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CHAPTER 7.

 FUNDS

ARTICLE 1.

 STATE ACCIDENT FUND

**SECTION 42‑7‑10.** Establishment of State Accident Fund; contents.

(A) There is established as a separate agency of state government a separate fund to be known as the State Accident Fund, hereinafter referred to as the “fund” or “state fund” in this article. This fund consists of annual premium charges, recoveries from the Second Injury Fund, recoveries by subrogation and, subject to subsection (B) of this section, of all income or revenue derived from investing these funds. Receipts for the credit of the fund and expenditures from the fund must be handled in the manner provided by law governing all state funds.

(B) One‑third of the investment income generated in Fiscal Year 1990‑91 and two‑thirds of the income generated in Fiscal Year 1991‑92 must be credited to the state fund in those years respectively. Thereafter all such income must be credited to the state fund except that the State Treasurer may charge the state fund, and credit to the general fund, the customary investment management fee.

**SECTION 42‑7‑20.** Administration of fund; director.

The State Accident Fund shall be administered by a director appointed by the Governor for a term of six years with the advice and consent of the Senate. The administration shall provide for employment of office and field personnel necessary for the proper conduct of the business of the fund, to the extent of appropriations therefor, including the determination of the amount of and the collection of annual charges, the issuance of certificates of compliance with this article, the investigation of claims, the adjustment and payment of claims and awards, the inspection of risks, study and investigation with respect to safety provisions with recommendations to employers as to means of preventing injuries, medical examination of employees, and the prosecution of subrogation rights against any third party. The director may inspect and audit records of employers for the purpose of determining or verifying the amount of annual charges against such employers.

**SECTION 42‑7‑30.** Legal representation for fund; extra legal services; fees and expenses.

Legal representation for the State Accident Fund shall be provided by a chief counsel and such staff attorneys as are necessary appointed by the director of the fund with the approval of the Attorney General. Any extra legal services that may be required must be performed by attorneys selected by the director also with the approval of the Attorney General. Fees and expenses for nonstaff attorneys must be approved by the director.

**SECTION 42‑7‑40.** Application to State.

This article shall apply to the State including the State Guard and the National Guard.

**SECTION 42‑7‑50.** Subdivisions of State may come under article.

Any county or municipality in the State or any agency or institution thereof shall have the option of participating under the provisions of this article but no county, municipality, agency or institution thereof shall be covered by the workers’ compensation insurance provided in this article until payment of the annual charge provided in this Title shall have been made to the fund, nor shall any county, municipality, agency or institution thereof be covered by this insurance after the lapse of the period for which the annual charge has been paid. The director shall notify each county, municipality, agency or institution thereof at least thirty days before the expiration date of its coverage in order that the county, municipality, agency, or institution may keep its insurance in force continuously.

**SECTION 42‑7‑60.** Officers and employees covered by article.

Notwithstanding anything to the contrary contained in Section 42‑1‑130, the provisions of this article apply to all officers and employees of the State and of any county, municipality, or other political subdivision thereof or any agency or institution of the State which has elected to participate under this article under the provisions of Section 42‑7‑50.

In cases of officers or employees who are on a partial or total fee basis or whose official duties require only part time the director may fix, for the purpose of this article, the average weekly wage of this officer or employee, not in excess of forty dollars and collect charges from the employer of this officer or employee on the basis of the average weekly wage so fixed.

Any client of the state agency of Vocational Rehabilitation, while involved in a program of assessment or work adjustment as defined in this section, who suffers an injury for which compensation is specifically prescribed in this title, may be awarded and paid compensation under the provisions of this title. For purposes of this section, “a client involved in a program of assessment or work adjustment” is defined as any client performing work tasks which are part of the program of Vocational Rehabilitation services for the individual and who in turn receives wage payments from the agency for the work performed.

Students of high schools, state technical schools, and state‑supported colleges and universities while engaged in work study, distributive education, or apprentice programs on the premises of private companies are also covered by the provisions of this title.

**SECTION 42‑7‑65.** Average weekly wage designated for certain categories of employees.

Notwithstanding the provisions of Section 42‑1‑40, for the purpose of this title and while serving in this capacity, the total average weekly wage of the following categories of employees is the following:

(1) for all members of the State and National Guard, regardless of rank, seventy‑five percent of the average weekly wage in the State for the preceding fiscal year, or the average weekly wage the service member would be entitled to, if any, if injured while performing his civilian employment, if the average weekly wage in his civilian employment is greater;

(2) for all voluntary firemen of organized voluntary rural fire units and voluntary municipal firemen, thirty‑seven and one‑half percent of the average weekly wage in the State for the preceding fiscal year;

(3) for all members of organized volunteer rescue squads, thirty‑seven and one‑half percent of the average weekly wage in the State for the preceding fiscal year;

(4) for all volunteer deputy sheriffs, thirty‑seven and one‑half percent of the average weekly wage in the State for the preceding fiscal year; and

(5) for all volunteer state constables appointed pursuant to Section 23‑1‑60, while performing duties in connection with their appointments and authorized by the State Law Enforcement Division, thirty‑seven and one‑half percent of the average weekly wage in the State for the preceding fiscal year.

The wages provided in items (2), (3), (4), and (5) of this section may not be increased as a basis for any computation of benefits because of employment other than as a volunteer. Persons in the categories provided by items (2), (3), (4), and (5) must be notified of the limitation on average weekly wages prescribed in this section by the authority responsible for obtaining coverage under this title.

“Volunteer firemen” and “rescue squad members” mean members of organized units whose membership is certified to the municipal clerk or chairman of the council of the municipality or county in which their unit is based by the chief officer of the unit concerned. A “volunteer deputy sheriff” is a volunteer whose membership is certified by the sheriff to the governing body of the county. No volunteer deputy sheriff may be included under the provisions of this title unless approved by the governing body of the county or municipality. A voluntary constable appointed pursuant to Section 23‑1‑60 must be included under the provisions of this title only while performing duties in connection with his appointment and as authorized by the State Law Enforcement Division. The workers’ compensation premiums for these constables must be paid from the state general fund upon warrant of the Chief of the State Law Enforcement Division. Notwithstanding any other provision of law, voluntary firemen of organized volunteer fire units and members of organized volunteer rescue squads are covered under this title by the county governing body unless the governing body of the county opts out of the coverage.

The average weekly wage for inmates of the State Department of Corrections as defined in Section 42‑1‑480 is forty dollars a week. However, the average weekly wage for an inmate who works in a federally approved Prison Industries Enhancement Certification Program must be based upon the inmate’s actual net earnings after any statutory reductions. The average weekly wage for county and municipal prisoners is forty dollars a week. The average weekly wage for students of high schools, state technical schools, and state‑supported colleges and universities while engaged in work study, marketing education, or apprentice programs on the premises of private companies or while engaged in the Tech Prep or other structured school‑to‑work programs on the premises of a sponsoring employer is fifty percent of the average weekly wage in the State for the preceding fiscal year.

**SECTION 42‑7‑67.** Benefits for State and National Guard members.

For members of the South Carolina State and National Guard injured while so employed, the extent, duration, and termination of disability and medical benefits under this title must be determined by reference to the member’s civilian employment, if any, without considering the member’s military position. If the member does not have civilian employment, reference may be made to the member’s military position.

**SECTION 42‑7‑70.** Rates and premiums.

The rates and premiums paid by employers insured in the fund must not be excessive, inadequate, or unfairly discriminatory. Employers may be grouped by classifications for the establishment of rates and minimum premiums, and classification rates may be modified to produce rates for individual employers in accordance with rating laws which establish standards for measuring any variations in hazards or expense provisions, or both, that can be demonstrated to have a probable effect upon losses or expenses. All premiums collected by the fund must be deposited by it in the State Treasurer to the credit of the State Accident Fund.

**SECTION 42‑7‑75.** State agencies required to pay workers’ compensation premiums; State Treasurer’s duties as to state accident fund.

All state agencies shall pay workers’ compensation premiums according to Section 42‑7‑70, as determined by the State Accident Fund. Calculation of premiums for the Adjutant General’s Office must exclude losses arising out of service as a member of the South Carolina State and National Guard. In lieu of premiums for those losses the Adjutant General shall pay, at the beginning of each premium year, the amount estimated by the fund to be required to cover actual workers’ compensation benefits to guard members during the premium year. If the amount actually paid as benefits differs from the estimated pay out advanced under this paragraph, the difference must be debited or credited to the Adjutant General’s account in the same manner that an actual adjusted premium is handled.

The State Treasurer and the Comptroller General shall pay from the general fund of the State to the State Accident Fund any necessary funds to cover actual benefit claims paid during any fiscal year, which exceed the amounts paid in for this purpose by the various agencies, departments, and institutions. The State Accident Fund shall certify quarterly to the Budget and Control Board the state’s liability for the benefit claims actually paid to claimants who are employees of any agency or political subdivision of this State and who are entitled to such payment under state law. The amount certified must be remitted to the State Accident Fund.

If there are not sufficient funds in the State Accident Fund Trust Account to pay operating expenses and claims as they arise, the State Treasurer shall, from the general fund of the State, deposit in the account monthly sufficient funds to pay expenses and claims required by law to be paid, but the amount deposited may not exceed the amount of investment income which the account would have earned from its inception if all such earnings had been credited to the fund.

**SECTION 42‑7‑80.** Payment of awards; notice of intention to contest award.

When awards under this article are made by the Commission, the Commission shall transmit to the director of the fund an official copy of such award, which shall contain the name of the claimant or beneficiary, an itemized statement of the payments to be made and such other information as may be necessary to constitute a full record of the case. Upon receipt of such official award the director of the fund, if he approves the award, shall forward an official copy thereof to the Comptroller General who shall issue his warrant upon the State Treasurer in payment of the claim and retain the award as his voucher therefor. If the director intends to litigate or otherwise contest the award, he shall notify the Commission of such intention.

**SECTION 42‑7‑90.** Expenditures from fund.

From the State Accident Fund the following expenditures are authorized:

(1) for the payment of any award under this article made by the commission in connection with accidental injury or death of any official or employee of the State, any county or municipality therein, any political subdivision thereof or any agency or institution of the State or a county, municipality, or political subdivision thereof participating hereunder; or

(2) any other expenses authorized by law or approved by the Budget and Control Board.

**SECTION 42‑7‑100.** Fund director may insure liability.

The fund director may, with the approval of the State Budget and Control Board, carry in a reliable insurance company or companies, such portion of the insurance liability as may be deemed advantageous.

**SECTION 42‑7‑200.** Workers’ Compensation Uninsured Employers’ Fund; claims; collection powers; reimbursement agreements; funding.

(A)(1) There is hereby established, within the office of the Second Injury Fund, the South Carolina Workers’ Compensation Uninsured Employers’ Fund. This fund is created to ensure payment of workers’ compensation benefits to injured employees whose employers have failed to acquire necessary coverage for employees in accordance with provisions of this section. The fund must be administered by the Director of the Second Injury Fund, who shall establish procedures to implement this section, until June 30, 2013. Effective July 1, 2013, all functions within the Second Injury Fund related to the Uninsured Employers’ Fund, including all allied, advisory, affiliated, or related entities, as well as the employees, funds, property, and all contractual rights and obligations associated with the Uninsured Employers’ Fund, is transferred to the South Carolina Workers’ Compensation Uninsured Employers’ Fund, and all powers, duties, obligations, and responsibilities of the Second Injury Fund that relate to the Uninsured Employers’ Fund are devolved upon the South Carolina Workers’ Compensation Uninsured Employers’ Fund in accordance with the State Budget and Control Board’s plan for the closure of the Second Injury Fund. This item is effective until July 1, 2013.

(2) There is hereby established, within the office of the State Accident Fund, the South Carolina Workers’ Compensation Uninsured Employers’ Fund. This fund is created to ensure payment of workers’ compensation benefits to injured employees whose employers have failed to acquire necessary coverage for employees in accordance with provisions of this section. The fund must be administered by the Director of the State Accident Fund, who shall establish procedures to implement this section. This item is effective as of July 1, 2013.

(B) When an employee makes a claim for benefits pursuant to Title 42 and the State Workers’ Compensation Commission determines that the employer is subject to Title 42 and is operating without insurance or as an unqualified self‑insurer, the commission shall notify the fund of the claim. The fund shall pay or defend the claim as it considers necessary in accordance with the provisions of Title 42.

(C) When the fund is notified of a claim, the fund may place a lien on the assets of the employer by way of lis pendens or otherwise so as to protect the fund from payments of costs and benefits. If the fund is required to incur costs or expenses or to pay benefits, the fund has a lien against the assets of the employer to the full extent of all costs, expenses, and benefits paid and may file notice of the lien with the clerk of court or register of deeds of any county in which the employer has assets in the same manner as the filing of South Carolina tax liens and with the Secretary of State in the same manner as utilized under Title 36 (Uniform Commercial Code). Any of the employer’s assets sold or conveyed during the litigation of the claim must be sold or conveyed subject to the lien.

(D) The fund has all rights of attachment set forth in Section 15‑19‑10 and has the right to proceed otherwise in the collection of its lien in the same manner as the Department of Revenue is allowed to enforce a collection of taxes generally pursuant to Section 12‑49‑10, et seq. When all benefits due the claimant, as well as all expenses and costs of litigation, have been paid, the fund shall file notice of the total of all monies paid with the clerk of court in any county in which the employer has assets and with the Secretary of State. This notice constitutes a judgment against the employer and has priority as a first lien in the same manner as liens of the Department of Revenue, subject only to the lien of the Department of Revenue pursuant to Section 12‑49‑10, et seq. If the employer files for bankruptcy or otherwise is placed into receivership, the fund becomes a secured creditor to the assets of the employer in the same manner as the Department of Revenue has priority for unpaid taxes, subject only to the lien of the Department of Revenue. The fund otherwise has all rights and remedies afforded the Department of Revenue as set forth in Section 12‑54‑10, et seq.

(E) Nothing in this section precludes the South Carolina Workers’ Compensation Uninsured Employers’ Fund from entering into an agreement for the reimbursement of expenses, costs, or benefits paid by the fund. If an agreement is entered into subsequent to the filing of a lien, the lien may be canceled by the fund. Provided, however, an agreement between the fund and an employer under this section may provide that in the event the employer breaches the terms or conditions of the agreement, the fund may file or reinstate a lien, as the case may be. For purposes of this section, the term “costs” includes reasonable administrative costs which must be set by the director of the fund, subject to the approval of the Workers’ Compensation Commission.

(F) To establish and maintain the South Carolina Workers’ Compensation Uninsured Employers’ Fund, there must be earmarked from the collections of the tax on insurance carriers and self‑insured persons provided for in Sections 38‑7‑50 and 42‑5‑190 an amount sufficient to establish and annually maintain the fund at a level of not less than two hundred thousand dollars. In addition, the State Treasurer may deposit to the account of the fund monies authorized to be paid to the Workers’ Compensation Commission under Section 42‑9‑140 upon determination additional funds are needed for the operation of the fund.

(G) When an employee makes a claim for benefits pursuant to Title 42 and the records of the South Carolina Workers’ Compensation Commission indicate that the employer is operating without insurance, the South Carolina Workers’ Compensation Uninsured Employers’ Fund or any person designated by the director may subpoena the employer or its agents and require the production of any documents or records which the fund considers relevant to its investigation of the claim. The subpoena shall be returnable at the office of the fund or any place designated by it. In the case of refusal to obey a subpoena issued to any person or agent of any employer, a court of common pleas upon application of the fund may issue an order requiring the person or agent of an employer to appear at the fund and produce documentary evidence or give other evidence concerning the matter under inquiry.

**SECTION 42‑7‑210.** Transfers from general fund to State Accident Fund authorized.

Notwithstanding the amounts annually appropriated as “Workers’ Compensation Insurance” to cover Workers’ Compensation benefit claims paid to employees of the state government who are entitled under state law, the State Treasurer and the Comptroller General are hereby authorized and directed to pay from the general fund of the State to the State Accident Fund such funds as are necessary to cover actual benefit claims paid and expenses relating to the operations of the agency during the current fiscal year which exceed the amounts paid in for this purpose by the various agencies, departments, and institutions. The State Accident Fund must certify quarterly to the Budget and Control Board the state’s liability for such benefit claims actually paid to claimants who are employees of the State of South Carolina and entitled under state law. The amount so certified must be remitted to the State Accident Fund.

ARTICLE 3.

 SECOND INJURY FUND

**SECTION 42‑7‑310.** Establishment, purpose, administration, funding and staff of Second Injury Fund.

(a) There is hereby established, under the Budget and Control Board, the Second Injury Fund for the purpose of making payments in accordance with the provisions of Section 42‑9‑400, Section 42‑9‑410, and this section. The fund shall be administered by a director appointed by the State Budget and Control Board. The State Treasurer shall be the custodian of the fund, and all monies and securities in the fund shall be held in a separate and distinct trust account by the State Treasurer.

(b) Disbursements from the fund shall be made with the approval of the director by forwarding a disbursement voucher, along with an itemized statement of payments and such other information as may be necessary to justify payment, to the Comptroller General who shall issue his warrant upon the State Treasurer in payment of the disbursement request.

Agreements to reimburse an employer or his carrier for compensation or medical benefits as provided in Section 42‑9‑400 or 42‑9‑410 shall be forwarded to the commission for approval. If approved and unappealed, such agreements shall be binding in the same manner as other orders, decisions, or awards of the commission.

When awards are made under Section 42‑9‑400 or 42‑9‑410 by the commission, it shall transmit to the director of the fund an official copy of such awards which shall contain the name of the employer, carrier, and employee to whom benefits were originally paid, an itemized statement of payments, and such other information as may be necessary to constitute a full record of the case. Upon the receipt of such official award, the director of the fund, if he approves the award, shall forward a disbursement voucher, along with an official copy, to the Comptroller General who shall issue his warrant upon the State Treasurer in payment of the claim. If the director intends to litigate or otherwise contest the award, he shall notify the commission of such intention. Any questions or controversies arising under this subsection shall be decided by the commission in the procedural manner now provided under this title.

(c) The original funding of the Second Injury Fund shall be in a manner as follows:

(1) From the State Accident Fund, the State Treasurer is hereby authorized and directed to transfer one hundred thousand dollars to be deposited in the Second Injury Fund.

(2) The State Treasurer is hereby authorized and directed to deposit in the Second Injury Fund one third of the workers’ compensation premium tax.

(3) The State Treasurer shall deposit to the account of the Second Injury Fund the money authorized paid to the Workers’ Compensation Commission under Section 42‑9‑140.

(d) The funding of the Division of the Second Injury Fund on a continuing basis is by:

(1) deposits to the account of the fund by the State Treasurer of those monies authorized to be paid to the Workers’ Compensation Commission under Section 42‑9‑140; and

(2) equitable assessments upon each carrier which, as used in this section, includes all insurance carriers, self‑insurers, and the State Accident Fund. Each carrier shall make payments to the fund in an amount equal to that proportion of one hundred thirty‑five percent of the total disbursement made from the fund during the preceding fiscal year less the amount of net assets in the fund as of June thirtieth of the preceding fiscal year which the normalized premium of each carrier bore to the normalized premium of all carriers during the preceding calendar year. Each insurance carrier, self‑insurer, and the State Accident Fund shall make payment based upon workers’ compensation normalized premiums during the preceding calendar year. The charge to each insurance carrier is a charge based upon normalized premiums. An employer who has ceased to be a self‑insurer shall continue to be liable for any assessments into the fund on account of any benefits paid by him during such calendar year. Any assessment levied or established in accordance with this section constitutes a personal debt of every employer or insurance carrier so assessed and is due and payable to the Second Injury Fund when payment is called for by the fund. In the event of failure to pay any assessment upon the date determined by the fund, the employer or insurance carrier immediately may be assessed a penalty in an amount not exceeding ten percent of the unpaid assessment. If the employer or insurance carrier fails to pay the assessment and penalty, they shall be barred from any recovery from the fund on all claims without exception until the assessment and penalty are paid in full. The director may file a complaint for collection against the employer or insurance carrier in a court of competent jurisdiction for the assessment, penalty, and interest at the legal rate, and the employer/carrier is responsible for attorney’s fees and costs. The penalty and interest under this subsection are payable to the Second Injury Fund. At the time of the filing of the complaint, the fund also shall notify the South Carolina Department of Insurance and the South Carolina Workers’ Compensation Commission, and these government agencies shall take the appropriate legal and administrative action immediately.

(3) “Normalized premium” is defined as gross paid losses before salvage and subrogation times a factor representing normalized expenses. Normalized expenses include taxes, licenses, fees, general expenses, profit, contingencies, and other expenses as reported on the Insurance Expense Exhibit of the NAIC Annual Statement blank. This normalized expense factor shall be computed annually by the Workers’ Compensation Commission by August first of each year and must be based upon aggregate expense information obtained from the Department of Insurance derived from insurers’ most recently filed annual statements.

(e) The director shall be authorized to employ necessary staff for administering the fund, and the monies necessary for administration of the fund shall be paid out of the fund. In furtherance of this purpose, the Attorney General shall appoint a member of his staff to represent the fund in all proceedings brought to enforce claims against the fund.

**SECTION 42‑7‑320.** Termination of Second Injury Fund; schedule.

(A) Except as otherwise provided in this section, on and after July 1, 2013, the programs and appropriations of the Second Injury Fund are terminated. The State Budget and Control Board must provide for the efficient and expeditious closure of the fund with the orderly winding down of the affairs of the fund so that the remaining liabilities of the fund are paid utilizing assessments, accelerated assessments, annuities, loss portfolio transfers, or such other mechanisms as are reasonably determined necessary to fund any remaining liabilities of the fund. The Department of Insurance and the Workers’ Compensation Commission may submit comments and suggestions to be considered by the State Budget and Control Board in planning for the closure of the fund. The State Budget and Control Board shall cause all necessary actions to be taken to provide appropriate staffing of the fund until such time as the staff services are no longer required to administer the obligations of the fund. The fund’s administrative costs, including employee salaries and benefits, shall be paid from the Second Injury Fund Trust if the interest from the trust becomes insufficient to pay these obligations.

(B) After December 31, 2011, the Second Injury Fund shall not accept a claim for reimbursement from any employer, self‑insurer, or insurance carrier. The fund shall not consider a claim for reimbursement for an injury that occurs on or after July 1, 2008.

(1) An employer, self‑insurer, or insurance carrier must notify the Second Injury Fund of a potential claim by December 31, 2010. Failure to submit notice by December 31, 2010, shall bar an employer, self‑insurer, or insurance carrier from recovery from the fund.

(2) An employer, self‑insurer, or insurance carrier must submit all required information for consideration of accepting a claim to the Second Injury Fund by June 30, 2011. Failure to submit all required information to the fund by June 30, 2011, so that the claim can be accepted, compromised, or denied shall bar an employer, self‑insurer, or insurance carrier from recovery from the fund.

(3) Insurance carriers, self‑insurers, and the State Accident Fund remain liable for Second Injury Fund assessments, as determined by the State Budget and Control Board, in order to pay accepted claims. The fund shall continue reimbursing employers and insurance carriers for claims accepted by the fund on or before December 31, 2011.