

The Colorado Workmen's Compensation Act



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TITLE 8
LABOR AND INDUSTRY

ARTICLE 40
Title and Enforcement

8-40-101. Short title. Articles 40 to 54 of this title shall be known and may be cited as the "Workmen's Compensation Act of Colorado".

8-40-102. Director to enforce. The director of the division of labor shall enforce and administer the provisions of articles 40 to 54 of this title.

ARTICLE 41
Definitions

8-41-101. Definitions. As used in articles 40 to 54 of this title, unless the context otherwise requires:

(1) Repealed, L. 86, p. 502, section 125, effective July 1, 1986.

(2) "Division" means the division of labor in the department of labor and employment.

(3) "Director" means the director of the division of labor.

(3.3) "Examiner" means one of the industrial claim appeals examiners appointed to the industrial claim appeals panel in the industrial claim appeals office.

(3.5) "Executive director" means the executive director of the department of labor and employment.

(4) "Manager" means the manager of the state compensation insurance authority fund.

(5) "Panel" means the industrial claim appeals panel that conducts administrative appellate review pursuant to articles 40 to 54 of this title.

8-41-102. "Order" defined. Except as otherwise expressly provided in articles 40 to 54 of this title, "order" means and includes any decision, finding and award, direction, rule, regulation, or other determination arrived at by the director, a referee of the division, or the panel.

8-41-103. Place of employment. Except as otherwise expressly provided in articles 40 to 54 of this title, "place of employment" means every place whether indoors, outdoors, or underground and the premises, workplaces, works, and plants

appertaining thereto or used in connection therewith where either temporarily or permanently any industry, trade, or business is carried on; or where any process or operation directly or indirectly relating to any industry, trade, or business is carried on; or where any person is directly or indirectly employed by another for direct or indirect gain or profit.

8-41-104. Employment. Except as otherwise expressly provided in articles 40 to 54 of this title, "employment" means any trade, occupation, job, position, or process of manufacture or any method of carrying on any trade, occupation, job, position, or process of manufacture in which any person may be engaged; except that it shall not include participation in a ridesharing arrangement, as defined in section 10-4-707.5 (2), C.R.S., and participation in such a ridesharing arrangement shall not affect the wages paid to or hours or conditions of employment of an employee.

8-41-105. Employer. (1) "Employer" means:

(a) The state, and every county, city, town, and irrigation, drainage, and school district and all other taxing districts therein, and all public institutions and administrative boards thereof without regard to the number of persons in the service of any such public employer. All such public employers shall be at all times subject to the compensation provisions of articles 40 to 54 of this title.

(b) Every person, association of persons, firm, and private corporation, including any public service corporation, personal representative, assignee, trustee, or receiver, who has one or more persons engaged in the same business or employment, except as otherwise expressly provided in articles 40 to 54 of this title, in service under any contract of hire, express or implied.

(c) (I) The department of institutions by virtue of the self-insurance program established pursuant to section 8-44-109 (3).

(II) Repealed, L. 88, p. 369, section 2, effective April 14, 1988.

(2) Articles 40 to 54 of this title are not intended to apply to employers of farm and ranch labor if the amounts expended for wages by an employer of said farm and ranch labor does not exceed the sum of twenty-four thousand dollars for the calendar year 1975 and the sum of ten thousand dollars for the calendar year 1976; thereafter, effective 12:01 a.m., January 1, 1977, this subsection (2) shall not apply, and employers of farm and ranch labor shall be included in the definition contained in paragraph (b) of subsection (1) of this section.

(3) Articles 40 to 54 of this title are not intended to apply to employees of eleemosynary, charitable, fraternal, religious, or social employers who are elected or appointed to serve in an advisory capacity and receive an annual salary or an amount not in excess of seven hundred fifty dollars and are not otherwise subject to the "Workmen's Compensation Act of Colorado".

(4) Articles 40 to 54 of this title are not intended to apply to employers of casual farm and ranch labor or employers of persons who do casual maintenance, repair, remodeling, yard, lawn, tree, or shrub planting or trimming, or similar work about the place of business, trade, or profession of the employer if such employers have no other employees subject to said articles 40 to 54, if such employments are casual and are not within the course of the trade, business, or profession of said employers, if the amounts expended for wages paid by the employers to casual persons employed to do maintenance, repair, remodeling, yard, lawn, tree, or shrub planting or trimming, or similar work about the place of business, trade, or profession of the employer do not exceed the sum of two thousand dollars for any calendar year, and if the amounts expended for wages by the employer of casual farm and ranch labor do not exceed the sum of two thousand dollars for any calendar year.

(4.5) Articles 40 to 54 of this title are not intended to apply to employers of persons who do domestic work or maintenance, repair, remodeling, yard, lawn, tree, or shrub planting or trimming, or similar work about the private home of the employer if such employers have no other employees subject to said articles 40 to 54 and if such employments are not within the course of the trade, business, or profession of said employers. This exemption shall not apply to such employers if the persons who perform the work are regularly employed by such employers on a full-time basis. For purposes of this subsection (4.5), "full-time" means work performed for forty hours or more a week or on five days or more a week.

(5) Any employer excluded under this section may elect to accept the provisions of articles 40 to 54 of this title by purchasing and keeping in force a policy of workmen's compensation insurance covering said employees.

(6) Articles 40 to 54 of this title are intended to apply to officers of agricultural corporations; but effective July 1, 1977, any such agricultural corporation may elect to reject the provisions of articles 40 to 54 of this title for any or all of said officers.

(7) (a) Any employer, as defined in subsection (1) of this section, who enters into a bona fide cooperative education or student internship program sponsored by an educational institution for the purpose of providing

on-the-job training for students shall be deemed an employer of such students for the purposes of workmen's compensation and liability insurance pursuant to articles 40 to 54 of this title.

(b) If the student placed in an on-the-job training program does not receive any pay or remuneration from the employer, the educational institution sponsoring the student in the cooperative education or student internship program shall insure the student through the institution's workmen's compensation and liability insurance or enter into negotiations with the employer for the purpose of arriving at a reasonable level of compensation to the employer for the employer's expense of providing workmen's compensation and liability insurance while such student is participating in on-the-job training with said employer. This paragraph (b) shall not apply to a student teacher participating in a program authorized pursuant to article 62 of title 22, C.R.S.

(c) As used in this subsection (7), "cooperative education or student internship program" means a program sponsored by an educational institution in which a student is taught through a coordinated combination of specialized in-the-school instruction provided through an educational institution by qualified teachers and on-the-job training provided through a local business, agency, or organization or any governmental agency in cooperation with the educational institution.

8-41-106. Employee. (1) "Employee" means:

(a) (I) (A) Every person in the service of the state, or of any county, city, town, or irrigation, drainage, or school district or any other taxing district therein, or of any public institution or administrative board thereof under any appointment or contract of hire, express or implied; and every elective official of the state, or of any county, city, town, or irrigation, drainage, or school district or any other taxing district therein, or of any public institution or administrative board thereof; and every member of the military forces of the state of Colorado while engaged in active service on behalf of the state under orders from competent authority. Policemen and firemen who are regularly employed shall be deemed employees within the meaning of this paragraph (a), as shall also sheriffs and deputy sheriffs, regularly employed, and all persons called to serve upon any posse in pursuance of the provisions of section 30-10-516, C.R.S., during the period of their service upon such posse, and all members of volunteer fire departments, including any person ordered by the chief or his designee at the scene of an emergency or during the period of an emergency to become a member of that department for the duration of an emergency, and to perform the duties of a fireman, and only if the person who is so ordered reports any claim within ten days of the

cessation of the emergency, volunteer rescue teams or groups, volunteer disaster teams, volunteer ambulance teams or groups, and volunteer search teams in any county, city, town, municipality, or legally organized fire protection district or ambulance district in the state of Colorado, and all members of the civil air patrol, Colorado wing, while said persons are actually performing duties as volunteer firemen or as members of such volunteer rescue teams or groups, volunteer disaster teams, volunteer ambulance teams or groups, or volunteer search teams or as members of the civil air patrol, Colorado wing, and while engaged in organized drills, practice, or training necessary or proper for the performance of such duties. Members of volunteer police departments, volunteer police reserves, and volunteer police teams or groups in any county, city, town, or municipality, while actually performing duties as volunteer police officers, may be deemed employees within the meaning of this paragraph (a) at the option of the governing body of such county or municipality.

(B) Notwithstanding the provisions of sub-subparagraph (A) of subparagraph (I) of this paragraph (a), any elected or appointed official of any county, city, town, or irrigation, drainage, or school district or taxing district who receives no compensation for his service as such an official, other than reimbursement of actual expenses, may be deemed not to be an employee within the meaning of this paragraph (a) at the option of the governing body of such county, city, town, or district. The option to exclude such officials as employees within the meaning of this paragraph (a) may be exercised as to any category of officials or as to any combination of categories of officials. Any such option may be exercised for any policy year by the filing of a statement with the division not less than forty-five days before the start of the policy year for which the option is to be exercised. If such a statement is in effect as to any category of such uncompensated officials, no official in said category shall be deemed an employee within the meaning of this paragraph (a). The governing body shall notify each official of such action promptly at the time such election to exclude is exercised.

(II) The rate of compensation of such persons accidentally injured, or, if killed, the rate of compensation for their dependents, while serving upon such posse or as volunteer firemen or as members of such volunteer police departments, volunteer police reserves, or volunteer police teams or groups or as members of such volunteer rescue teams or groups, volunteer disaster teams, volunteer ambulance teams or groups, or volunteer search teams or as members of the civil air patrol, Colorado wing, and of every nonsalaried person in the service of the state, or of any county, city, town, or irrigation, drainage, or school district therein, or of any public institution or administrative board thereof under any appointment or contract of hire, express or implied, including nonsalaried elective officials of the state, and of

all members of the military forces of the state of Colorado shall be at the maximum rate provided by articles 40 to 54 of this title; except that this subparagraph (II) shall apply to an official described in sub-subparagraph (B) of subparagraph (I) of this paragraph (a) only if no statement exercising the option to exclude such official as an employee within the meaning of this paragraph (a) is in effect.

(III) Any persons who, as part of a rehabilitation program of the social services department of any county or city and county, are placed with any employer for the purpose of training or learning trades or occupations shall be deemed while so engaged to be employees of the respective county or city and county arranging the rehabilitation training. Any person who receives a work assignment to a position in any department or agency of any county or municipality, in any school district, in the office of any state agency or political subdivision thereof, or in any nonprofit agency pursuant to the provisions of sections 26-2-111 (3) (d) and 26-2-111.2, C.R.S., shall be deemed while so assigned to be an employee of the respective department, agency, office, political subdivision, or school district to which he is assigned. Any person who receives a work assignment to a position in any federal office or agency pursuant to section 26-2-111.2, C.R.S., shall be deemed while so assigned to be an employee of the county arranging the work assignment. The rate of compensation for such persons if accidentally injured or, if killed, for their dependents shall be based upon the wages normally paid in the community in which they reside for the type of work in which they are engaged at the time of such injury or death; except that, if any such person is a minor, compensation to such minor for permanent disability, if any, or death benefits to his dependents shall be paid at the maximum rate of compensation payable under articles 40 to 54 of this title at the time of the determination of such disability or of such death.

(IV) Except as provided in section 8-41-105 (7) (a), any person who may at any time be receiving training under any work or job training or rehabilitation program sponsored by any department, board, commission, or institution of the state of Colorado or of any county, city and county, city, town, school district, or private or parochial school or college and who, as part of any such work or job training or rehabilitation program of any department, board, commission, or institution of the state of Colorado or of any county, city and county, city, town, school district, or private or parochial school or college, is placed with any employer for the purpose of training or learning trades or occupations shall be deemed while so engaged to be an employee of the respective department, board, commission, or institution of the state of Colorado or of the county, city and county, city, town, school district, or private or parochial school or college sponsoring such training or rehabilitation program.

The rate of compensation for such person if accidentally injured or, if killed, for his dependents shall be based upon the wages normally paid in the community in which he resides or in the community where said work or job training or rehabilitation program is being conducted for the type of work in which he is engaged at the time of such injury or death, as determined by the director; except that, if any such person is a minor, compensation for such minor for permanent disability, if any, or death benefits to his dependents shall be paid at the maximum rate of compensation payable under articles 40 to 54 of this title at the time of the determination of such disability or death.

(V) Repealed, L. 87, p. 378, section 4, effective May 20, 1987.

(b) Every person in the service of any person, association of persons, firm, or private corporation, including any public service corporation, personal representative, assignee, trustee, or receiver, under any contract of hire, express or implied, including aliens and also including minors, whether lawfully or unlawfully employed, who for the purpose of articles 40 to 54 of this title are considered the same and have the same power of contracting with respect to their employment as adult employees, but not including any persons who are expressly excluded from articles 40 to 54 of this title or whose employment is but casual and not in the usual course of the trade, business, profession, or occupation of the employer. The following persons shall also be deemed employees and entitled to benefits at the maximum rate provided by said articles, and, in the event of injury or death, their dependents shall likewise be entitled to such maximum benefits, if and when the association, team, group, or organization to which they belong has elected to become subject to articles 40 to 54 of this title and has insured its liability under said articles: All members of privately organized volunteer fire departments, volunteer rescue teams or groups, volunteer disaster teams, volunteer ambulance teams or groups, and volunteer search teams and organizations while performing their respective duties as members of such privately organized volunteer fire departments, volunteer rescue teams or groups, volunteer disaster teams, volunteer ambulance teams or groups, and volunteer search teams and organizations and while engaged in organized drills, practice, or training necessary or proper for the performance or their respective duties.

(2) "Employee" excludes any person employed by a passenger tramway operator, as defined in section 25-5-702 (3), C.R.S., or other employer, while participating in recreational activity on his own initiative, who at such time is relieved of and is not performing any prescribed duties, regardless of whether he is utilizing, by discount or

otherwise, a pass, ticket, license, permit, or other device as an emolument of his employment.

(3) "Employee" excludes any person who is a licensed real estate salesman or a licensed real estate broker associated with another real estate broker if:

(a) Substantially all of the salesman's or associated broker's remuneration from real estate brokerage is derived from real estate commissions; and

(b) The services of the salesman or associated broker are performed under a written contract specifying that the salesman or associated broker is an independent contractor; and

(c) Such contract provides that the salesman or associated broker shall not be treated as an employee for federal income tax purposes.

8-41-106.5. Rejection of coverage by corporate officers.

(1) Notwithstanding any provisions of articles 40 to 54 of this title to the contrary, a corporate officer of a corporation may elect to reject the provisions of articles 40 to 54 of this title. If he so elects, said corporate officer shall provide written notice of such election to the corporate insurer of his corporation by certified mail. Such notice shall become effective the day following receipt of said notice by the insurer.

(2) A corporate officer's election to reject the provisions of articles 40 to 54 of this title shall continue in effect so long as the corporate insurance policy is in effect or until the corporate officer, by written notice to the corporate insurer, revokes his election to reject said provisions.

(3) Nothing in this section shall be construed to limit the responsibility of corporations to provide coverage for their employees as required under articles 40 to 54 of this title. An election to reject coverage pursuant to this section may not be made a condition of employment.

(4) For the purposes of this section, "corporate officer" means the chairman of the board, president, vice-president, secretary, or treasurer who is an owner of at least ten percent of the stock of the corporation, as attested to by the secretary of the corporation at the time of the election.

8-41-107. Not applicable to common carriers. The provisions of articles 40 to 54 of this title shall not apply to common carriers by railroad but shall apply to all other employers as defined in said articles engaged in intrastate or

interstate commerce, or both, except those employers, other than the Colorado division of civil air patrol, for whom a rule of liability is established by the laws of the United States.

8-41-108. Additional definitions. As used in articles 40 to 54 of this title, unless the context otherwise requires:

(1) "Accident" means an unforeseen event occurring without the will or design of the person whose mere act causes it; an unexpected, unusual, or undesigned occurrence; or the effect of an unknown cause or, the cause being known, an unprecedented consequence of it.

(2) "Accident", "injury", or "injuries" includes disability or death resulting from accident or occupational disease as defined in subsection (3) of this section.

(2.2) "Accident", "injury", and "occupational disease" shall not be construed to include disability or death caused by or resulting from mental or emotional stress unless it is shown by competent evidence that such mental or emotional stress is proximately caused solely by hazards to which the worker would not have been equally exposed outside the employment.

(2.5) "Accident", "injury", and "occupational disease" shall not be construed to include disability or death caused by heart attack unless it is shown by competent evidence that such heart attack was proximately caused by an unusual exertion arising out of and within the course of the employment.

(3) "Occupational disease" means a disease which results directly from the employment or the conditions under which work was performed, which can be seen to have followed as a natural incident of the work and as a result of the exposure occasioned by the nature of the employment, and which can be fairly traced to the employment as a proximate cause and which does not come from a hazard to which the worker would have been equally exposed outside of the employment.

ARTICLE 42 Abrogation of Defense

8-42-101. Assumption of risk - negligence of employee or fellow servant. (1) In an action to recover damages for a personal injury sustained by an employee while engaged in the line of his duty, or for death resulting from personal injuries so sustained, in which recovery is sought upon the ground of want of ordinary care of the employer, or of the officer, agent, or servant of the employer, it shall not be a defense:

(a) That the employee, either expressly or impliedly, assumed the risk of the hazard complained of as due to the employer's negligence;

(b) That the injury or death was caused, in whole or in part, by the want of ordinary care of a fellow servant;

(c) That the injury or death was caused, in whole or in part, by the want of ordinary care of the injured employee where such want of care was not willful.

8-42-102. Liability of employer complying. An employer who has complied with the provisions of articles 40 to 54 of this title, including the provisions relating to insurance, shall not be subject to the provisions of section 8-42-101; nor shall such employer or the insurance carrier, if any, insuring the employer's liability under said articles be subject to any other liability for the death of or personal injury to any employee, except as provided in said articles; and all causes of action, actions at law, suits in equity, proceedings, and statutory and common law rights and remedies for and on account of such death of or personal injury to any such employee and accruing to any person are abolished except as provided in said articles.

8-42-103. Availability of common-law defenses. If an employer has complied with the provisions of articles 40 to 54 of this title, including the provisions thereof relating to insurance, and an action is brought against such employer or his insurance carrier to recover damages for personal injuries or death sustained by an employee who has elected not to come under said articles, such employer and his insurance carrier shall have all the defenses to the action which they would have had if said articles and part 2 of article 2 of this title had not been enacted.

ARTICLE 43 Acceptance

8-43-101 to 8-43-103.

Repealed, L. 75, p. 311, section 62, effective September 1, 1975.

8-43-104. Acceptance as surrender of other remedies. An election under the provisions of section 8-41-105 (5) and in compliance with the provisions of articles 40 to 54 of this title, including the provisions for insurance, shall be construed to be a surrender by the employer, his insurance carrier, and the employee of their rights to any method, form, or amount of compensation or determination thereof or to any cause of action, action at law, suit in equity, or statutory or common-law right, remedy, or proceeding for or on account of such personal injuries or death of such employee other than

as provided in said articles, and shall be an acceptance of all the provisions of said articles, and shall bind the employee himself, and, for compensation for his death, his personal representatives, a surviving spouse, and his next of kin, as well as the employer, his insurance carrier, and those conducting their business during bankruptcy or insolvency.

8-43-105. Employer not accepting - notice to employees.

Repealed, L. 75, p. 311, section 62, effective September 1, 1975.

ARTICLE 44
Insurance

8-44-101. Insurance requirements. (1) Any employer subject to the provisions of articles 40 to 54 of this title shall secure compensation for his employees in one or more of the following ways, which shall be deemed to be compliance with the insurance requirements of said articles:

(a) By insuring and keeping insured the payment of such compensation in the state compensation insurance authority fund;

(b) By insuring and keeping insured the payment of such compensation with any stock or mutual corporation authorized to transact the business of workmen's compensation insurance in this state. If insurance is effected in such stock or mutual corporation, the employer or insurer shall forthwith file with the division, in form prescribed by it, a notice specifying the name of the insured and the insurer, the business and place of business of the insured, the effective and termination dates of the policy, and, when requested, a copy of the contract or policy of insurance.

(c) By procuring a self-insurance permit from the executive director as provided in section 8-44-109, except for public entity pools as described in section 8-44-110 (3), which shall procure self-insurance certificates of authority from the commissioner of insurance as provided in section 8-44-110.

(d) By procuring a self-insurance certificate of authority from the commissioner of insurance as provided in section 8-44-112.

(2) It shall be unlawful, except as provided in sections 8-48-101 and 8-48-102, for any employer, regardless of the method of insurance, to require an employee to pay all or any part of the cost of such insurance.

(3) (a) All public entities in the state shall insure and keep insured the payment of compensation by electing one

of the three methods provided in subsection (1) of this section. A public entity having an insured payroll of less than one million dollars annually shall not be eligible for self-insurance; except that public entities forming a pool pursuant to section 8-44-110 (3) shall be eligible if the total of all the payrolls of the public entities in the pool exceeds the required minimum.

(b) (I) For purposes of this subsection (3), the department of institutions, by virtue of the self-insurance program established pursuant to section 8-44-109 (3), shall be considered a public entity of the state.

(II) Repealed, L. 88, p. 369, section 2, effective April 14, 1988.

8-44-102. Contract for insurance subject to act. Every contract for the insurance of compensation and benefits as provided in articles 40 to 54 of this title or against liability therefor shall be made subject to all the provisions of said articles, and all provisions in such contract for insurance inconsistent with the provisions of said articles shall be void. Any contract of insurance issued under said articles by any insurance carrier, including stock and mutual corporations and the state compensation insurance authority, may include and cover any liability of the employer on account of personal injuries sustained by or death resulting therefrom to any employee as such. If the employer desires, the contract may include by endorsement as an employee of the insured any working partner or individual employer actively engaged in the operation of the business. No insurance carrier, except the state compensation insurance authority, shall write any policy of insurance covering the liability under said articles of any employer doing business within the state of Colorado except on a form that has been previously filed with and approved by the commissioner of insurance, nor shall there be attached to said policy or contract of insurance any endorsement, rider, letter, or other document affecting such contract unless the same has been filed with and the form thereof approved by the commissioner of insurance. The commissioner of insurance shall from time to time approve and prescribe a standard or universal form, as nearly as possible, for every contract or policy of insurance, endorsement, rider, letter, or other document affecting such contract for use in insuring the compensation provided for in said articles.

8-44-103. Insurers to file system of rating - approval. Every insurance carrier authorized to transact business in this state, except the state compensation insurance authority, which insures employers against liability for compensation under the provisions of articles 40 to 54 of this title shall file with the commissioner of insurance its classification of risks, any premiums relating thereto, and any subsequent

proposed classification of risks and premiums, together with all rates and any systems of rating, none of which shall take effect until approved by the commissioner of insurance, and the commissioner may disapprove the same as inadequate. The commissioner, at any time, may withdraw his approval of any rate or system of rating.

8-44-104. Cutting rates - rebates - penalty. Every insurance carrier, except the state compensation insurance authority, which writes compensation insurance shall write insurance at the rates approved as adequate by the commissioner of insurance. The cutting of rates, rebating, or any other method whereby, directly or indirectly, any employer is given the benefit of or obtains a rate lower than that approved by the commissioner of insurance is prohibited. The commissioner of insurance may suspend the license of any insurance carrier, agent, or broker who violates any provision of this section. Also, any insurance carrier, any employer, or any officer, agent, or employee thereof who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars for each such violation.

8-44-105. Provisions of policies - primary liability - notice of injury. Every contract insuring against liability for compensation or insurance policy evidencing the same shall contain a clause to the effect that the insurance carrier shall be directly and primarily liable to the employee and, in the event of his death, to his dependents to pay compensation, if any, for which the employer is liable, thereby discharging to the extent of such payment the obligations of the employer to the employee; that, as between the employee and the insurance carrier, notice or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the insurance carrier; that jurisdiction of the employer, for the purpose of articles 40 to 54 of this title, shall be jurisdiction of the insurance carrier; and that the insurance carrier, in all things, shall be bound by and subject to the orders, findings, decisions, or awards rendered against the employer under the provisions of said articles. Such policy shall also provide that the employee shall have a first lien upon any amount which becomes owing to the employer from the insurance carrier, and the insurance carrier shall pay the same directly to the employee or his dependents, thereby discharging to the extent of such payment the obligation of the employer to the employee. The policy shall not contain any provisions relieving the insurance carrier from payment when the employer becomes legally incapable or insolvent or is discharged in bankruptcy or otherwise during the period that the policy is in operation or the compensation remains owing.

8-44-106. Insurer violation - suspension or revocation of license. If any insurance carrier intentionally,

knowingly, or willfully violates any of the provisions of articles 40 to 54 of this title, the commissioner of insurance, on the request of the director, shall suspend or revoke the license or authority of such carrier to do a compensation business in this state.

8-44-107. Default of employer - additional liability.

(1) In any case where the employer is subject to the provisions of articles 40 to 54 of this title and at the time of an injury has not complied with the insurance provisions of said articles, or has allowed his insurance to terminate, or has not effected a renewal thereof, the employee, if injured, or, if killed, his dependents may claim the compensation and benefits provided in said articles, and in any such case the amounts of compensation or benefits provided in said articles shall be increased fifty percent.

(2) In all cases where compensation is awarded under the terms of this section, the director or a referee of the division shall compute and require the employer to pay to a trustee designated by the director or referee an amount equal to the present value of all unpaid compensation or benefits computed at the rate of four percent per annum; or, in lieu thereof, such employer, within ten days after the date of such order, shall file a bond with the director or referee signed by two or more responsible sureties to be approved by the director or by some surety company authorized to do business within the state of Colorado. The bond shall be in such form and amount as prescribed and fixed by the director and shall guarantee the payment of the compensation or benefits as awarded. The filing of any appeal, including a petition for review, shall not relieve the employer of the obligation under this subsection (2) to pay the designated sum to a trustee or to file a bond with the director or referee.

(3) A certified copy of any award of the director, administrative law judge, or panel ordering the payment of compensation entered in such case may be filed with the clerk of the district court of any county in this state at any time after the order of the referee awarding compensation, and the same shall be recorded by him in the judgment book of said court and entry thereof made in the judgment docket, and it shall thenceforth have all the effect of a judgment of the district court, and execution may issue thereon out of said court as in other cases. Upon the reversal, setting aside, modification, or vacation of said order or award and upon payment to the trustee or furnishing of bond in accordance with the terms of this section, then, upon certification thereof by the director, administrative law judge, or panel, said record in the judgment book and the entry in the judgment docket shall be vacated, and any execution thereon shall be recalled.

(4) Any employer who fails to comply with a lawful order

or judgment issued pursuant to subsection (2) or (3) of this section is liable to the employee, if injured, or, if killed, his dependents, in addition to the amount in the order or judgment, for an amount equal to fifty percent of such order or judgment or one thousand dollars, whichever is greater, plus reasonable attorney fees incurred after entry of a judgment or order.

8-44-108. Right of insurer to examine books of employer. Any insurance carrier operating under the workmen's compensation act may apply to the commissioner of insurance for permission to examine any of the books, payrolls, or other documents of any employer insured by such carrier or of any contractor, subcontractor, lessee, sublessee, or person covered by the employer's compensation insurance to determine the amount of wage expenditure of such employer or of any contractor, subcontractor, lessee, sublessee, or person during any period that such insureds were insured by the insurance carrier. The commissioner of insurance may grant such carrier authority in writing to make the investigation or may appoint any of his agents to conduct the investigation.

8-44-109. Employer as own insurance carrier - revocation of permission. (1) (a) The executive director in his discretion may grant to any employer who has accepted the provisions of articles 40 to 54 of this title permission to be its own insurance carrier for the payment of the compensation and benefits provided by said articles. Such permission may be granted by the executive director after the filing by an employer of such statement and the giving of such information as may be required by the executive director. The executive director has the sole power to prescribe the rules, regulations, orders, terms, and conditions upon which said permit shall be granted or continued. Permission for self-insurance may be revoked at any time by the executive director, and the employer, upon notice of revocation, shall immediately insure otherwise his liability.

(b) (I) (A) Notwithstanding the provisions of paragraph (a) of this subsection (1), the executive director shall continue permission for the self-insurance program of the department of institutions established pursuant to subsection (3) of this section without applying security requirements as long as the department of institutions holds, in an approved trust fund, amounts sufficient to cover all claims costs, past, present, and expected future, arising out of the self-insurance program.

(B) Notwithstanding the provisions of paragraph (a) of this subsection (1), the executive director shall not prescribe or apply security requirements in continuing permission for an employer which is acting as its own insurance carrier on July 1, 1986, which are in excess of those security requirements in effect on July 1, 1986, unless

there is a substantial change in the economic condition or potential liability of such employer.

(II) Repealed, L. 88, p. 369, section 2, effective April 14, 1988.

(2) (a) The executive director shall establish and collect such fees as he determines are necessary to administer this section, which fees shall not supplant funding for any other function of the department of labor and employment. The fees established pursuant to this subsection (2) shall not exceed one thousand two hundred fifty dollars for an initial application or one thousand dollars for an annual review of any employer acting as a self-insurer under this section.

(b) The executive director shall transmit any moneys received pursuant to this subsection (2) to the state treasurer, who shall place such moneys in the workmen's compensation self-insurance fund, which fund is hereby created. The general assembly shall make appropriations from such fund for the purposes of administering this section.

(c) Repealed, L. 87, p. 383, section 2, effective May 8, 1987.

(3) The general assembly hereby finds and declares that a program shall be established by the department of institutions and the department of labor and employment to provide for a self-insurance program for the department of institutions. The program shall apply only to the department of institutions. Annually and not later than March 1, the director of the department of institutions shall furnish a written report to the legislative audit committee on all administrative costs, management fees, contract services, loss control, safety measures implemented and the costs thereof, the number of claims and the loss experience, reserves maintained, and the amount and cost of excess insurance purchased.

8-44-110. Public entities - self-insurance authorized for workmen's compensation - pooled insurance. (1) "Public entity", as used in this section, means and includes any county, municipality, school district, and any other type of district or authority organized pursuant to law.

(2) A public entity may, after receiving permission pursuant to section 8-44-101 (1) (c), act as its own insurance carrier for compensation and benefits. It may establish and maintain an insurance reserve fund for self-insurance purposes and may include in the annual tax levy of the public entity such amounts as are determined by its governing body to be necessary for the uses and purposes of the insurance reserve fund, subject to the limitations imposed by section 29-1-301, C.R.S., and, with respect to school districts, subject to the

levy limit of section 24-10-115 (3), C.R.S. In the event that a public entity has no annual tax levy, it may appropriate from any unexpended balance in the general fund such amounts as the governing body shall deem necessary for the purposes and uses of the insurance reserve fund.

(3) Public entities may cooperate with one another to form a self-insurance pool to provide the insurance coverage required by this article for the cooperating public entities. Any such insurance pool shall be formed pursuant to the provisions of part 2 of article 1 of title 29, C.R.S. The provisions of articles 10.5 and 47 of title 11, C.R.S., shall apply to moneys of such self-insurance pool.

(4) Any self-insurance pool authorized by subsection (3) of this section shall not be construed to be an insurance company nor otherwise subject to the provisions of the laws of this state regulating insurance or insurance companies; except that the pool shall comply with the applicable provisions of section 10-1-110 (1) to (4) and (6), C.R.S.

(5) Prior to the formation of a self-insurance pool, there shall be submitted to the commissioner of insurance a complete written proposal of the pool's operation, including, but not limited to, the administration, claims adjusting, membership, plan for reinsurance, and capitalization of the pool. The commissioner shall review the proposal within thirty days after receipt to assure that proper insurance techniques and procedures are included in the proposal. After such review, the commissioner shall have the right to approve or disapprove the proposal. If the commissioner approves the proposal, he shall issue a certificate of authority. The costs of such review shall be paid by the public entities desiring to form such a pool.

(6) Each self-insurance pool for public entities created in this state shall file, with the commissioner of insurance on or before March 30 of each year, a written report in a form prescribed by the commissioner, signed and verified by its chief executive officer as to its condition. Such report shall include a detailed statement of assets and liabilities, the amount and character of the business transacted, and the moneys reserved and expended during the year. All such reports shall be transmitted to the governor and the general assembly.

(7) The commissioner of insurance, or any person authorized by him, shall conduct an insurance examination at least once a year to determine that proper underwriting techniques and sound funding, loss reserves, and claims procedures are being followed. This examination shall be paid for by the self-insurance pool out of its funds at the same rate as provided for foreign insurance companies under section 10-1-110 (5), C.R.S. Any such payment received by the

commissioner is hereby appropriated to the division of insurance in addition to any other funds appropriated for its normal operation.

(8) (a) The certificate of authority issued to a public entity under this section may be revoked or suspended by the commissioner of insurance for any of the following reasons:

(I) Insolvency or impairment;

(II) Refusal or failure to submit an annual report as required by subsection (6) of this section;

(III) Failure to comply with the provisions of its own ordinances, resolutions, contracts, or other conditions relating to the self-insurance pool;

(IV) Failure to submit to examination or any legal obligation relative thereto;

(V) Refusal to pay the cost of examination as required by subsection (7) of this section;

(VI) Use of methods which, although not otherwise specifically proscribed by law, nevertheless render the operation of the self-insurance pool hazardous, or its condition unsound, to the public;

(VII) Failure to otherwise comply with the law of this state, if such failure renders the operation of the self-insurance pool hazardous to the public.

(b) If the commissioner of insurance finds upon examination, hearing, or other evidence that any participating public entity has committed any of the acts specified in paragraph (a) of this subsection (8) or any act otherwise prohibited in this section, the commissioner may suspend or revoke such certificate of authority if he deems it in the best interest of the public. Notice of any revocation shall be published in one or more daily newspapers in Denver which have a general state circulation. Before suspending or revoking any certificate of authority of a public entity, the commissioner shall grant the public entity fifteen days in which to show cause why such action should not be taken.

8-44-111. Surcharge on workmen's compensation insurance premiums. (1) Notwithstanding the provisions of sections 10-3-209 (1) (c) and 10-6-128 (3), C.R.S., for the purpose of offsetting the direct and indirect costs of the administration of the workmen's compensation system, every person, partnership, association, and corporation, whether organized under the laws of this state or of any other state or country, every mutual company or association, every captive insurance company, and every other insurance carrier, including the

state compensation insurance authority, insuring employers in this state against liability for personal injury to their employees or death caused thereby under the provisions of the "Workmen's Compensation Act of Colorado" shall, as provided in this section, pay a surcharge upon the premiums received, whether in cash or not, in this state, or on account of business done in this state, for such insurance in this state, at a rate established by the director by rule, which surcharge shall be reviewed and adjusted annually based upon appropriations made for the direct and indirect costs of the administration of the workmen's compensation system, as provided in subsection (7) of this section. Such insurance carriers shall be credited with all cancelled or returned premiums actually refunded during the year of such insurance.

(2) Every such insurance carrier shall, on July 1, 1987, and semiannually thereafter, make a return, verified by affidavits of its president and secretary, or other chief officers or agents, to the division of labor, stating the amount of all such premiums received and credits granted during the period covered by such return. Every insurance carrier required to make such return shall file the same with the division within thirty days after the close of the period covered thereby and shall, at the same time, pay to the division of labor a surcharge ascertained as provided in subsection (1) of this section, less return premiums on cancelled policies.

(3) Every employer carrying his own risk as a self-insurer under the provisions of the "Workmen's Compensation Act of Colorado" shall, under oath, report to the division of labor his payroll in such form as may be prescribed by the director and at the times in this section provided for premium reports by insurance companies in subsection (2) of this section. The division shall assess against such payroll a surcharge for the purposes of this section ascertained as provided in subsection (2) of this section on the basic premiums chargeable against the same or most similar industry or business taken from the manual insurance rates, including any discount or experience modification allowed, chargeable by the state compensation insurance authority fund, and, upon receipt of notice from the division of labor of the surcharge so assessed, every such self-insurer shall, within thirty days of the receipt of such notice, pay to the division of labor the surcharge so assessed.

(4) If any such insurance carrier or self-insurer fails or refuses to make the return required by this article, the director shall assess the surcharge against such insurance carrier or self-insurer at the rate provided for in this section on such amount of premium as he may deem just, and the proceedings thereof shall be the same as if the return had been made.

(5) If any such insurance carrier or self-insurer withdraws from business in this state before the surcharge falls due as provided in this section, or fails or neglects to pay such surcharge, the director shall at once proceed to collect the same; and he is authorized to employ such legal processes as may be necessary for that purpose. Suit shall be brought by the director in any of the courts of this state having jurisdiction.

(6) The director, in the enforcement of this section, shall have all of the powers granted to him in the "Workmen's Compensation Act of Colorado", and any insurance carrier or self-insurer violating any of the provisions of this section, or failing to pay the surcharge imposed in this section, is guilty of violation of said act and subject to the penalties therein prescribed.

(7) All moneys collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the workmen's compensation cash fund, which fund is hereby created. The moneys in the workmen's compensation cash fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs of the administration of the "Workmen's Compensation Act of Colorado", articles 40 to 54 of this title. Any interest earned on the investment or deposit of moneys in the workmen's compensation cash fund shall remain in the fund and shall not revert to the general fund of the state at the end of any fiscal year.

8-44-112. Employers - self-insurance pools authorized for workmen's compensation. (1) "Employers", as used in this section, means a bona fide trade or professional association or two or more employers which are engaged in the same or similar type of business or are members of the same bona fide trade or professional association.

(2) Employers may cooperate with one another to form a self-insurance pool to provide the insurance coverage required by this article for cooperating employers.

(3) Any self-insurance pool authorized by subsection (2) of this section shall not be construed to be an insurance company nor otherwise subject to the provisions of the laws of this state regulating insurance or insurance companies; except that the pool shall comply with the applicable provisions of section 10-1-110 (1) to (4) and (6), C.R.S.

(4) Prior to the formation of a self-insurance pool, there shall be submitted to the commissioner of insurance a complete written proposal of the pool's operation, including, but not limited to, the administration, claims adjusting, membership, plan for reinsurance, capitalization of the pool, and risk management programs. The commissioner shall review

the proposal within forty-five days after receipt to assure that proper insurance techniques and procedures are included in the proposal. After such review, the commissioner shall have the right to approve or disapprove the proposal. If the commissioner of insurance has not disapproved the proposal within ninety days of receipt of the proposal, such proposal shall be deemed approved. If the commissioner approves the proposal, he shall issue a certificate of authority. The costs of such review shall be paid by the employers desiring to form such a pool.

(5) Each self-insurance pool for employers created in this state shall file with the commissioner of insurance, on or before March 30 of each year, a written report in a form prescribed by the commissioner, signed and verified by its chief executive officer as to its condition. Such report shall include a detailed statement of assets and liabilities, the amount and character of the business transacted, and the moneys reserved and expended during the year. All such reports shall be transmitted to the governor and the general assembly.

(6) The commissioner of insurance, or his designee, shall conduct an insurance examination at least once a year to determine that proper underwriting techniques and sound funding, loss reserves, and claims procedures are being followed. This examination shall be paid for by the self-insurance pool out of its funds at the same rate as provided for foreign insurance companies under section 10-1-110 (5), C.R.S. Any such payment received by the commissioner is hereby appropriated to the division of insurance in addition to any other funds appropriated for its normal operation.

(7) (a) The certificate of authority issued to an employer self-insurance pool under this section may be revoked or suspended by the commissioner of insurance for any of the following reasons:

(I) Insolvency or impairment;

(II) Refusal or failure to submit an annual report as required by subsection (5) of this section;

(III) Failure to comply with the provisions of its own rules, resolutions, contracts, or other conditions relating to the self-insurance pool;

(IV) Failure to submit to examination or any legal obligation relative thereto;

(V) Refusal to pay the cost of examination as required by subsection (6) of this section;

(VI) Use of methods which, although not otherwise specifically proscribed by law, nevertheless render the operation of the self-insurance pool hazardous, or its condition unsound, to the public;

(VII) Failure to otherwise comply with the law of this state, if such failure renders the operation of the self-insurance pool hazardous to the public.

(b) If the commissioner of insurance finds upon examination, hearing, or other evidence that any participating employer self-insurance pool has committed any of the acts specified in paragraph (a) of this subsection (7) or any act otherwise prohibited in this section, the commissioner may suspend or revoke such certificate of authority if he deems it in the best interest of the public. Notice of any revocation shall be published in one or more daily newspapers in Denver which have a general state circulation. Before suspending or revoking any certificate of authority of an employer self-insurance pool, the commissioner shall grant the employer self-insurance pool fifteen days in which to show cause why such action should not be taken.

(8) The commissioner of insurance may supervise or rehabilitate an employer self-insurance pool pursuant to the provisions of parts 4 and 5 of article 3 of title 10, C.R.S., for any of the following reasons:

(a) Insolvency or impairment;

(b) Failure to comply with the provisions of its own rules, resolutions, contracts, or other conditions relating to the self-insurance pool;

(c) Failure to submit to examination or any legal obligation relative thereto;

(d) Use of methods which, although not otherwise specifically proscribed by law, nevertheless render the operation of the self-insurance pool hazardous, or its condition unsound, to the public;

(e) Failure to otherwise comply with the law of this state, if such failure renders the operation of the self-insurance pool hazardous to the public.

(9) The commissioner of insurance may promulgate reasonable rules and regulations necessary to effectuate the purposes of this section.

(10) Any self-insurance pool or any trust which provides insurance coverage for purposes of articles 40 to 54 of this title which is in existence and is operating prior to July 10, 1987, is not subject to the requirements of this section and

may continue to operate such pool or trust as authorized by law.

(11) Each self-insurance pool created under this section shall establish a trust fund, on an annual basis, to provide payment of the total workmen's compensation loss cost incurred by all pool members within each given year. Aggregate excess insurance shall be provided by each self-insurance pool to the statutory limit of coverage, attaching at the maximum amount of each annual trust fund balance, or, in lieu thereof, the commissioner of insurance shall set other security standards which assure payment of workmen's compensation in the event that a self-insurance pool disbands or defaults.

ARTICLE 45 Notices and Reports

8-45-101. Record of injuries - occupational disease - reported to division. (1) Every employer shall keep a record of all injuries which result in fatality to, or permanent physical impairment of, or lost time from work for the injured employee in excess of three shifts or calendar days. Within ten days after notice or knowledge that an employee has contracted an occupational disease, or the occurrence of a permanently physically impairing injury, or lost-time injury to an employee, or immediately in the case of a fatality, the employer shall, in writing, upon forms prescribed by the division for that purpose, report said occupational disease disability, permanently physically impairing injury, lost-time injury, or fatality to the division. The report shall contain such information as shall be required by the director.

(2) Injuries to employees which result in fewer than three days' or three shifts' loss of time from work, or no permanent physical impairment, or no fatality to the employee shall be reported by the employer only to the insurer of his workmen's compensation insurance liability, which injuries said insurer shall report only by monthly summary form to the division.

8-45-102. Notice to employer of injury - failure to report. (1) Every employee who sustains an injury resulting from an accident shall notify his employer of said injury within two days of the occurrence of the injury, unless said employee is physically or mentally unable to do so or unless his employer, or his foreman, superintendent, or manager, or any other person in charge has actual notice of said injury. If said employee fails to report said injury, he may lose up to one day's compensation for each day's failure to so report. If anyone reports the accident for said injured employee to his employer within the time specified in this section, the injured employee shall be relieved from reporting the accident.

(2) Written notice of the contraction of an occupational disease shall be given to the employer by the affected employee or by someone on his behalf within thirty days after the first distinct manifestation thereof. In the event of death from such occupational disease, written notice thereof shall be given to the employer within thirty days after such death. Failure to give either of such notices shall be deemed waived unless objection is made at a hearing on the claim prior to any award or decision thereon. Actual knowledge by an employer in whose employment an employee was last injuriously exposed to an occupational disease of the contraction of such disease by such employee and of his exposure to the conditions causing it shall be deemed notice of its contraction. If the notice required in this section is not given as provided and within the time fixed, the director may reduce the compensation that would otherwise have been payable in such manner and to such extent as the director deems just, reasonable, and proper under the existing circumstances.

8-45-103. Information furnished to division - confidential use. Every employer shall furnish the division, upon request, all information required by it to accomplish the purposes of articles 40 to 54 of this title. The information shall be for the confidential use of the division, unless otherwise ordered by the director of the division of labor, and shall not be open to the public nor used in any court or any action or proceeding pending therein, unless the director is a party to such action or proceeding.

8-45-104. Information to division - blanks - verification. Every employer receiving from the division any blanks with directions to fill out the same or requests for information required for the purposes of articles 40 to 54 of this title shall properly fill out the blanks and furnish the information so requested fully and correctly. The director may require that any information requested by the division be verified under oath and may fix the time within which said information shall be returned.

ARTICLE 46
General Powers - Extraterritorial Provisions

PART 1
GENERAL POWERS

8-46-101. Collection of statistics. The director or any agents of the division may enter into any place of employment for the purpose of collecting facts and statistics, examining the provisions made for the health, protection, and safety of the employees, and bringing to the attention of every employer any rule, order, or requirement of the division, or any law, or any failure on the part of any employer to comply therewith.

8-46-102. Records of employers open to inspection of division. All books, records, and payrolls of employers or of any contractor, subcontractor, lessee, sublessee, or person showing or reflecting in any way upon the amount of wage expenditure of such employers, contractor, subcontractor, lessee, sublessee, or person and all other facts, data, and statistics appertaining to the purposes of this article shall always be open for inspection by the director or any agents of the division for the purpose of ascertaining the correctness of the reported wage expenditure, number of men employed, and such other information as may be necessary for the uses and purposes of the division in the administration of articles 40 to 54 of this title.

8-46-103. Director to enforce orders. If any person fails or refuses to comply with an order of the director, or to obey any subpoena issued by him or agents of the division, or to furnish the statistics, data, and information required to be furnished to the division by the provisions of articles 40 to 54 of this title, or refuses to permit an inspection as provided in said articles, or being in attendance refuses to be sworn or examined, or to answer a question, or to produce a book or paper when ordered to do so by the director or any of the deputies, agents, or referees of the division, the director may apply to the district court, upon proof by affidavit of the facts, for an order, returnable in not less than three days nor more than five days, directing such person to show cause before the district court which made the order why he should not be committed to jail. Upon the return of such order, the district court shall examine under oath such person and give him an opportunity to be heard. If the court determines that the person has refused without legal excuse in any one of the foregoing matters, it may commit the offender to jail forthwith by warrant, there to remain until he submits to do the act which he was required to do or until he is discharged according to law.

8-46-104. Expenses of division. All expenses incurred by the division pursuant to the provisions of articles 40 to 54 of this title shall be paid from funds appropriated for the use of the division upon claims therefor which shall be itemized and sworn to by the person who incurred the same. The claims shall be allowed by the director subject to the approval of the controller. The traveling expenses of the director or of any employees of the division, incurred while on business of the division outside of the state of Colorado, shall be paid in the manner aforesaid, but only when such expenses are authorized in advance by the controller to be incurred by the division.

8-46-105. Orders of director or appeals office - validity. All orders of the director or industrial claim appeals office shall be valid and in force and prima facie reasonable and lawful until found otherwise in an action

brought for that purpose, pursuant to the provisions of articles 40 to 54 of this title, or until altered or revoked by the director or industrial claim appeals office, as the case may be.

8-46-106. Orders and awards - technical objections. Substantial compliance with the requirements of articles 40 to 54 of this title shall be sufficient to give effect to the orders or awards of the director or industrial claim appeals office, and they shall not be declared inoperative, illegal, or void for any omission of a technical nature in respect thereto.

8-46-107. Referee - appointment - powers - investigations - hearings. (1) For the purpose of making any investigation or conducting any hearing with regard to any matter contemplated by the provisions of articles 40 to 54 of this title, the director shall have power to appoint, with the approval of the executive director of the department of labor and employment by an order in writing, any competent person as an agent or referee, whose duties shall be prescribed in such order. Any referee conducting a hearing under article 53 of this title shall be appointed in the same manner as an administrative law judge is appointed pursuant to part 10 of article 30 of title 24, C.R.S.

(2) In the discharge of his duties, such agent or referee shall have every power whatsoever for obtaining information granted in said articles to the director, and all powers granted by law to officers authorized to take depositions are hereby granted to such agent.

(3) The director may conduct any number of such investigations contemporaneously through different agents or referees and may delegate to such agents the subpoenaing and swearing of witnesses and the taking of all testimony bearing upon any investigation or hearing. The decision of the director shall be based upon his examination of all testimony and records. The recommendations made by such agents or referees shall not preclude any further investigations or the taking of further testimony if the director so orders.

8-46-108. Adoption of rules and regulations. The director has the power to adopt reasonable and proper rules and regulations relative to the administration of articles 40 to 54 and 65 and 66 of this title and proper rules and regulations to govern proceedings and hearings of the division and to amend said rules and regulations from time to time in his discretion. Such rules and regulations shall be promulgated in accordance with section 24-4-103, C.R.S.

8-46-109. Employees of division - qualifications. The executive director of the department of labor and employment has the power to employ, pursuant to section 13 of article XII

of the state constitution, such deputies, experts, statisticians, accountants, inspectors, clerks, and other employees as may be necessary to carry out the provisions of articles 40 to 54 of this title or to perform the duties and exercise the powers conferred by law upon the division. Such deputies, statisticians, accountants, inspectors, clerks, and other employees, except experts in the employ of the division, shall have been for two years prior to such employment or appointment bona fide residents of the state of Colorado, and all of them, except only the experts, while in the employ of the division, shall devote their entire time to the service of the division.

8-46-110. Salaries of employees of division. All deputies, statisticians, accountants, clerks, experts, and other employees of the division shall receive such compensation as may be fixed by law. The salaries so fixed shall be paid monthly from the fund appropriated for the use of the division after approval by the director.

8-46-111. Public officers to enforce orders - furnish information. It is the duty of all officers and employees of the state, counties, and municipalities, upon the request of the director, to enforce in their respective departments all lawful orders of the director insofar as the same may be applicable and consistent with the general duties of such officers and employees. It is also their duty to make to the director such reports as he may require concerning matters within their knowledge pertaining to the purposes of articles 40 to 54 of this title and to furnish him such facts, data, statistics, and information as, from time to time, may come to them pertaining to the purposes of said articles and the duties of the division thereunder, and particularly all information coming to their knowledge respecting the condition of all places of employment subject to the provisions of said articles with regard to the health, protection, and safety of employees and the hazard of risk of such places of employment.

8-46-112. Employees of division - bonds. Such employees of the division as shall be directed by the director shall furnish surety company bonds in such sum as may be fixed by the director, the premiums therefor to be paid as other expenses of the division are paid.

8-46-113. State average weekly wage - method of computation. (1) The state average weekly wage shall be established by the director annually on or before July 1 of each year. The state average weekly wage shall be determined from statistics furnished the director by the division of employment and training and shall be based upon the average of the average weekly earnings in selected industries in Colorado, as published by the United States bureau of labor statistics, weighted by the volume of employment according to the records of the division of employment in each of the

selected industries, as computed by the division in June for the ensuing twelve months beginning July 1, on the basis of the most recent available figures. Such state average weekly wage shall automatically form the basis for establishing maximum benefits under the "Workmen's Compensation Act of Colorado" as of 12:01 a.m., July 1, 1974, and at each succeeding time and date annually thereafter.

(2) Repealed, L. 81, p. 466, section 1, effective July 1, 1982.

8-46-114. Workmen's compensation study - report to general assembly. The director shall contract for an independent study of the workmen's compensation system in order to obtain data and recommendations concerning the effectiveness of the present system, including the benefit structure and process, the adjudication process and ways to minimize litigation, the value of and place for vocational rehabilitation, and the data and ongoing reports necessary to properly inform the general assembly of the status of the workmen's compensation system. The director shall file a report of the results of such study with the general assembly on or before January 1, 1989.

PART 2 EXTRATERRITORIAL PROVISIONS

8-46-201. Definition. As used in this part 2, unless the context otherwise requires, "state" includes any state or territory of the United States, the District of Columbia, and any province of Canada.

8-46-202. Exemptions - laws of other state furnish exclusive remedy. Any employee who has been hired outside of this state and his employer shall be exempted from the provisions of the "Workmen's Compensation Act of Colorado" while such employee is temporarily within this state doing work for his employer if such employer has furnished workmen's compensation insurance coverage under the workmen's compensation or similar laws of a state other than Colorado, so as to cover such employee's employment while in this state, but only if the extraterritorial provisions of sections 8-46-202 to 8-46-204 are recognized in such other state and if employers and employees who are covered in this state are likewise exempted from the application of the workmen's compensation or similar laws of the other state. The benefits under the workmen's compensation or similar laws of the other state shall be the exclusive remedy against such employer for any injury, whether resulting in death or not, received by such employee while working for such employer in this state.

8-46-203. Certificate of other state prima facie evidence. A certificate from the duly authorized officer of the industrial commission or similar department of another

state certifying that the employer of such other state is insured therein and has provided extraterritorial coverage insuring his employees while working within this state shall be prima facie evidence that such employer carries compensation insurance.

8-46-204. Injury outside of state - benefits in accordance with state law. If an employee who has been hired or is regularly employed in this state receives personal injuries in an accident or an occupational disease arising out of and in the course of such employment outside of this state, he, or his dependents in case of his death, shall be entitled to compensation according to the law of this state. This provision shall apply only to those injuries received by the employee within six months after leaving this state, unless, prior to the expiration of such six-month period, the employer has filed with the division notice that he has elected to extend such coverage for a greater period of time.

ARTICLE 47
Earnings - Wages

8-47-101. Basis of compensation - "wages" defined - average weekly wage. (1) The average weekly wage of an injured employee shall be taken as the basis upon which to compute compensation payments.

(2) Whenever the term "wages" is used, it shall be construed to mean the money rate at which the services rendered are recompensed under the contract of hire in force at the time of the injury, either express or implied, and shall not include gratuities received from employers or others, nor shall it include the amounts deducted by the employer under the contract of hire for materials, supplies, tools, and other things furnished and paid for by the employer and necessary for the performance of such contract by the employee; but the term "wages" shall include the reasonable value of board, rent, housing, lodging, or any other similar advantages received from the employer, the reasonable value of which shall be fixed and determined from the facts by the division in each particular case. The term "wages" as applied to farm and ranch labor employees and as applied to employees of agricultural corporations shall be based solely upon the income reported on the employees' W-2 form for federal income tax purposes.

(3) Average weekly wages for the purpose of computing benefits provided in articles 40 to 54 of this title, except as provided in this section, shall be calculated upon the monthly, weekly, daily, hourly, or other remuneration which the injured or killed employee was receiving at the time of the injury, and in the following manner:

(a) Where the employee is being paid by the month for

his services under a contract of hire, the weekly wage shall be determined by multiplying the monthly wage or salary at the time of the accident by twelve and dividing by fifty-two.

(b) Where the employee is being paid by the week for his services under a contract of hire, said weekly remuneration at the time of the injury shall be deemed to be the weekly wage for the purposes of articles 40 to 54 of this title.

(c) Where the employee is rendering service on a per diem basis, the weekly wage shall be determined by multiplying the daily wage by the number of days and fractions of days in the week during which the employee under a contract of hire was working at the time of the injury or would have worked if the injury had not intervened. In no case shall the daily wage be multiplied by less than five for the purpose of determining the weekly wage.

(d) Where the employee is being paid by the hour, the weekly wage shall be determined by multiplying the hourly rate by the number of hours in a day during which the employee was working at the time of the injury or would have worked if the injury had not intervened, to determine the daily wage; then the weekly wage shall be determined from said daily wage in the manner set forth in paragraph (c) of this subsection (3). In no case shall the hourly rate be multiplied by less than eight.

(e) Where the employee is paid on a piecework, tonnage, commission, or basis other than a monthly, weekly, daily, or hourly wage and where the employment is but casual and in the usual course of the trade, business, profession, or occupation of his employer, the total amount earned by the injured or killed employee in the twelve months preceding the injury shall be computed, which sum shall be divided by the number of pay periods the injured person was employed during the twelve months immediately preceding the injury, and the result thus ascertained shall be considered the average wage of said employee per pay period.

(4) Where the foregoing methods of computing the average weekly wage of the employee, by reason of the nature of the employment or the fact that the injured employee has not worked a sufficient length of time to enable his earnings to be fairly computed thereunder or has been ill or in business for himself or for any other reason, will not fairly compute the average weekly wage, the division, in each particular case, may compute the average weekly wage of said employee in such other manner and by such other method as will, in the opinion of the director based upon the facts presented, fairly determine such employee's average weekly wage.

(5) Where an employee is a minor and the disability is temporary, the average weekly wage of such minor shall be

determined by the division as in cases of disability of adults. Where the disability of such minor is permanent or if benefits under articles 40 to 54 of this title accrue because of the death of such minor, compensation to said minor or death benefits to his dependents shall be paid at the maximum rate of compensation payable under said articles at the time of the determination of such permanency or of such death.

8-47-102. Effect of previous disability or compensation.

(1) The fact that an employee has suffered a previous disability or received compensation therefor shall not preclude compensation for a later injury or for death, but, in determining compensation for the later injury or death, his average weekly earnings shall be such sum as will reasonably represent his average weekly earning capacity at the time of the later injury and shall be arrived at according to and subject to the limitations in section 8-47-101.

(2) In case there is a previous disability, the percentage of disability for a subsequent injury shall be determined by computing the percentage of the entire disability and deducting therefrom the percentage of the previous disability as it existed at the time of the subsequent injury. In such cases awards shall be based on said computed percentage. Such computation, when applicable, shall be made in the following types of awards under articles 40 to 54 of this title: Permanent total, permanent partial, including scheduled, working unit, and lump sum; except that, in the event the provisions of section 8-51-106 are applicable, such apportionment shall not be made.

ARTICLE 48

Contractors and Lessees

8-48-101. Lessor or contractor-out deemed employer - liability - recovery. (1) Any person, company, or corporation operating or engaged in or conducting any business by leasing or contracting out any part or all of the work thereof to any lessee, sublessee, contractor, or subcontractor, irrespective of the number of employees engaged in such work, shall be construed to be an employer as defined in articles 40 to 54 of this title and shall be liable as provided in said articles to pay compensation for injury or death resulting therefrom to said lessees, sublessees, contractors, and subcontractors and their employees or employees' dependents. The employer, before commencing said work, shall insure and keep insured his liability as provided in said articles, and such lessee, sublessee, contractor, or subcontractor, as well as any employee thereof, shall be deemed employees as defined in said articles. The employer shall be entitled to recover the cost of such insurance from said lessee, sublessee, contractor, or subcontractor and may withhold and deduct the same from the contract price or any royalties or other money due, owing, or to become due said

lessee, sublessee, contractor, or subcontractor.

(2) If said lessee, sublessee, contractor, or subcontractor is himself an employer in the doing of such work and, before commencing such work, insures and keeps insured his liability for compensation as provided in articles 40 to 54 of this title, neither said lessee, sublessee, contractor, or subcontractor, its employees, or its insurer shall have any right of contribution or action of any kind, including actions under section 8-52-108, against the person, company, or corporation operating or engaged in or conducting any business by leasing or contracting out any part or all of the work thereof, or against its employees, servants, or agents.

(2.5) Any independent contractor who does not obtain coverage under a policy of workmen's compensation insurance for himself pursuant to section 8-41-105 (5), 8-41-106.5, or 8-44-102 shall not have any cause of action of any kind under articles 40 to 54 of this title. For purposes of this subsection (2.5), an "independent contractor" means any person who owns the assets of a business, company, or service and who manages and controls such business, company, or service and who has the ultimate responsibility for all decisions affecting such business, company, or service, and who is subject to realize any profit or loss from such business, company, or service. Nothing in this section shall be construed to restrict the right of any such claimant to elect to proceed against a third party in accordance with the provisions of section 8-52-108. The total amount of damages recoverable pursuant to any cause of action resulting from a work-related injury brought by such independent contractor which would otherwise have been compensable under articles 40 to 54 of this title shall not exceed fifteen thousand dollars, except in any cause of action brought against another not in the same employ.

(3) (a) Notwithstanding any provision of this section to the contrary, any person, company, or corporation who contracts with a landowner or lessee of a farm or ranch to perform a specified farming or ranching operation shall, prior to entering into such contract, provide for and maintain, for the period of such contract, workmen's compensation coverage pursuant to articles 40 to 54 of this title covering all his employees and laborers to be utilized under such contract. Proof of such coverage on forms or certificates issued by the insurer shall be provided to the person, company, or corporation contracting for the labor prior to performing such contract.

(b) Any person, company, or corporation contracting with a landowner or lessee of a farm or ranch to provide a specified farming or ranching operation who fails to provide coverage pursuant to subsection (1) of this section or who fails to maintain such coverage for the term of the contract

is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail for not more than sixty days, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment.

(c) Notwithstanding any provision of this section to the contrary, no person, company, or corporation contracting with a landowner or lessee of a farm or ranch operation to perform a specified farming or ranching operation nor any employee of such person, company, or corporation required to be covered by workmen's compensation pursuant to this subsection (3) shall have any right of contribution from, or any action of any kind, including actions under section 8-52-108, against, the person, company, or corporation contracting to have such agricultural labor performed.

(d) (I) If any person, company, or corporation contracting to provide labor to perform specified farming or ranching operations and required to provide workmen's compensation coverage pursuant to articles 40 to 54 of this title fails to provide such coverage and the person, company, or corporation for whom the labor is provided incurs any liability thereby, the person, company, or corporation providing the labor shall be subject to a cause of action for said liability and for reasonable attorney fees.

(II) If the person, company, or corporation for whom the labor for the performance of a specified farming or ranching operation is provided is sued by the injured employee, said person, company, or corporation may join the person, company, or corporation providing the labor as a third-party defendant in lieu of filing an independent action.

(4) Repealed, L. 79, p. 338, section 2, effective July 1, 1979.

(5) The provisions of this section shall not apply to licensed real estate brokers and licensed real estate salesmen who are excluded from the definition of employee pursuant to section 8-41-106 (3).

(6) Notwithstanding any provision of this section to the contrary, any person, company, or corporation operating a commercial vehicle as defined in section 42-4-234 (1) (a), C.R.S., who holds himself out as an independent contractor only to perform for-hire transportation, including loading and unloading, and who contracts to perform a specific transportation job, transportation task, or transportation delivery for another person, company, or corporation is not entering into an employee and employer relationship for purposes of workmen's compensation coverage pursuant to articles 40 to 54 of this title.

8-48-102. Repairs to real property - liability for

insurance. (1) Except as provided in section 8-48-101 (2.5) and except for the owner of a private home who contracts out any work done to or about said home, including renovations, additions, remodeling, or repair, every person, company, or corporation owning any real property or improvements thereon and contracting out any work done on and to said property to any contractor, subcontractor, or person who hires or uses employees in the doing of such work shall be deemed to be an employer under the terms of articles 40 to 54 of this title. Every such contractor, subcontractor, or person, as well as his employees, shall be deemed to be an employee, and such employer shall be liable as provided in said articles to pay compensation for injury or death resulting therefrom to said contractor, subcontractor, or person and his employees or employees' dependents and, before commencing said work, shall insure and keep insured his liability as provided in said articles. Such employer shall be entitled to recover the cost of such insurance from said contractor, subcontractor, or person and may withhold and deduct the same from the contract price or any royalties or other money due, owing, or to become due to said contractor, subcontractor, or person.

(2) If said contractor, subcontractor, or person doing or undertaking to do any work for an owner of property, as provided in subsection (1) of this section, is himself an employer in the doing of such work and, before commencing such work, insures and keeps insured his liability for compensation as provided in articles 40 to 54 of this title, neither said contractor, subcontractor, or person nor his employees or insurers shall have any right of contribution or action of any kind, including actions under section 8-52-108, against the person, company, or corporation owning real property and improvements thereon which contracts out work done on said property, or against its employees, servants, or agents.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, articles 40 to 54 of this title shall not apply to the owner of any real property or improvements thereon who hires an individual for work done on and to said property or who contracts out any work done on and to said property to any contractor, subcontractor, or person who hires or uses employees in the doing of such work if said owner employs no other employees subject to articles 40 to 54 of this title and the work is not within the course of the trade, business, or profession of said owner and if the amounts expended by the owner do not exceed the sum of two thousand dollars for any calendar year.

8-48-103. Exemption of certain lessors of real property.

(1) The provisions of this article shall not apply to any lessor or sublessor of real property who rents or leases real property to any lessee or sublessee for the purpose of conducting the business of such lessee or sublessee, whether as a franchise holder, independent agent, or consignee or in

any other separate capacity and whether or not such person is an employer, as defined in section 8-41-105, but in no event where such lessee or sublessee is an employee, as defined in section 8-41-106 (1) (b).

(2) No such lessee or sublessee, or any employee or insurer thereof, shall have any right of contribution from or action against such lessor or sublessor under articles 40 to 54 of this title.

(3) The provisions of this article shall not apply to any lessor or sublessor of real property who leases or rents real property to any lessee or sublessee for the purpose of conducting any agricultural production business of such lessee or sublessee, and no such lessee or sublessee, or any employee or insurer thereof, shall have any right of contribution from or action against such lessor or sublessor under articles 40 to 54 of this title.

ARTICLE 49 Medical, Surgical, and Hospital

8-49-101. Employer must furnish medical aid - approval of plan. (1) (a) Every employer, regardless of his method of insurance, shall furnish such medical, surgical, dental, nursing, and hospital treatment, medical, hospital, and surgical supplies, crutches, and apparatus as may reasonably be needed at the time of the injury or occupational disease and thereafter during the disability to cure and relieve the employee from the effects of the injury.

(b) In all cases where the injury results in the loss of a member or part of the employee's body, loss of teeth, loss of vision or hearing, or damage to an existing prosthetic device, the employer shall furnish within the limits of the medical benefits provided in paragraph (a) of this subsection (1) one artificial member, glasses, a hearing aid, a brace, and any other prosthetic device, including dentures, which are reasonably required to replace or improve the function of each member or part of the body or prosthetic device so affected or to improve the employee's vision or hearing. The employee may, at any time within two years from the date such artificial member, glasses, hearing aid, brace, and other prosthetic device, including dentures, was originally furnished, petition the division for one additional replacement upon grounds that the employee has undergone an anatomical change since the original was furnished, and that the anatomical change is directly related to and caused by the injury, and that the replacement is necessary to improve the function of each member or part of the body so affected or to relieve pain and discomfort. Every employer subject to the terms and provisions of articles 40 to 54 of this title must insure his liability for the medical, surgical, and hospital expenses provided for in this article, unless permission is

given by the director to such employer to operate under a medical plan, as set forth in subsection (2) of this section.

(2) Every such plan, which is agreed to between the employer and employee, for the furnishing of medical, surgical, and hospital treatment, whether or not the employee is to pay any part of the expense of such treatment, before being put into effect, shall receive the approval of the director. The director has full power to formulate the terms and conditions under which any such plan may operate and the essentials thereof, and at any time he may order modifications or changes in any such plan or withdraw his approval thereof. No plan shall be approved by the director which relieves the employer from the burden of assuming and paying for any part of the medical, surgical, and hospital services and supplies required.

(3) (a) The director has the power to establish a schedule fixing the fees for which all medical, surgical, hospital, dental, nursing, and vocational rehabilitation treatment rendered to employees under this section shall be compensated, and it is unlawful, void, and unenforceable as a debt for any physician, chiropractor, hospital, person, or institution to contract with, bill, or charge any patient for services, rendered in connection with injuries coming within the purview of this article or an applicable fee schedule, which are or may be in excess of said fee schedule unless such charges are approved by the director. Fee schedules shall be reviewed on or before July 1 of each year by the director, and appropriate health care practitioners shall be given a reasonable opportunity to be heard as required pursuant to section 24-4-103, C.R.S., prior to fixing the fees. The director shall promulgate rules and regulations concerning reporting requirements, penalties for failure to report correctly or in a timely manner, and utilization control requirements for services provided under this section. The director may appoint a committee to advise him concerning such requirements. Members of the committee shall serve without compensation.

(b) (I) The statutory authorization for the advisory committee authorized by paragraph (a) of this subsection (3) is repealed, effective July 1, 1994.

(II) Prior to said repeal, such advisory committee shall be reviewed as provided for in section 2-3-1203, C.R.S.

(4) to (6) Repealed, L. 87, p. 393, section 21, effective July 1, 1987.

8-49-102. Utilization review process. (1) The general assembly hereby finds and determines that insurers and self-insured employers should be required to pay for all medical services pursuant to this article which may be

reasonably needed at the time of an injury or occupational disease to cure and relieve an employee from the effects of an on-the-job injury. However, insurers and self-insured employers should not be liable to pay for care unrelated to a compensable injury or services which are not reasonably necessary or not reasonably appropriate according to accepted professional standards. The general assembly, therefore, hereby declares that the purpose of the utilization review process authorized in this section is to provide a mechanism to review and remedy services rendered pursuant to this article which may not be reasonably necessary or reasonably appropriate according to accepted professional standards.

(2) (a) Any insurer, self-insured employer, or claimant may request review under the provisions of this section of services rendered pursuant to this article by a health care provider. Requests for utilization review shall be submitted on forms specified by the director by rule and regulation. At the time of submission of any such request, the person making the request shall pay to the division a fee prescribed by the director by rule and regulation for use of the utilization review process. Such fee shall be set at a level which covers the administrative cost to the division of administering this section. If a claimant is successful in his utilization review case pursuant to this section, the division shall reimburse the fee charged pursuant to this paragraph (a) and assess such fee against the insurer or self-insured employer. Fees collected pursuant to this section shall be credited by the state treasurer to the utilization review cash fund, which fund is hereby created. Moneys in the utilization review cash fund are hereby continuously appropriated to the division for purposes of administering the utilization review program and shall not revert to the the general fund at the end of any fiscal year. The division shall notify any claimant, insurer, or self-insured employer that his case is to be reviewed and that he may be examined as a result of such review. The claimant, insurer, or self-insured employer has thirty days from the date of mailing of the notice required by this subsection (2) to examine the medical records submitted by the claimant, insurer, or self-insured employer requesting review and may add medical records to the utilization review file that he believes may be relevant to the utilization review. The division shall maintain a special file for utilization review cases. Such file shall be accessible only to interested parties in a utilization review case and shall not otherwise be open to any person.

(b) Prior to submitting a request for a utilization review pursuant to this section, an insurer or a self-insured employer shall cause to be performed by a licensed medical professional hired or employed by such insurer or employer a review of the services rendered in the case. The report of the review required by this paragraph (b) shall be submitted together with all necessary medical records and reports with

the request for utilization review pursuant to this section.

(c) A claimant may request a utilization review pursuant to this section if he has been refused a request pursuant to section 8-51-110 (5) to have his own physician or chiropractor attend him. Any claimant requesting a utilization review pursuant to this paragraph (c) shall file such request on forms specified by the director by rule and regulation and shall pay the fee for requesting such review as required by paragraph (a) of this subsection (2).

(3) (a) The director shall appoint members of utilization review committees for purposes of this section. The director shall establish committees based on the different areas of health care practice for which requests for utilization review may be made. The director, by rule and regulation, shall establish the qualifications for members of the different committees and the areas of health care practice in which each such committee shall conduct requested utilization reviews. Cases of requested utilization review shall be referred to committees appointed pursuant to this subsection (3) by the director based upon the areas of health care practice for which each committee is appointed.

(b) Each committee established pursuant to paragraph (a) of this subsection (3) shall be composed of three members. Committee members shall be compensated for their time by the division out of moneys in the utilization review cash fund, created in paragraph (a) of subsection (2) of this section. Any member of a committee appointed pursuant to this subsection (3) shall be immune from criminal liability and from suit in any civil action brought by any person based upon an action of such a committee, if such member acts in good faith within the scope of the function of the committee, has made reasonable effort to obtain the facts of the matter as to which he acts, and acts in the reasonable belief that the action taken by him is warranted by the facts. The immunity provided by this paragraph (b) shall extend to any person participating in good faith in any investigative proceeding pursuant to this section.

(c) A committee appointed pursuant to this subsection (3) shall review the medical necessity and appropriateness of care provided pursuant to this article by conducting an extensive review of the medical records of each case referred by the director pursuant to paragraph (a) of this subsection (3). Each committee shall issue a report to the director on the findings for each case reviewed. For each case, a committee may recommend by a majority vote of such committee that no change be ordered with respect to a case or that a change of provider be ordered. A committee, by a unanimous vote, may recommend that the director order that payment for fees charged for services in the case be retroactively denied. The director shall accept the recommendation of a committee

and base his order entered pursuant to this section thereon. If the director's order specifies that payment for fees charged for services in a case be retroactively denied, the provider whose fees are so denied payment may not contract with, bill, or charge the claimant for such fees.

(4) If the director orders pursuant to subsection (3) of this section that a change of provider be made in a case, the claimant, insurer, or self-insured employer shall have seven days from receipt of the director's order in which to agree upon a provider. If the claimant, insurer, or self-insured employer can not reach agreement within the seven day time period, the director shall select three providers who practice in the claimant's geographical location from lists submitted by professional medical and chiropractic organizations. A new provider shall be chosen from the list established pursuant to this subsection (4) by the party who was successful in his request for review. The director shall be notified of the name of the selected health care provider within seven days of establishment of the list pursuant to this subsection (4). If the new health care provider is not selected within such seven days, the director shall select the provider who shall attend the claimant from such list.

(5) (a) Except as provided in subparagraph (II) of paragraph (b) of this subsection (5), a claimant, insurer, or self-insured employer may appeal an order specifying that no change occur with respect to a case, that a change of provider be made, or that the payment of fees in the case be retroactively denied either to the director or to an administrative law judge by requesting a hearing pursuant to article 53 of this title. A health care provider may appeal an order specifying that no change occur with respect to a case, that a change of provider be made, or that the payment of fees in the case be retroactively denied to the director pursuant to subparagraph (II) of paragraph (b) of this subsection (5).

(b) (I) Any appeal filed pursuant to this subsection (5) must be filed within thirty days of the receipt of the director's order.

(II) If the claimant, insurer, self-insured employer, or health care provider appeals to the director, the director shall appoint a new review committee to consider the case and report recommendations either agreeing with the recommendation of the first review committee or making a different recommendation. The director shall order that the recommendation of the second review committee be complied with, whether such recommendation is to implement the recommendation of the first committee or to modify such recommendation. A claimant, insurer, or health care provider dissatisfied with the recommendation of the second review committee and the order of the director based thereon may, if

appeal is made to the director within thirty days of the date of the director's second order, obtain final review by a third review committee. The decision of the third review committee and the director's order based thereon shall be final and no party shall have a further right of appeal. No claimant, insurer, self-insured employer, or health care provider who appeals an order of the director issued pursuant to subsection (3) of this section pursuant to this subparagraph (II) shall be entitled to any right of appeal by requesting a hearing before an administrative law judge as provided in article 53 of this title.

(III) If a claimant, insurer, or self-insured employer appeals an order issued pursuant to subsection (3) of this section by requesting a hearing before an administrative law judge according to the provisions of article 53 of this title, the report of the utilization review committee upon which the director based his order pursuant to subsection (3) of this section shall be admissible in evidence, and if the report of the utilization review committee upon which the director based his order in the case under this section is supported by substantial evidence, the director's order shall not be altered by the administrative law judge.

ARTICLE 50 Dependency

8-50-101. Persons presumed wholly dependent. (1) For the purposes of articles 40 to 54 of this title, the following described persons shall be presumed to be wholly dependent (however, such presumption may be rebutted by competent evidence):

(a) Widow or widower, unless it is shown that she or he was voluntarily separated and living apart from the spouse at the time of the injury or death or was not dependent in whole or in part on the deceased for support;

(b) Minor children of the deceased under the age of eighteen years, including posthumous or legally adopted children;

(c) Minor children of the deceased over the age of eighteen years and under the age of twenty-one years if it is shown that at the time of the decedent's death they were actually dependent upon the deceased for support and engaged in courses of study as full-time students at any accredited school.

8-50-102. Other dependents - temporary dependency. Except as otherwise provided in section 8-50-101 (1) (c), a child eighteen years of age or over and a mother, father, grandmother, grandfather, sister, brother, or grandchild who was wholly or partially supported by the deceased employee at

the time of death and for a reasonable period of time immediately prior thereto is considered an actual dependent. To be entitled to compensation, such dependents, except as provided in section 8-50-101 (1) (c), must prove that they were incapable of or actually disabled from earning their own living. If said incapacity or disability is temporary only, compensation shall be paid only during the period of such temporary incapacity or disability.

8-50-103. Death benefits. In case of death, the dependents of the deceased entitled thereto shall receive as compensation or death benefits sixty-six and two-thirds percent of the deceased employee's average weekly wages, not to exceed a maximum of eighty percent of the state average weekly wage per week for accidents occurring on or after September 1, 1975, and not less than a minimum of twenty-five percent of the applicable maximum per week. In cases where it is determined that periodic death benefits granted by the federal old age, survivors, and disability insurance act or a workmen's compensation act of another state or of the federal government are payable to an individual and his dependents, the aggregate benefits payable for death pursuant to this section shall be reduced, but not below zero, by an amount equal to one hundred percent of such periodic benefits.

8-50-104. Partial dependents - compensation. Partial dependents shall be entitled to receive only that portion of the benefits provided for those wholly dependent which the average amount of the wages regularly contributed by the deceased to such partial dependents at and for a reasonable time immediately prior to the injury bore to the total income of the dependents during the same time. The director has power and discretion to determine the proper elements to be considered as income of said dependents in each particular case. Where there are persons both wholly dependent and partially dependent, only those wholly dependent shall be entitled to compensation.

8-50-105. Dependency and extent determined - how. (1) Dependents and the extent of their dependency shall be determined as of the date of the injury to the injured employee, and the right to death benefits shall become fixed as of said date irrespective of any subsequent change in conditions. Death benefits shall be directly payable to the dependents entitled thereto or to such person legally entitled thereto as the director may designate.

(2) In case an employee or claimant entitled to compensation dies leaving dependents, any accrued and unpaid portion of the compensation or benefits up to the time of the death of such employee or claimant shall be paid to such dependents as may be ordered by the director and not to the legal representative as such of said decedent. In case the injured employee or claimant leaves no dependents, the

director may order the application of any accrued and unpaid benefits up to the time of the death of such employee or claimant paid upon the expenses of the last sickness or funeral of such decedent, the preference in such payment to be to funeral expenses.

(3) In case an injured employee or dependent of a deceased employee entitled to benefits under articles 40 to 54 of this title is declared incompetent or insane, any benefits accrued or to accrue may be paid to the conservator of his estate, if any, or to his dependents, if any, or to the party or institution having custody of the person of such injured employee or dependent of a deceased employee as may be ordered by the director in his discretion.

8-50-106. Termination of right to benefits. Death benefits shall be paid to a dependent widow or widower for life or until remarriage, and, if there are no dependent children, as defined in section 8-50-101 (1) (b) and (1) (c), in the event of remarriage, a two-year lump-sum benefit without discount, less any lump sums previously paid, shall be paid to such widow or widower. Death benefits shall terminate upon the happening of any of the following contingencies and shall thereupon survive to the remaining dependents, if any: Upon the death of any dependent; when a child or brother or sister of the deceased reaches the age of eighteen years, except as otherwise provided in sections 8-50-101 (1) (b) and (1) (c) and 8-50-102; and upon the expiration of six years from the date of the death of the injured employee in the case of partial dependents.

8-50-107. Burial expenses. When, as a proximate result of an injury, death occurs to an injured employee, there shall be paid in one lump sum within thirty days after his death a sum not to exceed two thousand dollars for his reasonable funeral and burial expenses. Said sum may be paid to the undertaker, cemetery, or any other person who has paid the funeral and burial costs, if the director so orders. If the employee leaves no dependents, compensation shall be limited to said sum and the compensation, if any, which has accrued to date of death and the medical, surgical, and hospital expenses provided in articles 40 to 54 of this title. If the deceased employee leaves dependents, said sum shall be paid in addition to all other sums of compensation provided for in this article.

8-50-108. Action by injured employee - dependents not parties in interest. No dependent of an injured employee, during the life of the employee, shall be deemed a party in interest to any proceeding by him for the enforcement of any claim for compensation nor with respect to any settlement thereof by said employee.

8-50-109. Illegitimate minor children. Illegitimate

minor children of a deceased putative father shall be entitled to compensation in the same respect as a legitimate minor child of said decedent when it is proved to the satisfaction of the director that the father, during his lifetime, has acknowledged said children to be his and has regularly contributed to their support and maintenance for a reasonable period of time prior to his death.

8-50-110. Death after two years. In case death occurs more than two years after the date of receiving any injury, such death shall be prima facie presumed not to be due to such injury; such presumption shall not apply in cases of silicosis, asbestosis, anthracosis, or disability or death resulting from exposure to radioactive materials, substances, or machines or to fissionable materials, or any type of malignancy caused thereby, or from poisoning by uranium or its compounds. In all other cases, such presumption may be rebutted by competent evidence.

8-50-111. Death from injury - benefits. (1) In case death proximately results from the injury, the benefits shall be in the amount and to the persons following:

(a) If there are no dependents, compensation shall be limited to the expenses provided for medical, hospital, and funeral expense of the deceased, together with such sums as may have accrued or been paid to the deceased during his lifetime for disability, and any amount or payment which is due the subsequent injury fund under section 8-51-106.

(b) If there are wholly dependent persons at the time of death, the payment shall be in accordance with the provisions of section 8-50-103.

(c) If there are partially dependent persons at the time of death, the payment shall not exceed sixty-six and two-thirds percent of the average weekly wages, subject to the limitations of articles 40 to 54 of this title as to maximum and minimum weekly amounts, to continue for such period after the date of death as is required to pay, at the weekly rate, the total amount awarded by the director to be paid to such partially dependent persons.

8-50-112. When death not proximate result - benefits. (1) If death occurs to an injured employee, other than as a proximate result of an injury, before disability indemnity ceases and the deceased leaves persons wholly dependent upon him for support, death benefits shall be as follows:

(a) Where the injury proximately caused permanent total disability, the death benefit shall consist of the unpaid and unaccrued portion of the permanent total disability benefit which the employee would have received had he lived until he had received compensation at his regular rate for a period of

six years.

(b) Where the injury proximately caused permanent partial disability, the death benefit shall consist of the unpaid and unaccrued portion of the permanent partial disability benefit which the employee would have received had he lived.

8-50-113. Benefits to partial dependents. (1) If death occurs to an injured employee, other than as a proximate result of the injury, before disability indemnity ceases and the deceased leaves persons partially dependent upon him for support, death benefits shall be as follows:

(a) Where the injury proximately caused permanent total disability, the death benefit shall consist of that proportion of the unpaid and unaccrued portion of the permanent total disability benefit which the employee would have received had he lived until he had received compensation at his regular rate for a period of six years as the amount devoted by the deceased to the support of such persons for the year immediately prior to the injury bears to the total income of the persons during said year.

(b) Where the injury caused permanent partial disability, the death benefit shall consist of that proportion of the unpaid and unaccrued portion of the permanent partial disability benefit which the employee would have received if he had lived as the amount devoted by the deceased to the support of such persons for the year immediately prior to the injury bears to the total income of the persons during said year.

8-50-114. Death benefits to nonresident dependents.

Repealed, L. 79, p. 339, section 1, effective July 1, 1983.

8-50-114.1. Applicability of repeal of death benefits to nonresident dependents. The repeal of section 8-50-114 shall not affect the payments of death benefits which are being paid before July 1, 1983.

8-50-115. Director to determine and apportion benefits. Death benefits shall be paid to such one or more of the dependents of the decedent, for the benefit of all the dependents entitled to such compensation, as may be determined by the director, who may apportion the benefits among such dependents in such manner as he may deem just and equitable. Payment to a dependent subsequent in right may be made, if the director deems it proper, which payment shall operate to discharge all other claims therefor. The dependents or persons to whom benefits are paid shall apply the same to the use of the several beneficiaries thereof according to their

respective claims upon the decedent for support in compliance with the finding and direction of the director.

8-50-116. Minor dependents - safeguarding payments. In all cases of death where the dependents are minor children, it shall be sufficient for the surviving spouse or a friend to make application and claim on behalf of the minor children. The director, for the purpose of protecting the rights and interests of any dependent whom he deems incapable of fully protecting his own interest, may deposit the payments in any type of account in state or national banks insured by the federal deposit insurance corporation, savings and loan associations which are insured by the federal savings and loan insurance corporation, or credit unions which are insured by the national credit union share insurance fund and may otherwise provide for the manner and method of safeguarding the payments due such dependent in such manner as he sees fit.

8-50-117. Payment as discharge of liability - conflicting claims. Payment of death benefits to one or more dependents shall protect and discharge to that extent all compensation under articles 40 to 54 of this title unless and until any other person claiming to be a dependent has given the division notice of his claim and until the division has notified the employer or his insurance carrier of such claim. In such case, the director shall determine the respective rights of said rival claimants, and thereafter such death benefits shall be paid to such dependents as he may find so entitled under the provisions of said articles.

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8-51-101. Disability indemnity payable as wages - period of disability. (1) If the injury or occupational disease causes disability, a disability indemnity shall be payable as wages, upon the tenth day after the injured employee leaves work as the result of the injury and thereafter regularly but not less frequently than once every two weeks, unless otherwise ordered by the director, subject to the following limitations:

(a) If the period of disability does not last longer than three days from the day the employee leaves work as a result of the injury, no disability indemnity shall be recoverable except the disbursement provided in articles 40 to 54 of this title for medical, surgical, nursing, and hospital services, apparatus, and supplies, nor in any case unless the division has actual knowledge of the injury or is notified thereof within the period specified in said articles.

(b) If the period of disability lasts longer than two weeks from the day the injured employee leaves work as the result of the injury, disability indemnity shall be

recoverable from the day the injured employee leaves work.

(c) In cases where it is determined that periodic disability benefits granted by the federal old-age, survivors, and disability insurance act are payable to an individual and his dependents, the aggregate benefits payable for temporary total disability, temporary partial disability, permanent partial disability, and permanent total disability pursuant to this section shall be reduced, but not below zero, by an amount equal as nearly as practical to one-half such federal periodic benefits; but, if provisions of the federal old-age, survivors, and disability insurance act should be amended to provide for a reduction of an individual's disability benefits thereunder because of compensation benefits payable under articles 40 to 54 of this title, the reduction of compensation benefits provided in said articles shall be decreased by an amount equal to such federal reduction. Upon request of the insurer or employer, the employee shall apply for such federal periodic benefits and respond to requests from the insurer or employer as to the status of such application. Failure to comply with this section shall be cause for suspension of benefits.

(d) (I) In cases where it is determined that periodic disability benefits are payable to an employee under the provisions of a pension or disability plan financed in whole or in part by the employer, hereinafter called "employer pension or disability plan", the aggregate benefits payable for temporary total disability, temporary partial disability, permanent partial disability, and permanent total disability pursuant to this section shall be reduced, but not below zero, by an amount equal as nearly as practical to such employer pension or disability plan benefits, with the following limitations:

(A) Where the employee has contributed to the employer pension or disability plan, benefits shall be reduced under this section only in an amount proportional to the employer's percentage of total contributions to the employer pension or disability plan.

(B) Where the employer pension or disability plan provides by its terms that benefits are precluded thereunder in whole or in part if benefits are awarded under articles 40 to 54 of this title, the reduction provided in this paragraph (d) shall not be applicable to the extent of the amount so precluded.

(II) Upon request of the insurer or employer, the employee shall apply for such periodic disability benefits and respond to requests from the insurer or employer as to the status of such application. Failure to comply with this section shall be cause for suspension of benefits.

(e) In cases where it is determined that periodic disability benefits are payable to an individual and his dependents pursuant to a workmen's compensation act of another state or of the federal government, the aggregate benefits payable for temporary total disability, temporary partial disability, permanent partial disability, and permanent total disability pursuant to this section shall be reduced, but not below zero, by an amount equal to the benefits payable pursuant to such other workmen's compensation act.

(f) In cases where it is determined that unemployment compensation benefits are payable to an employee, the aggregate benefits payable for permanent total disability pursuant to this section shall be reduced, but not below zero, by an amount equal as nearly as practical to such unemployment compensation benefits. In cases where it is determined that unemployment insurance benefits are payable to an employee, compensation for temporary disability shall be reduced, but not below zero, by the amount of unemployment insurance benefits received, unless the unemployment insurance amount has already been reduced by the temporary disability benefit amount and except that temporary total disability shall not be reduced by unemployment insurance benefits received pursuant to section 8-73-112.

8-51-102. Temporary total disability. In case of temporary disability of more than three days' duration, the employee shall receive sixty-six and two-thirds percent of his average weekly wages so long as such disability is total, not to exceed a maximum of eighty percent of the state average weekly wage per week. Except where vocational rehabilitation is offered and accepted as provided in section 8-51-107 (3), temporary total disability payments shall cease when the employee reaches maximum improvement from medical care or returns to work or is able to return to work or as otherwise determined by the director. If vocational rehabilitation is offered and accepted, any party may at any time terminate vocational rehabilitation upon fourteen days' written notice to the other parties and the director. For purposes of this section, termination of vocational rehabilitation shall be the same as if vocational rehabilitation had never been offered and accepted, and the employer or insurance carrier shall not be entitled to recover any temporary total disability benefits paid during the period that vocational rehabilitation was provided.

8-51-103. Temporary partial disability. In case of temporary partial disability, the employee shall receive sixty-six and two-thirds percent of the impairment of his earning capacity during the continuance thereof, not to exceed a maximum of eighty percent of the state average weekly wage per week. Temporary partial disability payments shall cease when the employee reaches maximum improvement from medical care or as otherwise determined by the director.

8-51-104. Schedule of disability periods - commencement.

(1) In case an injury results in a loss set forth in the following schedule, the injured employee, in addition to compensation to be paid for temporary disability, shall receive compensation for the period as specified:

- (a) The loss of an arm at the shoulder 208 weeks
- (b) The loss of forearm at the elbow 139 weeks
- (c) The loss of a hand at the wrist 104 weeks
- (d) The loss of a thumb and the metacarpal bone thereof
50 weeks
- (e) The loss of a thumb at the proximal joint 35 weeks
- (f) The loss of a thumb at the second or distal joint
18 weeks
- (g) The loss of an index finger and the metacarpal bone
thereof 26 weeks
- (h) The loss of an index finger at the proximal joint
18 weeks
- (i) Loss of an index finger at the second joint 13 weeks
- (j) Loss of an index finger at the distal joint 9 weeks
- (k) Loss of a second finger and the metacarpal bone
thereof 18 weeks
- (l) Loss of a middle finger at the proximal joint
13 weeks
- (m) Loss of a middle finger at the second joint 9 weeks
- (n) Loss of a middle finger at the distal joint 5 weeks
- (o) Loss of a third or ring finger and the metacarpal
bone thereof 11 weeks
- (p) Loss of a ring finger at the proximal joint 7 weeks
- (q) Loss of a ring finger at the second joint 7 weeks
- (r) Loss of a ring finger at the distal joint 4 weeks
- (s) Loss of a little finger and the metacarpal bone
thereof 13 weeks
- (t) Loss of a little finger at the proximal joint 9 weeks

- (u) Loss of a little finger at the second joint 9 weeks
- (v) Loss of a little finger at the distal joint 4 weeks
- (w) Loss of a leg at the hip joint or so near thereto as to preclude the use of an artificial limb 208 weeks
- (x) Loss of a leg at or above the knee, where the stump remains sufficient to permit the use of an artificial limb 139 weeks
- (y) The loss of a foot at the ankle 104 weeks
- (z) The loss of a great toe with the metatarsal bone thereof 26 weeks
- (aa) The loss of a great toe at the proximal joint 18 weeks
- (bb) The loss of a great toe at the second or distal joint 9 weeks
- (cc) The loss of any other toe with the metatarsal bone thereof 11 weeks
- (dd) The loss of any other toe at the proximal joint 4 weeks
- (ee) The loss of any other toe at the second or distal joint 4 weeks
- (ff) The loss of an eye by enucleation (including disfigurement resulting therefrom) 139 weeks
- (gg) Total blindness of one eye 104 weeks
- (hh) Total deafness of both ears 139 weeks
- (ii) Total deafness of one ear 35 weeks
- (jj) Where workman prior to injury has suffered a total loss of hearing in one ear, and as a result of the accident loses total hearing in remaining ear 139 weeks

(2) The director shall determine the time when temporary disability terminates as to injuries coming under any provision of this section.

(3) For the purpose of this schedule, permanent and complete paralysis of any member as the proximate result of accidental injury shall be deemed equivalent to the loss thereof.

(4) If amputation is made between any two joints

mentioned in this schedule, except amputation between the knee and the hip joint, the resulting loss shall be estimated as if the amputation had been made at the joint nearest thereto. If any portion of the bone of the distal joint of any finger, thumb, or toe is amputated, the amount paid therefor shall be the amount allowed for amputation at said distal joint.

(5) The amounts specified in this section shall be at the compensation rate of one hundred fifty dollars per week.

(6) When an injured employee sustains two or more injuries coming under this schedule, the disabilities specified in this section shall be added, and the injured employee shall receive the sum total thereof; except that, where the injury results in the loss or partial loss of use of the index finger and thumb of the same hand or of more than two digits of any one hand or foot, the disability, in the discretion of the director, may be compensated on the basis of the partial loss of use of said hand or foot, measured respectively from the wrist or ankle.

(7) Where an injury causes the loss of, loss of use of, or partial loss of use of any member specified in the foregoing schedule, the director may determine the disability suffered and the amount of compensation to be awarded by awarding compensation which bears such relation to the amount stated in the above schedule for the loss of a member as the disabilities bear to the loss produced by the injuries named in the schedule, and such amount shall be in addition to compensation for temporary disability; or the director may award such compensation under the permanent partial disability section of this article as the director in his discretion may determine from the particular facts in each case.

8-51-105. Disfigurement - additional compensation. If any employee is seriously, permanently disfigured about the head, face, or parts of the body normally exposed to public view, the director, in addition to all other compensation benefits provided in this article, may allow such sum for compensation on account thereof as he may deem just, not exceeding two thousand dollars.

8-51-106. Subsequent injury fund. (1) (a) In a case where an employee has previously sustained permanent partial industrial disability and in a subsequent injury sustains additional permanent partial industrial disability and it is shown that the combined industrial disabilities render the employee permanently and totally incapable of steady gainful employment and incapable of rehabilitation to steady gainful employment, then the employer in whose employ the employee sustained such subsequent injury shall be liable only for that portion of the employee's industrial disability attributable to said subsequent injury, and the balance of compensation due such employee on account of permanent total disability shall

be paid from the subsequent injury fund as is provided in this section.

(b) In addition to such compensation and after the completion of the payments therefor, the employee shall continue to receive compensation at his established compensation rate for permanent total disability until death out of a special fund to be known as the "subsequent injury fund", created for such purpose in the following manner: For every compensable injury resulting in death wherein there are no persons either wholly or partially dependent upon the deceased, the employer or his insurance carrier, if any, shall pay to the division the sum of fifteen thousand dollars, to be deposited with the state treasurer, as custodian, into the subsequent injury fund. In the event there are only partially dependent persons dependent upon the deceased, the employer or his insurance carrier, if any, shall first pay such benefits to such partial dependents and the balance of the sum of fifteen thousand dollars, to be deposited with the state treasurer, as custodian, into the subsequent injury fund.

(I) In addition to such compensation and after the completion of the payments therefor, the employee shall continue to receive compensation at his established compensation rate for permanent total disability until death out of a special fund to be known as the subsequent injury fund, hereby created for such purpose. The subsequent injury fund shall be funded pursuant to the provisions of subparagraphs (II) and (III) of this paragraph (b).

(II) For every compensable injury resulting in death wherein there are no persons either wholly or partially dependent upon the deceased, the employer or his insurance carrier, if any, shall pay to the division the sum of fifteen thousand dollars, to be transmitted to the state treasurer, as custodian, and credited by him to the subsequent injury fund. In the event that there are only partially dependent persons dependent upon the deceased, the employer or his insurance carrier, if any, shall first pay such benefits to such partial dependents and shall transmit the balance of the sum of fifteen thousand dollars to the state treasurer, as custodian, who shall credit the same to the subsequent injury fund.

(III) (A) Notwithstanding the provisions of sections 10-3-209 (1) (c) and 10-6-128 (3), C.R.S., for the purpose of funding the financial liabilities of the subsequent injury fund pursuant to this section, every person, partnership, association, and corporation, whether organized under the laws of this state or of any other state or country, every mutual company or association, every captive insurance company, and every other insurance carrier, including the state compensation insurance authority, insuring employers in this state against liability for personal injury to their employees or death caused thereby under the provisions of articles 40 to

54 of this title shall, as provided in this subparagraph (III), pay a tax upon the premiums received in this state, whether or not in cash, or on account of business done in this state for such insurance in this state at a rate of four-tenths of one percent. Such insurance carriers shall be credited with all cancelled or returned premiums actually refunded during the year of such insurance.

(B) Every such insurance carrier shall, on July 1, 1988, and semiannually thereafter, make a return, verified by affidavits of its president and its secretary or by affidavits of its other chief officers or agents, to the division, stating the amount of all such premiums received and credits granted during the period covered by such return. Every insurance carrier required to make such return shall file the same with the division within thirty days after the close of the period covered thereby and shall, at the same time, pay to the division a tax ascertained as provided in sub-subparagraph (A) of this subparagraph (III), less return premiums on cancelled policies.

(C) Every employer carrying his own risk as a self-insurer under the provisions of articles 40 to 54 of this title shall, under oath, report to the division his payroll in such form as may be prescribed by the director and at the times specified for premium reports by insurance companies in sub-subparagraph (B) of this subparagraph (III). The division shall assess against such payroll a tax for the purposes of sub-subparagraph (B) of this subparagraph (III) on the basic premiums chargeable against the same or most similar industry or business taken from the manual insurance rates, including any discount or experience modification allowed, chargeable by the state compensation insurance authority fund, and, upon receipt of notice from the division of the tax so assessed, every such self-insurer shall, within thirty days of the receipt of such notice, pay to the division the tax so assessed.

(D) If any such insurance carrier or self-insurer fails or refuses to make the return or report required by sub-subparagraph (B) or (C) of this subparagraph (III), the director shall assess the tax against such insurance carrier or self-insurer at the rate provided for in this subparagraph (III) on such amount of premium as he may deem just, and the proceedings thereof shall be the same as if the return had been made.

(E) If any such insurance carrier or self-insurer withdraws from business in this state before the tax provided for in this subparagraph (III) falls due as provided in this section, or fails or neglects to pay such tax, the director shall proceed at once to collect the same; and he is authorized to employ such legal processes as may be necessary for that purpose. Suit shall be brought by the director in

any of the courts of this state having jurisdiction.

(F) The director, in the enforcement of this subparagraph (III), shall have all of the powers granted to him in articles 40 to 54 of this title, and any insurance carrier or self-insurer who violates any of the provisions of this subparagraph (III) or fails to pay the tax thereby imposed is guilty of a violation of said articles and shall be subject to the penalties therein prescribed.

(G) All moneys collected pursuant to this subparagraph (III) shall be transmitted to the state treasurer, as custodian, who shall credit the same to the subsequent injury fund. Any interest earned on the investment or deposit of moneys in the subsequent injury fund shall remain in the fund and shall not revert to the general fund of the state at the end of any fiscal year.

(2) If an employee entitled to additional benefits, as provided in this section, obtains employment while receiving compensation from the subsequent injury fund, he shall be compensated out of said fund at the rate of one-half of his average weekly wage loss, subject to the maximum and minimum provisions of the workmen's compensation act, during such period of employment.

(3) In case payment is or has been made under the provisions of this section and dependency later is shown or if payment is made by mistake or inadvertence or under such circumstances that justice requires a refund thereof, the division is authorized to refund such payment to the employer or, if insured, his insurance carrier.

(4) (a) The sums provided for the subsequent injury fund created by this section shall be used to pay the costs related to the administration of the fund and to make such compensation payments as may be required by the provisions of articles 40 to 54 of this title.

(b) Repealed, L. 85, p. 1358, section 2, effective June 28, 1985.

(c) All funds which are utilized for the administration of the subsequent injury fund shall be subject to appropriation by the general assembly.

(5) The director shall administer and conduct all matters involving the subsequent injury fund in the name of the division, and, in that name and without any other name, title, or authority, the director may:

(a) (I) Sue and be sued in all the courts of this state, of any other state, or of the United States and in actions arising out of any act, deed, matter, or thing made, omitted,

entered into, done, or suffered in connection with the subsequent injury fund and the administration or conduct of matters relating thereto, including the authority to employ counsel to represent the fund in any action.

(II) Nothing in this paragraph (a) shall be construed to waive any provisions of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., nor shall it be construed to waive immunity of the state of Colorado from suit in federal court, guaranteed by the eleventh amendment to the constitution of the United States.

(b) Make and enter into contracts or obligations relating to the subsequent injury fund as authorized or permitted under the provisions of articles 40 to 54 of this title, but neither the director nor any officer or employee of the division shall be personally liable in his private capacity for or on account of any act done or omitted or contract or other obligation entered into or undertaken in an official capacity in good faith and without intent to defraud in connection with the administration or conduct of the subsequent injury fund, its business, or other affairs relating thereto.

8-51-107. Award for permanent total disability. (1) In cases of permanent total disability, the award shall be sixty-six and two-thirds percent of the average weekly wages of the injured employee and shall continue until death of such person so totally disabled but not in excess of the weekly maximum benefits specified in this article for injuries causing temporary total disability.

(2) The loss of both hands or both arms or both feet or both legs or both eyes or of any two thereof, by injury in or resulting from the same injury or occupational disease, shall create a presumption which may be rebutted by competent contrary evidence of total and permanent disability to be compensated according to the provisions of this section; except that, where the disability comes under this section and where the employer or the division obtains suitable employment for such disabled person which he can perform and which in all cases is subject to the sole approval of the director, the disabilities set out in this subsection (2) shall not constitute total disability during the continuance of the director's approval of said employment but shall constitute such partial disability as may be determined by the director after a finding of the facts.

(3) A totally disabled employee capable of rehabilitation to suitable gainful employment who refuses an offer of employment in a suitable job by the employer or an offer of vocational rehabilitation paid for by the employer shall not be awarded permanent total disability.

8-51-108. Permanent partial disability - how determined.

(1) (a) Where an accident causes injury resulting in permanent partial disability, except the sustaining of any one of the injuries specifically covered by sections 8-51-104 to 8-51-106, the injured employee shall be deemed permanently disabled from the time he is so declared by the director and from said time shall be entitled to compensation for permanent partial disability in addition to any compensation theretofore allowed.

(b) In determining permanent partial disability, the director shall ascertain in terms of percentage the extent of general permanent disability which the injury has caused, taking into consideration not only the manifest weight of the evidence but also the general physical condition and mental training, ability, former employment, and education of the injured employee. The director shall then determine the injured employee's expectancy of life from recognized expectancy tables and such other evidence relating to his expectancy as may be presented, but in no event shall the employee's life expectancy be reduced for these purposes if his injury or illness is the direct cause of his reduced life expectancy. He shall then ascertain the total amount which said employee would receive during the balance of his expectancy at the compensation rate of one hundred twenty dollars per week and shall then take that percentage of the total sum so arrived at as is indicated by the percentage of general permanent disability found to exist in the manner as set forth in this article, not to exceed in any event the aggregate sum of thirty-seven thousand five hundred sixty dollars, said sum to be paid at a weekly rate of not more than one hundred twenty dollars.

(2) At any time, and from time to time, during the period for which compensation has been awarded for either permanent total or permanent partial disability, upon application of any party in interest, the director shall require such injured employee to be examined by one or more physicians, and, upon petition from any such interested party supported by a showing that the disability of such injured employee has undergone a change in degree since the entry of such award, the case shall be reopened, and the compensation previously awarded shall be modified, terminated, or continued as the evidence may require; except that no case shall be reopened other than on the ground of fraud or mutual mistake of material fact if the claimant agreed to a settlement in which he waived his right to reopen such case.

(3) Repealed, L. 75, p. 311, section 62, effective September 1, 1975.

(4) In any case where an employer reemploys or continues the disabled employee at work in the employment of the employer at the employee's preinjury rate of pay and extends

to the employee the usual wage adjustments, the employee's permanent partial disability award shall be limited to permanent medical impairment or a payment under section 8-51-104, whichever is less. This subsection (4) shall not apply if the director finds that due to the injury the employee is permanently unable to perform the duties offered by the employer. If, during the two years following the date of return to work or reemployment, the injured employee, as a result of his permanent disability due to his injury, is dismissed from employment or resigns from employment with the employer, he may petition the director for a redetermination of his original permanent partial disability award, and, upon a proper showing of his limitations in the labor market, the director shall order an appropriate award of permanent partial disability.

8-51-108.5. Election to waive vocational rehabilitation benefits and become subject to permanent partial disability provisions. In all cases arising under articles 40 to 54 of this title prior to July 1, 1987, the employee, the employer, and, if insured, the insurance carrier may elect, upon unanimous agreement, in writing to waive vocational rehabilitation which was awarded pursuant to section 8-49-101 as it existed prior to July 1, 1987, and become subject to the permanent partial disability provisions pursuant to section 8-51-108. Such election shall be made in a form prescribed by the director and shall not affect payments made prior to the filing of such agreement. Failure to agree to the options available under the provisions of this section shall not be evidence of bad faith in any future litigation by either party.

8-51-109. Added compensation for additional injuries. Where an injured employee sustains an injury covered by sections 8-51-104 to 8-51-106 but in addition thereto receives other injuries which are sufficient in their nature to alone cause temporary total disability, said employee shall receive, in addition to the amounts specified in said schedule, compensation for temporary total disability as long as said disability is found to exist as a result of said other injuries.

8-51-110. Examination - refusal - personal responsibility - physicians to testify and furnish results. (1) If in case of injury the right to compensation under articles 40 to 54 of this title exists in favor of an employee, upon the written request of his employer or the insurer carrying such risk, he shall submit himself from time to time to examination by a physician or surgeon or to a vocational evaluation, which shall be provided and paid for by the employer or insurer, and he shall likewise submit to examination from time to time by any regular physician selected and paid for by the division.

(2) The employee shall be entitled to have a physician, provided and paid for by himself, present at any such examination. If an employee is examined by a chiropractor at the request of the employer, the employee shall be entitled to have a chiropractor provided and paid for by himself present at any such examination. The employee shall also be entitled to receive from the examining physician or chiropractor a copy of any report which said physician or chiropractor makes to the employer, insurer, or division upon said examination, said copy to be furnished to the employee at the same time it is furnished to the employer, insurer, or division. The employee shall also be entitled to receive reports from any physician selected by the employer to treat him upon the same terms and conditions and at the same time the reports are furnished by the physician to the employer. The employer shall be entitled to receive reports from any physician or chiropractor selected by the employee to treat or examine him in connection with such injury upon the same terms and at the same time the reports are furnished by the physician or chiropractor to the employee.

(3) So long as the employee, after written request by the employer or insurer, refuses to submit himself to medical examination or vocational evaluation or in any way obstructs the same, his right to collect, or to begin or maintain any proceeding for the collection of, compensation shall be suspended. If he refuses to submit to such examination after direction by the director or any agent, referee, or administrative law judge of the division appointed pursuant to section 8-46-107 (1) or in any way obstructs the same, his right to weekly indemnity which accrues and becomes payable during the period of such refusal or obstruction shall be barred. If any employee persists in any unsanitary or injurious practice which tends to imperil or retard his recovery or refuses to submit to such medical or surgical treatment or vocational evaluation as is reasonably essential to promote his recovery, the director, in his discretion, may reduce or suspend the compensation of any such injured employee.

(4) Any physician or chiropractor who makes or is present at any such examination may be required to testify as to the results thereof. Any physician or chiropractor having attended an employee in a professional capacity may be required to testify before the division when it so directs. A physician or chiropractor will not be required to disclose confidential communications imparted to him for the purpose of treatment and which are unnecessary to a proper understanding of the case.

(5) (a) In all cases of injury, the employer or insurer has the right in the first instance to select the physician who attends said injured employee. If the services of a physician are not tendered at the time of injury, the employee

shall have the right to select his own physician or chiropractor. Upon written request to the insurance carrier or employer's authorized representative if self-insured, the employee may procure written permission to have his own physician or chiropractor attend him. If such permission is neither granted nor refused within twenty days, the employer or insurance carrier shall be deemed to have waived any objection thereto. Objection shall be in writing and shall be deposited in the United States mail or hand delivered to the employee within said twenty days. Upon the proper showing to the division, the employee may procure its permission at any time to have a physician of his own selection attend him, and in any nonsurgical case the employee, with such permission, in lieu of medical aid, may procure any nonmedical treatment recognized by the laws of this state as legal, the practitioner administering such treatment to receive such fees therefor under the medical provisions of articles 40 to 54 of this title as may be fixed by the division.

(b) Any private insurer or self-insured employer acting as his own insurance carrier as provided in section 8-44-109 providing workmen's compensation coverage shall pay for chiropractic care as provided in paragraph (a) of this subsection (5).

(6) Application or prosecution of a claim for benefits shall be a waiver of any privilege concerning communications relating to all medical issues raised by the claim, for the purposes of a utilization review conducted pursuant to section 8-49-102.

(7) An employer or insurer shall not be liable for treatment provided pursuant to article 41 of title 12, C.R.S., unless such treatment has been prescribed by an authorized treating physician.

8-51-111. State treasurer to invest funds. (1) The state treasurer shall invest any portion of the subsequent injury fund, including its surplus and reserves, which the division determines is not needed for immediate use. All interest earned upon such invested portion shall be credited to the fund and used for the same purposes and in the same manner as other moneys in the fund. Such moneys may be invested in the types of investments authorized in sections 24-36-109, 24-36-112, and 24-36-113, C.R.S.

(2) In addition, such moneys may be invested in notes and loans secured by first mortgages or first deeds of trust on real property located in Colorado and guaranteed by government or private insurance or in nonconvertible corporate notes and bonds and equipment trust certificates of United States domestic corporations rated investment grade by a recognized security rating service.

8-51-112. Last employer liable - exception. (1) Where compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of such disease and the insurance carrier, if any, on the risk when such employee was last so exposed under such employer shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier. In the case of silicosis, asbestosis, or anthracosis, the only employer and insurance carrier liable shall be the last employer in whose employment the employee was last exposed to harmful quantities of silicon dioxide (SiO₂) dust, asbestos dust, or coal dust on each of at least sixty days or more and the insurance carrier, if any, on the risk when the employee was last so exposed under such employer.

(2) In any case where an employee of an employer becomes disabled from silicosis, asbestosis, anthracosis, or poisoning or disease caused by exposure to radioactive materials, substances, or machines or to fissionable materials, or any type of malignancy caused thereby, or in the event death results from silicosis, asbestosis, anthracosis, or poisoning or disease caused by exposure to radioactive materials, substances, or machines or to fissionable materials, or any type of malignancy caused thereby, and, if such employee has been injuriously exposed to such diseases while in the employ of another employer during his lifetime, the last employer or his insurance carrier, if any, shall be liable only for compensation and medical benefits as provided by articles 40 to 54 of this title, including funeral expenses and death benefits, up to the amount of ten thousand dollars. In addition to such benefits, such employee or, in the event of death, his dependents shall receive additional benefits equivalent to the difference between the amount paid by the last employer or his insurance carrier, if any, and the total amount of benefits payable under said articles. Such additional benefits shall be paid out of the subsequent injury fund created by the provisions of section 8-51-106.

8-51-113. Waiver of compensation by employee - approval required - exception. No waiver of compensation or medical benefits by an employee for aggravation of any preexisting condition or disease shall be allowed under articles 40 to 54 of this title. This section, however, shall not invalidate any such waiver so filed and approved prior to March 1, 1977, under the provisions of the "Colorado Occupational Disease Disability Act", which is repealed effective September 1, 1975.

ARTICLE 52 General Provisions

8-52-101. Loaning employer liable for compensation. Where an employer, who has accepted the provisions of articles

40 to 54 of this title and has complied therewith, loans the service of any of his employees who have accepted the provisions of said articles to any third person, he shall be liable for any compensation thereafter for any injuries or death of said employee as provided in said articles, unless it appears from the evidence in said case that said loaning constitutes a new contract of hire, express or implied, between the employee whose services were loaned and the person to whom he was loaned.

8-52-102. Conditions of recovery. (1) The right to the compensation provided for in articles 40 to 54 of this title, in lieu of any other liability to any person for any personal injury or death resulting therefrom, shall obtain in all cases where the following conditions occur:

(a) Where, at the time of the injury, both employer and employee are subject to the provisions of said articles and where the employer has complied with the provisions thereof regarding insurance;

(b) Where, at the time of the injury, the employee is performing service arising out of and in the course of his employment;

(c) Where the injury or death is proximately caused by an injury or occupational disease arising out of and in the course of his employment and is not intentionally self-inflicted.

(2) Where the claim is by reason of mental or emotional stress, or by reason of injuries or death caused by or resulting from mental or emotional stress, said right to compensation shall obtain only in those cases where all of the following additional conditions occur:

(a) The claim of emotional or mental stress must be proven by evidence supported by the testimony of a licensed physician or psychologist;

(b) The emotional or mental stress which is the basis of the claim must have arisen primarily from the claimant's then occupation and place of employment;

(c) The claim of emotional or mental stress cannot be based, in whole or in part, upon facts and circumstances that are common to all fields of employment; and

(d) The emotional or mental stress which is the basis of the claim must be, in and of itself, either sufficient to render the employee temporarily or permanently disabled from pursuing the occupation from which the claim arose or to require medical or psychological treatment.

8-52-103. Compensation in lump sum. (1) At any time after six months have elapsed from the date of injury, the director, in the exercise of his discretion, after five days' prior notice to the parties, may order payment of all or any part of the compensation awarded in a lump sum, or in such manner as he may determine to be for the best interests of the parties concerned, and his discretion so exercised shall be final and not subject to review. When payment in a lump sum is ordered, the director shall fix the amount to be paid based on the present worth of partial payments, considering interest at four percent per annum, and less deductions for contingencies of death and remarriage.

(2) The aggregate of all lump sums granted to a claimant who has been awarded compensation by the director for permanent total disability or death benefits shall not exceed twenty-six thousand two hundred ninety-two dollars. In case of permanent partial disability, the director shall order payment upon application by the employee not to exceed thirty-seven thousand five hundred sixty dollars to be paid based on the present worth of partial payments, considering interest at four percent per annum.

8-52-104. Acts of employees reducing compensation. (1) The compensation provided for in articles 40 to 54 of this title shall be reduced fifty percent:

(a) Where injury is caused by the willful failure of the employee to use safety devices provided by the employer;

(b) Where injury results from the employee's willful failure to obey any reasonable rule adopted by the employer for the safety of the employee;

(c) Where injury results from the intoxication of the employee. When an employee has a 0.10 or more grams of alcohol per one hundred milliliters of blood or 0.10 or more grams of alcohol per two hundred ten liters of breath as shown by chemical analysis, it shall be presumed that he was intoxicated and that the injury was due to such intoxication. This presumption may be overcome by clear and convincing evidence.

8-52-104.5. Limitations on payments to prisoners. The compensation provided for in articles 40 to 54 of this title shall not be paid to any individual for any week during which such individual is confined in a jail or prison following conviction unless such compensation is received pursuant to sections 8-51-104, 8-51-107, or 8-51-108 and unless he assigns such compensation to his spouse or minor children. If upon appeal such conviction is overturned, the benefits suspended shall be reinstated.

8-52-105. Notice of injury - time limit. (1) Notice of

an injury, for which compensation and benefits are payable, shall be given by the employer to the division within ten days after the injury, and, in case of the death of any employee resulting from any such injury or any accident in which three or more employees are injured, the employer shall give immediate notice thereof to the director. If no such notice is given by the employer, as required by articles 40 to 54 of this title, such notice may be given by any person. Any notice required to be filed by an injured employee or, if deceased, by his dependents may be made and filed by anyone on behalf of such claimant and shall be considered as done by such claimant if not specifically disclaimed or objected to by such claimant in writing filed with the division within a reasonable time. Such notice shall be in writing and upon forms prescribed by the division for that purpose and served upon the division by delivering to, or by mailing by registered mail two copies thereof addressed to, the division at its office in Denver, Colorado. Upon receipt of such notice from a claimant, the division shall immediately mail one copy thereof to said employer, his agent, or his insurance carrier.

(2) The director shall have jurisdiction at all times to hear and determine and make findings and awards on all cases of injury for which compensation or benefits are provided by articles 40 to 54 of this title. Except in cases of disability or death resulting from exposure to radioactive materials, substances, or machines or to fissionable materials, or any type of malignancy caused thereby, or from poisoning by uranium or its compounds, or from asbestosis, silicosis, and anthracosis, the right to compensation and benefits provided by said articles shall be barred unless, within three years after the injury or after death resulting therefrom, a notice claiming compensation is filed with the division. This limitation shall not apply to any claimant to whom compensation has been paid or if it is established to the satisfaction of the director within five years after the injury or death that a reasonable excuse exists for the failure to file such notice claiming compensation and if the employer's rights have not been prejudiced thereby, and the furnishing of medical, surgical, or hospital treatment by the employer shall not be considered payment of compensation or benefits within the meaning of this section; but, in all cases in which the employer has been given notice of an injury and fails, neglects, or refuses to report said injury to the division as required by the provisions of said articles, this statute of limitations shall not begin to run against the claim of the injured employee or his dependents in the event of his death until the required report has been filed with the division.

(3) In cases of disability or death resulting from exposure to radioactive materials, substances, or machines or to fissionable materials, or any type of malignancy caused

thereby, or from poisoning by uranium or its compounds, or from asbestosis, silicosis, or anthracosis, the right to compensation and benefits shall be barred unless, within five years after the commencement of disability or death, a notice claiming compensation is filed with the division.

8-52-106. Disability beginning five years after injury. Any disability beginning more than five years after the date of injury shall be conclusively presumed not to be due to the injury, except in cases of disability or death resulting from exposure to radioactive materials, substances, or machines or to fissionable materials, or any type of malignancy caused thereby, or from poisoning by uranium or its compounds, or from asbestosis, silicosis, or anthracosis.

8-52-107. Assignability and exemption of claims - payment to employers - when. (1) Except for amounts due under court-ordered support, claims for compensation or benefits due under articles 40 to 54 of this title shall not be assigned, released, or commuted except as provided in said articles and shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy or recovery or collection of a debt, which exemption may not be waived.

(2) The power given in any power of attorney or other authority from any injured employee or the dependents of any killed employee purporting to authorize any other person to receive, be paid, or receipt for any compensation benefits awarded any such claimant shall be wholly void and illegal and of no force and effect; except that any employer who is subject to the provisions of articles 40 to 54 of this title and who, by separate agreement, working agreement, contract of hire, or any other procedure, continues to pay a sum in excess of the temporary total disability benefits prescribed by articles 40 to 54 of this title to any employee temporarily disabled as a result of any injury arising out of and in the course of his employment and has not charged the employee with any earned vacation leave, sick leave, or other similar benefits shall be reimbursed if insured by an insurance carrier or shall take credit if self-insured to the extent of all moneys that such employee may be eligible to receive as compensation or benefits for temporary partial or temporary total disability under the provisions of said articles, subject to the approval of the director.

(3) Such payments shall be paid directly to the employer during the period of time that such employer continues to pay a sum in excess of the temporary total disability benefits prescribed by articles 40 to 54 of this title and has not charged any earned vacation leave, sick leave, or other similar benefits to any employee so disabled and for so long as such employee is eligible for temporary disability benefits under the provisions of articles 40 to 54 of this title. The

payment of such moneys to an employer shall constitute the payment of compensation or benefits to the employee in accordance with the provisions of section 8-51-101.

(4) When the payment by an employer to any such disabled employee is reduced to a sum equal to or less than the temporary total disability benefits prescribed by articles 40 to 54 of this title, or when the employer has charged the employee with any earned vacation leave, sick leave, or other similar benefits for any reason, the rights of the employee to receive direct payment of any award for temporary partial or temporary total disability that he may be entitled to on and after the effective date of such reduction shall be reinstated in accordance with the provisions of articles 40 to 54 of this title.

(5) Any employer subject to the provisions of articles 40 to 54 of this title and otherwise qualifying for direct payment of employee benefits as provided in this section shall notify the division and the insurance carrier of his eligibility to receive such moneys. The director shall approve such direct payment after the filing of such information by the employer as the director may require.

(6) Nothing in this section shall be construed to limit in any way the right of any employee to full payment of any award which may be granted to him for permanent partial or permanent total disability under the provisions of said articles.

(7) Following an injury, any injured employee may authorize in writing the continuation of any payroll deduction which the employee had authorized or could have authorized before the injury, which authorization shall be legal and may be honored by the employer to the extent that proceeds of compensation of claims are available to the employer or are made available to the employer by his insurance carrier for this purpose until the authorization is revoked in writing by the injured employee.

(8) If any employer who pays to an injured employee a sum in excess of the temporary total disability benefits prescribed by articles 40 to 54 of this title and who has not charged the employee with any earned vacation leave, sick leave, or other similar benefits seeks to have assigned the compensation benefits otherwise due the injured employee as provided in this section, the employer shall notify the employee of said request at the same time he makes the request of the director or insurance carrier or both.

8-52-108. Negligence of stranger - election of remedies - subrogation - actions - compromise. (1) If any employee entitled to compensation under articles 40 to 54 of this title is injured or killed by the negligence or wrong of another not

in the same employ, such injured employee or, in case of death, his dependents, before filing any claim under this article, shall elect in writing whether to take compensation under said articles or to pursue his remedy against the other person. Such election shall be evidenced in such manner as the director may by rule or regulation prescribe. If such injured employee or, in case of death, his dependents elect to take compensation under said articles, the payment of compensation shall operate as and be an assignment of the cause of action against such other person to the state compensation insurance authority, medical disaster insurance fund, major medical insurance fund, or subsequent injury fund, if compensation is payable from said funds, and otherwise to the person, association, corporation, or insurance carrier liable for the payment of such compensation. Said insurance carrier shall not be entitled to recover any sum in excess of the amount of compensation for which said carrier is liable under said articles to the injured employee, but to that extent said carrier shall be subrogated to the rights of the injured employee against said third party causing the injury. If the injured employee elects to proceed against such other person, the state compensation insurance authority fund, medical disaster insurance fund, major medical insurance fund, subsequent injury fund, person, association, corporation, or insurance carrier, as the case may be, shall contribute only the deficiency, if any, between the amount of the recovery against such other person actually collected and the compensation provided by said articles in such case. The right of subrogation provided by this section shall apply to and include all compensation and all medical, hospital, dental, funeral, and other benefits and expenses to which the employee or his dependents are entitled under the provisions of said articles, including articles 65 and 66 of this title, or for which his employer or insurance carrier is liable or has assumed liability. Nothing in this section shall be construed as limiting in any way the right of the injured employee to elect to take compensation under articles 40 to 54 of this title and also proceed against the third party causing the injury to recover any damages in excess of the subrogation rights described in this section.

(2) Such a cause of action assigned to the state compensation insurance authority may be prosecuted or compromised by it. A compromise of any such cause of action by the employee or his dependents at an amount less than the compensation provided for by articles 40 to 54 of this title shall be made only with the written approval of the manager of the state compensation insurance authority fund, if the deficiency of compensation would be payable from the state compensation insurance authority fund, and otherwise with the written approval of the person, association, corporation, or insurance carrier liable to pay the same.

(3) If an employee is killed by the negligence or wrong

of another not in the same employ and the dependents of such employee entitled to compensation under articles 40 to 54 of this title are minors, such election to take compensation and the assignment of the cause of action against such other person and such notice of election to pursue a remedy against such other person shall be made by such minor or shall be made on his behalf by a parent of such minor or by his next friend or duly appointed guardian, as the director of the division of labor may determine by rule in each case.

8-52-109. Right to compensation operates as lien - interest on award. (1) The right of compensation granted by articles 40 to 54 of this title and any awards made thereunder shall have the same preference or lien without limit of amount against the assets of the employer or his insurer or both as may be allowed by law for a claim for unpaid wages for labor.

(2) Every employer or insurance carrier of an employer shall pay interest at the rate of eight percent per annum upon all sums not paid upon the date fixed by the award of the director for the payment thereof or the date the employer or insurance carrier became aware of an injury, whichever date is later. Upon application and satisfactory showing to the director of the valid reasons therefor, said director, upon such terms or conditions as he may determine, may relieve such employer or insurer from the payment of interest after the date of the order therefor; and proof that payment of the amount fixed has been offered or tendered to the person designated by the award shall be such sufficient valid reason.

8-52-110. Defaulting employer enjoined from continuing business. Any employer subject to the terms and provisions of articles 40 to 54 of this title who fails to insure or to keep the insurance required by said articles in force or who allows the same to lapse or fails to effect a renewal thereof shall not continue any of his business operations while such default in effective insurance continues. The director may institute the proper action to enjoin any such employer from continuing his business operations during any such default.

8-52-111. Attorneys assigned by director - fees.

Repealed, L. 83, p. 424, section 2, effective July 1, 1983.

8-52-112. Deposit on unpaid compensation or benefits - trust fund - surplus. (1) The director in his discretion at any time, any provisions in articles 40 to 54 of this title to the contrary notwithstanding, may compute and require to be paid to the division, to be held by it in trust, an amount equal to the present value of all unpaid compensation or other benefits in any case computed at the rate of four percent per annum. Such action may be taken after a finding by the director as to the insolvency, the threatened insolvency, or

any other condition or danger which may cause the loss of, or which has delayed or may impede, hinder, or delay prompt payment of, compensation or benefits by any insurance carrier or employer. The action and finding of the director shall not be subject to review, and the director shall not be required to give any notice of hearing or hold any hearing prior to taking such action or making its finding.

(2) All moneys so paid in shall constitute a separate trust fund in the office of the state treasurer, and, after any such payment is so ordered, the employer or insurance carrier shall thereupon be discharged from any further liability under such award for which payment is made to the extent of the payment made, and the payment of the award shall then be assumed to the extent of payment made by the special trust fund so created. If, for any reason, a beneficiary's right to the compensation awarded and ordered paid into said special trust fund ceases, lapses, or in any manner terminates by virtue of the terms and provisions of articles 40 to 54 of this title so that a surplus not surviving or accruing to any other beneficiary remains in said trust fund of the amount ordered paid into it on behalf of the beneficiary, the insurance carrier or employer who has made said payment shall be entitled to a refund of the present value of said surplus, if any, computed at the rate of four percent per annum. The state treasurer shall invest any portion of the special trust fund, including its surplus and reserves, which the director determines is not needed for immediate use.

8-52-113. Cost containment models and strategies - report to general assembly - repeal of section.

Repealed, L. 85, p. 357, section 1, effective July 1, 1986.

8-52-114. Report to general assembly. The director of the division, in conjunction with the director of the division dealing with rehabilitation in the department of social services, shall collect and analyze data concerning the impact of Senate Bill No. 79, enacted at the First Regular Session of the Fifty-sixth General Assembly on the vocational outcome of those injured employees previously offered services and shall report on such impact to the general assembly. The director of the division dealing with rehabilitation shall report to the general assembly on the impact of Senate Bill No. 79, enacted at the First Regular Session of the Fifty-sixth General Assembly upon the case load, the work load, and the budget of the division of rehabilitation.

8-52-115. Attorney fees. On contested cases, a contingent fee not exceeding twenty percent of the amount of contested benefits shall be presumed to be reasonable. At the request of either an employee or his attorney, the director may determine the reasonableness of the fee charged by such

attorney. In making this determination, the director shall consider fees normally charged by attorneys for cases requiring the same amount of time and skill and may decrease or increase the fee payable to such attorney. If the director finds that a review by the industrial claims appeals office or an appeal to the court of appeals or to the supreme court was perfected or if the director finds that such attorney reasonably devoted an extraordinary amount of time to the case, the director may award or approve a contingent fee or other fee in a percentage or amount that exceeds twenty percent of the amount of contested benefits.

ARTICLE 53
Hearing and Review Procedure

8-53-101. Disputes arising under "Workmen's Compensation Act of Colorado". The director and administrative law judges employed by the division of administrative hearings in the department of administration shall have original jurisdiction to hear and decide all matters arising under articles 40 to 54 of this title.

8-53-102. Notice concerning liability. (1) The employer or, if insured, his insurance carrier shall notify in writing the division and the injured employee or, if deceased, his dependents within twenty-five days after notice or knowledge of an injury to an employee which disables said employee for more than three shifts or three calendar days or results in permanent physical impairment or death of said employee, whether liability is admitted or contested; but, for the purpose of this section, any knowledge on the part of the employer, if insured, is not knowledge on the part of his insurance carrier. Where the employer's report of injury shows that the employee is temporarily disabled for three days or less and medical attention as provided by section 8-49-101, if required, has been afforded at the expense of the employer or the insurance carrier, then no admission or denial of liability need be filed until the employer or, if insured, his insurance carrier has knowledge of or notice of claim for compensation benefits and then within fifteen days from the date of such knowledge or notice.

(2) If such notice is not filed as provided in subsection (1) of this section, the employer or, if insured, his insurance carrier, as the case may be, may become liable to the claimant, if successful in his claim for compensation, for up to one day's compensation for each day's failure to so notify. Fifty percent of any penalty paid pursuant to this subsection (2) shall be paid to the subsequent injury fund and fifty percent to the claimant. If the employer or, if insured, his insurance carrier admits liability, such notice shall specify the amount of compensation to be paid, to whom compensation will be paid, the period for which compensation will be paid, and the disability for which compensation will

be paid, and payment thereon shall be made forthwith. An admission of liability for final payment of compensation shall include a statement that this is the final admission by the workmen's compensation insurance carrier in the case, that the claimant may contest this admission if he feels he is entitled to more compensation, to whom he should provide his written objection, and notice that if he does not contest the final admission in writing within sixty days of the date of the final admission the case will be automatically closed as to the issues admitted in the final admission. When the final admission is predicated upon medical reports, such reports shall accompany the final admission. Once a case is closed pursuant to this subsection (2), the issues closed may only be reopened pursuant to section 8-53-113. Upon proper showing in writing made within said times fixed therefor, the director may extend the time for filing such admission of liability or notice of contest, but not exceeding ten days at any one time. Hearings may be set to determine any matter, but, if any liability is admitted, payments shall continue according to admitted liability.

8-53-103. Hearings. (1) Hearings shall be held to determine any controversy concerning any issue arising under articles 40 to 54 of this title. In connection with hearings, the director and administrative law judges are empowered to:

(a) In the name of the division, issue subpoenas for witnesses and documentary evidence which shall be served in the same manner as subpoenas in the district court;

(b) Administer oaths;

(c) Make evidentiary rulings;

(d) Limit or exclude cumulative or repetitive proof or examination;

(e) Upon written motion and for good cause shown, permit parties to cause depositions to be taken. The director or administrative law judge may impose the sanctions provided in the rules of civil procedure in the district courts for willful failure to comply with permitted discovery.

(f) Upon written motion and for good cause shown, conduct prehearing conferences for the settlement or simplification of issues;

(g) Dispose of procedural requests upon written motion or on written briefs or oral arguments as determined appropriate;

(h) Control the course of the hearing and the conduct of persons in the hearing room;

(i) Upon written motion and for good cause shown, grant reasonable extensions of time for the taking of any action contained in this article;

(j) Upon good cause shown, adjourn any hearing to a later date for the taking of additional evidence; and

(k) Issue orders.

(l) Appoint guardians ad litem, as appropriate, in matters involving dependents' claims, and assess the reasonable fees and costs, therefore, from one or more of the parties.

(m) Determine the competency of witnesses who testify in a workmen's compensation hearing or proceeding and the competency of parties that have entered into settlement agreements pursuant to section 8-53-105. Such competency determinations shall only be for the purpose of the particular workmen's compensation proceeding.

(n) Once an application for hearing is filed by the claimant or respondent, whether or not an actual hearing has occurred, dismiss all issues indicated on the application for hearing except as to resolved issues and except as to benefits already received, upon thirty days notice to all the parties, for failure to prosecute the case unless good cause is shown why such issues should not be dismissed. For purposes of this paragraph (n), it shall be deemed a failure to prosecute if there has been no activity by the parties in the case for a period of at least six months.

8-53-104. Director may refer cases - special administrative law judges. The director may refer any case to any district or county judge or other person in this state as special administrative law judge for the purpose of taking evidence, and such special administrative law judge, after notice to the parties in interest, may hold hearings and issue subpoenas for such purpose and, in case such hearing is held by him, shall reduce all evidence so taken to writing and certify to and return the same to the director, and such evidence may be used by the director or any administrative law judge of the division in making or entering the findings and award of the director. The director, after notice to the parties in interest, may refer the taking of any evidence to any commission, court, or board administering in another state the compensation laws thereof, and such commission, court, or board of such other state, after notifying the parties in interest of the time and place of holding such hearing, shall hold hearings and take such evidence in the same manner and by the officers as authorized by the laws of such state, and all such proceedings shall be certified and return thereof made as prescribed by the director of the division of labor.

8-53-105. Settlements. An injured employee may settle all or part of his claim for compensation, benefits, penalties, or interest. If such settlement provides by its terms that his claim or award shall not be reopened, such settlement shall not be subject to being reopened under any provisions of articles 40 to 54 of this title other than on the ground of fraud or mutual mistake of material fact. Such a settlement shall be in writing and shall be signed by a representative of the employer or insurer and signed and sworn to by the injured employee. The settlement shall be reviewed in person with the injured employee and approved in writing by an administrative law judge or the director of the division prior to the finalization of such settlement. The settlement shall be filed with the division as a part of the injured employee's permanent record.

8-53-106. Transcripts. (1) All testimony and argument of all hearings held pursuant to section 8-53-103 concerning any issue arising under articles 40 to 54 of this title shall either be taken verbatim by a hearing reporter or shall be electronically recorded by the division.

(2) Any party in interest may order a transcript at any time from a hearing reporter or, if the hearing is recorded, from the division. For purposes of a petition to review, a transcript shall be all testimony taken which is relevant to the issue being appealed. In the preparation of transcripts, hearing reporters shall give preference to transcripts as part of the record in a petition to review. Hearing reporters shall be paid for transcripts and copies at the rate set by the supreme court for reporters in courts of record.

(3) Upon a satisfactory showing to the director in writing that a party petitioning to review is indigent and unable to pay for the preparation of the transcript, the director may order a transcript to be prepared at the division's expense, and, if the transcript was prepared by a hearing reporter, the division shall pay the hearing reporter the fee therefor.

(4) When a transcript is ordered as part of the record on a petition to review, the original of the transcript shall be filed with the division where it shall be available to all parties in interest.

8-53-107. Transcript certified - evidence. A transcribed copy of the evidence and proceedings, or any specific part thereof, of any investigation or hearing which was prepared at the direction of the director shall be certified by the hearing reporter, or the division if the hearing was recorded, to be a true and correct transcript of the testimony on the investigation or hearing of a particular witness, or a specific part thereof, carefully compared to original notes or to the original recording, and to be a

correct statement of the evidence and proceedings had on such investigation or hearing. A transcribed copy which is so certified may be received as evidence by the director, the panel, and any court with the same effect as if the person who prepared the transcript were present and testified to the facts so certified.

8-53-108. Compulsion of testimony. When any person upon whom a subpoena issued in the name of the division has been served fails or refuses to appear, the party who requested the subpoena may apply to the district court in the county in which the person served resides, for an order compelling attendance before the division of the witness or the production of the documents subpoenaed. Violation of such an order shall be treated as contempt of the court issuing the order.

8-53-109. Notice - request for hearing. (1) At least twenty days prior to any hearing, the division shall send written notice to all parties by regular mail. The notice shall:

(a) Repealed, L. 86, p. 540, sections 54, 55, effective July 1, 1987.

(b) Give the time, date, and place of the hearing;

(c) Inform the parties that they must be prepared to present their evidence concerning the issues to be heard;

(d) Inform the parties that they have the right to be represented by an attorney or other counsel at the hearing.

(2) Hearings shall be set by the division when any of the following occur:

(a) The director, upon his own motion, sets any issue for hearing. The director may expedite the hearing for good cause shown.

(b) Any party requests a hearing by filing a written request with the division on forms provided by the division. Such request shall be mailed to all parties at the time they are filed with the division. After the filing of such requests, the division shall set the matter for hearing insofar as is practicable in the order in which requests are received by the division.

(c) Any party or the attorney of such party sends notice to set a hearing to opposing parties or their attorneys. The director shall determine the place and time or times during which settings can be made. At such setting, the party requesting the setting shall submit a completed request for hearing form. Any notice to set shall be mailed to opposing

parties at least ten days prior to the setting date.

8-53-110. Orders. After the conclusion of a hearing, the administrative law judge shall make a summary order allowing or denying said claim without being required to make specific findings of fact. If compensation benefits are granted, it shall be sufficient to specify the amounts thereof, the disability for which compensation benefits are granted, by whom and to whom such benefits shall be paid, and the method and time of such payments. Such order of the administrative law judge shall be in writing; a certificate of mailing and a copy of such order shall be mailed to each of the parties in interest, the original of which shall be a part of the records in said case. Said order shall be entered as the final award of the director subject to review as provided in this article. Any party dissatisfied with a summary order may request specific findings of fact and conclusions of law in writing within twenty days after the date of the certificate of mailing of the summary order. Such request shall be a prerequisite to a petition to review under section 8-53-111, and such request shall stay the time within which to file a petition to review until after the mailing of the specific findings and conclusions. Thereafter, time limits shall be governed by section 8-53-111.

8-53-111. Petitions to review. (1) Any order, corrected order, or supplemental order is final unless a petition to review or appeal has been filed in accordance with this article.

(1.1) Any party dissatisfied with an order which requires any party to pay a penalty or benefits or denies a claimant any benefit or penalty may file a petition to review with the director, if the order was entered by the director, or with the administrative law judge at the place indicated in the order, if the order was entered by the administrative law judge, and serve the same by mail on all the parties. Such petition shall be filed within twenty days from the date of the certificate of mailing of the order, and, unless so filed, such order shall be final. The petition to review may be filed by mail and shall be deemed filed upon the date of mailing as determined by the certificate of mailing. The petition to review shall be in writing and shall set forth in detail the particular errors and objections of the petitioner. A petitioner shall, at the same time, order any transcript relied upon for his petition to review, arrange with the hearing reporter to pay for the same, and notify opposing parties of the transcript ordered. Opposing parties shall have twenty days from the date of the certificate of mailing of the petition to review to order any other transcript not ordered by the petitioner and arrange with the hearing reporter to pay for the same.

(2) If transcripts of hearings are ordered as part of

the record in a petition to review, the director or administrative law judge cannot rule on the petition until the transcripts are lodged with the division.

(3) When the record upon which a petition to review has been filed is complete, the parties shall be notified in writing. The petitioner shall have twenty days after the date of the certificate of mailing of the notice to file a brief in support of the petition. The opposing parties shall have twenty days after the date of the certificate of mailing of the petitioner's brief to file briefs in opposition thereto. After the briefs are filed or the time for filing has run, the director or administrative law judge shall have thirty days to enter a supplemental order or transmit the file to the industrial claim appeals office for review.

(4) In ruling on a petition to review, the director or administrative law judge may issue a supplemental order labeled as such limited to the matters raised in the petition to review, and, as to those matters, he may amend or alter the original order or set the matter for further hearing. In any event, if it has not already been done, the administrative law judge or director, following a petition to review an order, shall make findings of fact and conclusions of law necessary to support such order.

(5) A party dissatisfied with a supplemental order may file a petition for review by the panel. Such petition shall be filed with the division within twenty days from the date of the certificate of mailing of the supplemental order. The petition shall be in writing, shall set forth in detail the particular errors and objections relied upon, and shall be accompanied by a brief in support thereof. The petition and brief shall be mailed by petitioner to all other parties at the time the petition is filed. All parties, except the petitioner, shall be deemed opposing parties and shall have twenty days from the date of the certificate of mailing of the petition and brief to file with the division briefs in opposition to the petition.

(6) When any petition for review by the panel is filed, the division shall, when all briefs are submitted to it or within fifteen days of the date briefs were due, certify and transmit the record to the industrial claim appeals office along with the petitions and briefs. The division shall simultaneously send notice to the parties including the date that the record has been transmitted to the industrial claim appeals office.

(7) The industrial claim appeals office shall have sixty days after receipt of the certified record to enter its order. The panel may issue a summary order affirming the order of the administrative law judge or director. The panel may correct, set aside, or remand any order but only upon the following

grounds: That the findings of fact are not sufficient to permit appellate review; that conflicts in the evidence are not resolved in the record; that the findings of fact are not supported by the evidence; that the findings of fact do not support the order; or that the award or denial of benefits is not supported by applicable law. If the findings of fact entered by the director or administrative law judge are supported by substantial evidence, they shall not be altered by the panel.

(7.1) The panel shall have the power to issue such procedural orders as may be necessary to carry out its appellate review under section 8-53-111 (7), including but not limited to, orders concerning completion of the record and filing of briefs. In those cases where the parties file a stipulated motion requesting that consideration of the appeal be deferred pending ongoing settlement negotiations, the panel may extend the time for entry of its order up to a maximum of thirty days.

(8) The panel's order shall be mailed to all parties of record. Any party dissatisfied with the panel's order shall have twenty days after the date of the certificate of mailing of such order to file an appeal with the court of appeals.

(9) If the panel has failed to enter its order within sixty days of the receipt of the certified record, the order of the director or administrative law judge shall be deemed the order of the panel and final unless, within thirty days after the end of the sixty-day period, the petitioner files an appeal with the court of appeals. If the panel has not acted on the sixtieth day, the industrial claim appeals office shall send a written notice to all parties stating that the parties have thirty days after the date of the certificate of mailing of the notice to file such an appeal.

(10) If a petition to review is filed, a hearing may be held and orders entered on any other issue in the case during the pendency of the petition to review. If the order which is under petition to review concerns compensability, orders entered on these later issues are final and appealable when entered, but not enforceable until the review of the order on compensability is completed.

(11) If the order which is under petition to review does not concern compensability, but concerns the respective liability of two or more employers or insurance carriers, and the injury or illness was found compensable in a hearing held pursuant to section 8-53-110, the employer or insurance carrier found liable by the director or administrative law judge shall pay benefits in accordance with the order under review until the review process is completed, at which time it shall be reimbursed by the other employer or carrier if reimbursement is necessary to comply with the final order.

8-53-112. Corrected orders. (1) The director or administrative law judge, on his own motion, or the panel, on its own motion, may issue a corrected order:

(a) At any time within thirty days after the entry of an order, to correct any clerical errors in the order. Clerical errors are grammatical or computational errors.

(b) At any time within thirty days of the entry of an order, to correct any errors caused by mistake or inadvertence.

(2) Any order corrected for clerical error, mistake, or inadvertence shall be labeled "corrected order" and mailed by the division. Any corrected order may be appealed in the manner provided in this article for any other order.

8-53-113. Reopening. (1) At any time within six years from the date of injury the director or an administrative law judge may, after notice to all parties, review and reopen any award on the ground of an error, a mistake, or a change in condition, except for those settlements entered into pursuant to section 8-53-105 in which the claimant waived his right to reopen an award; but a settlement may be reopened at any time on the ground of fraud or mutual mistake of material fact. If an award is reopened, compensation and medical benefits previously ordered may be ended, diminished, maintained, or increased. No such reopening shall affect the earlier award as to moneys already paid. Any order entered under this subsection (1) shall be subject to review in the same manner as other orders.

(2) (a) At any time within two years after the date the last temporary or permanent disability benefits or dependent benefits excluding medical benefits become due or payable, the director or an administrative law judge may, after notice to all parties, review and reopen an award on the ground of an error, a mistake, or a change in condition, except for those settlements entered into pursuant to section 8-53-105 in which the claimant waived his right to reopen an award; but a settlement may be reopened at any time on the ground of fraud or mutual mistake of material fact. If an award is reopened under this paragraph (a), compensation and medical benefits previously ordered may be ended, diminished, maintained, or increased. No such reopening shall affect the earlier award as to moneys already paid. Any order entered under this paragraph (a) shall be subject to review in the same manner as other orders.

(b) At any time within two years after the date the last medical benefits become due and payable, the director or an administrative law judge may, after notice to all parties, review and reopen an award only as to medical benefits on the ground of an error, a mistake, or a change in condition,

except for those settlements entered into pursuant to section 8-53-105 in which the claimant waived his right to reopen an award; but a settlement may be reopened at any time on the ground of fraud or mutual mistake of material fact. If an award is reopened under this paragraph (b), medical benefits previously ordered may be ended, diminished, maintained, or increased. No such reopening shall affect the earlier award as to moneys already paid. Any order entered under this paragraph (b) shall be subject to review in the same manner as other orders.

8-53-114. Final orders.

Repealed, L. 88, p. 383, section 16, effective June 11, 1988.

8-53-115. Evidence. The rules of evidence of the district courts shall apply in all hearings; except that medical and hospital records, physicians' reports, vocational reports, and records of the employer are admissible as evidence and can be filed in the record as evidence without formal identification if relevant to any issue in the case. Depositions may be substituted for testimony upon good cause shown.

8-53-116. Violations - penalty. Any employer or insurer, or any officer or agent of either, or any employee, or any other person who violates any provision of articles 40 to 54 of this title, or does any act prohibited thereby, or fails or refuses to perform any duty lawfully enjoined within the time prescribed by the director or panel, for which no penalty has been specifically provided, or fails, neglects, or refuses to obey any lawful order made by the director or panel or any judgment or decree made by any court as provided by said articles shall be punished by a fine of not more than one hundred dollars for each such offense.

8-53-117. Each day separate offense. Every day during which any employer or insurer, or officer or agent of either, or any employee, or any other person fails to comply with any lawful order of the director or panel or fails to perform any duty imposed by articles 40 to 54 of this title shall constitute a separate and distinct violation thereof. In any action brought to enforce the same or to enforce any penalty provided for in said articles, such violation shall be considered cumulative and may be joined in such action.

8-53-118. Collection of fines and penalties. (1) A certified copy of any final order of the director or an administrative law judge ordering the payment of any penalty pursuant to articles 40 to 54 of this title may be filed with the clerk of the district court of any county in this state at any time after the period of time provided by articles 40 to 54 of this title for appeal or seeking review of the order has

passed without appeal or review being sought or, if appeal or review is sought, after the order has been finally affirmed and all appellate remedies and all opportunities for review have been exhausted. The party filing the order shall at the same time file his certificate to the effect that the time for appeal or review has passed without appeal or review being undertaken or that the order has been finally affirmed with all appellate remedies and all opportunities for review having been exhausted. The clerk of the district court shall record the order and the filing party's certificate in the judgment book of said court and entry thereof made in the judgment docket, and it shall thenceforth have all the effect of a judgment of the district court, and execution may issue thereon out of said court as in other cases. Any such order may be filed by and in the name of the director or by and in the name of the party in the worker's compensation action who was injured by the violation of any provision of articles 40 to 54 of this title.

(2) All such penalties when collected shall be payable to the division and transmitted through the state treasurer for credit to the subsequent injury fund.

8-53-119. Appeals to the court of appeals. (1) Any person in interest, including the state compensation insurance authority, being dissatisfied with any final order of the panel, may commence an action in the court of appeals against the industrial claim appeals office as defendant to modify or vacate any such order on the grounds set forth in section 8-53-120.

(2) All such actions shall have precedence over any civil cause of a different nature pending in such court, and the court of appeals shall always be deemed open for the trial thereof, and such actions shall be tried and determined by the court of appeals in the manner provided for other civil actions.

(3) All such actions shall be commenced by service of a copy of the petition upon the industrial claim appeals office and filing the same with the court of appeals. The petition shall state the grounds upon which the review is sought and shall also be served upon all other parties. After the filing of a petition for review in the court of appeals, such action shall be conducted in the manner prescribed by the Colorado appellate rules.

8-53-120. Causes for setting aside award. Upon hearing the action, the court of appeals may affirm or set aside such order, but only upon the following grounds: That the findings of fact are not sufficient to permit appellate review; that conflicts in the evidence are not resolved in the record; that the findings of fact are not supported by the evidence; that the findings of fact do not support the order; or that the

award or denial of benefits is not supported by applicable law. If the findings of fact entered by the director or administrative law judge are supported by substantial evidence, they shall not be altered by the court of appeals.

8-53-121. Actions in court tried within thirty days. Any such action commenced in the court of appeals to set aside or modify any order shall be heard within thirty days after issue shall be joined, unless continued on order of the court for good cause shown. No continuance shall be for longer than thirty days at one time.

8-53-122. Error disregarded unless prejudicial. The appeal shall be upon the record returned to the court by the industrial claim appeals office. Upon the hearing of any such action, the court shall disregard any irregularity or error of the director or the panel unless it affirmatively appears that the party complaining was damaged thereby.

8-53-123. Court record transmitted to industrial claim appeals office - when. It is the duty of the clerk of the court of appeals, without order of court or application of the panel, to transmit the record in any case to the industrial claim appeals office within twenty-five days after the order or judgment of the court unless in the meantime further appellate review is granted by the supreme court. If the supreme court grants further appellate review, the clerk shall return the record immediately upon receipt of remittitur from the supreme court, unless the order of the supreme court requires further action by the court of appeals, and then within twenty-five days after such further action.

8-53-124. Court may remand case or order entry of award. Upon setting aside of any order, the court may recommit the controversy and remand the record in the case for further hearing or proceedings by the director, administrative law judge, or panel, or it may order entry of a proper award upon the findings as the nature of the case shall demand. In no event shall such order for award be for a greater amount of compensation than allowed by articles 40 to 54 of this title, or in any manner conflict with the provisions thereof.

8-53-125. Summary review by supreme court. Any affected party dissatisfied with the decision of the court of appeals may seek review in the supreme court. If the supreme court reviews the judgment of the court of appeals, such review shall be limited to a summary review of questions of law. Any such action shall be advanced upon the calendar of the supreme court, and a final decision shall be rendered within sixty days after the date the supreme court grants further appellate review. The director, the industrial claim appeals office, or any other aggrieved party shall not be required to file any undertaking or other security upon review by the supreme court.

8-53-126. Fees - costs - duty of district attorneys and attorney general. No fee shall be charged by the clerk of any court for the performance of any official service required by articles 40 to 54 of this title. On proceedings to review any order or award, costs as between the parties shall be allowed in the discretion of the court, but no costs shall be taxed against said director or industrial claim appeals office. In any action for the review of any order or award and upon any review thereof by the supreme court, it is the duty of the district attorney in the county wherein said action is pending, or of the attorney general if requested by the director or industrial claim appeals office, to appear on behalf of either or both, whether any other party defendant should have appeared or been represented in the action.

8-53-127. Witnesses and testimony - mileage - fees - costs. The director or any agent, deputy, or referee of the division has the power to issue subpoenas to compel the attendance of witnesses or parties and the production of books, papers, or records and to administer oaths. Any person who serves a subpoena shall receive the same fee as the sheriff. Each witness who is subpoenaed on behalf of the director and who appears in obedience thereto shall receive for his attendance the fees and mileage provided for witnesses in civil cases in the district court, which shall be audited and paid from the state treasury in the same manner as other expenses are audited and paid, upon the presentation of a proper voucher approved by the director. The director, in his discretion, may assess the cost of attendance and mileage of witnesses subpoenaed by either party to any proceeding against the other party to such proceeding when, in his judgment, the necessity of subpoenaing such witnesses arises out of the raising of any incompetent, irrelevant, or sham issues by such other party.

8-53-128. Attorney general, district attorney, or attorney of division to act for director or office. Upon the request of the director or the industrial claim appeals office, the attorney general or the district attorney of any district or any attorney-at-law in the regular employ of the division shall institute and prosecute the necessary actions or proceedings for the enforcement of any of the provisions of articles 40 to 54 of this title, or any award or order of the director or the industrial claim appeals office, or for the recovery of any money due the state compensation insurance authority fund, or any penalty provided in said articles, and shall defend in like manner all suits, actions, or proceedings brought against the director or industrial claim appeals office.

8-53-129. False statement - felony. If, for the purpose of obtaining any order, benefit, award, compensation, or payment under the provisions of articles 40 to 54 of this title, either for himself or for any other person, anyone

willfully makes a false statement or representation material to the claim, he commits a class 4 felony and shall be punished as provided in section 18-1-105, C.R.S., and shall forfeit all right to compensation under said articles upon conviction of such offense.

ARTICLE 54

State Compensation Insurance Authority

8-54-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Board" means the board of directors of the state compensation insurance authority.

(2) "Manager" means the manager of the state compensation insurance authority fund appointed by the board of directors of said authority.

8-54-102. State compensation insurance authority fund created - control of fund. (1) There is hereby created in the state treasury a fund, to be known as the state compensation insurance authority fund, for the benefit of injured and the dependents of killed employees, which shall be administered in accordance with the provisions of this article by the board. Such administration shall be without liability on the part of the state, beyond the amount of said fund, constituted as provided in this article.

(2) The manager is vested with full power and jurisdiction over the administration of the state compensation insurance authority fund and may appoint such subordinate officers as may be necessary for the efficient operation of the state compensation insurance authority and may do and perform all things, whether specifically designated in this article or, in addition thereto, which are necessary or convenient in the exercise of any power or jurisdiction over said fund in the administration thereof under the provisions of this article as fully and completely as the head of a private insurance company might or could do, subject, however, to all the provisions of this article.

(3) Control of all moneys in the state compensation insurance authority fund shall be transferred to the board, which shall administer the fund and use such moneys for the purposes of this article.

(4) The state compensation insurance authority fund shall be a continuing fund and shall consist of all premiums received and paid into said fund for compensation insurance, all property and securities acquired by and through the use of moneys belonging to said fund, and all interest earned upon moneys belonging to said fund and deposited or invested as provided in section 8-54-122. Said fund shall be applicable

to the payment of the salaries of the employees of the fund and to its other operating expenses and to the payment of losses sustained or liabilities incurred under the contracts or policies of insurance issued by said state compensation insurance authority fund in accordance with the provisions of articles 40 to 54 of this title. All moneys in the fund previously known as the state compensation insurance fund shall be transferred into the state compensation insurance authority fund on July 1, 1987.

(5) The moneys in the state compensation insurance authority fund shall be continuously available for the purposes of this article and shall not be transferred to or revert to the general fund of the state at the end of any fiscal year.

8-54-102.5. State compensation insurance authority - creation - powers and duties. (1) There is hereby created the state compensation insurance authority which shall be a body corporate and a political subdivision of the state. The authority shall not be an agency of state government, nor shall it be subject to administrative direction by any state agency except as provided in this article, and except for the purposes of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., and except for inclusion in the risk management fund and by the division of risk management as provided in part 15 of article 30 of title 24, C.R.S.

(2) The powers of the authority shall be vested in the board of directors of the state compensation insurance authority, which shall have six members. The executive director of the department of labor and employment shall be a member. The remaining five members of the board shall be appointed by the governor with the consent of the senate. Of those five members, three shall be employers whose liability under articles 40 to 54 of this title is insured by the state compensation insurance authority, one shall be an employer who is a farmer or rancher whose liability under articles 40 to 54 of this title is insured by the state compensation insurance authority, and one shall be either an employee of an employer whose liability is so insured or an interested citizen. Of the employer members appointed to the board, the employer member who is a farmer or rancher shall be appointed for a term expiring January 1, 1991, one employer member shall be appointed for a term expiring January 1, 1988, one employer member shall be appointed for a term expiring January 1, 1989, and one employer member shall be appointed for a term expiring January 1, 1990. The member who is an employee or an interested citizen shall be appointed for a term expiring January 1, 1991. Thereafter, the term of office for each such member shall be five years. The initial appointees shall serve on a temporary basis until the senate is in session and is able to confirm such appointments. Vacancies on the board shall be filled by appointment of the governor for the

remainder of any unexpired terms. The board shall elect a chairman annually from its membership.

(3) Members of the board, except for the executive director of the department of labor and employment, shall be compensated one hundred forty dollars per diem plus their actual and necessary expenses. Per diem compensation, not to exceed thirty days in any calendar year, shall be paid only when the board is transacting official business. Such per diem shall be paid out of the state compensation insurance authority fund upon vouchers drawn by the manager in the same manner as the normal operating expenses of such fund are paid.

(4) On and after July 1, 1987, the powers, duties, and functions formerly exercised by the state compensation insurance fund may be exercised by the state compensation insurance authority.

(5) The board shall:

(a) Appoint the manager of the state compensation insurance authority fund who shall serve under contract and appoint, hire, or delegate the authority to hire such other staff as may be necessary to carry out the duties of the state compensation insurance authority;

(b) Develop and approve an annual budget;

(c) Establish general policies and procedures for the operation and administration of the state compensation insurance authority fund and matters in connection therewith;

(d) Promulgate reasonable rules and regulations pertaining to the operation of the state compensation insurance authority fund;

(e) Promulgate rules and regulations that establish the basis by which employer premiums payable to the state compensation insurance authority fund are determined;

(f) Review and streamline administrative procedures;

(g) Oversee the operations and make necessary personnel changes;

(h) Review the investigative procedures and implement changes to expedite investigations;

(i) Review and recommend legislation pertaining to workmen's compensation in articles 40 to 54 of this title and to clarify legal concepts related thereto;

(j) Review the method of calculation of the experience modification factor with the object of providing maximum

incentives for job safety and submit recommendations to the board for consideration in setting and approving rates; and

(k) Establish general policies and procedures by rule and regulation concerning medical care cost containment practices under articles 40 to 54 of this title.

(6) Article 4 of title 24, C.R.S., shall not apply to the promulgation of any policies, procedures, and rules and regulations authorized by subsection (5) of this section.

(7) (a) The board is authorized to contract with the department of labor and employment through the state personnel board pursuant to section 13 (4) of article XII of the state constitution for personnel to provide administrative support services, including, but not limited to, data processing. The board may also contract with the private sector.

(b) The board is authorized to contract with the department of labor and employment or the department of administration for information processing and administrative support services other than personnel for carrying out the functions authorized in this article.

(8) The board may expend reasonable amounts for the rent of quarters furnished by the department of labor and employment or from private sources for use in the administration of the state compensation insurance authority fund.

(9) Any person who was an employee of the division of the state compensation insurance fund on July 1, 1987, may elect on or after July 1, 1987, but before July 1, 1992, either to become an employee of the state compensation insurance authority or to continue to remain an employee of the department of labor and employment. If such person elects to become an employee of the authority, such person shall be exempt from the state personnel system, and, if a member of the public employees' retirement association, such person may continue membership in the association with all attendant rights and duties. All other employees of the authority shall be exempt from the state personnel system but shall, by acceptance of employment, be subject to the provisions of article 51 of title 24, C.R.S. The authority shall provide for the deduction of employer and employee contributions from salary and for payment to the association of such deductions and for any other payments which would be due from a state employer.

(10) Any person who was an employee of the division of the state compensation insurance fund on July 1, 1987, and who does not become an employee of the state compensation insurance authority before July 1, 1992, shall continue to be within the state personnel system and shall continue to be an

employee of the department of labor and employment if permitted under rules of the state personnel board. However, any employee who continues to perform duties or fulfill responsibilities for the benefit of the authority shall become an employee of the authority if that employee accepts a promotion, voluntary demotion, or transfer for purposes of a change of duties performed for the benefit of the authority. In such case, such person shall be exempt from the state personnel system, and, if such person is a member of the public employees' retirement association, such person may continue membership in the association with all attendant rights and duties. The authority shall provide for the deduction of employer and employee contributions from salary and for payment to the association of such deductions and for any other payments which would be due from a state employer.

8-54-103. Advisory council - powers and duties - sunset review.

Repealed, L. 86, p. 540, sections 54, 55, effective July 1, 1987.

8-54-104. Appointment of personnel - salaries.

Repealed, L. 86, p. 540, sections 54, 55, effective July 1, 1987.

8-54-104.5. Annual report. The manager shall submit an annual report to the governor and the joint budget committee of the general assembly reporting on the business operations, resources, and liabilities of the state compensation insurance authority fund.

8-54-105. Board to fix rates - manager to administer rates - sue and be sued - contracts - care of injured.
(1) The board shall have full power and it is its duty to fix and determine the rates to be charged by the state compensation insurance authority fund for compensation insurance.

(2) The manager shall manage and conduct all business and affairs in relation to the rates to be charged by the state compensation insurance authority fund for compensation insurance which shall be conducted in the name of the state compensation insurance authority, and in that name, without any other name, title, or authority, the manager may:

(a) (I) Sue and be sued in all the courts of this state, or of any other state, or of the United States, and in actions arising out of any act, deed, matter, or thing made, omitted, entered into, done, or suffered in connection with the state compensation insurance authority fund and the administration, management, or conduct of the business or affairs relating thereto; and the manager shall be authorized to employ counsel

to represent the fund in any action.

(II) Nothing in this paragraph (a) shall be construed to waive any provisions of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., nor shall it be construed to waive immunity of the state of Colorado from suit in federal court, guaranteed by the eleventh amendment to the constitution of the United States.

(b) Make and enter into contracts of insurance with employers as provided in this article, and such other contracts or obligations relating to the state compensation insurance authority fund as are authorized or permitted under the provisions of articles 40 to 54 of this title; but the manager shall not, nor shall any officer or employee of the state compensation insurance authority, or entities or parties with whom it contracts for services, be personally liable in his private capacity for or on account of any act done or omitted or contract or other obligation entered into or undertaken in an official capacity in good faith and without intent to defraud in connection with the administration, management, or conduct of the state compensation insurance authority fund, its business, or other affairs relating thereto;

(c) Contract with physicians, surgeons, and hospitals for medical and surgical treatment, services and supplies, crutches and apparatus, and the care and nursing of injured persons entitled to benefits from said fund, and may contract for medical, surgical, hospital, and nursing services and supplies in excess of the amount and period otherwise limited in this article, if said manager may determine that the contracting of such extra medical, surgical, hospital, and nursing services and supplies might tend to reduce the period of disability for which said fund would be liable for the payment and compensation.

8-54-106. State compensation fund a continuing fund - sources - applicability.

Repealed, L. 86, p. 540, sections 54, 55, effective July 1, 1987.

8-54-107. Places of employment classified - amount of premiums. (1) The board may classify the places of employment of employers insured under the state compensation insurance authority fund into classes in accordance with the nature of the business in which they are engaged and the probable hazard or risk of injury to their employees. It shall determine the amount of the premiums which such employers shall pay to said state compensation insurance authority fund, and may prescribe in what manner such premiums shall be paid, and may change the amount thereof both in respect to any or all of such employers as circumstances may

require, and the condition of their respective plants, establishments, or places of work in respect to the safety of their employees may justify. All such premiums shall be levied on a basis that shall be fair, equitable, and just as among such employers.

(2) In classifying the places of employment of an employer insured under the state compensation insurance authority fund as provided in subsection (1) of this section, if the performance of a particular task or operation by an employee or by employees is unusual or incidental to the overall operation of the employer, such performance shall not materially change the classification to a higher risk classification. If the employer receives a gross income of less than seven thousand five hundred dollars as a result of the performance of a particular task or operation that is secondary to the overall operation of the employer or if the percentage of time that an employee spends performing a particular task or operation constitutes five percent or less of the total overall hourly work performed annually by such employee, it shall be deemed to be "unusual or incidental" for the purposes of this subsection (2).

8-54-108. Subclasses.

Repealed, L. 86, p. 540, sections 54, 55, effective July 1, 1987.

8-54-109. Insurance at cost. It is the duty of the board, in the exercise of the powers and discretion conferred upon it by articles 40 to 54 of this title, ultimately to fix and maintain, for each class of occupation, the lowest possible rates of premium consistent with the maintenance of a solvent state compensation insurance authority fund, and the creation and maintenance of a reasonable surplus after the payment of legitimate claims for injury and death, that may be authorized to be paid from the state compensation insurance authority fund for the benefit of injured and dependents of killed employees.

8-54-110. Basis of rates - reserve - surplus. (1) Such rates shall take no account of the extent to which the employees in any particular establishment have or have not persons dependent upon them for support; nor of whether such employees have dependents who are nonresidents of the United States; nor of whether such employees are married or single; nor the age of any such employees.

(2) The rates so made shall be that percentage of the payroll of any employer which, on the average, shall produce a sufficient sum to:

(a) Carry all claims to maturity such that the rates shall be based upon the reserve and not upon the assessment

plan;

(b) Produce a reasonable surplus as provided in articles 40 to 54 of this title, and to cover the catastrophe hazard, and to insure the payment to employees and their dependents of the compensation provided in said articles.

(3) In determining the amount of reserve to be laid aside to meet deferred payments according to awards, such reserve shall be ascertained by finding the present worth of such deferred payments calculated at a rate of interest not higher than four percent per annum, and such calculations shall be made according to a table of mortality not lower than the American experience table of mortality and, in the discretion of the board, by such other and further methods as will result in the establishment of adequate reserves.

8-54-111. Board to keep accounts - readjustment by board of rates. The board shall keep an accurate account of the money paid in premiums by each of the several classes of occupations or industries and the disbursements on account of injuries and death of employees thereof. It shall also keep an account of the money received from each individual employer and the amount disbursed from the state compensation insurance authority fund on account of injuries and death of the employees of such employer. The state compensation insurance authority fund, including such portions of said fund as may be derived from premiums paid by the state and its political subdivisions, shall be one fund indivisible. It is the intention that the amounts raised for such state compensation insurance authority fund shall ultimately become neither more nor less than to make said fund self-supporting, and the premiums or rates levied for such purpose shall be subject to readjustment from time to time by the board as may become necessary.

8-54-112. Portions of premiums paid carried to surplus. The board shall set aside such proportion as it may deem necessary of the earned premiums paid into the state compensation insurance authority fund, as a contribution to the surplus of the fund.

8-54-113. Amendment of rates - distribution to policyholders. The board may amend at any time the rates for any class. No contract of insurance between the state compensation insurance authority and any employer shall be in effect until a policy or binder has been actually issued by the board and the premium therefor paid as and when required by this article. After the inspection of the premises of any employer, or after considering the experience of such employer, the manager may quote with respect to such employer's risk a rate higher or lower than that indicated by the manual issued by the board as applicable to his risk. Any such decision of the manager shall be subject to review by the

board. Not less often than once a year the manager shall tabulate the earned premiums paid by policyholders of the state compensation insurance authority fund. Should the experience of the fund show a credit balance and after payment of all amounts which have fallen due because of operating expenses, injury, or death, and after setting aside proper reserves, the board shall distribute such credit balance to the policyholders who have a balance to their credit in proportion to the premium paid and losses incurred by each such policyholder during the preceding insurance period. In the event any such policyholder fails to renew his policy in the state compensation insurance authority fund for the period following the period in which said dividends were earned, he shall be entitled to said credit dividend if he terminates such policy in good standing. In the event an employer actually discontinues business, his policy shall be cancelled, and the dividend, if any, when ascertained, shall be returned to him.

8-54-114. Policy cancelled, when. If any employer is in arrears for more than thirty days in any payment or wage report required to be made by him to the state compensation insurance authority as provided in articles 40 to 54 of this title for advance premium, deposit premium, additional audited premium, or periodic premium, he shall by virtue of such arrearage be in default of such payment or reporting and any policy issued to him by said authority shall thereupon be cancelled without notice as of the effective or renewal date in the case of a new or renewal policy or as of the due date in the case of an existing policy. In the event cancellation of policy is made as provided in this section and the state compensation insurance authority is required to make any expenditures for the benefits provided by said articles for any accident causing injury or death within said thirty-day period, said authority shall be entitled to reimbursement from the employer for all amounts so paid which may be collected by said authority in a civil action brought against the employer. The employer shall be primarily liable to any injured employee or the dependents of a killed employee for the payment of the compensation and benefits provided by said articles during said thirty-day period.

8-54-115. Adjustment of premiums. In the event the amount of premium collected by the fund from any employer at the beginning of any policy period, as ascertained and calculated by using the estimated expenditure of wages for the period of time covered by such premium payments as a basis, shall differ from the earned premium based upon the actual wage expenditure for such policy period, an adjustment of the amount of such premium shall be made at the end of such policy period and the actual amount of such premium shall be determined in accordance with the amount of actual expenditure of wages for such period. In the event such actual wage expenditure for such period is less than the amount on which

such estimated premium was collected, then such employer shall be entitled to have the amount of the difference in premium repaid to him or credited on succeeding premium payments. If the earned premium, where ascertained, exceeds in amount the premium so paid by such employer at the beginning of each such policy period, such employer, upon being advised of the true amount of such premium due, shall forthwith pay to said state compensation insurance authority fund an amount equal to the difference between the amount actually found to be due and the amount so paid by him at the beginning of said policy period.

8-54-116. Determination of premium - payment in advance - deductibles. (1) Each employer insured in the state compensation insurance authority fund shall pay into the state compensation insurance authority fund in advance the amount of premium determined and assessed against such employer for the ensuing period. The amount of the premium to be paid by such employer shall be on the basis of the annual expenditure of money by said employer for the services of persons engaged in his employment. The amount of premium to be so paid by each such employer shall be determined by the manager in accordance with the rules and rates made and published by the board. Payment shall be made within the time fixed by this article.

(2) Any employer of farm and ranch labor or any officer of an agricultural corporation insured in the state compensation insurance authority fund may agree as a condition of his policy to pay a certain amount not to exceed one thousand dollars per claim toward the total amount of any claim payable under articles 40 to 54 of this title. The amount of premium to be paid by an employer who agrees to pay such a deductible shall be reduced based upon such deductible and shall be determined by the manager in accordance with the rules and rates made and published by the board. The existence of a policy with a deductible or the fact of payment as a result of a deductible shall not affect the requirement of an employer to report an injury or death to the division as required in section 8-52-105 (1).

8-54-117 to 8-54-119.

Repealed, L. 86, pp. 502, 540, sections 125, 54, effective July 1, 1986.

8-54-120. Reinsurance. The manager may secure reinsurance covering the catastrophe hazard with respect to any risks carried by the state compensation insurance authority fund, and the state treasurer shall pay the premium for such reinsurance from the state compensation insurance authority fund in the manner provided in section 8-54-121 for other disbursements from said fund.

8-54-121. Treasurer custodian of fund - disbursements.
(1) The state treasurer shall be the custodian of the state

compensation insurance authority fund, and all disbursements therefrom shall be paid by him upon warrants drawn in accordance with law upon vouchers issued by the board upon order of the manager. In every case occurring in which a warrant has been drawn in accordance with law against the state treasurer upon vouchers issued by the board for payment of any sum of money from the state compensation insurance authority fund, and the time within which said warrant shall be presented for payment in order to be valid has not been stamped, printed, or written across the face thereof, and a period of six months has elapsed since the issuance of such warrant during which no person entitled thereto, or the proceeds thereof, has presented the same to the state treasurer for payment, or appeared to claim the funds so authorized to be paid from the hands of the state treasurer, such warrant may in the discretion of the manager be posted for cancellation, and thereafter cancelled and set aside.

(2) In every such case in which it is proposed to cancel any such warrant, the manager shall cause a notice to be drawn in duplicate, with a description of said warrant containing the amount, number, date of issuance, and name of payee, and shall cause one copy of said notice to be posted in a conspicuous place which is open to the public in the office of said board and one copy to be delivered to the state treasurer. If, at the end of one month after the posting of such notice and the delivery of a copy to the state treasurer, such warrant is not presented for payment and no person entitled to the proceeds thereof appears to claim the funds so authorized to be paid in said warrant, said warrant may be cancelled as provided in this section.

(3) The state treasurer shall thereupon, upon the request of the manager, transfer any such funds held to the credit of or for the payment of such warrant back to the credit of the state compensation insurance authority fund. If at any time thereafter application shall be made for the reissuance of such warrant, the same may be reissued, if the claim which it represents appears to be valid and still outstanding. Such reissued warrant shall be made payable from the moneys on deposit in the state compensation insurance authority fund and shall be made payable to the person entitled to the proceeds thereof.

(4) The powers and discretion granted in this section to the manager and the state treasurer shall obtain in all cases relating to the warrants drawn on the state compensation insurance authority fund, anything to the contrary in any statute notwithstanding.

8-54-122. State treasurer to invest funds. (1) Except as provided in subsection (2) of this section, the state treasurer shall invest any portion of the state compensation insurance authority fund, including its surplus or reserves,

which is not needed for immediate use. Such moneys may be invested in the types of investments authorized in sections 24-36-109, 24-36-112, and 24-36-113, C.R.S.

(2) Subject to approval by the board, the manager may convey title to the real property known as the 950 Broadway Building, located at 950 Broadway, Denver, Colorado, and the adjoining property to the south, situated and known as lots six through eighteen, block one, first addition to Arlington Heights, and may also authorize and direct the state treasurer to invest a portion of the funds in the state compensation insurance authority fund for the purchase of real property, to house, contain, and maintain the offices and operational facilities of the authority as may be deemed necessary to accommodate its immediate and reasonably anticipated future needs. The manager is authorized to purchase such real property, buildings, and improvements thereon. Title to such real property, buildings, and improvements thereon shall vest in the state compensation insurance authority, and such assets shall be a part of the state compensation insurance authority fund. The manager may lease or rent space not needed for the immediate requirements of the authority in such real property to other public agencies or private businesses. Moneys received from such rental or lease of space and moneys appropriated by the general assembly for rental or lease of space in such real property shall be deposited with the state treasurer for credit to the state compensation insurance authority fund. The manager shall not sell or otherwise dispose of any property, buildings, or improvements thereon so acquired, without consent of the board, and the moneys received from such sale or disposition shall be credited to the account of the state compensation insurance authority fund. Expenses for administration, operation, and maintenance of such real property, buildings, and improvements thereon shall be paid by the state treasurer upon the direction and authorization of the manager, out of the funds of the state compensation insurance authority fund, in an amount not to exceed the moneys received from such rental or lease of space and moneys authorized by the board. The executive director of the department of labor and employment shall transfer any interest in the real property known as the 950 Broadway Building, located at 950 Broadway, Denver, Colorado, and the adjoining property to the south, situated and known as lots six through eighteen, block one, first addition to Arlington Heights, to the state compensation insurance authority.

(3) In addition, such moneys may be invested in notes and loans secured by first mortgages or first deeds of trust on real property located in Colorado and guaranteed by government or private insurance, or in nonconvertible corporate notes and bonds and equipment trust certificates of United States domestic corporations rated investment grade by a recognized security rating service, or in asset-backed securities rated at least "AA" by one or more nationally

recognized organizations which regularly rate such obligations, or in mortgage-backed securities rated at least "AAA" by one or more nationally recognized organizations which regularly rate such obligations.

8-54-123. State treasurer to give separate bond as custodian. (1) The state treasurer shall give a separate and additional bond in such amount as may be fixed by the board with sureties to be approved by the governor, conditioned for the faithful performance of his duties as custodian of the state compensation insurance authority fund, and as custodian of all the bonds, warrants, investments, and moneys of, or belonging to, said state compensation insurance authority fund, subject to all provisions of law governing bonds of the state treasurer. The premium on said bond shall be paid out of the earnings of the state compensation insurance authority fund.

(2) The state treasurer shall give a separate and additional bond in such amount as may be fixed by the executive director of the department of labor and employment with sureties to be approved by the governor, conditioned for the faithful performance of his duties as custodian of the funds under the jurisdiction of the director of the division of labor, and as custodian of all the bonds, warrants, investments, and moneys of, or belonging to, the funds under the jurisdiction of the director of the division of labor, subject to all provisions of law governing bonds of the state treasurer. The premium on said bond shall be paid out of the earnings of the funds under the jurisdiction of the director of the division of labor on a pro rata basis.

8-54-124. Visitation of fund by commissioner of insurance- annual audit - examination. (1) The state compensation insurance authority fund shall be open to visitation by the commissioner of insurance at all reasonable times, and the commissioner of insurance shall require from the manager reports as to the condition of such fund, as required by law to be made by other insurance carriers doing business in this state insofar as applicable to said fund.

(2) An annual audit of said fund shall be made by an auditor or firm of auditors, having the necessary specialized knowledge and experience, retained by the state auditor with the consultation and advice of the manager and the commissioner of insurance. The cost of such audit and examination shall be borne by the fund. Following his examination of the report of such audit, the state auditor shall transmit it, together with his comments and recommendations, to the governor, the general assembly, the executive director of the department of labor and employment, and the manager.

(3) The executive director of the department of labor

and employment, with the consultation and advice of the manager and the commissioner of insurance, shall employ a qualified actuary or retain the services of a firm of actuaries of recognized standing who shall be free of any interest conflicting with the interests of the fund.

(4) At least once every three years, the commissioner of insurance shall conduct an examination of said fund, such examination to be conducted in the same manner as an examination of a private insurance carrier. With respect to such examination, the provisions of section 10-1-110, C.R.S., shall be applicable. The commissioner of insurance shall transmit a copy of his examination to the governor, the state auditor, the general assembly, the executive director of the department of labor and employment, and the manager.

8-54-125. Intentional misrepresentation by employer. Any employer who intentionally misrepresents to the board the amount of payroll or wage expenditure upon which any premium under this article is based is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment.

8-54-126. Blanks furnished by state. The board shall prepare and furnish to employers at the expense of the fund all such blanks as may be necessary to carry out the terms and provisions of articles 40 to 54 of this title in connection with operation and maintenance of the state compensation insurance authority fund.

8-54-127. Rate schedules posted. The board shall cause to be prepared proper schedules showing the classification, rates, and regulations which shall be effective at such time as it may order. Said classification, rates, and regulations shall be published by posting a copy thereof on the bulletin board in the offices of the state compensation insurance authority.

ARTICLE 60
Occupational Diseases

8-60-101 to 8-60-131.

Repealed, L. 75, p. 311, section 62, effective September 1, 1975.

ARTICLE 65
Colorado Medical Disaster Insurance Fund

8-65-101. Short title. This article shall be known and may be cited as the "Colorado Medical Disaster Insurance Fund Act".

8-65-102. Medical disaster insurance fund - tax imposed - returns. (1) There is hereby established a medical disaster insurance fund to defray medical, surgical, hospital, nursing, and drug expenses in excess of those provided under the "Workmen's Compensation Act of Colorado" for employees who have established their entitlement to disability benefits under said act, whether necessary to promote recovery, alleviate pain, or reduce disability.

(2) The director of the division of labor shall administer the medical disaster insurance fund and is hereby given jurisdiction to enforce the provisions of this article. The director shall approve or disapprove admissions to the Colorado medical disaster insurance fund.

8-65-103. Enforcement powers - violations. (1) The director, in the enforcement of this article, shall have all of the powers granted to him in the "Workmen's Compensation Act of Colorado", articles 40 to 54 of this title, and any insurance carrier or self-insurer violating any of the provisions of this article is guilty of a violation of said act and shall be subject to the penalties therein prescribed.

(2) The director shall administer and conduct all matters involving the medical disaster insurance fund in the name of the division, and, in that name and without any other name, title, or authority, the director may:

(a) (I) Sue and be sued in all courts of this state, of any other state, or of the United States and in actions arising out of any act, deed, matter, or thing made, omitted, entered into, done, or suffered in connection with the medical disaster insurance fund and the administration or conduct of matters relating thereto, including the authority to employ counsel to represent the fund in any action.

(II) Nothing in this paragraph (a) shall be construed to waive any provisions of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., nor shall it be construed to waive immunity of the state of Colorado from suit in federal court, guaranteed by the eleventh amendment to the constitution of the United States.

(b) Make and enter into contracts or obligations relating to the medical disaster insurance fund as authorized or permitted under the provisions of articles 40 to 54 of this title, but neither the director nor any officer or employee of the division shall be personally liable in his private capacity for or on account of any act done or omitted or contract or other obligation entered into or undertaken in an official capacity in good faith and without intent to defraud in connection with the administration or conduct of the medical disaster insurance fund, its business, or other affairs relating thereto;

(c) Contract with physicians, surgeons, and hospitals for medical and surgical treatment, services and supplies, crutches and apparatus, and the care and nursing of injured persons entitled to benefits from said fund and, in addition, may contract for medical, surgical, hospital, and nursing services and supplies in excess of the amount and period otherwise limited in this article if said director determines that the contracting of such extra medical, surgical, hospital, and nursing services and supplies will reduce the period of disability for which said fund would be liable for the payment and compensation.

8-65-104. Receipt and disbursement of moneys. All moneys collected by the division of labor pursuant to the provisions of this article shall be transmitted to the state treasurer who shall deposit the same to the credit of the medical disaster insurance fund, and all disbursements therefrom shall be paid by him in accordance with and subject to final awards of the director, as provided in this article.

8-65-105. Use of funds limited. (1) All funds received by the division of labor under the provisions of this article shall be used solely to pay the costs related to the administration of the medical disaster insurance fund and to defray the cost of medical, surgical, and hospital expenses necessary to effect the recovery, alleviate pain, or reduce the disability of employees who have established their entitlement to disability benefits under the "Workmen's Compensation Act of Colorado" in accordance with and subject to the provisions of such act.

(2) All funds which are utilized for the administration of the medical disaster insurance fund shall be subject to appropriation by the general assembly.

8-65-106. Applications - medical panel - awards - limitations. (1) Payments from the medical disaster insurance fund shall be awarded by the director only after an application therefor has been filed by a claimant employee, his employer, or his insurance carrier, or one on their behalf, and approved by the director for admission to the fund, in any case where the limits of liability provided under section 8-49-101 have been exhausted.

(2) The director shall, in every case where an application for payments from the medical disaster insurance fund is filed, immediately, after receipt of such application, appoint a medical panel of three medical experts to see and examine the applicant, each of whom shall render a report to the director, advising whether or not the expenditure of further sums of money will promote recovery, alleviate pain, or reduce disability, suggesting the form and manner of further treatment or services and suggesting the reasonable cost thereof.

(3) The director, upon receipt of reports from each of the medical experts appointed in accordance with subsection (2) of this section, shall either deny the application or award payments from the medical disaster insurance fund, based upon such reports and as nearly as possible in accordance with the majority opinion and suggestions of the medical panel.

(4) In making payment awards from the medical disaster insurance fund, the director shall be limited in any one case to the sum of fifty-five thousand dollars, less any amounts of money expended by the employer or his insurance carrier for medical, surgical, or hospital services and the costs of any prosthetic devices, or the reasonable value of any such services or devices furnished by the employer or his insurance carrier.

(5) The director shall award, and the state treasurer shall pay from the medical disaster insurance fund, the reasonable fees and expenses of the appointed members of the medical panel.

8-65-107. Credit for reduced disability - when. (1) In any determination of permanent disability, the employer or his insurance carrier shall receive no credit or benefit for the reduction of disability of any claimant employee under the "Workmen's Compensation Act of Colorado" directly attributable to a compensable accident or disease when such reduction of disability is accomplished by expenditures from the medical disaster insurance fund, unless it shall have been determined by a preponderance of the evidence:

(a) That the claimant employee had refused hospital, surgical, and medical services under the "Workmen's Compensation Act of Colorado" necessary to reduce his disability voluntarily offered by the employer; or

(b) That the claimant employee had reached maximum improvement as determined by the director prior to the filing of the application for payments from the medical disaster insurance fund.

8-65-108. State treasurer to invest funds. (1) The state treasurer shall invest any portion of the medical disaster insurance fund, including its surplus and reserves, which the director determines is not needed for immediate use. All interest earned upon such invested portion shall be credited to the fund and used for the same purposes and in the same manner as other moneys in the fund. Such moneys may be invested in the types of investments authorized in sections 24-36-109, 24-36-112, and 24-36-113, C.R.S.

(2) In addition, such moneys may be invested in notes and loans secured by first mortgages or first deeds of trust on real property located in Colorado and guaranteed by

government or private insurance or in nonconvertible corporate notes and bonds and equipment trust certificates of United States domestic corporations rated investment grade by a recognized security rating service.

ARTICLE 66
Colorado Major Medical Insurance Fund Act

8-66-101. Short title. This article shall be known and may be cited as the "Colorado Major Medical Insurance Fund Act".

8-66-102. Major medical insurance fund - tax imposed - returns. (1) There is hereby established a major medical insurance fund to defray medical, surgical, dental, hospital, nursing, and drug expenses and expenses for medical, hospital, and surgical supplies, crutches, apparatus, and vocational rehabilitation, which shall include tuition, fees, transportation, and weekly maintenance equivalent to that which the employee would receive under section 8-51-102 for the period of time that the employee is attending a vocational rehabilitation course, which expenses are in excess of those provided under the "Workmen's Compensation Act of Colorado" for employees who have established their entitlement to disability benefits under said act, whether necessary to promote recovery, alleviate pain, or reduce disability.

(2) The director of the division of labor shall administer the major medical insurance fund and is hereby given jurisdiction to enforce the provisions of this article. The director shall administer and conduct all matters involving the major medical insurance fund in the name of the division, and, in that name and without any other name, title, or authority, the director may:

(a) (I) Sue and be sued in all the courts of this state, of any other state, or of the United States and in actions arising out of any act, deed, matter, or thing made, omitted, entered into, done, or suffered in connection with the major medical insurance fund and the administration or conduct of matters relating thereto, including the authority to employ counsel to represent the fund in any action.

(II) Nothing in this paragraph (a) shall be construed to waive any provisions of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., nor shall it be construed to waive immunity of the state of Colorado from suit in federal court, guaranteed by the eleventh amendment to the constitution of the United States.

(b) Make and enter into contracts or obligations relating to the major medical insurance fund as authorized or permitted under the provisions of articles 40 to 54 of this title, but neither the director nor any officer or employee of

the division shall be personally liable in his private capacity for or on account of any act done or omitted or contract or other obligation entered into or undertaken in an official capacity in good faith and without intent to defraud in connection with the administration or conduct of the major medical insurance fund, its business, or other affairs relating thereto;

(c) Contract with physicians, surgeons, and hospitals for medical and surgical treatment, services and supplies, crutches and apparatus, and the care and nursing of injured persons entitled to benefits from said fund and, in addition, may contract for medical, surgical, hospital, and nursing services and supplies in excess of the amount and period otherwise limited in this article if said director determines that the contracting of such extra medical, surgical, hospital, and nursing services and supplies will reduce the period of disability for which said fund would be liable for the payment and compensation.

(3) Notwithstanding the provisions of sections 10-3-209 (1) (c) and 10-6-128 (3), C.R.S., for the purpose of the establishment, maintenance, and continuance of the major medical insurance fund, every person, partnership, association, and corporation, whether organized under the laws of this state or of any other state or country, every mutual company or association, and every other insurance carrier, including the state compensation insurance authority, insuring employers in this state against liability for personal injury to their employees or death caused thereby under the provisions of the "Workmen's Compensation Act of Colorado", articles 40 to 54 of this title, shall, as provided in this article, pay a tax upon the premiums received in this state, whether or not in cash, or on account of business done in this state for such insurance in this state at the rate of two and one-quarter percent of the amount of such premiums until the balance in the major medical insurance fund exceeds the estimated actuarial present value of future claim payments, after which time, said tax shall no longer be collected. Such insurance carriers shall be credited with all cancelled or returned premiums actually refunded during the year of such insurance.

(4) Every such insurance carrier shall, on the first day of July, 1971, and semiannually thereafter, make a return, verified by affidavits of its president and secretary, or other chief officers or agents, to the division of labor, stating the amount of all such premiums received and credits granted during the period covered by such return. Every insurance carrier required to make such return shall file the same with the division within thirty days after the close of the period covered thereby, and shall, at the same time, pay to the division of labor a tax ascertained as provided in subsection (3) of this section, less return premiums on

cancelled policies.

(5) Every employer carrying his own risk as a self-insurer under the provisions of the "Workmen's Compensation Act of Colorado" shall, under oath, report to the division of labor his payroll in such form as may be prescribed by the director and at the times in this article provided for premium reports by insurance companies in subsection (4) of this section. The division shall assess against such payroll a tax for the purposes of this article ascertained as provided in subsection (3) of this section on the basic premiums chargeable against the same or most similar industry or business taken from the manual insurance rates chargeable by the state compensation insurance authority fund, and, upon receipt of notice from the division of labor of the tax so assessed, every such self-insurer shall, within thirty days of the receipt of such notice, pay to the division of labor the tax so assessed.

8-66-103. Failure to make returns. If any such insurance carrier or self-insurer fails or refuses to make the return required by this article, the director shall assess the tax against such insurance carrier or self-insurer at the rate provided for in this article on such amount of premium as he may deem just, and the proceedings thereof shall be the same as if the return had been made.

8-66-104. Collection of taxes due. If any such insurance carrier or self-insurer withdraws from business in this state before the tax falls due as provided in this article, or fails or neglects to pay such tax, the director shall at once proceed to collect the same; and he is authorized to employ such legal processes as may be necessary for that purpose. Suit shall be brought by the director in any of the courts of this state having jurisdiction.

8-66-105. Enforcement powers - violations. The director, in the enforcement of this article, shall have all of the powers granted to him in the "Workmen's Compensation Act of Colorado", and any insurance carrier or self-insurer violating any of the provisions of this article, or failing to pay the tax imposed in this article, is guilty of violation of said act and subject to the penalties therein prescribed.

8-66-106. Receipt and disbursement of moneys. All moneys collected by the division of labor pursuant to the provisions of this article shall be transmitted to the state treasurer who shall deposit the same to the credit of the major medical insurance fund, and all disbursements therefrom shall be paid by him in accordance with and subject to final awards of the director, as provided in this article.

8-66-107. Use of funds limited. All funds received by the division of labor under the provisions of this article

shall be devoted to defray the cost of administration, investigation, medical, surgical, dental, hospital, nursing, and drug expenses and expenses for medical, hospital, and surgical supplies, crutches, apparatus, and vocational rehabilitation, which shall include tuition, fees, transportation, and weekly maintenance equivalent to that which the employee would receive under section 8-51-102 for the period of time that the employee is attending a vocational rehabilitation course, which expenses are necessary to effect the recovery, alleviate pain, or reduce the disability of employees who have established their entitlement to disability benefits under the "Workmen's Compensation Act of Colorado" in accordance with and subject to the provisions of said act.

8-66-108. Applications - awards. (1) Payments from the major medical insurance fund shall be awarded by the director only after an application therefor has been filed by a claimant employee, his employer, or his insurance carrier, or one on their behalf, for admission to the fund, in any case where the limits of liability provided under section 8-49-101 have been exhausted.

(2) Following the filing of an application, the director shall approve or disapprove the expenditure of further sums of money from the major medical insurance fund and in so doing may rely upon medical reports contained in the case file if he deems them adequate, or he may rely upon recommendations of the medical director, appointed pursuant to section 8-1-103, or he may appoint a medical panel of not more than three medical experts to see and examine the applicant, each of whom shall render a report to him, advising whether or not such expenditure of further sums of money will promote recovery, alleviate pain, or reduce disability, suggesting the form and manner of such treatment or services and suggesting the reasonable cost thereof. The director, in every case in which an award is made from this fund, shall review said case at such time as the total medical expenditures, including those expended under section 8-49-101, shall reach fifteen thousand dollars and at each ten thousand dollars increment thereafter to determine and enter his order regarding continuation or cessation of further payments from said fund.

(3) The director shall award, and the state treasurer shall pay from the major medical insurance fund, the reasonable fees and expenses of the appointed members of the medical panel when such procedure is used by the director.

8-66-109. Credit for reduced disability - when. In any determination of permanent disability, the employer or his insurance carrier shall receive any credit or benefit for the reduction of disability of any claimant employee under the "Workmen's Compensation Act of Colorado" directly attributable to a compensable accident or disease when such reduction of disability is accomplished by expenditures from the major

medical insurance fund.

8-66-110. State treasurer to invest funds. (1) The state treasurer shall invest any portion of the major medical insurance fund, including its surplus and reserves, which the director of the division of labor determines is not needed for immediate use. All interest earned upon such invested portion shall be credited to the fund and used for the same purposes and in the same manner as other moneys in the fund. Such moneys may be invested in the types of investments authorized in sections 24-36-109, 24-36-112, and 24-36-113, C.R.S.

(2) In addition, such moneys may be invested in notes and loans secured by first mortgages or first deeds of trust on real property located in Colorado and guaranteed by government or private insurance or in nonconvertible corporate notes and bonds and equipment trust certificates of United States domestic corporations rated investment grade by a recognized security rating service.

8-66-111. Abatement of tax - when. The tax imposed in this article shall be abated for any fiscal semiannual period in which the balance in the major medical insurance fund exceeded three million dollars.

8-66-112. Closure of fund. Effective July 1, 1981, no further cases shall be accepted into the major medical insurance fund for injuries or occupational diseases occurring after that date, nor shall any cases be transferred from the medical disaster insurance fund to the major medical insurance fund. When all payments have been made for all cases accepted into the major medical insurance fund, any balance remaining in said fund shall revert to the general fund.

13-25-103. Mortality table. The table referred to in section 13-25-102 is as follows:

<u>Completed Age</u>	<u>Expectancy of Life, U.S. Life Table: 1981</u>
0	74.2
1	74.1
2	73.1
3	72.2
4	71.2
5	70.2
6	69.3
7	68.3
8	67.3
9	66.3
10	65.3
11	64.4
12	63.4
13	62.4
14	61.4
15	60.4
16	59.5
17	58.5
18	57.6
19	56.6
20	55.7
21	54.8
22	53.8
23	52.9
24	52.0
25	51.0
26	50.1
27	49.2
28	48.2
29	47.3
30	46.3
31	45.4
32	44.5
33	43.5
34	42.6
35	41.6
36	40.7
37	39.8
38	38.8
39	37.9
40	37.0
41	36.1
42	35.2
43	34.3
44	33.4
45	32.5
46	31.6
47	30.7
48	29.8
49	29.0
50	28.1

Completed
Age

Expectancy of Life,
U.S. Life Table: 1981

51	27.3
52	26.5
53	25.6
54	24.8
55	24.0
56	23.2
57	22.5
58	21.7
59	21.0
60	20.2
61	19.5
62	18.8
63	18.1
64	17.4
65	16.7
66	16.0
67	15.4
68	14.7
69	14.1
70	13.5
71	12.9
72	12.3
73	11.8
74	11.2
75	10.7
76	10.1
77	9.6
78	9.1
79	8.6
80	8.1
81	7.7
82	7.3
83	6.8
84	6.5
85	5.96
86	5.61
87	5.29
88	4.99
89	4.70
90	4.43
91	4.17
92	3.93
93	3.71
94	3.51
95	3.34
96	3.19
97	3.05
98	2.93
99	2.82
100	2.73

<u>Completed Age</u>	<u>Expectancy of Life, U.S. Life Table: 1981</u>
101	2.64
102	2.57
103	2.50
104	2.44
105	2.38
106	2.33
107	2.29
108	2.24
109	2.20
110	

SECTION 2. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the state compensation insurance fund not otherwise appropriated, to the department of labor and employment, for the fiscal year beginning July 1, 1986, the sum of twenty-eight thousand dollars (\$28,000), or so much thereof as may be necessary, for the implementation of this act.

SECTION 3. Effective date. This act shall take effect July 1, 1986.



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