

AMENDED IN SENATE AUGUST 26, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 486**

**Introduced by Assembly Member ~~Steinberg~~ Calderon**

February 21, 2001

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~~An act to amend Section 112 of the Labor Code, relating to workers' compensation. An act to amend Sections 78, 123.5, 123.6, 3201.5, 3501, 3742, 4453, 4600.5, 4614, 4702, and 5502 of, and to add Sections 3201.7, 3701.8, 5307.21, and 6354.7 to, the Labor Code, and to amend Section 86 of Chapter 6 of the Statutes of 2002, relating to workers' compensation.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 486, as amended, ~~Steinberg~~—Calderon. Workers' Compensation Appeals Board: ~~composition~~—compensation: administration and benefits.

(1) Existing law provides that the Commission on Health and Safety and Workers' Compensation in the Department of Industrial Relations is to be funded by appropriations from the Workplace Health and Safety Revolving Fund, into which certain civil and administrative penalties are deposited. Existing law requires the commission to review and approve applications from employers and employee organizations, or both, for grants to assist in establishing effective occupational injury and illness prevention programs.

This bill would instead provide for the deposit of these penalties in the Workers' Compensation Administration Revolving Fund. This bill would authorize the department to expend these funds upon approval by the commission, and upon appropriation from the fund by the

Legislature, to fund the grants and other activities and expenses of the commission.

(2) Existing law provides for the Department of Industrial Relations to be divided into at least 6 divisions, including the Division of Workers' Compensation, which is under the direction of an administrative director. Existing law provides that the administrative director has various powers and duties with respect to the Workers' Compensation Appeals Board and workers' compensation administrative law judges who hear appeals of workers' compensation claims.

This bill would add various provisions, including certain qualifications and ethics requirements for workers' compensation administrative law judges and other provisions relating to the operation of the workers' compensation courts.

This bill would also require the administrative director, in consultation with the court administrator and the Commission on Judicial Performance, to adopt regulations to enforce the applicable ethics requirements for workers' compensation administrative law judges, and would authorize the court administrator to enforce these regulations.

(3) Existing law authorizes collective bargaining agreements between a private employer or groups of employers engaged in certain activities and a recognized or certified exclusive bargaining representative that establishes a dispute resolution process for workers' compensation instead of the hearing before the Workers' Compensation Appeals Board and its workers' compensation administrative law judges, or that provides for specified other alternative workers' compensation programs.

This bill would enact similar provisions with respect to employers in the aerospace and timber industries, as specified. By requiring certain information in connection with these provisions to be submitted by an employer under penalty of perjury, this bill would expand the definition of the crime of perjury, thereby imposing a state-mandated local program.

(4) Existing law makes certain conclusive presumptions regarding a child's or spouse's dependency on a deceased employee for support as it pertains to workers' compensation benefits.

This bill would require a finding by a trier of fact, as specified, as to the physical or mental incapacitation to earn by a dependent child of any age.



(5) Existing law requires every employer, except as specified, to secure the payment of compensation by either being insured against liability to pay compensation, or by securing from the Director of Industrial Relations a certificate of consent to self-insure.

Existing law establishes the Self-Insurers' Security Fund, governed by a 7-member board of trustees and administered by the Director of Industrial Relations, to provide for the continuation of workers' compensation benefits delayed as a result of the failure of a private, self-insured employer to meet its compensation obligations when the employer's security deposit is either inadequate or not immediately accessible for the payment of benefits.

Existing law requires every private, self-insuring employer to secure incurred liabilities for the payment of workers' compensation by making a deposit based on estimated future liability for compensation.

This bill would authorize the director to provide by regulation for an alternative security system, as an alternative to that required by existing law, that would require private, self-insured employers to collectively secure all, or a portion of, their aggregate liabilities through the Self-Insurers' Security Fund.

(6) Existing law requires the Self-Insurers' Security Fund to establish bylaws in order to carry out the purposes and responsibilities of the fund.

This bill would require that those bylaws include any obligations imposed on the director by the above provisions relating to the alternative security system whereby all private, self-insureds, collectively, would be required to secure all, or a portion of, their aggregate liabilities through the Self-Insurers' Security Fund. The bill would also authorize the director to impose specified financial obligations on fund members to satisfy the security requirements set by the director with respect to participation in the fund.

(7) Existing law provides certain methods for determining workers' compensation benefits payable to a worker or his or her dependents for purposes of temporary disability, permanent total disability, permanent partial disability, and in case of death.

This bill would provide for increased temporary disability and permanent partial disability and death benefits for injuries or deaths occurring on or after January 1, 2003, with additional increases in benefits phased in over several years.



(8) Existing law establishes certification requirements for specified health care organizations that provide health care services for injured employees.

This bill would revise these certification requirements.

(9) Existing law provides for the payment of death benefits to the dependents of an injured employee who has died. Existing law establishes varying amounts of death benefits, in the case of dependents are totally or partially dependent, or both, based on the date of the injury and on the number of dependent children.

This bill would increase the amount of those death benefits for injuries occurring on or after January 1, 2006.

(10) Existing law requires injured employees to be provided with medical services, including surgical treatment.

The bill would provide that the administrative director has the sole authority to develop an outpatient surgery facility fee schedule for services not performed under contract.

(11) Existing law establishes various procedures for workers' compensation claims proceedings, and gives exclusive jurisdiction to the Workers' Compensation Appeals Board regarding those claims. Existing law establishes procedures for the filing of pleadings, and for setting the times for hearings.

This bill would make changes to that procedure and would require a court administrator, rather than the Workers' Compensation Appeals Board, to establish various forms and to perform various administrative functions relating to these proceedings. This bill would also require the court administrator to establish a priority conferences calendar in specified cases, and require that the conferences shall be conducted by a workers' compensation administrative law judge, as prescribed. This bill would provide that if the dispute cannot be resolved at the conference, the case would be set for trial, as specified.

(12) Existing law requires workers' compensation insurers to maintain or provide occupational safety and health loss control consultation services certified by the Director of Industrial Relations.

The bill would require the Commission on Health and Safety and Workers' Compensation to establish and maintain a worker and occupational safety and health training and education program and an insurance loss control services coordinator position, to be funded from the Workers' Occupational Safety and Health Education Fund that would be created by the bill. The bill would require the director to levy and collect fees from workers' compensation insurers for purposes of



*the program, with the fees to be deposited in the Workers' Occupational Safety and Health Education Fund. Moneys in the fund would be available for expenditure for the above purposes upon appropriation by the Legislature.*

*(13) This bill would make related and technical changes.*

*(14) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~Existing law requires 5 of the 7 members of the Workers' Compensation Appeals Board to be attorneys and that all 7 members be selected with due consideration of their judicial temperament and abilities.~~

~~This bill would require that at least one of the 7 board members be from organized labor.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1 ~~SECTION 1. Section 112 of the Labor Code is amended to~~  
2 *SECTION 1. Section 78 of the Labor Code is amended to*  
3 *read:*

4 78. (a) The commission shall review and approve  
5 applications from employers and employee organizations, as well  
6 as applications submitted jointly by an employer organization and  
7 an employee organization, for grants to assist in establishing  
8 effective occupational injury and illness prevention programs. The  
9 commission shall establish policies for the evaluation of these  
10 applications and shall give priority to applications proposing to  
11 target high-risk industries and occupations, including those with  
12 high injury or illness rates, and those in which employees are  
13 exposed to one or more hazardous substances or conditions or  
14 where there is a demonstrated need for research to determine  
15 effective strategies for the prevention of occupational illnesses or  
16 injuries.

17 (b) Civil and administrative penalties assessed *and collected*  
18 pursuant to Sections 129.5 and 4628 shall be deposited in the



1 ~~Workplace Health and Safety Revolving Fund, which is hereby~~  
2 ~~created in the State Treasury. Proceeds of Workers' Compensation~~  
3 ~~Administration Revolving Fund. Moneys in the fund, when~~  
4 ~~appropriated by the Legislature to fund the grants under~~  
5 ~~subdivision (a) and other activities and expenses of the~~  
6 ~~commission set forth in this code, shall be expended by the~~  
7 ~~department, upon approval by the commission, for funding the~~  
8 ~~grants under subdivision (a), and by the commission for payment~~  
9 ~~of the commission's expenses incurred under this chapter.~~

10 *SEC. 2. Section 123.5 of the Labor Code is amended to read:*

11 123.5. (a) Workers' compensation *administrative law* judges  
12 employed by the administrative director *and supervised by the*  
13 *court administrator* pursuant to this chapter shall be taken from an  
14 eligible list of attorneys licensed to practice law in this state, who  
15 have the qualifications prescribed by the State Personnel Board. In  
16 establishing eligible lists for this purpose, state civil service  
17 examinations shall be conducted in accordance with the State Civil  
18 Service Act (Part 2 (commencing with Section 18500) of Division  
19 5 of Title 2 of the Government Code). Every workers'  
20 compensation judge shall maintain membership in the State Bar of  
21 California during his or her tenure.

22 A workers' compensation *administrative law* judge may not  
23 receive his or her salary as a workers' compensation  
24 *administrative law* judge while any cause before the workers'  
25 compensation *administrative law* judge remains pending and  
26 undetermined for 90 days after it has been submitted for decision.

27 (b) ~~Settlement conference referees employed by the~~  
28 ~~administrative director pursuant to this chapter shall be taken from~~  
29 ~~an eligible list of All workers' compensation administrative law~~  
30 ~~judges appointed on or after January 1, 2003, shall be attorneys~~  
31 ~~licensed to practice law in this state, who have the qualifications~~  
32 ~~prescribed in subdivision (d) of Section 5502. In establishing~~  
33 ~~eligible lists for this purpose, state civil service examinations shall~~  
34 ~~be conducted in accordance with the State Civil Service Act (Part~~  
35 ~~2 (commencing with Section 18500) of Division 5 of Title 2 of the~~  
36 ~~Government Code). Every settlement conference referee shall~~  
37 ~~maintain membership in the State Bar of California during his or~~  
38 ~~her tenure—California for five or more years prior to their~~  
39 ~~appointment and shall have experience in workers' compensation~~  
40 ~~law.~~



1     *SEC. 3. Section 123.6 of the Labor Code, as amended by*  
2     *Chapter 6 of the Statutes of 2002, is amended to read:*

3     123.6. (a) All workers' compensation administrative law  
4 judges employed by the administrative director and supervised by  
5 the court administrator shall subscribe to the Code of Judicial  
6 Ethics adopted by the Supreme Court pursuant to subdivision (m)  
7 of Section 18 of Article VI of the California Constitution for the  
8 conduct of judges and shall not otherwise, directly or indirectly,  
9 engage in conduct contrary to that code or to the commentary to  
10 the Code of Judicial Ethics made by the California Judges  
11 Association.

12     ~~The~~  
13     *In consultation with both the court administrator and the*  
14     *Commission on Judicial Performance, the administrative director*  
15     *shall adopt regulations to enforce this section*~~after consideration~~  
16     ~~of recommendations from the court administrator.~~ Existing  
17 regulations shall remain in effect until new regulations based on  
18 the recommendations of the court administrator *and the*  
19 *Commission on Judicial Performance* have become effective. To  
20 the extent possible, the rules shall be consistent with the  
21 procedures established by the Commission on Judicial  
22 Performance for regulating the activities of state judges, and, to the  
23 extent possible, with the gift, honoraria, and travel restrictions on  
24 legislators contained in the Political Reform Act of 1974 (Title 9  
25 (commencing with Section 81000) of the Government Code). *The*  
26 *court administrator shall have the authority to enforce the rules*  
27 *adopted by the administrative director.*

28     (b) Honoraria or travel allowed by the court administrator, and  
29 not otherwise prohibited by this section in connection with any  
30 public or private conference, convention, meeting, social event, or  
31 like gathering, the cost of which is significantly paid for by  
32 attorneys who practice before the board, may not be accepted  
33 unless the court administrator has provided prior approval in  
34 writing to the workers' compensation administrative law judge  
35 allowing him or her to accept those payments.

36     *SEC. 4. Section 3201.5 of the Labor Code is amended to read:*

37     3201.5. (a) Except as provided in subdivisions (b) and (c),  
38 the Department of Industrial Relations and the courts of this state  
39 shall recognize as valid and binding any provision in a collective  
40 bargaining agreement between a private employer or groups of



1 employers engaged in construction, construction maintenance, or  
2 activities limited to rock, sand, gravel, cement and asphalt  
3 operations, heavy-duty mechanics, surveying, and construction  
4 inspection and a union that is the recognized or certified exclusive  
5 bargaining representative that establishes any of the following:

6 (1) An alternative dispute resolution system governing  
7 disputes between employees and employers or their insurers that  
8 supplements or replaces all or part of those dispute resolution  
9 processes contained in this division, including, but not limited to,  
10 mediation and arbitration. Any system of arbitration shall provide  
11 that the decision of the arbiter or board of arbitration is subject to  
12 review by the appeals board in the same manner as provided for  
13 reconsideration of a final order, decision, or award made and filed  
14 by a workers' compensation *administrative law* judge pursuant to  
15 the procedures set forth in Article 1 (commencing with Section  
16 5900) of Chapter 7 of Part 4 of Division 4, and the court of appeals  
17 pursuant to the procedures set forth in Article 2 (commencing with  
18 Section 5950) of Chapter 7 of Part 4 of Division 4, governing  
19 orders, decisions, or awards of the appeals board. The findings of  
20 fact, award, order, or decision of the arbitrator shall have the same  
21 force and effect as an award, order, or decision of a workers'  
22 compensation *administrative law* judge. Any provision for  
23 arbitration established pursuant to this section shall not be subject  
24 to Sections 5270, 5270.5, 5271, 5272, 5273, 5275, and 5277.

25 (2) The use of an agreed list of providers of medical treatment  
26 that may be the exclusive source of all medical treatment provided  
27 under this division.

28 (3) The use of an agreed, limited list of qualified medical  
29 evaluators and agreed medical evaluators that may be the  
30 exclusive source of qualified medical evaluators and agreed  
31 medical evaluators under this division.

32 (4) Joint labor management safety committees.

33 (5) A light-duty, modified job or return-to-work program.

34 (6) A vocational rehabilitation or retraining program utilizing  
35 an agreed list of providers of rehabilitation services that may be the  
36 exclusive source of providers of rehabilitation services under this  
37 division.

38 (b) Nothing in this section shall allow a collective bargaining  
39 agreement that diminishes the entitlement of an employee to  
40 compensation payments for total or partial disability, temporary



1 disability, vocational rehabilitation, or medical treatment fully  
2 paid by the employer as otherwise provided in this division. The  
3 portion of any agreement that violates this subdivision shall be  
4 declared null and void.

5 (c) Subdivision (a) shall apply only to the following:

6 (1) An employer developing or projecting an annual workers'  
7 compensation insurance premium, in California, of two hundred  
8 fifty thousand dollars (\$250,000) or more, or any employer that  
9 paid an annual workers' compensation insurance premium, in  
10 California, of two hundred fifty thousand dollars (\$250,000) in at  
11 least one of the previous three years.

12 (2) Groups of employers engaged in a workers' compensation  
13 safety group complying with Sections 11656.6 and 11656.7 of the  
14 Insurance Code, and established pursuant to a joint labor  
15 management safety committee or committees, ~~which~~ *that*  
16 develops or projects annual workers' compensation insurance  
17 premiums of two million dollars (\$2,000,000) or more.

18 (3) Employers or groups of employers that are self-insured in  
19 compliance with Section 3700 that would have projected annual  
20 workers' compensation costs that meet the requirements of, and  
21 that meet the other requirements of, paragraph (1) in the case of  
22 employers, or paragraph (2) in the case of groups of employers.

23 (4) Employers covered by an owner or general contractor  
24 provided wrap-up insurance policy applicable to a single  
25 construction site that develops workers' compensation insurance  
26 premiums of two million dollars (\$2,000,000) or more with  
27 respect to those employees covered by that wrap-up insurance  
28 policy.

29 (d) Employers and labor representatives who meet the  
30 eligibility requirements of this section shall be issued a letter by the  
31 administrative director advising each employer and labor  
32 representative that, based upon the review of all documents and  
33 materials submitted as required by the administrative director,  
34 each has met the eligibility requirements of this section.

35 (e) The premium rate for a policy of insurance issued pursuant  
36 to this section shall not be subject to the requirements of Section  
37 11732 or ~~11732.4~~ 11732.5 of the Insurance Code.

38 (f) No employer may establish or continue a program  
39 established under this section until it has provided the  
40 administrative director with all of the following:



1 (1) Upon its original application and whenever it is  
2 renegotiated thereafter, a copy of the collective bargaining  
3 agreement and the approximate number of employees who will be  
4 covered thereby.

5 (2) Upon its original application and annually thereafter, a  
6 valid and active license where that license is required by law as a  
7 condition of doing business in the state within the industries set  
8 forth in subdivision (a) of Section 3201.5.

9 (3) Upon its original application and annually thereafter, a  
10 statement signed under penalty of perjury, that no action has been  
11 taken by any administrative agency or court of the United States  
12 to invalidate the collective bargaining agreement.

13 (4) The name, address, and telephone number of the contact  
14 person of the employer.

15 (5) Any other information that the administrative director  
16 deems necessary to further the purposes of this section.

17 (g) No collective bargaining representative may establish or  
18 continue to participate in a program established under this section  
19 unless all of the following requirements are met:

20 (1) Upon its original application and annually thereafter, it has  
21 provided to the administrative director a copy of its most recent  
22 LM-2 or LM-3 filing with the United States Department of Labor,  
23 along with a statement, signed under penalty of perjury, that the  
24 document is a true and correct copy.

25 (2) It has provided to the administrative director the name,  
26 address, and telephone number of the contact person or persons of  
27 the collective bargaining representative or representatives.

28 (h) Commencing July 1, 1995, and annually thereafter, the  
29 Division of Workers' Compensation shall report to the Director of  
30 the Department of Industrial Relations the number of collective  
31 bargaining agreements received and the number of employees  
32 covered by these agreements.

33 (i) By June 30, 1996, and annually thereafter, the  
34 Administrative Director of the Division of Workers'  
35 Compensation shall prepare and notify Members of the  
36 Legislature that a report authorized by this section is available  
37 upon request. The report based upon aggregate data shall include  
38 the following:

39 (1) Person hours and payroll covered by agreements filed.

40 (2) The number of claims filed.



1 (3) The average cost per claim shall be reported by cost  
2 components whenever practicable.

3 (4) The number of litigated claims, including the number of  
4 claims submitted to mediation, the appeals board, or the court of  
5 ~~appeals~~ appeal.

6 (5) The number of contested claims resolved prior to  
7 arbitration.

8 (6) The projected incurred costs and actual costs of claims.

9 (7) Safety history.

10 (8) The number of workers participating in vocational  
11 rehabilitation.

12 (9) The number of workers participating in light-duty  
13 programs.

14 The division shall have the authority to require those employers  
15 and groups of employers listed in subdivision (c) to provide the  
16 data listed above.

17 (j) The data obtained by the administrative director pursuant to  
18 this section shall be confidential and not subject to public  
19 disclosure under any law of this state. However, the Division of  
20 Workers' Compensation shall create derivative works pursuant to  
21 subdivisions (h) and (i) based on the collective bargaining  
22 agreements and data. Those derivative works shall not be  
23 confidential, but shall be public. On a monthly basis the  
24 administrative director shall make available an updated list of  
25 employers and unions entering into collective bargaining  
26 agreements containing provisions authorized by this section.

27 *SEC. 5. Section 3201.7 is added to the Labor Code, to read:*

28 *3201.7. (a) Except as provided in subdivisions (b) and (c),*  
29 *the Department of Industrial Relations and the courts of this state*  
30 *shall recognize as valid and binding any provision in a collective*  
31 *bargaining agreement between a private employer or groups of*  
32 *employers engaged in the aerospace or timber industries and a*  
33 *union that is the recognized or certified exclusive bargaining*  
34 *representative that establishes any of the following:*

35 *(1) An alternative dispute resolution system governing disputes*  
36 *between employees and employers or their insurers that*  
37 *supplements or replaces all or part of those dispute resolution*  
38 *processes contained in this division, including, but not limited to,*  
39 *mediation and arbitration. Any system of arbitration shall provide*  
40 *that the decision of the arbiter or board of arbitration is subject to*



1 review by the appeals board in the same manner as provided for  
2 reconsideration of a final order, decision, or award made and filled  
3 by a workers' compensation administrative law judge pursuant to  
4 the procedures set forth in Article 1 (commencing with Section  
5 5900) of Chapter 7 of Part 4 of Division 4, and the court of appeal  
6 pursuant to the procedures set forth in Article 2 (commencing with  
7 Section 5950) of Chapter 7 of Part 4 of Division 4, governing  
8 orders, decisions, or awards of the appeals board. The findings of  
9 fact, award, order, or decision of the arbitrator shall have the same  
10 force and effect as an award, order, or decision of a workers'  
11 compensation administrative law judge. Any provision for  
12 arbitration established pursuant to this section shall not be subject  
13 to Sections 5270, 5270.5, 5271, 5272, 5273, 5275, and 5277.

14 (2) The use of an agreed list of providers of medical treatment  
15 that may be the exclusive source of all medical treatment provided  
16 under this division.

17 (3) The use of an agreed, limited list of qualified medical  
18 evaluators and agreed medical evaluators that may be the  
19 exclusive source of qualified medical evaluators and agreed  
20 medical evaluators under this division.

21 (4) Joint labor management safety committees.

22 (5) A light-duty, modified job or return-to-work program.

23 (6) A vocational rehabilitation or retraining program utilizing  
24 an agreed list of providers of rehabilitation services that may be  
25 the exclusive source of providers of rehabilitation services under  
26 this division.

27 (b) Nothing in this section shall allow a collective bargaining  
28 agreement that diminishes the entitlement of an employee to  
29 compensation payments for total or partial disability, temporary  
30 disability, vocational rehabilitation, or medical treatment fully  
31 paid by the employer as otherwise provided in this division; nor  
32 shall any agreement authorized by this section deny to any  
33 employee the right to representation by counsel at all stages of the  
34 alternative dispute resolution process. The portion of any  
35 agreement that violates this subdivision shall be declared null and  
36 void.

37 (c) Subdivision (a) shall apply only to the following:

38 (1) An employer developing or projecting an annual workers'  
39 compensation insurance premium, in California, of two hundred  
40 fifty thousand dollars (\$250,000) or more, or any employer that



1 *paid an annual workers' compensation insurance premium, in*  
2 *California, of two hundred fifty thousand dollars (\$250,000), in at*  
3 *least one of the previous three years.*

4 (2) *Groups of employers engaged in a workers' compensation*  
5 *safety group complying with Sections 11656.6 and 11656.7 of the*  
6 *Insurance Code, and established pursuant to a joint labor*  
7 *management safety committee or committees, which develops or*  
8 *projects annual workers' compensation insurance premiums of*  
9 *two million dollars (\$2,000,000) or more.*

10 (3) *Employer or groups of employers that are self-insured in*  
11 *compliance with Section 3700 that would have projected annual*  
12 *workers' compensation costs that meet the requirements of*  
13 *paragraph (1) in the case of employers, or paragraph (2) in the*  
14 *case of groups of employers.*

15 (4) *In the aerospace and timber industry, this section shall*  
16 *apply only to an affiliate of a national or international labor*  
17 *organization that has one or more affiliate local unions that*  
18 *negotiated an agreement or agreements pursuant to Section*  
19 *3201.5 prior to January 1, 2003.*

20 (d) *Employers and labor representatives who meet the*  
21 *eligibility requirements of this section shall be issued a letter by the*  
22 *administrative director advising each employer and labor*  
23 *representative that, based upon the review of all documents and*  
24 *materials submitted as required by the administrative director,*  
25 *each has met the eligibility requirements of this section.*

26 (e) *The premium rate for a policy of insurance issued pursuant*  
27 *to this section shall not be subject to the requirements of Section*  
28 *11732 or 11732.5 of the Insurance Code.*

29 (f) *No employer may establish or continue a program*  
30 *established under this section until it has provided the*  
31 *administrative director with all of the following:*

32 (1) *Upon its original application and whenever it is*  
33 *renegotiated thereafter, a copy of the collective bargaining*  
34 *agreement and the approximate number of employees who will be*  
35 *covered thereby.*

36 (2) *Upon its original application and annually thereafter, a*  
37 *valid and active license where that license is required by law as a*  
38 *condition of doing business in the state within the industries set*  
39 *forth in subdivision (a).*



1 (3) Upon its original application and annually thereafter, a  
2 statement signed under penalty of perjury, that no action has been  
3 taken by any administrative agency or court of the United States  
4 to invalidate the collective bargaining agreement.

5 (4) The name, address, and telephone number of the contact  
6 person of the employer.

7 (5) Upon its original application, a plan agreed to between an  
8 employer and any affected union prior to the commencement of  
9 collective bargaining, that establishes a framework for the  
10 implementation of the system to be developed pursuant to  
11 paragraph (1) of subdivision (a).

12 (6) Any other information that the administrative director  
13 deems necessary to further the purposes of this section.

14 (g) No collective bargaining representative may establish or  
15 continue to participate in a program established under this section  
16 unless all of the following requirements are met:

17 (1) Upon its original application and annually thereafter, it has  
18 provided to the administrative director a copy of its most recent  
19 LM-2 or LM-3 filing with the United States Department of Labor,  
20 along with a statement, signed under penalty of perjury, that the  
21 document is a true and correct copy.

22 (2) It has provided to the administrative director the name,  
23 address, and telephone number of the contact person or persons  
24 of the collective bargaining representative or representatives.

25 (h) Commencing July 1, 2004, and annually thereafter, the  
26 Division of Workers' Compensation shall report to the Director of  
27 Industrial Relations the number of collective bargaining  
28 agreements received and the number of employees covered by  
29 these agreements.

30 (i) By June 30, 2004, and annually thereafter, the  
31 Administrative Director of the Division of Workers' Compensation  
32 shall prepare and notify members of the Legislature that a report  
33 authorized by this section is available upon request. The report  
34 based upon aggregate data shall include the following:

35 (1) Person hours and payroll covered by agreements filed.

36 (2) The number of claims filed.

37 (3) The average cost per claim shall be reported by cost  
38 components whenever practicable.



1 (4) *The number of litigated claims, including the number of*  
2 *claims submitted to mediation, the appeals board, or the court of*  
3 *appeals.*

4 (5) *The number of contested claims resolved prior to*  
5 *arbitration.*

6 (6) *The projected incurred costs and actual costs of claims.*

7 (7) *Safety history.*

8 (8) *The number of workers participating in vocational*  
9 *rehabilitation.*

10 (9) *The number of workers participating in light-duty*  
11 *programs.*

12 (10) *Overall worker satisfaction.*

13 *The division shall have the authority to require those employers*  
14 *and groups of employers listed in subdivision (c) to provide the*  
15 *data listed above.*

16 (j) *The data obtained by the administrative director pursuant*  
17 *to this section shall be confidential and not subject to public*  
18 *disclosure under any law of this state. However, the Division of*  
19 *Workers' Compensation shall create derivative works pursuant to*  
20 *subdivisions (h) and (i) based on the collective bargaining*  
21 *agreements and data. Those derivative works shall not be*  
22 *confidential, but shall be public. On a monthly basis, the*  
23 *administrative director shall make available an updated list of*  
24 *employers and unions entering into collective bargaining*  
25 *agreements containing provisions authorized by this section.*

26 SEC. 6. *Section 3501 of the Labor Code is amended to read:*

27 3501. (a) *A child under the age of 18 years, or ~~over that age~~*  
28 *~~but~~ a child of any age found by any trier of fact, whether*  
29 *contractual, administrative, regulatory, or judicial, to be*  
30 *physically or mentally incapacitated from earning, shall be*  
31 *conclusively presumed to be wholly dependent for support upon*  
32 *a deceased employee-parent with whom that child is living at the*  
33 *time of injury resulting in death of the parent or for whose*  
34 *maintenance the parent was legally liable at the time of injury*  
35 *resulting in death of the parent, there being no surviving totally*  
36 *dependent parent.*

37 (b) *A spouse to whom a deceased employee is married at the*  
38 *time of death shall be conclusively presumed to be wholly*  
39 *dependent for support upon the deceased employee if the surviving*



1 spouse earned thirty thousand dollars (\$30,000) or less in the  
2 twelve months immediately preceding the death.

3 *SEC. 7. Section 3701.8 is added to the Labor Code, to read:*

4 *3701.8. (a) As an alternative to each private self-insuring*  
5 *employer securing its own incurred liabilities as provided in*  
6 *Section 3701, the director may provide by regulation for an*  
7 *alternative security system whereby all private self-insureds*  
8 *designated for full participation by the director shall collectively*  
9 *secure their aggregate incurred liabilities through the*  
10 *Self-Insurers' Security Fund. The regulations shall provide for the*  
11 *director to set a total security requirement for these participating*  
12 *self-insured employers based on a review of their annual reports*  
13 *and any other self-insurer information as may be specified by the*  
14 *director. The Self-Insurers' Security Fund shall propose to the*  
15 *director a combination of cash and securities, surety bonds,*  
16 *irrevocable letters of credit, insurance, or other financial*  
17 *instruments or guarantees satisfactory to the director sufficient to*  
18 *meet the security requirement set by the director. Upon approval*  
19 *by the director and posting by the Self-Insurers' Security Fund on*  
20 *or before the date set by the director, that combination shall be the*  
21 *composite deposit. The noncash elements of the composite deposit*  
22 *may be one-year or multiple-year instruments. If the Self-Insurers'*  
23 *Security Fund fails to post the required composite deposit by the*  
24 *date set by the director, then within 30 days after that date, each*  
25 *private self-insuring employer shall secure its incurred liabilities*  
26 *in the manner required by Section 3701. Self-insured employers*  
27 *not designated for full participation by the director shall meet all*  
28 *requirements as may be set by the director pursuant to subdivision*  
29 *(g).*

30 *(b) In order to provide for the composite deposit approved by*  
31 *the director, the Self-Insurers' Security Fund shall assess, in a*  
32 *manner approved by the director, each fully participating private*  
33 *self-insuring employer a deposit assessment payable within 30*  
34 *days of assessment. The amount of the deposit assessment charged*  
35 *each fully participating self-insured employer shall be set by the*  
36 *Self-Insurers' Security Fund, based on its reasonable*  
37 *consideration of all the following factors:*

38 *(1) The total amount needed to provide the composite deposit.*

39 *(2) The self-insuring employer's paid or incurred liabilities as*  
40 *reflected in its annual report.*



1 (3) *The financial strength and creditworthiness of the*  
2 *self-insured.*

3 (4) *Any other reasonable factors as may be authorized by*  
4 *regulation.*

5 (5) *In order to make a composite deposit proposal to the*  
6 *director and set the deposit assessment to be charged each fully*  
7 *participating self-insured, the Self-Insurers' Security Fund shall*  
8 *have access to the annual reports and other information submitted*  
9 *by all self-insuring employers to the director, under terms and*  
10 *conditions as may be set by the director, to preserve the*  
11 *confidentiality of the self-insured's financial information.*

12 (c) *Upon payment of the deposit assessment and except as*  
13 *provided herein, the self-insuring employer loses all right, title,*  
14 *and interest in the deposit assessment. To the extent that in any one*  
15 *year the deposit assessment paid by self-insurers is not exhausted*  
16 *in the purchase of securities, surety bonds, irrevocable letters of*  
17 *credit, insurance, or other financial instruments to post with the*  
18 *director as part of the composite deposit, the surplus shall remain*  
19 *posted with the director, and the principal and interest earned on*  
20 *that surplus shall remain as part of the composite deposit in*  
21 *subsequent years. In the event that in any one year the*  
22 *Self-Insurers' Security Fund fails to post the required composite*  
23 *deposit by the date set the by the director, and the director requires*  
24 *each private self-insuring employer to secure its incurred*  
25 *liabilities in the manner required by Section 3701, then any deposit*  
26 *assessment paid in that year shall be refunded to the self-insuring*  
27 *employer that paid the deposit assessment.*

28 (d) *If any private self-insuring employer objects to the*  
29 *calculation, posting, or any other aspect of its deposit assessment,*  
30 *upon payment of the assessment in the time provided, the employer*  
31 *shall have the right to appeal the assessment to the director, who*  
32 *shall have exclusive jurisdiction over this dispute. If any private*  
33 *self-insuring employer fails to pay the deposit assessment in the*  
34 *time provided, the director shall order the self-insuring employer*  
35 *to pay a penalty of not less than 10 percent of its deposit*  
36 *assessment, and to post a separate security deposit in the manner*  
37 *provided by Section 3701. The penalty shall be added to the*  
38 *composite deposit held by the director. The director may also*  
39 *revoke the certificate of consent to self-insure of any self-insuring*



1 employer who fails to pay the deposit assessment in the time  
2 provided.

3 (e) Upon the posting by the Self-Insurers' Security Fund of the  
4 composite deposit with the director, the deposit shall be held until  
5 the director determines that a private self-insured employer has  
6 failed to pay workers' compensation as required by this division,  
7 and the director orders the Self-Insurers' Security Fund to  
8 commence payment. Upon ordering the Self-Insurers' Security  
9 Fund to commence payment, the director shall make available to  
10 the fund that portion of the composite deposit necessary to pay the  
11 workers' compensation benefits of the defaulting self-insuring  
12 employer. In the event additional funds are needed in subsequent  
13 years to pay the workers' compensation benefits of any  
14 self-insuring employer who defaulted in earlier years, the director  
15 shall make available to the Self-Insurers' Security Fund any  
16 portions of the composite deposit as may be needed to pay those  
17 benefits. In making the deposit available to the Self-Insurers'  
18 Security Fund, the director shall also allow any amounts as may  
19 be reasonably necessary to pay for the administrative and other  
20 activities of the fund.

21 (f) The cash portion of the composite deposit shall be  
22 segregated from all other funds held by the director, and shall be  
23 invested by the director for the sole benefit of the Self-Insurers'  
24 Security Fund and the injured workers of private self-insured  
25 employers, and may not be used for any other purpose by the state.  
26 Alternatively, the director, in his discretion, may allow the  
27 Self-Insurers' Security Fund to hold, invest, and draw upon the  
28 cash portion of the composite deposit as prescribed by regulation.

29 (g) Notwithstanding any other provision of this section, the  
30 director shall, by regulation, set minimum credit, financial, or  
31 other conditions that a private self-insured must meet in order to  
32 be a fully participating self-insurer in the alternative security  
33 system. In the event any private self-insuring employer is unable  
34 to meet the conditions set by the director, or upon application of  
35 the Self-Insurers' Security Fund to exclude an employer for credit  
36 or financial reasons, the director shall exclude the self-insuring  
37 employer from full participation in the alternative security system.  
38 In the event a self-insuring employer is excluded from full  
39 participation, the nonfully participating private self-insuring  
40 employer shall post a separate security deposit in the manner



1 *provided by Section 3701 and pay a deposit assessment set by the*  
2 *director. Alternatively, the director may order that the nonfully*  
3 *participating private self-insuring employer post a separate*  
4 *security deposit to secure a portion of its incurred liabilities and*  
5 *pay a deposit assessment set by the director.*

6 *(h) An employer who self-insures through group self-insurance*  
7 *and an employer whose certificate to self-insure has been revoked*  
8 *may fully participate in the alternative security system if both the*  
9 *director and the Self-Insurers' Security Fund approve the*  
10 *participation of the self-insurer. If not approved for full*  
11 *participation, or if an employer is issued a certificate to self-insure*  
12 *after the composite deposit is posted, the employer shall satisfy the*  
13 *requirements of subdivision (g) for nonfully participating private*  
14 *self-insurers.*

15 *(i) At all times, a self-insured employer shall have secured its*  
16 *incurred workers' compensation liabilities either in the manner*  
17 *required by Section 3701 or through the alternative security*  
18 *system, and there shall not be any lapse in the security.*

19 *SEC. 8. Section 3742 of the Labor Code is amended to read:*

20 *3742. (a) The Self-Insurers' Security Fund shall be*  
21 *established as a Nonprofit Mutual Benefit Corporation pursuant to*  
22 *Part 3 (commencing with Section 7110) of Division 2 of Title 1 of*  
23 *the Corporations Code and this article. If any provision of the*  
24 *Nonprofit Mutual Benefit Corporation Law conflicts with any*  
25 *provision of this article, the provisions of this article shall apply.*  
26 *Each private self-insurer shall participate as a member in the fund*  
27 *as a condition of maintaining its certificate of consent to*  
28 *self-insure.*

29 *(b) The fund shall be governed by a seven member board of*  
30 *trustees. The director shall hold ex officio status, with full powers*  
31 *equal to those of a trustee, except that the director shall not have*  
32 *a vote. The director, or a delegate authorized in writing to act as*  
33 *the director's representative on the board of trustees, shall carry*  
34 *out exclusively the responsibilities set forth in Division 1*  
35 *(commencing with Section 50) through Division 4 (commencing*  
36 *with Section 3200) and shall not have the obligations of a trustee*  
37 *under the Nonprofit Mutual Benefit Corporation Law. The fund*  
38 *shall adopt bylaws to segregate the director from all matters ~~which~~*  
39 *that may involve fund litigation against the department or fund*  
40 *participation in legal proceedings before the director. Although*



1 not voting, the director or a delegate authorized in writing to  
2 represent the director, shall be counted toward a quorum of  
3 trustees. The remaining six trustees shall be representatives of  
4 private self-insurers. The self-insurer trustees shall be elected by  
5 the members of the fund, each member having one vote. Three of  
6 the trustees initially elected by the members shall serve two-year  
7 terms, and three shall serve four-year terms. Thereafter, trustees  
8 shall be elected to four-year terms, and shall serve until their  
9 successors are elected and assume office pursuant to the bylaws of  
10 the fund.

11 (c) The fund shall establish ~~such~~ bylaws as are necessary to  
12 effectuate the purposes of this article and to carry out the  
13 responsibilities of the fund, *including, but not limited to, any*  
14 *obligations imposed by the director pursuant to Section 3701.8.*  
15 The fund may carry out its responsibilities directly or by contract,  
16 and may purchase services and insurance and borrow funds as it  
17 deems necessary for the protection of the members and their  
18 employees. *The fund may receive confidential information*  
19 *concerning the financial condition of self-insured employers*  
20 *whose liabilities to pay compensation may devolve upon it and*  
21 *shall adopt bylaws to prevent dissemination of that information.*

22 ~~(d) The fund may receive confidential information concerning~~  
23 ~~the financial condition of self-insured employers whose liabilities~~  
24 ~~to pay compensation may devolve upon it and shall adopt bylaws~~  
25 ~~to prevent dissemination of such information. The director may~~  
26 ~~also require fund members to subscribe to financial instruments or~~  
27 ~~guarantees to be posted with the director in order to satisfy the~~  
28 ~~security requirements set by the director pursuant to Section~~  
29 ~~3701.8.~~

30 SEC. 9. Section 4453 of the Labor Code is amended to read:

31 4453. (a) In computing average annual earnings for the  
32 purposes of temporary disability indemnity and permanent total  
33 disability indemnity only, the average weekly earnings shall be  
34 taken at:

35 (1) Not less than one hundred twenty-six dollars (\$126) nor  
36 more than two hundred ninety-four dollars (\$294), for injuries  
37 occurring on ~~and~~ or after January 1, 1983.

38 (2) Not less than one hundred sixty-eight dollars (\$168) nor  
39 more than three hundred thirty-six dollars (\$336), for injuries  
40 occurring on ~~and~~ or after January 1, 1984.



1 (3) Not less than one hundred sixty-eight dollars (\$168) for  
2 permanent total disability, and, for temporary disability, not less  
3 than the lesser of one hundred sixty-eight dollars (\$168) or 1.5  
4 times the employee's average weekly earnings from all employers,  
5 but in no event less than one hundred forty-seven dollars (\$147),  
6 nor more than three hundred ninety-nine dollars (\$399), for  
7 injuries occurring on ~~and~~ or after January 1, 1990.

8 (4) Not less than one hundred sixty-eight dollars (\$168) for  
9 permanent total disability, and for temporary disability, not less  
10 than the lesser of one hundred eighty-nine dollars (\$189) or 1.5  
11 times the employee's average weekly earnings from all employers,  
12 nor more than five hundred four dollars (\$504), for injuries  
13 occurring on ~~and~~ or after January 1, 1991.

14 (5) Not less than one hundred sixty-eight dollars (\$168) for  
15 permanent total disability, and for temporary disability, not less  
16 than the lesser of one hundred eighty-nine dollars (\$189) or 1.5  
17 times the employee's average weekly earnings from all employers,  
18 nor more than six hundred nine dollars (\$609), for injuries  
19 occurring on ~~and~~ or after July 1, 1994.

20 (6) Not less than one hundred sixty-eight dollars (\$168) for  
21 permanent total disability, and for temporary disability, not less  
22 than the lesser of one hundred eighty-nine dollars (\$189) or 1.5  
23 times the employee's average weekly earnings from all employers,  
24 nor more than six hundred seventy-two dollars (\$672), for injuries  
25 occurring on ~~and~~ or after July 1, 1995.

26 (7) Not less than one hundred sixty-eight dollars (\$168) for  
27 permanent total disability, and for temporary disability, not less  
28 than the lesser of one hundred eighty-nine dollars (\$189) or 1.5  
29 times the employee's average weekly earnings from all employers,  
30 nor more than seven hundred thirty-five dollars (\$735), for  
31 injuries occurring on ~~and~~ or after July 1, 1996.

32 (8) *Not less than one hundred eighty-nine dollars (\$189), nor*  
33 *more than nine hundred three dollars (\$903), for injuries*  
34 *occurring on or after January 1, 2003.*

35 (9) *Not less than one hundred eighty-nine dollars (\$189), nor*  
36 *more than one thousand ninety-two dollars (\$1,092), for injuries*  
37 *occurring on or after January 1, 2004.*

38 (10) *Not less than one hundred eighty-nine dollars (\$189), nor*  
39 *more than one thousand two hundred sixty dollars (\$1,260), for*  
40 *injuries occurring on or after January 1, 2005. For injuries*



1 occurring on or after January 1, 2006, average weekly earnings  
2 shall be taken at not less than one hundred eighty-nine dollars  
3 (\$189), nor more than one thousand two hundred sixty dollars  
4 (\$1,260) or one and one-half times the state average weekly wage,  
5 whichever is greater. Commencing on January 1, 2007, and each  
6 January 1 thereafter, the limits specified in this paragraph shall be  
7 increased by an amount equal to the percentage increase in the  
8 state average weekly wage as compared to the prior year. For  
9 purposes of this paragraph, “state average weekly wage” means  
10 the average weekly wage paid by employers to employees covered  
11 by unemployment insurance as reported by the United States  
12 Department of Labor for California for the 12 months ending  
13 March 31 of the calendar year preceding the year in which the  
14 injury occurred.

15 (b) In computing average annual earnings for purposes of  
16 permanent partial disability indemnity, except as provided in  
17 Section 4659, the average weekly earnings shall be taken at:

18 (1) Not less than seventy-five dollars (\$75), nor more than one  
19 hundred ninety-five dollars (\$195), for injuries occurring on ~~and~~  
20 or after January 1, 1983.

21 (2) Not less than one hundred five dollars (\$105), nor more  
22 than two hundred ten dollars (\$210), for injuries occurring on ~~and~~  
23 or after January 1, 1984.

24 (3) When the final adjusted permanent disability rating of the  
25 injured employee is 15 percent or greater, but not more than 24.75  
26 percent: (A) not less than one hundred five dollars (\$105), nor  
27 more than two hundred twenty-two dollars (\$222), for injuries  
28 occurring on ~~and~~ or after July 1, 1994; (B) not less than one  
29 hundred five dollars (\$105), nor more than two hundred thirty-one  
30 dollars (\$231), for injuries occurring on ~~and~~ or after July 1, 1995;  
31 (C) not less than one hundred five dollars (\$105), nor more than  
32 two hundred forty dollars (\$240), for injuries occurring on ~~and~~ or  
33 after July 1, 1996.

34 (4) When the final adjusted permanent disability rating of the  
35 injured employee is 25 percent or greater, not less than one  
36 hundred five dollars (\$105), nor more than two hundred  
37 twenty-two dollars (\$222), for injuries occurring on ~~and~~ or after  
38 January 1, 1991.

39 (5) When the final adjusted permanent disability rating of the  
40 injured employee is 25 percent or greater but not more than 69.75



1 percent: (A) not less than one hundred five dollars (\$105), nor  
2 more than two hundred thirty-seven dollars (\$237), for injuries  
3 occurring on ~~and~~-or after July 1, 1994; (B) not less than one  
4 hundred five dollars (\$105), nor more than two hundred forty-six  
5 dollars (\$246), for injuries occurring on ~~and~~-or after July 1, 1995;  
6 and (C) not less than one hundred five dollars (\$105), nor more  
7 than two hundred fifty-five dollars (\$255), for injuries occurring  
8 on ~~and~~-or after July 1, 1996.

9 (6) When the final adjusted permanent disability rating of the  
10 injured employee is *less than 70 percent*: (A) *not less than one*  
11 *hundred fifty dollars (\$150), nor more than two hundred*  
12 *seventy-seven dollars and fifty cents (\$277.50), for injuries*  
13 *occurring on or after January 1, 2003; (B) not less than one*  
14 *hundred fifty-seven dollars and fifty cents (\$157.50), nor more*  
15 *than three hundred dollars (\$300), for injuries occurring on or*  
16 *after January 1, 2004; (C) not less than one hundred fifty-seven*  
17 *dollars and fifty cents (\$157.50), nor more than three hundred*  
18 *thirty dollars (\$330), for injuries occurring on or after January 1,*  
19 *2005; and (D) not less than one hundred ninety-five dollars*  
20 *(\$195), nor more than three hundred forty-five dollars (\$345), for*  
21 *injuries occurring on or after January 1, 2006.*

22 (7) When the final adjusted permanent disability rating of the  
23 injured employee is 70 percent or greater, but less than ~~99.75-~~ 100  
24 percent: (A) not less than one hundred five dollars (\$105), nor  
25 more than two hundred fifty-two dollars (\$252), for injuries  
26 occurring on ~~and~~-or after July 1, 1994; (B) not less than one  
27 hundred five dollars (\$105), nor more than two hundred  
28 ninety-seven dollars (\$297), for injuries occurring on ~~and~~-or after  
29 July 1, 1995; ~~and~~ (C) not less than one hundred five dollars (\$105),  
30 nor more than three hundred forty-five dollars (\$345), for injuries  
31 occurring on ~~and~~-or after July 1, 1996; (D) *not less than one*  
32 *hundred fifty dollars (\$150), nor more than three hundred*  
33 *forty-five dollars (\$345), for injuries occurring on or after January*  
34 *1, 2003; (E) not less than one hundred fifty-seven dollars and fifty*  
35 *cents (\$157.50), nor more than three hundred seventy-five dollars*  
36 *(\$375), for injuries occurring on or after January 1, 2004; (F) not*  
37 *less than one hundred fifty-seven dollars and fifty cents (\$157.50),*  
38 *nor more than four hundred five dollars (\$405), for injuries*  
39 *occurring on or after January 1, 2005; and (G) not less than one*  
40 *hundred ninety-five dollars (\$195), nor more than four hundred*



1 *five dollars (\$405), for injuries occurring on or after January 1,*  
2 *2006.*

3 (c) Between the limits specified in subdivisions (a) and (b), the  
4 average weekly earnings, except as provided in Sections 4456 to  
5 4459, shall be arrived at as follows:

6 (1) Where the employment is for 30 or more hours a week and  
7 for five or more working days a week, the average weekly earnings  
8 shall be the number of working days a week times the daily  
9 earnings at the time of the injury.

10 (2) Where the employee is working for two or more employers  
11 at or about the time of the injury, the average weekly earnings shall  
12 be taken as the aggregate of these earnings from all employments  
13 computed in terms of one week; but the earnings from  
14 employments other than the employment in which the injury  
15 occurred shall not be taken at a higher rate than the hourly rate paid  
16 at the time of the injury.

17 (3) If the earnings are at an irregular rate, such as piecework,  
18 or on a commission basis, or are specified to be by week, month,  
19 or other period, then the average weekly earnings mentioned in  
20 subdivision (a) shall be taken as the actual weekly earnings  
21 averaged for this period of time, not exceeding one year, as may  
22 conveniently be taken to determine an average weekly rate of pay.

23 (4) Where the employment is for less than 30 hours per week,  
24 or where for any reason the foregoing methods of arriving at the  
25 average weekly earnings cannot reasonably and fairly be applied,  
26 the average weekly earnings shall be taken at 100 percent of the  
27 sum which reasonably represents the average weekly earning  
28 capacity of the injured employee at the time of his or her injury,  
29 due consideration being given to his or her actual earnings from all  
30 sources and employments.

31 (d) Every computation made pursuant to this section beginning  
32 January 1, 1990, shall be made only with reference to temporary  
33 disability or the permanent disability resulting from an original  
34 injury sustained after January 1, 1990. However, all rights existing  
35 under this section on January 1, 1990, shall be continued in force.  
36 Except as provided in Section 4661.5, disability indemnity  
37 benefits shall be calculated according to the limits in this section  
38 in effect on the date of injury and shall remain in effect for the  
39 duration of any disability resulting from the injury.



1 SEC. 10. Section 4600.5 of the Labor Code is amended to  
2 read:

3 4600.5. (a) Any health care service plan licensed pursuant to  
4 the Knox-Keene Health Care Service Plan Act, a disability insurer  
5 licensed by the Department of Insurance, or any entity, including,  
6 but not limited to, workers' compensation insurers and third-party  
7 administrators authorized by the administrative director under  
8 subdivision (e), may make written application to the  
9 administrative director to become certified as a health care  
10 organization to provide health care to injured employees for  
11 injuries and diseases compensable under this article.

12 (b) Each application for certification shall be accompanied by  
13 a reasonable fee prescribed by the administrative director,  
14 sufficient to cover the actual cost of processing the application. A  
15 certificate is valid for the period that the director may prescribe  
16 unless sooner revoked or suspended.

17 (c) If the health care organization is a health care service plan  
18 licensed pursuant to the Knox-Keene Health Care Service Plan  
19 Act, ~~the administrative director shall certify the plan to provide~~  
20 ~~health care pursuant to Section 4600.3 if the director finds that the~~  
21 ~~plan is in good standing with the Department of Managed Health~~  
22 ~~Care and meets and has provided the Managed Care Unit of the~~  
23 *Division of Workers' Compensation with the necessary*  
24 *documentation to comply with this subdivision, that organization*  
25 *shall be deemed to be a health care organization able to provide*  
26 *health care pursuant to Section 4600.3, without further*  
27 *application duplicating the documentation already filed with the*  
28 *Department of Managed Health Care. These plans shall be*  
29 *required to remain in good standing with the Department of*  
30 *Managed Health Care, and shall meet the following additional*  
31 requirements:

32 (1) Proposes to provide all medical and health care services that  
33 may be required by this article.

34 (2) Provides a program involving cooperative efforts by the  
35 employees, the employer, and the health plan to promote  
36 workplace health and safety, consultative and other services, and  
37 early return to work for injured employees.

38 (3) Proposes a timely and accurate method to meet the  
39 requirements set forth by the administrative director for all carriers  
40 of workers' compensation coverage to report necessary



1 information regarding medical and health care service cost and  
2 utilization, rates of return to work, average time in medical  
3 treatment, and other measures as determined by the administrative  
4 director to enable the director to determine the effectiveness of the  
5 plan.

6 (4) Agrees to provide the administrative director with  
7 information, reports, and records prepared and submitted to the  
8 Department of Managed Health Care in compliance with the  
9 Knox-Keene Health Care Service Plan Act, relating to financial  
10 solvency, provider accessibility, peer review, utilization review,  
11 and quality assurance, upon request, if the administrative director  
12 determines the information is necessary to verify that the plan is  
13 providing medical treatment to injured employees in compliance  
14 with the requirements of this code.

15 Disclosure of peer review proceedings and records to the  
16 administrative director shall not alter the status of the proceedings  
17 or records as privileged and confidential communications  
18 pursuant to Sections 1370 and 1370.1 of the Health and Safety  
19 Code.

20 (5) Demonstrates the capability to provide occupational  
21 medicine and related disciplines.

22 (6) Complies with any other requirement the administrative  
23 director determines is necessary to provide medical services to  
24 injured employees consistent with the intent of this article,  
25 including, but not limited to, a written patient grievance policy.

26 (d) If the health care organization is a disability insurer licensed  
27 by the Department of Insurance, and is in compliance with  
28 subdivision (d) of Sections 10133 and 10133.5 of the Insurance  
29 Code, the administrative director shall certify the organization to  
30 provide health care pursuant to Section 4600.3 if the director finds  
31 that the plan is in good standing with the Department of Insurance  
32 and meets the following additional requirements:

33 (1) Proposes to provide all medical and health care services that  
34 may be required by this article.

35 (2) Provides a program involving cooperative efforts by the  
36 employees, the employer, and the health plan to promote  
37 workplace health and safety, consultative and other services, and  
38 early return to work for injured employees.

39 (3) Proposes a timely and accurate method to meet the  
40 requirements set forth by the administrative director for all carriers



1 of workers' compensation coverage to report necessary  
2 information regarding medical and health care service cost and  
3 utilization, rates of return to work, average time in medical  
4 treatment, and other measures as determined by the administrative  
5 director to enable the director to determine the effectiveness of the  
6 plan.

7 (4) Agrees to provide the administrative director with  
8 information, reports, and records prepared and submitted to the  
9 Department of Insurance in compliance with the Insurance Code  
10 relating to financial solvency, provider accessibility, peer review,  
11 utilization review, and quality assurance, upon request, if the  
12 administrative director determines the information is necessary to  
13 verify that the plan is providing medical treatment to injured  
14 employees consistent with the intent of this article.

15 Disclosure of peer review proceedings and records to the  
16 administrative director shall not alter the status of the proceedings  
17 or records as privileged and confidential communications  
18 pursuant to subdivision (d) of Section 10133 of the Insurance  
19 Code.

20 (5) Demonstrates the capability to provide occupational  
21 medicine and related disciplines.

22 (6) Complies with any other requirement the administrative  
23 director determines is necessary to provide medical services to  
24 injured employees consistent with the intent of this article,  
25 including, but not limited to, a written patient grievance policy.

26 (e) If the health care organization is a workers' compensation  
27 insurer, third-party administrator, or any other entity that the  
28 administrative director determines meets the requirements of  
29 Section 4600.6, the administrative director shall certify the  
30 organization to provide health care pursuant to Section 4600.3 if  
31 the director finds that it meets the following additional  
32 requirements:

33 (1) Proposes to provide all medical and health care services that  
34 may be required by this article.

35 (2) Provides a program involving cooperative efforts by the  
36 employees, the employer, and the health plan to promote  
37 workplace health and safety, consultative and other services, and  
38 early return to work for injured employees.

39 (3) Proposes a timely and accurate method to meet the  
40 requirements set forth by the administrative director for all carriers



1 of workers' compensation coverage to report necessary  
2 information regarding medical and health care service cost and  
3 utilization, rates of return to work, average time in medical  
4 treatment, and other measures as determined by the administrative  
5 director to enable the director to determine the effectiveness of the  
6 plan.

7 (4) Agrees to provide the administrative director with  
8 information, reports, and records relating to provider accessibility,  
9 peer review, utilization review, quality assurance, advertising,  
10 disclosure, medical and financial audits, and grievance systems,  
11 upon request, if the administrative director determines the  
12 information is necessary to verify that the plan is providing  
13 medical treatment to injured employees consistent with the intent  
14 of this article.

15 Disclosure of peer review proceedings and records to the  
16 administrative director shall not alter the status of the proceedings  
17 or records as privileged and confidential communications  
18 pursuant to subdivision (d) of Section 10133 of the Insurance  
19 Code.

20 (5) Demonstrates the capability to provide occupational  
21 medicine and related disciplines.

22 (6) Complies with any other requirement the administrative  
23 director determines is necessary to provide medical services to  
24 injured employees consistent with the intent of this article,  
25 including, but not limited to, a written patient grievance policy.

26 (7) Complies with the following requirements:

27 (A) An organization certified by the administrative director  
28 under this subdivision may not provide or undertake to arrange for  
29 the provision of health care to employees, or to pay for or to  
30 reimburse any part of the cost of that health care in return for a  
31 prepaid or periodic charge paid by or on behalf of those employees.

32 (B) Every organization certified under this subdivision shall  
33 operate on a fee-for-service basis. As used in this section, fee for  
34 service refers to the situation where the amount of reimbursement  
35 paid by the employer to the organization or providers of health care  
36 is determined by the amount and type of health care rendered by  
37 the organization or provider of health care.

38 (C) An organization certified under this subdivision is  
39 prohibited from assuming risk.



1 (f) (1) A workers' compensation health care provider  
2 organization authorized by the Department of Corporations on  
3 December 31, 1997, shall be eligible for certification as a health  
4 care organization under subdivision (e).

5 (2) An entity that had, on December 31, 1997, submitted an  
6 application with the Commissioner of Corporations under Part 3.2  
7 (commencing with Section 5150) shall be considered an applicant  
8 for certification under subdivision (e) and shall be entitled to  
9 priority in consideration of its application. The Commissioner of  
10 Corporations shall provide complete files for all pending  
11 applications to the administrative director on or before January 31,  
12 1998.

13 (g) The provisions of this section shall not affect the  
14 confidentiality or admission in evidence of a claimant's medical  
15 treatment records.

16 (h) Charges for services arranged for or provided by health care  
17 service plans certified by this section and that are paid on a  
18 per-enrollee-periodic-charge basis shall not be subject to the  
19 schedules adopted by the administrative director pursuant to  
20 Section 5307.1.

21 (i) Nothing in this section shall be construed to expand or  
22 constrict any requirements imposed by law on a health care service  
23 plan or insurer when operating as other than a health care  
24 organization pursuant to this section.

25 (j) In consultation with interested parties, including the  
26 Department of Corporations and the Department of Insurance, the  
27 administrative director shall adopt rules necessary to carry out this  
28 section.

29 (k) The administrative director shall refuse to certify or may  
30 revoke or suspend the certification of any health care organization  
31 under this section if the director finds that:

32 (1) The plan for providing medical treatment fails to meet the  
33 requirements of this section.

34 (2) A health care service plan licensed by the Department of  
35 Managed Health Care, a workers' compensation health care  
36 provider organization authorized by the Department of  
37 Corporations, or a carrier licensed by the Department of Insurance  
38 is not in good standing with its licensing agency.

39 (3) Services under the plan are not being provided in  
40 accordance with the terms of a certified plan.



1 (l) (1) When an injured employee requests chiropractic  
2 treatment for work-related injuries, the health care organization  
3 shall provide the injured worker with access to the services of a  
4 chiropractor pursuant to guidelines for chiropractic care  
5 established by paragraph (2). Within five working days of the  
6 employee's request to see a chiropractor, the health care  
7 organization and any person or entity who directs the kind or  
8 manner of health care services for the plan shall refer an injured  
9 employee to an affiliated chiropractor for work-related injuries  
10 that are within the guidelines for chiropractic care established by  
11 paragraph (2). Chiropractic care rendered in accordance with  
12 guidelines for chiropractic care established pursuant to paragraph  
13 (2) shall be provided by duly licensed chiropractors affiliated with  
14 the plan.

15 (2) The health care organization shall establish guidelines for  
16 chiropractic care in consultation with affiliated chiropractors who  
17 are participants in the health care organization's utilization review  
18 process for chiropractic care, which may include qualified medical  
19 evaluators knowledgeable in the treatment of chiropractic  
20 conditions. The guidelines for chiropractic care shall, at a  
21 minimum, explicitly require the referral of any injured employee  
22 who so requests to an affiliated chiropractor for the evaluation or  
23 treatment, or both, of neuromusculoskeletal conditions.

24 (3) Whenever a dispute concerning the appropriateness or  
25 necessity of chiropractic care for work-related injuries arises, the  
26 dispute shall be resolved by the health care organization's  
27 utilization review process for chiropractic care in accordance with  
28 the health care organization's guidelines for chiropractic care  
29 established by paragraph (2).

30 Chiropractic utilization review for work-related injuries shall  
31 be conducted in accordance with the health care organization's  
32 approved quality assurance standards and utilization review  
33 process for chiropractic care. Chiropractors affiliated with the plan  
34 shall have access to the health care organization's provider appeals  
35 process and, in the case of chiropractic care for work-related  
36 injuries, the review shall include review by a chiropractor  
37 affiliated with the health care organization, as determined by the  
38 health care organization.

39 (4) The health care organization shall inform employees of the  
40 procedures for processing and resolving grievances, including



1 those related to chiropractic care, including the location and  
2 telephone number where grievances may be submitted.

3 (5) All guidelines for chiropractic care and utilization review  
4 shall be consistent with the standards of this code that require care  
5 to cure or relieve the effects of the industrial injury.

6 (m) Individually identifiable medical information on patients  
7 submitted to the division shall not be subject to the California  
8 Public Records Act (Chapter 3.5 (commencing with Section 6250)  
9 of Division 7 of Title 1 of the Government Code).

10 (n) (1) When an injured employee requests acupuncture  
11 treatment for work-related injuries, the health care organization  
12 shall provide the injured worker with access to the services of an  
13 acupuncturist pursuant to guidelines for acupuncture care  
14 established by paragraph (2). Within five working days of the  
15 employee's request to see an acupuncturist, the health care  
16 organization and any person or entity who directs the kind or  
17 manner of health care services for the plan shall refer an injured  
18 employee to an affiliated acupuncturist for work-related injuries  
19 that are within the guidelines for acupuncture care established by  
20 paragraph (2). Acupuncture care rendered in accordance with  
21 guidelines for acupuncture care established pursuant to paragraph  
22 (2) shall be provided by duly licensed acupuncturists affiliated  
23 with the plan.

24 (2) The health care organization shall establish guidelines for  
25 acupuncture care in consultation with affiliated acupuncturists  
26 who are participants in the health care organization's utilization  
27 review process for acupuncture care, which may include qualified  
28 medical evaluators. The guidelines for acupuncture care shall, at  
29 a minimum, explicitly require the referral of any injured employee  
30 who so requests to an affiliated acupuncturist for the evaluation or  
31 treatment, or both, of neuromusculoskeletal conditions.

32 (3) Whenever a dispute concerning the appropriateness or  
33 necessity of acupuncture care for work-related injuries arises, the  
34 dispute shall be resolved by the health care organization's  
35 utilization review process for acupuncture care in accordance with  
36 the health care organization's guidelines for acupuncture care  
37 established by paragraph (2).

38 Acupuncture utilization review for work-related injuries shall  
39 be conducted in accordance with the health care organization's  
40 approved quality assurance standards and utilization review



1 process for acupuncture care. Acupuncturists affiliated with the  
2 plan shall have access to the health care organization's provider  
3 appeals process and, in the case of acupuncture care for  
4 work-related injuries, the review shall include review by an  
5 acupuncturist affiliated with the health care organization, as  
6 determined by the health care organization.

7 (4) The health care organization shall inform employees of the  
8 procedures for processing and resolving grievances, including  
9 those related to acupuncture care, including the location and  
10 telephone number where grievances may be submitted.

11 (5) All guidelines for acupuncture care and utilization review  
12 shall be consistent with the standards of this code that require care  
13 to cure or relieve the effects of the industrial injury.

14 *SEC. II. Section 4614 of the Labor Code is amended to read:*

15 4614. (a) (1) Notwithstanding Section 5307.1, where the  
16 employee's individual or organizational provider of health care  
17 services rendered under this division and paid on a fee-for-service  
18 basis is also the provider of health care services under contract with  
19 the employee's health benefit program, and the service or  
20 treatment provided is included within the range of benefits of the  
21 employee's health benefit program, and paid on a fee-for-service  
22 basis, the amount of payment for services provided under this  
23 division, for a work-related occurrence or illness, shall be no more  
24 than the amount that would have been paid for the same services  
25 under the health benefit plan, for a non-work-related occurrence  
26 or illness.

27 (2) A health care service plan that arranges for health care  
28 services to be rendered to an employee under this division under  
29 a contract, and which is also the employee's organizational  
30 provider for nonoccupational injuries and illnesses, *with the*  
31 *exception of a nonprofit health care service plan that exclusively*  
32 *contracts with a medical group to provide or arrange for medical*  
33 *services to its enrollees in a designated geographic area*, shall be  
34 paid by the employer for services rendered under this division only  
35 on a capitated basis.

36 (b) (1) Where the employee's individual or organizational  
37 provider of health care services rendered under this division who  
38 is not providing services under a contract is not the provider of  
39 health care services under contract with the employee's health  
40 benefit program or where the services rendered under this division



1 are not within the benefits provided under the employer-sponsored  
2 health benefit program, the provider shall receive payment that is  
3 no more than the average of the payment that would have been paid  
4 by five of the largest preferred provider organizations by  
5 geographic region. Physicians, as defined in Section 3209.3, shall  
6 be reimbursed at the same averaged rates, regardless of licensure,  
7 for the delivery of services under the same procedure code. This  
8 subdivision shall not apply to a health care service plan that  
9 provides its services on a capitated basis.

10 (2) The administrative director shall identify the regions and  
11 the five largest carriers in each region. The carriers shall provide  
12 the necessary information to the administrative director in the  
13 form and manner requested by the administrative director. The  
14 administrative director shall make this information available to the  
15 affected providers on an annual basis.

16 (c) Nothing in this section shall prohibit an individual or  
17 organizational health care provider from being paid fees different  
18 from those set forth in the official medical fee schedule by an  
19 employer, insurance carrier, third-party administrator on behalf of  
20 employers, or preferred provider organization representing an  
21 employer or insurance carrier provided that the administrative  
22 director has determined that the alternative negotiated rates  
23 between the organizational or individual provider and a payor, a  
24 third-party administrator on behalf of employers, or a preferred  
25 provider organization will produce greater savings in the  
26 aggregate than if each item on billings were to be charged at the  
27 scheduled rate.

28 (d) For the purposes of this section, “organizational provider”  
29 means an entity that arranges for health care services to be  
30 rendered directly by individual caregivers. An organizational  
31 provider may be a health care service plan, disability insurer,  
32 health care organization, preferred provider organization, or  
33 workers’ compensation insurer arranging for care through a  
34 managed care network or on a fee-for-service basis. An individual  
35 provider is either an individual or institution that provides care  
36 directly to the injured worker.

37 *SEC. 12. Section 4702 of the Labor Code, as amended by*  
38 *Chapter 6 of the Statutes of 2002, is amended to read:*



1 4702. (a) Except as otherwise provided in this section and  
2 Sections 4553, 4554, 4557, and 4558, the death benefit in cases of  
3 total dependency shall be as follows:

4 (1) In the case of two total dependents and regardless of the  
5 number of partial dependents, for injuries occurring before  
6 January 1, 1991, ninety-five thousand dollars (\$95,000), for  
7 injuries occurring on or after January 1, 1991, one hundred fifteen  
8 thousand dollars (\$115,000), for injuries occurring on or after July  
9 1, 1994, one hundred thirty-five thousand dollars (\$135,000), for  
10 injuries occurring on or after July 1, 1996, one hundred forty-five  
11 thousand dollars (\$145,000), and for injuries occurring on or after  
12 January 1, 2006, two hundred ninety thousand dollars (\$290,000).

13 (2) In the case of one total dependent and one or more partial  
14 dependents, for injuries occurring before January 1, 1991, seventy  
15 thousand dollars (\$70,000), for injuries occurring on or after  
16 January 1, 1991, ninety-five thousand dollars (\$95,000), for  
17 injuries occurring on or after July 1, 1994, one hundred fifteen  
18 thousand dollars (\$115,000), for injuries occurring on or after July  
19 1, 1996, one hundred twenty-five thousand dollars (\$125,000),  
20 and for injuries occurring on or after January 1, 2006, two hundred  
21 fifty thousand dollars (\$250,000), plus four times the amount  
22 annually devoted to the support of the partial dependents, but not  
23 more than the following: for injuries occurring before January 1,  
24 1991, a total of ninety-five thousand dollars (\$95,000), for injuries  
25 occurring on or after January 1, 1991, one hundred fifteen  
26 thousand dollars (\$115,000), for injuries occurring on or after July  
27 1, 1994, one hundred twenty-five thousand dollars (\$125,000), for  
28 injuries occurring on or after July 1, 1996, one hundred forty-five  
29 thousand dollars (\$145,000), and for injuries occurring on or after  
30 January 1, 2006, two hundred ninety thousand dollars (\$290,000).

31 (3) In the case of one total dependent and no partial dependents,  
32 for injuries occurring before January 1, 1991, seventy thousand  
33 dollars (\$70,000), for injuries occurring on or after January 1,  
34 1991, ninety-five thousand dollars (\$95,000), for injuries  
35 occurring on or after July 1, 1994, one hundred fifteen thousand  
36 dollars (\$115,000), for injuries occurring on or after July 1, 1996,  
37 one hundred twenty-five thousand dollars (\$125,000), and for  
38 injuries occurring on or after January 1, 2006, two hundred fifty  
39 thousand dollars (\$250,000).



1 (4) (A) In the case of no total dependents and one or more  
2 partial dependents, for injuries occurring before January 1, 1991,  
3 four times the amount annually devoted to the support of the partial  
4 dependents, but not more than seventy thousand dollars (\$70,000),  
5 for injuries occurring on or after January 1, 1991, a total of  
6 ninety-five thousand dollars (\$95,000), for injuries occurring on  
7 or after July 1, 1994, one hundred fifteen thousand dollars  
8 (\$115,000), and for injuries occurring on or after July 1, 1996, but  
9 before January 1, 2006, one hundred twenty-five thousand dollars  
10 (\$125,000).

11 (B) In the case of no total dependents and one or more partial  
12 dependents, eight times the amount annually devoted to the  
13 support of the partial dependents, for injuries occurring on or after  
14 January 1, 2006, but not more than two hundred fifty thousand  
15 dollars (\$250,000).

16 (5) In the case of three or more total dependents and regardless  
17 of the number of partial dependents, one hundred fifty thousand  
18 dollars (\$150,000), for injuries occurring on or after July 1, 1994,  
19 one hundred sixty thousand dollars (\$160,000), for injuries  
20 occurring on or after July 1, 1996, and three hundred twenty  
21 thousand dollars (\$320,000), for injuries occurring on or after  
22 January 1, 2006.

23 (6) ~~In~~ For injuries occurring on or after January 1, 2004, in the  
24 case of no total dependents and no partial dependents, two hundred  
25 fifty thousand dollars (\$250,000) to the estate of the deceased  
26 employee.

27 (b) The death benefit in all cases shall be paid in installments  
28 in the same manner and amounts as temporary total disability  
29 indemnity would have to be made to the employee, unless the  
30 appeals board otherwise orders. However, no payment shall be  
31 made at a weekly rate of less than two hundred twenty-four dollars  
32 (\$224).

33 (c) Disability indemnity shall not be deducted from the death  
34 benefit and shall be paid in addition to the death benefit when the  
35 injury resulting in death occurs after September 30, 1949.

36 (d) All rights under this section existing prior to January 1,  
37 1990, shall be continued in force.

38 SEC. 13. Section 5307.21 is added to the Labor Code, to read:

39 5307.21. (a) The administrative director shall have the sole  
40 authority to develop an outpatient surgery facility fee schedule for



1 *services not performed under contract, provided that the schedule*  
2 *meets all of the following requirements:*

3 *(1) The schedule shall include all facility charges for outpatient*  
4 *surgeries performed in any facility authorized by law to perform*  
5 *the surgeries. The schedule may not include the fee of any*  
6 *physician and surgeon providing services in connection with the*  
7 *surgery.*

8 *(2) The schedule shall promote payment predictability,*  
9 *minimize administrative costs, and ensure access to outpatient*  
10 *surgery services by injured workers.*

11 *(3) The schedule shall be sufficient to cover the costs of each*  
12 *surgical procedure, as well as access to quality care.*

13 *(4) The schedule shall include specific provisions for review*  
14 *and revision of related fees no less frequently than biennially.*

15 *(5) The schedule shall be adopted after public hearings*  
16 *pursuant to Section 5307.3 and shall be included within the official*  
17 *medical fee schedule.*

18 *(b) The process used by the administrative director to develop*  
19 *an outpatient surgery fee schedule shall contain the following*  
20 *elements:*

21 *(1) A formal analysis of one year of published data collected*  
22 *pursuant to Section 128737 of the Health and Safety Code, with the*  
23 *assistance of an independent consultant with demonstrated*  
24 *expertise in outpatient surgery service.*

25 *(2) Any published data collected from providers of outpatient*  
26 *surgery services.*

27 *(3) Payment data including, but not limited to, type of payor*  
28 *and amount charged.*

29 *(4) Cost data including, but not limited to, actual expenses for*  
30 *labor, supplies, equipment, implants, anesthesia, overhead, and*  
31 *administration.*

32 *(5) Outcome data including, but not limited to, expected level*  
33 *of rehabilitation, expected coverage timeframe, and incidence of*  
34 *infection.*

35 *(6) Access data including, but not limited to, date of injury, date*  
36 *of surgery recommendation, and date of procedure.*

37 *(7) Other data that is mutually agreed to by the Office of*  
38 *Statewide Health Planning and Development and the*  
39 *administrative director. The administrative director shall consult*  
40 *with the Office of Statewide Health Planning and Development to*



1 *ensure that the data collected is comprehensive and relevant to the*  
2 *development of a fee schedule.*

3 *(c) The outpatient surgery facility fee schedule shall reflect*  
4 *input from workers' compensation insurance carriers, businesses,*  
5 *organized labor, providers of outpatient surgical services, and*  
6 *patients receiving outpatient surgical services.*

7 *(d) At least 90 days prior to commencing the public hearings*  
8 *related to an outpatient surgery fee schedule as prescribed by*  
9 *Section 5307.3, the administrative director shall provide the*  
10 *Assembly Committee on Insurance and the Senate Committee on*  
11 *Labor and Industrial Relations a comprehensive report on the data*  
12 *analysis required by this section and the administrative director's*  
13 *recommendations for an outpatient surgery fee schedule.*

14 *SEC. 14. Section 5502 of the Labor Code is amended to read:*

15 5502. (a) Except as provided in subdivisions (b) and (d), the  
16 hearing shall be held not less than 10 days, and not more than 60  
17 days, after the date a declaration of readiness to proceed, on a form  
18 prescribed by the ~~Workers' Compensation Appeals Board~~ *court*  
19 *administrator*, is filed. ~~Where~~ *If* a claim form has been filed for an  
20 injury occurring on or after January 1, 1990, and before January  
21 1, 1994, an application for adjudication shall accompany the  
22 declaration of readiness to proceed.

23 (b) The ~~administrative director~~ *court administrator* shall  
24 establish a priority calendar for issues requiring an expedited  
25 hearing and decision. A hearing shall be held and a determination  
26 as to the rights of the parties shall be made and filed within 30 days  
27 after the declaration of readiness to proceed is filed if the issues in  
28 dispute are any of the following:

29 (1) The employee's entitlement to medical treatment pursuant  
30 to Section 4600.

31 (2) The employee's entitlement to, or the amount of, temporary  
32 disability indemnity payments.

33 (3) The employee's entitlement to vocational rehabilitation  
34 services, or the termination of an employer's liability to provide  
35 these services to an employee.

36 (4) The employee's entitlement to compensation from one or  
37 more responsible employers when two or more employers dispute  
38 liability as among themselves.



1 (5) Any other issues requiring an expedited hearing and  
2 determination as prescribed in rules and regulations of the  
3 administrative director.

4 (c) *The court administrator shall establish a priority*  
5 *conference calendar for cases in which the employee is represented*  
6 *by an attorney and the issues in dispute are employment or injury*  
7 *arising out of employment or in the course of employment. The*  
8 *conference shall be conducted by a workers' compensation*  
9 *administrative law judge within 30 days after the declaration of*  
10 *readiness to proceed. If the dispute cannot be resolved at the*  
11 *conference, a trial shall be set as expeditiously as possible, unless*  
12 *good cause is shown why discovery is not complete, in which case*  
13 *status conferences shall be held at regular intervals. The case shall*  
14 *be set for trial when discovery is complete, or when the workers'*  
15 *compensation administrative law judge determines that the parties*  
16 *have had sufficient time in which to complete reasonable*  
17 *discovery. A determination as to the rights of the parties shall be*  
18 *made and filed within 30 days after the trial.*

19 (d) ~~The administrative director~~ court administrator shall  
20 report quarterly to the Governor and to the Legislature concerning  
21 the frequency and types of issues which are not heard and decided  
22 within the period prescribed in this section and the reasons  
23 therefor.

24 ~~(d)~~

25 (e) (1) In all cases, a mandatory settlement conference shall be  
26 conducted not less than 10 days, and not more than 30 days, after  
27 the filing of a declaration of readiness to proceed. If the dispute is  
28 not resolved, the regular hearing shall be held within 75 days after  
29 the declaration of readiness to proceed is filed.

30 (2) The settlement conference shall be conducted by a workers'  
31 compensation *administrative law* judge or by a referee who is  
32 eligible to be a workers' compensation *administrative law* judge  
33 or eligible to be an arbitrator under Section 5270.5. At the  
34 mandatory settlement conference, the referee or workers'  
35 compensation *administrative law* judge shall have the authority to  
36 resolve the dispute, including the authority to approve a  
37 compromise and release or issue a stipulated finding and award,  
38 and if the dispute cannot be resolved, to frame the issues and  
39 stipulations for trial. The appeals board shall adopt any regulations  
40 needed to implement this subdivision. The presiding workers'



1 compensation *administrative law* judge shall supervise settlement  
2 conference referees in the performance of their judicial functions  
3 under this subdivision.

4 (3) If the claim is not resolved at the mandatory settlement  
5 conference, the parties shall file a pretrial conference statement  
6 noting the specific issues in dispute, each party’s proposed  
7 permanent disability rating, and listing the exhibits, and disclosing  
8 witnesses. Discovery shall close on the date of the mandatory  
9 settlement conference. Evidence not disclosed or obtained  
10 thereafter shall not be admissible unless the proponent of the  
11 evidence can demonstrate that it was not available or could not  
12 have been discovered by the exercise of due diligence prior to the  
13 settlement conference.

14 ~~(e)~~

15 (f) In cases involving the Director of the Department of  
16 Industrial Relations in his or her capacity as administrator of the  
17 Uninsured Employers Fund, this section shall not apply unless  
18 proof of service, as specified in paragraph (1) of subdivision (d)  
19 of Section 3716 has been filed with the appeals board and provided  
20 to the Director of Industrial Relations, valid jurisdiction has been  
21 established over the employer, and the fund has been joined.

22 ~~(f)~~

23 (g) Except as provided in subdivision (a) and in Section 4065,  
24 the provisions of this section shall apply irrespective of the date of  
25 injury.

26 *SEC. 15. Section 6354.7 is added to the Labor Code, to read:*

27 *6354.7. (a) The Workers’ Occupational Safety and Health*  
28 *Education Fund is hereby created as a special account in the State*  
29 *Treasury. Proceeds of the fund may be expended, upon*  
30 *appropriation by the Legislature, by the Commission on Health*  
31 *and Safety and Workers’ Compensation for the purpose of*  
32 *establishing and maintaining a worker occupational safety and*  
33 *health training and education program and an insurance loss*  
34 *control services coordinator. The director shall levy and collect*  
35 *fees to fund these purposes from insurers subject to Section 6354.5.*  
36 *However, the fee assessed against any insurer shall not exceed the*  
37 *greater of one hundred dollars (\$100) or 0.0286 percent of paid*  
38 *workers’ compensation indemnity amounts for claims as reported*  
39 *for the previous calendar year to the designated rating*  
40 *organization for the analysis required under subdivisions (b) and*



1 (c) of Section 11759.1 of the Insurance Code. All fees shall be  
2 deposited in the fund.

3 (b) The commission shall establish and maintain a worker  
4 safety and health training and education program. The purpose of  
5 the worker occupational safety and health training and education  
6 program shall be to promote awareness of the need for prevention  
7 education programs, to develop and provide injury and illness  
8 prevention education programs for employees and their  
9 representatives, and to deliver those awareness and training  
10 programs through a network of providers throughout the state. The  
11 commission may conduct the program directly or by means of  
12 contracts or interagency agreements.

13 (c) The commission shall establish an employer and worker  
14 advisory board for the program. The advisory board shall guide  
15 the development of curricula, teaching methods, and specific  
16 course material about occupational safety and health, and shall  
17 assist in providing links to the target audience and broadening the  
18 partnerships with worker-based organizations, labor studies  
19 programs, and others that are able to reach the target audience.

20 (d) The program shall include the development and provision  
21 of a needed core curriculum addressing competencies for effective  
22 participation in workplace injury and illness prevention programs  
23 and on joint labor-management health and safety committees. The  
24 core curriculum shall include an overview of the requirements  
25 related to injury and illness prevention programs and hazard  
26 communication.

27 (e) The program shall include the development and provision  
28 of additional training programs for any or all of the following  
29 categories:

30 (1) Industries on the high hazard list.

31 (2) Hazards that result in significant worker injuries, illnesses,  
32 or compensation costs.

33 (3) Industries or trades in which workers are experiencing  
34 numerous or significant injuries or illnesses.

35 (4) Occupational groups with special needs, such as those who  
36 do not speak English as their first language, workers with limited  
37 literacy, young workers, and other traditionally underserved  
38 industries or groups of workers. Priority shall be given to training  
39 workers who are able to train other workers and workers who have  
40 significant health and safety responsibilities, such as those



1 workers serving on a health and safety committee or serving as  
2 designated safety representatives.

3 (f) The program shall operate one or more libraries and  
4 distribution systems of occupational safety and health training  
5 material, which shall include, but not be limited to, all material  
6 developed by the program pursuant to this section.

7 (g) The advisory board shall annually prepare a written report  
8 evaluating the use and impact of programs developed.

9 (h) The payment of administrative costs incurred by the  
10 commission in conducting the program shall be made from the  
11 Workers' Occupational Safety and Health Education Fund.

12 SEC. 16. Section 86 of Chapter 6 of the Statutes of 2002 is  
13 amended to read:

14 Sec. 86. It is the intent of the Legislature that all  
15 reimbursement expended by the Administrative Director of the  
16 Division of Workers' Compensation for the administration of the  
17 workers' compensation Return-to-Work Program established in  
18 Section 139.48 of the Labor Code shall be funded from the funds  
19 collected in the annual premium tax, collected under Section  
20 12201 of the Revenue and Taxation Code, which is directly  
21 attributable to the compensation benefit rates and amounts set  
22 forth in ~~the Revenue and Taxation Code~~ Chapter 6 of the Statutes  
23 of 2002.

24 SEC. 17. It is the intent of the Legislature that annual  
25 appropriations to the Division of Workers' Compensation be  
26 sufficient to enable the division to hire necessary staff and to obtain  
27 adequate resources and technology to carry out and complete each  
28 of its mandates under Divisions 1 (commencing with Section 50),  
29 4 (commencing with Section 3200), and 4.5 (commencing with  
30 Section 6100) of the Labor Code in a timely manner and in a  
31 manner consistent with the directives set forth in Section 4 of  
32 Article XIV of the California Constitution.

33 SEC. 18. Sections 3, 12, and 16 of this act shall be effective  
34 only if Chapter 6 of the Statutes of 2002 becomes operative.

35 SEC. 19. No reimbursement is required by this act pursuant  
36 to Section 6 of Article XIII B of the California Constitution  
37 because the only costs that may be incurred by a local agency or  
38 school district will be incurred because this act creates a new crime  
39 or infraction, eliminates a crime or infraction, or changes the  
40 penalty for a crime or infraction, within the meaning of Section



1 *17556 of the Government Code, or changes the definition of a*  
2 *crime within the meaning of Section 6 of Article XIII B of the*  
3 *California Constitution.*

4 read:

5 ~~112.—The members of the appeals board shall be appointed by~~  
6 ~~the Governor with the advice and consent of the Senate. The term~~  
7 ~~of office of the members appointed prior to January 1, 1990, shall~~  
8 ~~be four years, and the term of office of members appointed on or~~  
9 ~~after January 1, 1990, shall be six years, and they shall hold office~~  
10 ~~until the appointment and qualification of their successors.~~

11 ~~Five of the members of the appeals board shall be experienced~~  
12 ~~attorneys at law admitted to practice in the State of California. The~~  
13 ~~other two members need not be attorneys at law. At least one of the~~  
14 ~~seven members shall be from organized labor. All members shall~~  
15 ~~be selected with due consideration of their judicial temperament~~  
16 ~~and abilities. Each member shall receive the salary provided for by~~  
17 ~~Chapter 6 (commencing with Section 11550) of Part 1 of Division~~  
18 ~~3 of Title 2 of the Government Code.~~

