

1 SB122
2 173385-1
3 By Senators Orr, Sanford, Livingston, Scofield, Stutts and
4 Melson
5 RFD: Fiscal Responsibility and Economic Development
6 First Read: 02-FEB-16

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8 SYNOPSIS: This bill would revise portions of the
9 workers' compensation law to limit an employer's
10 liability for permanent total disability benefits
11 after the sixty-fifth birthday of the employee, and
12 to limit the obligation of an employer to pay
13 medical benefits if an employee does not seek
14 medical attention for a claimed work injury within
15 a certain time period.

16
17 A BILL
18 TO BE ENTITLED
19 AN ACT

20
21 To amend Sections 25-5-57 and 25-5-77, Code of
22 Alabama 1975, relating to workers' compensation; to limit an
23 employer's liability for permanent total disability benefits
24 after an employee reaches the age of 65; and to limit the
25 obligation of an employer to pay the medical benefits of an
26 employee who does not promptly seek medical attention for a
27 claimed work injury.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Sections 25-5-57 and 25-5-77 of the Code
3 of Alabama 1975, are amended to read as follows:

4 "§25-5-57.

5 "(a) Compensation schedule. Following is the
6 schedule of compensation:

7 "(1) TEMPORARY TOTAL DISABILITY. For injury
8 producing temporary total disability, the compensation shall
9 be 66 2/3 percent of the average weekly earnings received at
10 the time of injury, subject to a maximum and minimum weekly
11 compensation as stated in Section 25-5-68, but if at the time
12 of injury the employee received average weekly earnings of
13 less than the minimum stated in Section 25-5-68, then he or
14 she shall receive the full amount of the average weekly
15 earnings per week. This compensation shall be paid during the
16 time of the disability, but at the time as a temporary total
17 disability shall become permanent, compensation for the
18 continued total disability shall be governed by (a) (4) of this
19 section with respect to permanent total disability. Payments
20 are to be made at the intervals when the earnings were
21 payable, as nearly as may be, unless the parties otherwise
22 agree.

23 "(2) TEMPORARY PARTIAL DISABILITY.

24 "a. Amount and Duration of Compensation. For
25 temporary partial disability, the compensation shall be 66 2/3
26 percent of the difference between the average weekly earnings
27 of the worker at the time of the injury and the average weekly

1 earnings he or she is able to earn in his or her partially
2 disabled condition. This compensation shall be paid during the
3 period of the disability, but not beyond 300 weeks. Payments
4 shall be made at the intervals when the earnings were payable,
5 as nearly as may be, unless the parties otherwise agree, and
6 shall be subject to the same maximum weekly compensation as
7 stated in Section 25-5-68.

8 "b. Effect of Change in Employment. If the injured
9 employee who is receiving compensation for temporary partial
10 disability leaves the employment of the employer by whom he or
11 she was employed at the time of the accident for which the
12 compensation is being paid, he or she shall, upon securing
13 employment elsewhere, give to the former employer an affidavit
14 in writing containing the name of his or her new employer, the
15 place of employment, and the amount of wages being received at
16 the new employment, and until he or she gives the affidavit,
17 the compensation for temporary partial disability shall cease.
18 The employer for whom the employee was employed at the time of
19 the accident for which the compensation is being paid may also
20 at any time demand of the employee an additional affidavit, in
21 writing, containing the name of his or her employer, the place
22 of his or her employment, and the amount of wages he or she is
23 receiving; and if the employee upon demand fails or refuses to
24 make and furnish the affidavit, his or her right to
25 compensation for temporary partial disability shall cease
26 until the affidavit is made and furnished.

27 "(3) PERMANENT PARTIAL DISABILITY.

1 "a. Amount and Duration of Compensation. For
2 permanent partial disability, the compensation shall be based
3 upon the extent of the disability. In cases included in the
4 following schedule, the compensation shall be 66 2/3 percent
5 of the average weekly earnings, during the number of weeks set
6 out in the following schedule:

7 "1. For the loss of a thumb, 62 weeks.

8 "2. For the loss of a first finger, commonly called
9 the index finger, 43 weeks.

10 "3. For the loss of a second finger, 31 weeks.

11 "4. For the loss of a third finger, 22 weeks.

12 "5. For the loss of a fourth finger, commonly called
13 the little finger, 16 weeks.

14 "6. The loss of the first phalange of the thumb or
15 of any finger shall be considered as equal to the loss of one
16 half of the thumb or finger, and compensation shall be paid at
17 the prescribed rate during one half of the time specified
18 above for the thumb or finger.

19 "7. The loss of two or more phalanges shall be
20 considered as the loss of the entire finger or thumb, but in
21 no case shall the amount received for more than one finger
22 exceed the amount provided in this schedule for the loss of a
23 hand.

24 "8. For the loss of a great toe, 32 weeks.

25 "9. For the loss of any of the toes other than the
26 great toe, 11 weeks.

1 "10. The loss of the first phalange of any toe shall
2 be considered to be equal to the loss of one half of the toe,
3 and compensation shall be paid at the prescribed rate during
4 one half the time prescribed above for the toe.

5 "11. The loss of two or more phalanges shall be
6 considered as the loss of an entire toe.

7 "12. For the loss of a hand, 170 weeks.

8 "13. For the loss of an arm, 222 weeks.

9 "14. For the loss of a foot, 139 weeks.

10 "15. Amputation between the elbow and wrist shall be
11 considered as the equivalent to the loss of a hand, and
12 amputation between the knee and ankle shall be considered as
13 the equivalent of the loss of a foot.

14 "16. For the loss of a leg, 200 weeks.

15 "17. For the loss of an eye, 124 weeks.

16 "18. For the complete and permanent loss of hearing
17 in both ears, 163 weeks.

18 "19. For the complete and permanent loss of hearing
19 in one ear, 53 weeks.

20 "20. For the loss of an eye and a leg, 350 weeks.

21 "21. For the loss of an eye and one arm, 350 weeks.

22 "22. For the loss of an eye and a hand, 325 weeks.

23 "23. For the loss of an eye and a foot, 300 weeks.

24 "24. For the loss of two arms, other than at the
25 shoulder, 400 weeks.

26 "25. For the loss of two hands, 400 weeks.

27 "26. For the loss of two legs, 400 weeks.

1 "27. For the loss of two feet, 400 weeks.

2 "28. For the loss of one arm and the other hand, 400
3 weeks.

4 "29. For the loss of one hand and one foot, 400
5 weeks.

6 "30. For the loss of one leg and the other foot, 400
7 weeks.

8 "31. For the loss of one hand and one leg, 400
9 weeks.

10 "32. For the loss of one arm and one foot, 400
11 weeks.

12 "33. For the loss of one arm and one leg, 400 weeks.

13 "34. For serious disfigurement, not resulting from
14 the loss of a member or other injury specifically compensated,
15 materially affecting the employability of the injured person
16 in the employment in which he or she was injured or other
17 employment for which he or she is then qualified, 66 2/3
18 percent of the average weekly earnings for the period as the
19 court may determine, but not exceeding 100 weeks.

20 "b. Successive or Concurrent Temporary Total and
21 Permanent Partial Disabilities Resulting from Same Injury.
22 When a permanent partial disability, the number of weeks
23 compensation for which is scheduled in subdivision (a) (3) of
24 this section, follows or accompanies a period of temporary
25 total disability resulting from the same injury, the number of
26 weeks of the temporary total disability shall not be deducted

1 from the number of weeks payable for the permanent partial
2 disability.

3 "c. Concurrent Disabilities. If an employee sustains
4 concurrent injuries resulting in concurrent disabilities, he
5 or she shall receive compensation only for the injury which
6 entitled him or her to the largest amount of compensation, but
7 this paragraph shall not affect liability for the concurrent
8 loss of more than one member for which members compensation is
9 provided in the specific schedule.

10 "d. Loss of Use of Member. The permanent and total
11 loss of the use of a member shall be considered as equivalent
12 to the loss of that member, but in such cases the compensation
13 specified in the schedule for such injury shall be in lieu of
14 all other compensation, except as otherwise provided herein.
15 For permanent disability due to injury to a member resulting
16 in less than total loss of use of the member not otherwise
17 compensated in this schedule, compensation shall be paid at
18 the prescribed rate during that part of the time specified in
19 the schedule for the total loss or total loss of use of the
20 respective member which the extent of the injury to the member
21 bears to its total loss.

22 "e. Effect of Refusal of Suitable Employment. If an
23 injured employee refuses employment suitable to his or her
24 capacity offered to or procured for him or her, he or she
25 shall not be entitled to any compensation at any time during
26 the continuance of the refusal, unless at any time, in the

1 opinion of the judge of the circuit court of the county of his
2 or her residence, the refusal is justifiable.

3 "f. Maximum and Minimum Compensation Awards.
4 Compensation provided in this subsection (a) for loss of
5 members or loss of use of members is subject to the same
6 limitations as to maximum and minimum weekly compensation as
7 stated in Section 25-5-68.

8 "g. Compensation for Permanent Partial Disabilities
9 Not Enumerated. For all other permanent partial disabilities
10 not above enumerated, the compensation shall be 66 2/3 percent
11 of the difference between the average weekly earnings of the
12 worker at the time of the injury and the average weekly
13 earnings he or she is able to earn in his or her partially
14 disabled condition, subject to the same maximum weekly
15 compensation as stated in Section 25-5-68. If a permanent
16 partial disability, compensation for which is not calculated
17 by use of the schedule in subdivision (a) (3) of this section,
18 follows a period of temporary total disability resulting from
19 the same injury, the number of weeks of the temporary total
20 disability shall be deducted from the number of weeks payable
21 for the permanent partial disability. Compensation shall
22 continue during disability, but not beyond 300 weeks.

23 "h. Affidavit of New Employment. If the injured
24 employee leaves the services of the employer for whom he or
25 she was working at the time of the accident and accepts
26 employment elsewhere, he or she shall make and furnish

1 affidavit as to his or her new employment in the manner as
2 required in (a) (2) of this section.

3 "i. Return to Work. If, on or after the date of
4 maximum medical improvement, except for scheduled injuries as
5 provided in Section 25-5-57(a) (3), an injured worker returns
6 to work at a wage equal to or greater than the worker's
7 pre-injury wage, the worker's permanent partial disability
8 rating shall be equal to his or her physical impairment and
9 the court shall not consider any evidence of vocational
10 disability. Notwithstanding the foregoing, if the employee has
11 lost his or her employment under circumstances other than any
12 of the following within a period of time not to exceed 300
13 weeks from the date of injury, an employee may petition a
14 court within two years thereof for reconsideration of his or
15 her permanent partial disability rating:

16 "(i) The loss of employment is due to a labor
17 dispute still in active progress in the establishment in which
18 he or she is or was last employed. For the purposes of this
19 section only, the term "labor dispute" includes any
20 controversy concerning terms, tenure, or conditions of
21 employment, or concerning the association or representation of
22 persons in negotiating, fixing, maintaining, changing, or
23 seeking to arrange terms or conditions of employment,
24 regardless of whether the disputants stand in the proximate
25 relation of employer and employee. This definition shall not
26 relate to a dispute between an individual worker and his or
27 her employer.

1 "(ii) The loss of employment is voluntary, without
2 good cause connected with such work.

3 "(iii) The loss of employment is for a dishonest or
4 criminal act committed in connection with his or her work, for
5 sabotage, or an act endangering the safety of others.

6 "(iv) The loss of employment is for actual or
7 threatened misconduct committed in connection with his or her
8 work after previous warning to the employee.

9 "(v) The loss of employment is because a license,
10 certificate, permit, bond, or surety which is necessary for
11 the performance of such employment and which he or she is
12 responsible to supply has been revoked, suspended, or
13 otherwise become lost to him or her for a cause.

14 "The burden of proof is on the employer to prove, by
15 clear and convincing evidence, that an employee's loss of
16 employment was due to one of the causes (i) through (v) above.
17 At the hearing, the court may consider evidence as to the
18 earnings the employee is or may be able to earn in his or her
19 partially disabled condition, and may consider any evidence of
20 vocational disability. The fact the employee had returned to
21 work prior to his or her loss of employment shall not
22 constitute a presumption of no vocational impairment. In
23 making this evaluation, the court shall consider the permanent
24 restriction, if any, imposed by the treating physician under
25 Section 25-5-77, as well as all available reasonable
26 accommodations that would enable the employee in his or her
27 condition following the accident or onset of occupational

1 disease to perform jobs that he or she in that condition
2 otherwise would be unable to perform, and shall treat an
3 employee able to perform with such accommodation as though he
4 or she could perform without the accommodation. Nothing
5 contained in this section shall be construed as having any
6 effect upon any evidentiary issues or claims made in third
7 party actions pursuant to Section 25-5-11.

8 "(4) PERMANENT TOTAL DISABILITY.

9 "a. Amount, Duration, and Payment of Compensation.

10 For permanent total disability, as defined in paragraph d. of
11 this subdivision, the employee shall receive 66 2/3 percent of
12 the average weekly earnings received at the time of the
13 injury, subject to a maximum and minimum weekly compensation
14 as stated in Section 25-5-68. Notwithstanding the foregoing,
15 if at the time of injury the employee was receiving earnings
16 of less than the minimum as stated in Section 25-5-68, then he
17 or she shall receive the full amount of his or her earnings
18 per week. This compensation shall be paid during the permanent
19 total disability, as defined in paragraph d. of this
20 subdivision. Payment of the compensation shall be made at the
21 intervals when the earnings were payable, as nearly as may be,
22 unless the parties otherwise agree. The payments, with the
23 approval of the circuit judge or by the agreement of the
24 parties, may be made monthly, quarterly, or otherwise as the
25 parties may agree. Payments for permanent total disability
26 shall not be ordered to be paid in a lump sum without the
27 consent of both the employer and the employee. Notwithstanding

1 the foregoing, the obligation of an employer to pay benefits
2 based upon a permanent total disability shall continue during
3 the permanent total disability of the employee, except that
4 benefits based upon permanent total disability shall otherwise
5 terminate upon either the date of the employee's sixty-fifth
6 birthday or the date 500 weeks after the date of injury,
7 whichever is longer.

8 "b. Alteration, Amendment, or Revision of
9 Compensation. At any time, the employer may petition the court
10 that awarded or approved compensation for permanent total
11 disability to alter, amend, or revise the award or approval of
12 the compensation on the ground that as a result of physical or
13 vocational rehabilitation, or otherwise, the disability from
14 which the employee suffers is no longer a permanent total
15 disability and, if the court is so satisfied after a hearing,
16 it shall alter, amend, or revise the award accordingly. If
17 compensation for permanent total disability is being paid
18 pursuant to a written agreement between employer and employee
19 without approval, the employer may make application to the
20 court that would have had jurisdiction to award the
21 compensation to the employee to alter, amend, or revise the
22 agreement on such grounds. If an employee is receiving
23 benefits for permanent total disability other than as a result
24 of an award or a written agreement between the employer and
25 employee and if the employer terminates the payment of the
26 benefits, the employee may, within two years of the last
27 payment, petition the court to reinstate the benefits and,

1 upon a showing that the permanent total disability still
2 exists, shall be entitled to have the benefits reinstated
3 effective the date of the last payment.

4 "c. Employees in Public Institutions. In case an
5 employee who is permanently and totally disabled becomes an
6 inmate of a public institution, no compensation shall be
7 payable unless the employee has wholly dependent on him or her
8 for support a person or persons named in Sections 25-5-61 and
9 25-5-62, whose dependency shall be determined as if the
10 employee were deceased, in which case the compensation
11 provided for in this subdivision shall be paid for the benefit
12 of the person so dependent, during dependency, in the manner
13 so ordered by the court, while the employee is an inmate in
14 the institution. Nothing contained herein shall be construed
15 to deprive a permanently and totally disabled employee who has
16 no dependent named in Sections 25-5-61 and 25-5-62 from
17 receiving benefits to which he or she would otherwise be
18 entitled if the employee, although an inmate of a public
19 institution, is paying or on whose behalf funds are paid from
20 any source to the public institution the normal and customary
21 charge for the services rendered by the public institution.
22 Normal and customary charge shall mean that charge actually
23 made by the public institution to persons able to pay for the
24 services rendered them whether the charge actually covers the
25 expense of the upkeep of the inmate or not. If the employee
26 has had a guardian appointed by a court of competent

1 jurisdiction, the workers' compensation payments shall be
2 directly paid to the guardian.

3 "d. Definition. The total and permanent loss of the
4 sight of both eyes or the loss of both arms at the shoulder or
5 any physical injury or mental impairment resulting from an
6 accident, which injury or impairment permanently and totally
7 incapacitates the employee from working at and being retrained
8 for gainful employment, shall constitute prima facie evidence
9 of permanent total disability but shall not constitute the
10 sole basis on which an award of permanent total disability may
11 be based. Any employee whose disability results from an injury
12 or impairment and who shall have refused to undergo physical
13 or vocational rehabilitation or to accept reasonable
14 accommodation shall not be deemed permanently and totally
15 disabled.

16 "e. Second Permanent Injuries Generally. If an
17 employee has a permanent disability or has previously
18 sustained another injury than that in which the employee
19 received a subsequent permanent injury by accident, as is
20 specified in this section defining permanent injury, the
21 employee shall be entitled to compensation only for the degree
22 of injury that would have resulted from the latter accident if
23 the earlier disability or injury had not existed.

24 "f. Second Permanent Injury in Same Employment
25 Resulting in Permanent Total Disability. If an employee
26 receives a permanent injury as specified in this section after
27 having sustained another permanent injury in the same

1 employment, and if the previous and subsequent injuries result
2 in permanent total disability, compensation shall be payable
3 for permanent total disability only.

4 "g. Concurrent Compensation Payments. If an employee
5 receives an injury for which compensation is payable while he
6 or she is still receiving or entitled to receive compensation
7 for a previous injury in the same employment, he or she shall
8 not at the same time be entitled to compensation for both
9 injuries, unless the later injury is a permanent injury, as
10 specified in this section, but he or she shall be entitled to
11 compensation for that injury and from the time of that injury
12 which will cover the longest period and the largest amount
13 payable under this article and Article 4 of this chapter.

14 "If an employee receives a permanent injury as
15 specified in this section, after having sustained another
16 permanent injury in the same employment, he or she shall be
17 entitled to compensation for both injuries, subject to
18 paragraph e. of this subdivision, but the total compensation
19 shall be paid by extending the period and not by increasing
20 the amount of weekly compensation, and in no case for
21 permanent partial disability exceeding 700 weeks.

22 "h. Effect of Rehabilitation or Recovery on
23 Permanent Total Disability Benefits. If an employee who is
24 receiving benefits for permanent total disability shall, as a
25 result of physical or vocational rehabilitation or otherwise,
26 obtain gainful employment, the obligation to pay permanent
27 total disability benefits shall thereupon terminate; provided,

1 that at any time that the employee's weekly wage from the
2 employment shall be less than the employee's average weekly
3 wage at the time of injury, the employer shall remain
4 obligated to pay to the employee as compensation an amount
5 equal to 66 2/3 percent of the difference, subject to each of
6 the following limitations:

7 "1. The employer's liability for the payment of 66
8 2/3 percent of the difference shall continue for 200 weeks
9 from the date of reemployment or 300 weeks from the date of
10 injury, whichever is the longer period.

11 "2. In no event shall the amount of weekly benefits
12 paid by the employer to the employee exceed the weekly benefit
13 the employee was receiving for permanent total disability.

14 "3. No payments shall be due for any week the
15 employee earns as much as or more than his or her average
16 weekly wage at the time of injury. If the employee who obtains
17 gainful employment suffered a permanent partial disability as
18 specified in subsection (a), subdivision (3) of this section,
19 the total amount of compensation paid for permanent total
20 disability shall not be less than that amount which would have
21 been payable for the permanent partial disability.

22 "i. Affidavit of Gainful Employment. If an employee
23 who is receiving benefits for permanent total disability
24 shall, as the result of physical or vocational rehabilitation,
25 accommodation, or otherwise, obtain gainful employment with an
26 employer other than with his or her former employer, he or she
27 shall, upon securing employment, give to his or her former

1 employer an affidavit in writing containing the name of his or
2 her new employer, the place of employment and the amount of
3 wages being received at the new employment. Until he or she
4 gives the affidavit, the compensation for permanent total
5 disability shall cease. The employer for whom the employee was
6 employed at the time of the accident for which compensation is
7 being paid may also at any time demand of the employee
8 additional affidavit, in writing, containing the name of his
9 or her employer, the place of his or her employment, and the
10 amount of wages he or she is receiving. If the employee, upon
11 demand, fails or refuses to make and furnish the affidavit,
12 his or her rights to compensation shall cease until the
13 affidavit is made and furnished.

14 "(5) DEATH FOLLOWING DISABILITY. If an employee
15 sustains an injury occasioned by an accident arising out of
16 and in the course of his or her employment and, during the
17 period of disability caused thereby, death results proximately
18 therefrom, all payments previously made as compensation for
19 the injury shall be deducted from the compensation, if any,
20 due on account of death. If an employee who sustains a
21 permanent partial or permanent total disability, the degree of
22 which has been agreed upon by the parties or has been
23 ascertained by the court, and death results not proximately
24 therefrom, the employee's surviving spouse or dependent
25 children or both shall be entitled to the balance of the
26 payments which would have been due and payable to the worker,
27 whether or not the decedent employee was receiving

1 compensation for permanent total disability, not exceeding,
2 however, the amount that would have been due the surviving
3 spouse or dependent children or both if death had resulted
4 proximately from an injury on account of which compensation is
5 being paid to an employee.

6 "(6) HERNIA.

7 "a. Proof. For hernia resulting from injury by an
8 accident arising out of and in the course of the employee's
9 employment, it must be definitely proven to the satisfaction
10 of the court all of the following:

11 "1. That there was an injury resulting in hernia.

12 "2. That the hernia appeared suddenly.

13 "3. That it was accompanied by pain.

14 "4. That the hernia immediately followed an
15 accident.

16 "5. That the hernia did not exist prior to the
17 accident for which compensation is claimed.

18 "b. Treatment. All hernia, inguinal, femoral, or
19 otherwise, proved to be the result of an injury by accident
20 arising out of and in the course of the employment, shall be
21 treated in a surgical manner by radical operation. If the
22 injured employee refuses to undergo the radical operation for
23 the cure of the hernia, no compensation will be allowed during
24 the time the refusal continues. If, however, it is shown that
25 the employee has some chronic disease or is otherwise in
26 physical condition that the court considers it unsafe for the

1 employee to undergo the operation, the employee shall be paid
2 as otherwise provided in this chapter.

3 "(b) Computation of compensation; determination of
4 average weekly earnings. Compensation under this section shall
5 be computed on the basis of the average weekly earnings.
6 Average weekly earnings shall be based on the wages, as
7 defined in Section 25-5-1(6) of the injured employee in the
8 employment in which he or she was working at the time of the
9 injury during the period of 52 weeks immediately preceding the
10 date of the injury divided by 52, but if the injured employee
11 lost more than seven consecutive calendar days during the
12 period, although not in the same week, then the earnings for
13 the remainder of the period, although not in the same week,
14 then the earnings for the remainder of the 52 weeks shall be
15 divided by the number of weeks remaining after the time so
16 lost has been deducted. Where the employment prior to the
17 injury extended over a period of less than 52 weeks, the
18 method of dividing the earnings during that period by the
19 number of weeks and parts thereof during which the employee
20 earned wages shall be followed, provided results just and fair
21 to both parties will thereby be obtained. Where by reason of
22 the shortness of the time during which the employee has been
23 in the employment of his or her employer or the casual nature
24 or terms of the employment it is impracticable to compute the
25 average weekly earnings as above defined, regard shall be had
26 to the average weekly amount which during the 52 weeks prior
27 to the injury was being earned by a person in the same grade,

1 employed at the same work by the same employer, and if there
2 is no person so employed, by a person in the same grade
3 employed in the same class of employment in the same district.
4 Whatever allowances of any character made to an employee in
5 lieu of wages are specified as part of the wage contract shall
6 be deemed a part of his or her earnings.

7 "(c) Setoff for other recovery. In calculating the
8 amount of workers' compensation due:

9 "(1) The employer may reduce or accept an assignment
10 from an employee of the amount of benefits paid pursuant to a
11 disability plan, retirement plan, or other plan providing for
12 sick pay by the amount of compensation paid, if and only if
13 the employer provided the benefits or paid for the plan or
14 plans providing the benefits deducted.

15 "(2) The employee shall forfeit to the employer all
16 compensation paid for any period to which is attributed any
17 award of back pay either by a court, administrative agency,
18 arbitration, or settlement, provided, however, social security
19 payments shall not be included herein.

20 "(3) If an employer continues the salary of an
21 injured employee during the benefit period or pays similar
22 compensation during the benefit period, the employer shall be
23 allowed a setoff in weeks against the compensation owed under
24 this article. For the purposes of this section, voluntary
25 contributions to a Section 125-cafeteria plan for a disability
26 or sick pay program shall not be considered as being provided
27 by the employer.

1 "§25-5-77.

2 "(a) In addition to the compensation provided in
3 this article and Article 4 of this chapter, the employer,
4 where applicable, shall pay the actual cost of the repair,
5 refitting, or replacement of artificial members damaged as the
6 result of an accident arising out of and in the course of
7 employment, and the employer, except as otherwise provided in
8 this amendatory act, shall pay an amount not to exceed the
9 prevailing rate or maximum schedule of fees as established
10 herein of reasonably necessary medical and surgical treatment
11 and attention, physical rehabilitation, medicine, medical and
12 surgical supplies, crutches, artificial members, and other
13 apparatus as the result of an accident arising out of and in
14 the course of the employment, as may be obtained by the
15 injured employee or, in case of death, obtained during the
16 period occurring between the time of the injury and the
17 employee's death therefrom. If the employee is dissatisfied
18 with the initial treating physician selected by the employer
19 and if further treatment is required, the employee may so
20 advise the employer, and the employee shall be entitled to
21 select a second physician from a panel or list of four
22 physicians selected by the employer. If surgery is required
23 and if the employee is dissatisfied with the designated
24 surgeon, he or she may so advise the employer, and the
25 employee shall be entitled to select a second surgeon from a
26 panel or list of four surgeons selected by the employer. If
27 four physicians or surgeons are not available to be listed,

1 the employer shall include on the list as many as are
2 available. The four physicians or surgeons selected by the
3 employer hereunder shall not be from or members of the same
4 firm, partnership, or professional corporation. The total
5 liability of the employer shall, unless otherwise provided in
6 this chapter, not exceed the prevailing rate or the maximum
7 schedule of fees as established herein. Notwithstanding the
8 foregoing, in ascertaining the prevailing rate of
9 reimbursement or payment with regard to participating
10 hospitals and ambulatory surgical centers or outpatient
11 rehabilitation centers licensed by the State of Alabama, as
12 well as diagnostic facilities accredited by the Commission on
13 Accreditation of Rehabilitation Facilities, the prevailing
14 rate shall be negotiated with each individual hospital,
15 ambulatory surgical center, licensed outpatient rehabilitation
16 facility, or diagnostic facility based on that institution's
17 treatment of comparable type cases for the 12-month period
18 immediately preceding August 1, 1992. These rates shall be
19 updated every 12 months thereafter. Initial rates shall be
20 established within six months of August 1, 1992. For those
21 non-participating hospitals the prevailing rate shall be
22 determined by a committee. In the first year following August
23 1, 1992, the committee shall be composed of five members. The
24 director shall appoint one member from the Department of
25 Industrial Relations and two members from the community in
26 which the non-participating hospital is located. The
27 non-participating hospital shall appoint two members. This

1 committee shall by a majority vote establish the maximum rates
2 of reimbursement or payment for the non-participating
3 hospital, and the hospital shall be bound for one year by the
4 determined rates of reimbursement or payment for workers'
5 compensation cases. If, following the first year after the
6 rates were established by this committee, the hospital is
7 again non-participating, then another committee shall be
8 appointed. This second committee shall have three members
9 selected by the non-participating hospital and two members
10 selected by the director. The committee composition shall
11 alternate as above described each year the hospital is
12 non-participating. The total liability of the employer shall
13 not exceed the rates established by the committee. This
14 committee, in determining the rates of reimbursement or
15 payments to the hospital, may consider such factors as the
16 size, staffing, and medical equipment of the hospital, and any
17 other factors which the committee may consider relevant. If an
18 insurer of the employee or a benefit association has paid or
19 is liable for the employee's medical, surgical, and hospital
20 service or for a part thereof, or if the employee is entitled
21 to the same or a part thereof, from any source whatever by
22 virtue of any agreement or understanding or law, state or
23 federal, without any loss of benefit to the employee, the
24 employer shall not be required to pay any part of the expense.
25 If the benefits are insufficient to pay all the employee's
26 expense, the employer shall be liable for the deficiency only.
27 All cases of dispute as to the necessity and value of the

1 services shall be determined by the tribunal having
2 jurisdiction of the claim of the injured employee for
3 compensation.

4 "(b) If requested to do so by the employer, the
5 injured employee shall submit to examination by the employer's
6 physician at all reasonable times, but the employee shall have
7 the right to have a physician of his or her own selection
8 present at the examination, in which case the employee shall
9 be liable to the physician of his or her own selection for his
10 or her services. The employer shall pay for the services of
11 the physician making the examination at the instance of the
12 employer. If a dispute arises as to the injury, or as to the
13 extent of the disability therefrom, the court may, at the
14 instance of either party or of its own motion, appoint a
15 neutral physician of good standing and ability to make an
16 examination of the injured employee and to report his or her
17 findings to the court, the expense of which examination shall
18 be borne equally by the parties. If the injured employee
19 refuses to comply with reasonable request for examination, or
20 refuses to accept the medical service or physical
21 rehabilitation, which the employer elects to furnish under
22 this chapter, the employee's right to compensation shall be
23 suspended and no compensation shall be payable for the period
24 of the refusal. A physician whose services are furnished or
25 paid for by the employer, or a physician of the injured
26 employee who treats or makes or is present at any examination
27 of an injured employee may be required to testify as to any

1 knowledge obtained by him or her in the course of the
2 treatment or examination as the treatment or examination
3 related to the injury or the disability arising therefrom. The
4 physician shall, upon written request of the injured employee
5 or his or her employer and without consent of or notice to the
6 employee or employer not making the request, furnish the
7 injured employee or his or her employer a written statement of
8 his or her professional opinion as to the extent of the injury
9 and disability. In all death claims where the cause of death
10 is obscure or is disputed, any interested party may require an
11 autopsy, the cost of which is to be borne by the party
12 demanding the autopsy. The term "physicians" shall include
13 medical doctor, surgeon, and chiropractor. A hospital, medical
14 clinic, rehabilitation service, or other person or entity
15 providing treatment to an employee or providing facilities at
16 which the employee receives treatment shall, upon the written
17 request of the employee or of the employer, furnish, at a
18 reasonable cost, the employee or the employer a copy of the
19 records, including X-rays and laboratory reports, relating to
20 the treatment of the injured employee. The copy may be
21 furnished without the consent of or notice to the employee or
22 employer not making the request. A physician, hospital,
23 medical clinic, rehabilitation service, or other person or
24 entity providing written statement of professional opinion or
25 copies of records pursuant to this subsection shall not be
26 liable to any person for a claim arising out of the release of
27 medical information concerning the employee.

1 "(c) If the employer so elects, the employee shall
2 submit to and undergo vocational rehabilitation at the
3 employer's expense through a vocational rehabilitation
4 specialist, who shall be qualified to render competent
5 vocational rehabilitation service. If an employee who is
6 unable in the opinion of the treating physician to return to
7 his or her former employment shall request vocational
8 rehabilitation and if both a vocational rehabilitation
9 specialist and a treating physician, the cost of whose service
10 is the obligation of the employer under this section, shall
11 express their opinions in writing that in the judgment of each
12 of them vocational rehabilitation is reasonably calculated to
13 restore the employee to gainful employment and is in the best
14 interest of the employee, the cost of the rehabilitation shall
15 be borne by the employer. The cost, where rehabilitation
16 requires residence at or near a facility or institution away
17 from the employee's customary residence, shall include
18 reasonable charges for the employee's necessary board,
19 lodging, and travel.

20 "(d) If an employee refuses, without the consent of
21 the court, to accept vocational rehabilitation at the
22 employer's request, the refusal shall result in loss of
23 compensation for the period of refusal.

24 "(e) All disputes with regard to vocational
25 rehabilitation may be submitted to the court for resolution.

1 "(f) The employer shall pay mileage costs to and
2 from medical and rehabilitation providers at the same rate as
3 provided by law for official state travel.

4 "(g) In a compensable workers' compensation claim,
5 the injured employee shall not be liable for payment of any
6 authorized and compensable medical expenses associated with
7 the workers' compensation claim.

8 "(h) All undisputed medical reimbursements or
9 payments shall be made within 25 working days of receipt of
10 claims in the form specified in Section 25-5-3. There shall be
11 added to any undisputed medical invoice which is not paid
12 within 25 working days an amount equal to 10 percent of the
13 unpaid balance.

14 If the employer or insurer responsible for payment
15 of the claim fails to add the additional 10 percent to the
16 claim as required by this section, the person, firm,
17 corporation, or partnership providing the medical service for
18 which payment has been delayed beyond the period specified in
19 this section may file a written complaint stating that fact
20 with the director. Upon investigation, if the director
21 determines that the facts stated in the complaint are true,
22 then in that event the director shall order the employer or
23 insurer to pay to the provider the amount of the claim and any
24 applicable penalty, and in addition may assess a civil
25 monetary penalty in amount not to exceed \$500 against the
26 employer or insurer, payment of which shall be made to the
27 director within 30 days of the notice of assessment.

1 "(i) Any party, including a health care provider, is
2 entitled to a review by an ombudsman of medical services that
3 are provided or for which authorization of payment is sought
4 if any party or the health care provider has any of the
5 following:

6 "(1) Been denied payment or had the charge reduced
7 for medical services rendered.

8 "(2) Been denied authorization for the payment of
9 services requested or performed when authorization is
10 required.

11 "(3) Been ordered by the director to refund payments
12 received for the provision of medical services.

13 "(4) A party to a medical dispute that remains
14 unresolved after a review of medical services as provided by
15 this section may petition the court for relief.

16 "(5) In any review under this subsection of medical
17 services provided by a physician, any party to a dispute may
18 request that the ombudsman consult with an independent medical
19 expert for the purpose of obtaining advice and consultation on
20 the resolution of any issue involving medical practice. If
21 such a request is made, the ombudsman shall select an
22 independent medical expert from among a list of at least three
23 names provided by the Workers' Compensation Medical Services
24 Board in a medical specialty appropriate to the issues raised
25 in the dispute and shall secure a written opinion from the
26 independent medical expert. In rendering a decision or
27 recommendation, the ombudsman shall give full consideration to

1 the opinion of the independent medical expert but shall not be
2 bound by that opinion. The independent medical expert shall be
3 compensated at a rate set by the Workers' Compensation Medical
4 Services Board and approved by the director.

5 "(j) If the employee does not receive medical
6 treatment related to the claimed injury for a period of two
7 years, a rebuttable presumption arises that any subsequently
8 obtained medical treatment is unrelated to the workers'
9 compensation injury. The employer shall be liable for such
10 medical treatment only upon a finding of clear and convincing
11 proof that such treatment is related to the workers'
12 compensation injury. The obligation of the employer for the
13 payment of medical benefits shall conclusively end if the
14 employee does not receive medical treatment related to the
15 claimed injury for a period of four years."

16 Section 2. This act shall become effective on the
17 first day of the third month following its passage and
18 approval by the Governor, or its otherwise becoming law.