law, the Board shall hear his claim for compensation within a reasonable time. Provided, however, when such injured workman is being paid compensation as provided in this Act, and the institution is furnishing either hospitalization or medical treatment to such workman, the Board may, within its discretion, delay or postpone the hearing of his claim, and no appeal shall be taken from any such order made by the Board.

Section 19, Setting Aside Funds; Account; Reports:

The institutions covered by this Act are hereby authorized to set aside from available appropriations other than itemized salary appropriations an amount not to exceed two percent (2%) of the annual workman payroll of the institution for the payment of all costs, administrative expense, charges, benefits, and awards authorized by this Act.

The amounts so set aside shall be set up in a separate account in the records of the institution, which amount shall show the disbursements authorized by this Act; provided the amounts so set aside in this account shall not exceed two percent (2%) of the annual workman payroll at anyone time. A statement of the amounts set aside for and disbursements from said account shall be included in reports made to the Governor and the legislature as required by the Statutes.

Section 20, Legal Representative:

The Attorney General of the State of Texas shall be the legal representative of the institution and is hereby given power and authority to bring and defend all suits and hearings necessary to carry out the purposes of this Act.

Section 21, Duties of Clerk of Court and Attorneys:

That in every case appealed from the Board to any District or County Court, the Clerk of such Court shall, within twenty (20) days after the filing thereof, mail to the Board a notice giving the style, number, and date of filing such suit, and shall, within twenty (20) days after judgment is rendered in such suit, mail to the Board a certified copy of such judgment. The duties devolving upon District and County Clerks under this Act shall constitute a part of their ex officio duties and for such services they shall not be entitled to any fee.

In every such case the attorney preparing the judgment shall file the original and a copy of same with the Clerk of the Court. However, the failure of such attorney to comply with this provision shall not excuse the failure of the Clerk of a District or County Court to mail a certified copy of such judgment to the Board as above provided.

Any Clerk of a District or County Court who fails to comply with the provisions of this Act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than Two Hundred and Fifty Dollars (\$250).

Section 22, Partial Unconstitutionality:

If any section, sentence, clause or part of this Act is for any reason held to be unconstitutional, such decision shall not affect the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act and each sentence, clause and part thereof despite the fact that one or more sections, sentences, clauses, or parts thereof be declared unconstitutional. (Acts 1973)

Article 8309e-1

Specifically repealed 1973; see ARTICLE 8309h.

Article 8309e-2

Specifically repealed 1973; see ARTICLE 8309h.

Article 8309f

Specifically repealed 9/1/77; see ARTICLE 8309g-1.

Article 8309g. Workers' Compensation Insurance For State Employees

Section 1. Definitions:

In this Article:

(1) "Employee" means a person in the service of the state pursuant to election, appointment, or an express contract of hire, oral or written. The term includes a person, who is paid from state funds but whose duties require they work and frequently receive supervision in a political subdivision of the state.

(2) The word "employee" shall not include:

- (A) Persons performing personal services for the State of Texas as independent contractors or volunteers.
- (B) Members of the state military forces as defined in Section 1, Article 5765, Revised Civil Statutes of Texas, 1925.
- (C) Persons who are at the time of injury performing services for the federal government and who are covered by some form of federal workers' compensation, including those working under Comprehensive Employment and Training Act of 1973 programs; prisoners or inmates of a prison or correctional institution; clients patients of any state institution or agency.
- (D) Persons employed by the State Department of Highways and Public Transportation that are covered under Chapter 502, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 6674s, Vernon's Texas Civil Statutes).
- (E) Persons employed by The University of Texas that are covered by Chapter 310, Acts. of the 52nd Legislature, 1951, as amended (Article 8309d, Revised Civil Statutes of Texas).
- (F) Persons employed by The Texas A&M University System that are covered by Chapter 229, Acts of the 50th Legislature, 1947, as amended (Article 8309b, Vernon's Texas Civil Statutes).

(3) "Legal beneficiaries", "average weekly wages" and "injury sustained in the course of employment" have the meaning assigned to them in Section 1, Article 8309, Revised Civil Statutes of Texas, 1925, as amended.

(4) "Board" means the Industrial Accident Board.

(5) "Division" means the State Employees Division of the Attorney General's Office.

(6) "Director" means the Director of the State Employees Division.

Section 2. State Self-Insuring:

With respect to injuries sustained by employees in the course of their employment, the state is self-insuring.

Section 3. State Employees Division; Director:

The Attorney General shall establish a State Employees Division within his office to administer this Article. He shall appoint a Director to act as the chief executive and

administrative officer of the division, and shall provide him with office space and sufficient personnel to administer this Article. The Director shall administer this Article with money appropriated by the Legislature. The Director, with the approval of the Attorney General, may contract with a company authorized to do business in this state for any or all of the administrative services required by this Article. Such contract shall be awarded on the basis of competitive bidding by qualified companies.

Section 4. Director's Standing as Employer and Insurer:

In administering and enforcing this Article, the Director shall act in the capacity of employer and insurer. He shall act as an adversary before the Board and courts, presenting the legal defenses and positions of the state as an employer and insurer. For these purposes he is entitled to the legal counsel of the Attorney General of the State of Texas.

Section 5. Procedural Rules:

The Director shall make procedural rules and prescribe forms necessary to the effective administration of this Article.

Section 6. Rules for Accident Prevention:

The Director shall make and enforce reasonable rules for the prevention of accidents and injuries. He shall hold hearings on all proposed rules under this Section and afford reasonable opportunity for officers of the departments, boards, commissions, and agencies of the state to testify. The Director's responsibility includes reporting to the Legislature any agency that fails to meet their obligation regarding the prevention of administrative statement of its biennial budget request a summary containing (a) the number of first reports of injury filed by the agency during the preceding biennium, (b) the amount of workers' compensation indemnity and medical benefits paid to or for such employees during such period, (c) the number of on-the-job injuries per 100 of its employees per year during such period, and (d) positive efforts made by each such agency to increase job safety and reduce job injuries, including the participation of heads of agencies and the executive staff of each agency in training programs offered by the workers' compensation division of the Attorney General's office and others.

Section 7. Distribution of Copies of Rules:

The Director shall furnish copies of all rules to the Board and to the administrative heads of all departments, boards, commissions, and agencies affected by this Article.

Section 8. Records and Reports of Injuries:

The Director shall keep a record of all injuries sustained by employees in the course of their employment. Within eight days after the occurrence of an accident resulting in an injury to an employee, causing his absence from work for more than one day, the Director shall make a written report to the Board on a form provided by the Board. He shall submit a supplemental report within 10 days after the termination of the incapacity of the employee. If the incapacity extends beyond a period of 60 days, he shall submit a supplemental report before the 70th day. The Director shall make other reports as required by the Board.

Section 9. Reports to Legislature:

The Director shall make a report to the Legislature at the beginning of each regular session. The report shall be dated January 1 and shall include the following:

- (1) a list of all recipients of benefits under this Article, the nature and causes of their injuries, and the amounts paid in weekly compensation and for medical, hospital, and other services;
- (2) a summary of administrative expenses;
- (3) a statement showing how much of the money appropriated by the preceding legislature remains unexpended as of January 1, and estimating how much of this balance will be needed to administer this Article for the remainder of the fiscal year;
- (4) an estimate, based on experience factors, of the amount of money which will be required to administer this Article and pay for the compensation and services provided by this Article during the next succeeding biennium.

Section 10. Director Subject to Actions of Board:

The Director is subject to the regulations, orders, and decisions of the Board in the same manner as private employers, insurers, and associations.

Section 11. Right to Compensation:

- (a) If an employee sustains an injury in the course of his employment, he is entitled to compensation by the Director as provided in this Article.
- (b) The Director shall pay the compensation directly to the person entitled to it, from week to week and as it accrues, unless the liability is redeemed as provided in this Article.

Section 12. Effect of Sick Leave and Emergency Leave:

- (a) An employee may elect to utilize accrued sick leave before receiving weekly payments of compensation. If the employee elects to utilize sick leave, the employee is not entitled to weekly payments of compensation under this Article until he has exhausted his accrued sick leave.
- (b) If in accordance with the General Appropriations Act the administrative head or heads of an agency or institution authorize payment for emergency leave to an employee receiving workers' compensation benefits, the payments may not exceed an amount equal to the difference between the basic monthly wage of the employee and the amount of benefits received and may not extend beyond six months from the date on which compensation payments begin. In authorizing these payments for emergency leave, the administrative head or heads of the agency or institution must review the merits of each case individually. If payment for emergency leave is authorized, the agency or institution shall attach a statement of the reasons for the authorization to its duplicate payroll voucher for the first payroll period affected by the leave.
- (c) The Director has authority under Section 5 of this Article to provide rules for the administration of this Section.

Section 13. Beneficiaries of Deceased Employee:

The provisions of this Article and the rules of the Director affecting an employee also apply to the legal beneficiaries of a deceased employee.

Section 14. Notice By Clerk On Appeal:

- (a) In every case appealed from the Board to a district or county court, the clerk of the

court shall within 20 days after the filing of the suit mail to the Board a notice giving the style, number, and date of filing; and within 20 days after judgment is rendered in the suit, the clerk shall mail to the Board a certified copy of the judgment. District and county clerks are not entitled to a fee for this service.

(b) The attorney preparing the judgment shall file the original and a copy with the clerk of the court. However, the failure of the attorney to comply with this requirement does not excuse the clerk of the court from the duty to mail a certified copy of the judgment to the Board.

(c) Any clerk of a county or district court who fails to comply with this Section is guilty of a misdemeanor, and on conviction he shall be punished by a fine of not more than \$250.

Section 15. Adoption of General Workers' Compensation Laws:

(a) The following laws as amended or as they may hereafter be amended are adopted except to the extent that they are inconsistent with this Act:

(1) Art. 8306, except Sections 5 and 28, and Art. 8307, 8037b, and 8309, Revised Civil Statutes of Texas, 1925, as amended;

(2) Chapter 248, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Art. 8306a, Vernon's Texas Civil Statutes);

(3) Chapter 77, Acts of the 65th Legislature, Regular Session, 1977 (Art. 8306b, Vernon's Texas Civil Statutes);

(4) Chapter 208, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Art. 8307a, Vernon's Texas Civil Statutes);

(5) Chapter 115, Acts of the 62nd Legislature, Regular Session, 1971 (Art. 8307c, Vernon's Texas Civil Statutes);

(6) Chapter 358, Acts of the 64th Legislature, 1975 (Art. 8307d, Vernon's Texas Civil Statutes); and

(7) Chapter 179, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Art. 8309a, Vernon's Texas Civil Statutes).

(b) Wherever the words "association," "insurer," "subscriber," or "employer" are used in the adopted laws, the word "state," "division" or "director," whichever is applicable, is substituted for the purposes of this Article.

(c) For purposes of Chapter 115, Acts of the 62nd Legislature, Regular Session, 1971 (Art. 8307c, Vernon's Texas Civil Statutes), the individual agency shall be considered the employer.

Section 16, Entitlement to Benefits:

An employee is not entitled to benefits under this Article unless the accident causing his injury occurs at least 90 days after the effective date of this Article.

Section 17, Coverage for Out-Of-State Employees:

Notwithstanding Section 19, Article 8306, Revised Civil Statutes of Texas, 1925, as amended, an employee who performs services outside this state is entitled to benefits under this article even if the person is hired or not hired in this state, is injured outside

this state, does not work in this state, works both in this state and out of state, or has been outside this state for more than one year. An employee who elects to pursue remedies provided by the state or the District of Columbia in which an injury occurs is not entitled to benefits under this article. (Acts 1983)

Section 18:

All sums of money recovered by the director from third parties by way of subrogation shall be deposited into the state workers compensation fund and may be used for the payment of compensation and other benefits to state employees. (Acts 9/1/85)

Article 8309g-1. Texas Tech University

Eligible employees of Texas Tech University, Pan Tech Farms, Texas Tech University School of Medicine at Lubbock, and other agencies under the direction and control of the Board of Regents of Texas Tech University are entitled to participate in the workers' compensation program for state employees provided in Article 8309g, Revised Civil Statutes of Texas, 1925, as amended. (Acts 9/1/77)

**Article 8309h. Workers' Compensation Insurance
for Employees of Political Subdivisions**

Section 1. Definitions:

The following words and phrases as used in this Article shall unless a different meaning is plainly required by the context, have the following meanings, respectively.

(1) "Political subdivision" means a county, home-rule city, a city, town, or village organized under the general laws of this state, a special district, a school district, a junior college district" or any other legally constituted political subdivision of the state.

(2) "Employee" means every person in the service of a political subdivision who has been appointed in accordance with the provisions of the Article. No person in the service of a political subdivision who is paid on a piecework basis or on a basis other than by the hour, day, week, month, or year shall be considered an employee and entitled to compensation under the terms of the provisions of this Article. Provided, however, a political subdivision may cover volunteer firefighters, policemen, emergency medical personnel, and other volunteers that are specifically named who shall be entitled to full medical benefits and the minimum compensation payments provided under the law. A political subdivision may cover an elected official as an employee by a majority vote of the members of the governing body of the political subdivision. A political subdivision may cover children who are in a program established by the political subdivision to assist children in rendering personal services to a charitable or educational institution as authorized by Subsection (b), Section 54.041, Family Code. Members of a self-insurance fund created hereunder may provide coverage for themselves as well as their staff by a majority vote of such members of the fund. No class of persons who are paid as a result of jury service or an appointment to serve in the conduct of elections may be considered employees under this Article unless declared to be employees by a majority vote of the members of the governing body of a political subdivision.

(3) "Board" means the Industrial Accident Board.

Section 2. Self-Insurance; Effective Date; Notice to Board and Employees; Municipal Utilities:

(a) All political subdivisions of this state shall become either self-insurers, provide insurance under workers' compensation insurance contracts or policies, or enter into interlocal agreements with other political subdivisions providing for self-insurance, extending workers' compensation benefits to their employees.

(b) Each political subdivision shall notify the Board stating the method by which their employees will receive benefits, the approximate number of employees covered, and the estimated amount of payroll.

(c) Notice shall also be given to the employees of a political subdivision of the provision so made for benefits and the effective date thereof; and employees of a political subdivision shall be conclusively deemed to have accepted the compensation provisions in lieu of common-law or statutory liability or cause of action, if any, for injuries received in the course of employment or death resulting from injuries so received.

(d) In cities, towns, or villages in which a public utility or utilities is operated by a board of trustees set up and appointed in accordance with Article 1115, Revised Civil Statutes of Texas, 1925, or any similar law, such board of trustees shall have all of the powers and authority of the governing body of the city with reference to the adoption of a program of self-insurance under this Article or in the taking out of a policy or policies of workers' compensation insurance hereunder, and all funds set aside or expended for such purposes shall be considered operating expenses of the municipal utilities. All funds set aside or paid by such boards of trustees in connection with self-insurance or for premiums on policies of insurance shall be paid out of the revenues of the utilities operated by the board of trustees and neither the provisions for self-insurance nor the obligations incurred under insurance policies shall be general liabilities of the city, town, or village, but shall constitute only obligations payable out of the revenues. The boards of trustees shall be authorized to adopt all resolutions, give all notices and to do all things concerning workers' compensation under this Article with reference to employees employed by the boards of trustees which the governing body of the city, town, or village would be authorized to do with reference to other city employees, or groups of employees.

Section 3. Adoption of General Workmen's Compensation Laws:

(a) The following laws as amended or as they may hereafter be amended are adopted except to the extent that they are inconsistent with this Article:

(1) Art. 8306, except Sections 5 and 28, and Arts. 8307, 8307b, and 8309, Revised Civil Statutes of Texas, 1925, as amended;

(2) Chapter 248, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Art. 8306a, Vernon's Texas Civil Statutes);

(3) Chapter 77, Acts of the 65th Legislature, Regular Session, 1977 (Art. 8306b, Vernon's Texas Civil Statutes);

(4) Chapter 208, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Art. 8307a, Vernon's Texas Civil Statutes);

(5) Chapter 115, Acts of the 62nd Legislature, Regular Session, 1971 (Art. 8307c, Vernon's Texas Civil Statutes), except that if the city provides by Charter or ordinance for ultimate access to the district court for wrongful discharge, Chapter 115, Acts of the 62nd Legislature, Regular Session, 1971 (Art. 8307c, Vernon's Texas Civil Statutes) is not applicable;

(6) Chapter 358, Acts of the 64th Legislature, 1975 (Art. 8307d, Vernon's Texas , Civil Statutes); and

(7) Chapter 179, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Art. 8309a, Vernon's Texas Civil Statutes).

(b) Provided that whenever in the above adopted laws the words "association", "subscriber", or "employer", or their equivalents appear, they shall be construed to and shall mean "a political subdivision".

Section 4. Establishment of Joint Fund:

A joint fund, as herein provided for, may be established by the concurrence of any two or more political subdivisions. The fund may be operated under the rules, regulations, and bylaws as established by the political subdivisions which desire to participate therein. Each political subdivision shall be and is hereby empowered to pay into said fund its proportionate part as due and to contract for the fund, by and through its directors, to make the payments due hereunder to the employees of the contracting political subdivision. The joint insurance fund herein provided for shall not be considered insurance for the purpose of any other statute of this state and shall not be subject to the regulations of the State Board of Insurance.

Section 5. Purpose:

(a) It is the purpose of this Article that the compensation herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto unless the liability is redeemed as in such cases provided elsewhere herein. Provided further, however, that any and all sums for incapacity received in accordance with chapter 325, Acts of the 50th Legislature, 1947, as amended (Article 1269m, Vernon's Texas Civil Statutes), and any other statutes now in force and effect that provide for payment for incapacity to work because of injury on the job that is also covered by this Act are hereby offset as against the benefits provided under this Act to the extent applicable. Provided that when an employee's wage is offset as prescribed above, both the employer and the employee shall pay into the pension fund on the amount of money by which his wage was offset and provided further that under no circumstances shall an employee's pension benefit be reduced as a result of his injuries or any compensation received under the provision of this Act, unless such reduction is a result of a pension revision passed by majority vote of the affected members of a pension system.

(b) When benefits are offset as in Subsection (a) of Section 5 of this Act, the employer shall not withhold the offset portion of the employee's wages until such time as the benefits from this Act are received.

Section 6. Rules and Regulations; Form:

The political subdivision is authorized to promulgate and publish rules and regulations and to prescribe and furnish forms as may be necessary to the effective administration

of this Article, and the political subdivision shall have authority to make and enforce rules for the prevention of accidents and injuries as may be deemed necessary.

Section 7. Appropriations for Disbursements; Separate Account; Report:

(a) The political subdivision is hereby authorized to set aside from available appropriations, other than itemized salary appropriations, an amount sufficient for the payment of all costs, administrative expenses, charges, benefits, insurance, attorney fees, and awards authorized by this Article.

(b) The amount so set aside shall be set up in a separate account in the records of the political subdivision, which account shall show the disbursements authorized by this Article. A statement of the amount set aside for the disbursements from the account shall be included in an annual report made to the political subdivision treasurer and the duly and legally constituted governing body of the political subdivision.

Section 8. Suits and Proceedings; Municipal Utilities:

The political subdivision attorney, his assistants, or outside counsel may represent the political subdivision in the bringing of defense or suits and proceedings in connection with workers' compensation benefits provided by the political subdivision as a self-insurer, except in cases where municipal utilities are operated by the boards of trustees set up and appointed in accordance with Article 1115, Revised Civil Statutes of Texas, 1925, and similar statutes, and in such instances the regularly employed attorneys or outside counsel for the boards of trustees shall represent the city in all cases and proceedings involving workers' compensation for the employees employed under the jurisdiction of the boards of trustees and for whom benefits have been provided by the board of trustees on a self-insurer basis.

Section 9, Federal Ceta Employees:

Notwithstanding any other provision of this law or any applicable workers' compensation law, an employee hired in accordance with the federal Comprehensive Employment and Training Act of 1973 shall be considered an employee of the federal Comprehensive Employment and Training Act prime sponsor, or its contractor or subcontractor, whichever assumes responsibility for disbursement of wages directly to the employee, and the "borrowed servant doctrine" shall not apply. (Acts 1983)

**Article 8309i. Penalties, Attorneys' Fees On Mandamus
To Collect Compensation Judgment**

Section 1:

In all cases where the State of Texas or any department, division, or political subdivision of the state fails or refuses to comply within 30 days with a judgment against that entity under Articles 8309g and 8309h, Revised Civil Statutes of Texas, 1925, as amended; Chapter 229, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 8309b, Vernon's Texas Civil Statutes); Chapter 310, Acts of the 52nd Legislature, Regular Session, 1951, as amended (Article 8309d, Vernon's Texas Civil Statutes); Chapter 252, Acts of the 55th Legislature, Regular Session, 1957 (Article 8309f, Vernon's Texas Civil Statutes); or Chapter 502, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 6674s, Vernon's Texas Civil Statutes), and the

workers' compensation claimant secures mandamus that the entity comply with the judgment, the claimant is also entitled to receive an award of:

(1) The sum of 12 percent of the amount of compensation recovered in the judgment, as a penalty; and

(2) A reasonable attorney's fee for the prosecution of the mandamus action. (Acts 8/29/77)