

## TITLE 27 - LABOR AND EMPLOYMENT

### CHAPTER 1 - GENERAL PROVISIONS

#### **27-1-101. "Manufacturing establishment" defined; "person" defined.**

Manufacturing establishments, as those words are used in this act, shall mean and include all smelters, oil refineries, cement works, mills of every kind, machine and repair shops, and in addition to the foregoing, any other kind or character of manufacturing establishment, of any nature or description whatsoever, wherein any natural product or other articles or materials of any kind, in a raw or unfinished or incomplete state or condition, are converted into a new or improved or different form. Wherever the expression occurs in this act in substantially the following words: "every person owning or operating any manufacturing establishment," or where language similar to that is used, the word "person" in that connection shall be held and construed to mean any person or persons, partnership, corporation, receiver, trust, trustee, or any other person or combination of persons, either natural or artificial, by whatever name he or they may be called.

#### **27-1-102. Doors at public places to open outward; handrails on stairs; enforcement.**

All doors leading into or to any manufacturing establishment, mills, workshops, offices, bakeries, laundries, stores, hotels, theaters, halls, or other buildings in which people are employed, shall be so constructed as to open outward, when practicable, and shall not be locked, bolted or fastened so as to prevent free egress during working hours. Proper and substantial handrails shall be provided on all stairways in manufacturing establishments, mills, workshops, offices, bakeries, laundries, stores, hotels, theaters, halls, and other buildings where people are employed or rooms are rented to the public. The department of workforce services shall have authority to enforce by due process of law, the provisions of this section, and other laws relating to fire escapes.

#### **27-1-103. Safety devices on elevators and machinery.**

The openings of all hoistways, hatchways, elevators, well holes and stairways in manufacturing establishments, mills, workshops, bakeries, laundries, stores, hotels, theaters, halls, or any other kind of establishment where labor is employed, or

machinery used, shall be protected by trapdoors, hatches, fences, automatic gates or other safeguards, and all due diligence shall be used to keep all such means of protection closed, except when it is necessary to have the same open for use when practicable. All machinery, in use in any mercantile, manufacturing, or any other establishment whatsoever where labor is employed, shall be equipped, with proper shifters for throwing on or off pulleys, loose pulleys and other such safeguards as may be deemed necessary by the department of workforce services for the proper safeguard of life and limb.

**27-1-104. Mines and interstate railroads exempt.**

Nothing herein contained, as applied to inspection and application of safety devices, shall be construed to be applicable to coal and metalliferous mines and workshops connected therewith, nor to railroads engaged in interstate commerce and workshops connected therewith.

**27-1-105. Employees' contract releasing employer from personal injury liability void.**

It shall be unlawful for any person, company or corporation to require of its servants or employees, as a condition of their employment or otherwise, any contract or agreement whereby such person, company or corporation shall be released or discharged from liability or responsibility on account of personal injuries received by such servants or employees while in service of such person, company or corporation, by reason of the negligence of such person, company or corporation, or the agents or employees thereof, and such contracts shall be absolutely null and void.

**27-1-106. Certain nonresident employers required to post bond; exceptions.**

(a) All firms, corporations or employers of any kind who are nonresident employers and expect to pay wages in the state of Wyoming in excess of four thousand dollars (\$4,000.00) in any month as a result of conducting business within Wyoming, are required to file with the director of the department of workforce services a surety bond or other security meeting the requirements of this section, approved by the director.

(b) The bond or other security required by subsection (a) of this section shall be in the amount of eight thousand dollars (\$8,000.00) plus an additional two thousand dollars (\$2,000.00) for each one thousand dollars (\$1,000.00) or fraction thereof

that the expected wages in any month exceed four thousand dollars (\$4,000.00) up to expected wages in any month of twenty thousand dollars (\$20,000.00). For expected wages in any month that exceed twenty thousand dollars (\$20,000.00), the bond or other security amount shall be one thousand dollars (\$1,000.00) for each additional one thousand dollars (\$1,000.00) or fraction thereof of expected wages.

(c) The bond or security provided for in this section shall ensure:

(i) The payment of wages of employees working in the state;

(ii) The payment of civil penalties the occupational health and safety commission may assess; and

(iii) All other payments or obligations of the nonresident employer required by:

(A) The Wyoming Worker's Compensation Act unless waived by the director pursuant to W.S. 27-14-302;

(B) Any other section under title 27 of Wyoming statutes or any department of workforce services rule or regulation.

(d) The nonresident employer shall post additional security before performing work under any new contract if the security previously posted under this section has expired.

(e) Upon application by a nonresident employer, the director may permit the withdrawal of any security if the employer has:

(i) Complied with the security requirements of this section and made all necessary payments for a period of two (2) years;

(ii) Demonstrated that he has been a resident of the state for two (2) years and intends to remain a resident; or

(iii) Acquired real property as a nonresident with an unencumbered value greater than or equal to the value of the bond or other security required by subsection (b) of this section.

(f) If the anticipated work has ceased before the expiration of twenty-four (24) months, or less than fifty percent (50%) of the largest work force is still working in Wyoming, the security deposited by the nonresident employer shall be forfeited and retained by the division in an amount equal to the reserved amounts for compensable injuries to the nonresident employer's employees. Upon application by a nonresident employer, the division shall refund the amount not forfeited pursuant to this subsection except for any disbursements made under subsection (c) of this section.

(g) This section does not apply to charitable or religious organizations.

**27-1-107. Nonresident employers to post bond; penalty.**

Any person or persons, corporation, agent, manager or employer who shall violate or fail to comply with any of the provisions of W.S. 27-1-106 shall be deemed guilty of a misdemeanor, and upon conviction thereof shall for each offense, be subject to a fine of not more than one thousand dollars (\$1,000.00), imprisonment for not more than one (1) year, or both.

**27-1-108. Penalties generally.**

Any person who violates or omits to comply with any of the provisions of this act, or any final order of the department of workforce services is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one thousand dollars (\$1,000.00), imprisonment in the county jail for not more than one (1) year, or both.

**27-1-109. Prosecution of violations.**

The district attorney for any county in this state shall, upon receipt of a verified complaint from the director of the department of workforce services or a final agency decision of the department of workforce services prosecute to termination before any court of competent jurisdiction, in the name of the state of Wyoming, actions or proceedings against any person or persons charged with violation of any of the provisions of this act, or any of the laws of this state enacted for the protection of employees.

**27-1-110. State rehabilitation council; membership; chairman.**

(a) There is established a permanent council within the department of workforce services to be known as the Wyoming governor's state rehabilitation council, to consist of:

(i) At least one (1) representative of the statewide independent living council;

(ii) At least one (1) representative of a parent training and information center;

(iii) At least one (1) representative of the client assistance program;

(iv) At least one (1) vocational rehabilitative counselor;

(v) At least one (1) representative of community rehabilitation program service providers;

(vi) Four (4) representatives of business, industry and labor;

(vii) At least two (2) representatives of disability advocacy groups;

(viii) At least two (2) current or former applicants of vocational rehabilitation services;

(ix) The administrator of the division of vocational rehabilitation;

(x) At least one (1) representative of the department of education;

(xi) At least one (1) representative of the state workforce investment board.

(b) The director of the department of workforce services shall be an ex officio, nonvoting member of the state rehabilitation council.

(c) A majority of council members shall be persons who are:

(i) Individuals with disabilities;

(ii) Not employed by the division of vocational rehabilitation.

(d) One (1) of the members shall be elected chairman by the members of the council. The appointive members shall hold office for the term specified. The council shall be nonpartisan. The governor may remove any council member as provided in W.S. 9-1-202.

**27-1-111. Duties of council and department.**

The department of workforce services, with advice of the council, shall carry on a continuing program to promote the employment of physically, mentally, emotionally and otherwise handicapped persons by creating statewide interest in the rehabilitation and employment of the handicapped and by obtaining and maintaining cooperation from all public and private groups and individuals in the field. The council shall work in cooperation with the president's committee on employment of the handicapped in order to more effectively carry out the purposes of this act.

**27-1-112. Authority of council to receive gifts, grants or donations.**

The department of workforce services, on behalf of the council, is authorized to receive any gifts, grants or donations made for any of the purposes of its program.

**27-1-113. Employer immunity for disclosure of certain employee information; rebuttal of presumption.**

(a) An employer who discloses information about a former employee's job performance to a prospective employer or to an employer of the former employee is presumed to be acting in good faith. Unless lack of good faith is shown by a preponderance of evidence, the employer is immune from civil liability for the disclosure or for the consequences resulting from the disclosure.

(b) For purposes of subsection (a) of this section, the presumption of good faith is rebutted upon a showing that the information disclosed by the former employer was knowingly false or deliberately misleading or was rendered with malicious purpose.

**27-1-114. Temporary employment fees.**

(a) A temporary service contractor for temporary workers is not entitled to collect a fee from an employer for the permanent employment of a temporary worker placed by the temporary service contractor, unless the employer is notified in writing of the existence and the amount of the fee prior to the date of services being rendered by a temporary worker to the employer.

(b) For the purpose of this section "temporary service contractor" means any person, firm, association or corporation conducting a business that employs individuals directly for the purpose of furnishing services of the employed individuals on a temporary basis to others.

**27-1-115. State directory of new hires; requirements; exceptions; definitions.**

(a) A department designated by the governor shall maintain a directory of new hires using information provided by employers in the state. The department shall use the information in the directory of new hires to:

(i) Provide information to the department of family services as necessary to:

(A) Locate individuals for purposes of establishing paternity and establishing, modifying and enforcing child support obligations;

(B) Notify employers of wage withholding orders.

(ii) Provide information to the national directory of new hires; and

(iii) Maintain information as necessary for the administration of employment security and worker's compensation programs.

(b) Except as provided in subsection (c) of this section, each employer in the state shall furnish to the department of workforce services within twenty (20) days of hiring a new employee, or in the case of an employer transmitting reports magnetically or electronically, by two (2) monthly transmissions not less than twelve (12) days nor more than sixteen (16) days apart, a report that contains the name, address and social security number of the employee, the date services for

remuneration were first performed by the employee and the name and address of, and identifying number assigned to, the employer under section 6109 of the Internal Revenue Code. The report shall be made on a W-4 form approved by the internal revenue service or, at the option of the employer, on an equivalent form approved by the department. The form may be transmitted by first class mail, electronically or magnetically in a format acceptable to the designated department.

(c) An employer that has employees who are employed in Wyoming and any other state and who transmits the report required under subsection (b) of this section by electronic or magnetic means may elect to submit the report to either state in accordance with federal law. Any department, agency or instrumentality of the federal government operating in the state may submit the report required under subsection (b) of this section to the national directory of new hires in accordance with federal law.

(d) For purposes of this section:

(i) "Employee" means an individual eighteen (18) years of age or older who is an employee within the meaning of chapter 24 of the Internal Revenue Code of 1986, but does not include an employee of a federal or state agency performing intelligence or counter-intelligence functions if the head of such agency has determined that reporting the information required by this section could endanger the safety of the individual or compromise an ongoing investigation or intelligence operation. If the federal government seeks to impose sanctions on Wyoming for failure to report new hires under eighteen (18) years of age, the department may include such individuals within the definition of employee for purposes of this section;

(ii) "Employer" means as defined in section 3401(d) of the Internal Revenue Code of 1986 and includes any governmental agency and any labor organization;

(iii) "Newly hired employee" means an individual who has not previously been employed by the employer or was previously employed by the employer but has been separated from employment with that employer for at least sixty (60) days.

(e) In the event that the federal law requiring the state to maintain a directory of new hires is repealed, employers shall not be required to submit reports as provided by

subsections (b) and (c) of this section. The state shall not thereafter maintain the directory of new hires required under subsection (a) of this section.

**27-1-116. Business relationship between franchisors and franchisees; business relationship between franchisors and employees of franchisees.**

(a) Neither a franchisee nor a franchisee's employee shall be deemed to be an employee of the franchisor for any purpose under this title, unless otherwise agreed to in writing by the franchisor and the franchisee.

(b) This section shall not apply to a voluntary agreement entered into between the United States department of labor and a franchisee.

(c) As used in this section, "franchisee" and "franchisor" have the same definitions as set out in 16 C.F.R. 436.1.

**27-1-117. Portable benefit accounts.**

(a) As used in this section:

(i) "Financial institution" means any bank, savings and loan association or credit union chartered under the laws of Wyoming, the laws of the United States or the laws of another territory or state of the United States that is insured by the federal deposit insurance corporation or the national credit union administration. "Financial institution" shall include any special purpose depository institution as defined by W.S. 13-1-101(a)(xvi);

(ii) "Hiring party" means a person that hires or enters into a contract with an independent contractor;

(iii) "Independent contractor" means as defined by W.S. 27-14-102(a)(xxiii);

(iv) "Portable benefit account" means an account opened by an independent contractor that is:

(A) Administered by a portable benefit account provider; and

(B) Assigned to a beneficiary of one (1) or more benefit plans for the purpose of funding the purchase of one (1)

or more benefit plans, including but not limited to plans that provide health benefits, income replacement insurance, vision and dental insurance, life insurance or retirement benefits.

(v) "Portable benefit account provider" means the administrator of a portable benefit account and shall include:

(A) A financial institution;

(B) An investment management firm;

(C) A technology provider or program manager that offers services through a financial institution or investment management firm;

(D) Any other person that demonstrates to the satisfaction of the state banking commissioner that the manner in which the person will administer the portable benefit account is consistent with the requirements of this section.

(b) Any person, including but not limited to an independent contractor, internet-based company and application-based company, may voluntarily contribute funds to a portable benefit account for or on behalf of an independent contractor.

(c) Any contribution to a portable benefit account made under this section shall not be used as a criterion or factor for determining a person's employment classification, including a classification or determination under W.S. 27-3-104 or 27-14-102(a) (xxiii).

(d) A contribution to a portable benefit account under this section may be made using the funds of the hiring party or as a percentage of funds withheld from compensation owed to an independent contractor if all of the following are met:

(i) The withholding of compensation, if applicable, is expressly agreed to by the independent contractor in writing;

(ii) The written agreement for withholding funds or contributing employer funds is clear, unambiguous and prominently displayed in a work contract or separate agreement;

(iii) The withholdings are made only after an independent contractor opts in to the withholdings;

(iv) The independent contractor is authorized to opt out of the agreement at any time;

(v) A hiring party is authorized to opt out of the agreement with at least sixty (60) days of notice to the independent contractor.

## CHAPTER 2 - LABOR AND STATISTICS

**27-2-101. Repealed by Laws 1990, ch. 63, § 3.**

**27-2-102. Repealed by Laws 1990, ch. 63, § 3.**

**27-2-103. Repealed by Laws 1990, ch. 63, § 3.**

**27-2-104. Duties of department of workforce services.**

(a) The department of workforce services shall:

(i) Enforce all laws enacted by the legislature of Wyoming, relating to labor, wages, hours of labor, and to the health, welfare, life and limb of the workers of this state;

(ii) Repealed By Laws 2001, Ch. 162, § 2.

(iii) Make necessary inspections of industrial establishments and buildings as provided by law;

(iv) Make an inspection of all living accommodations provided for employees wherever employed, where the living accommodations are furnished as a part of the wages; and

(v) To promulgate reasonable rules.

(b) Repealed By Laws 2002, Ch. 100, § 4.

**27-2-105. Report to governor; statistics and information required.**

(a) The department of workforce services shall collect, classify, have printed and submit to the governor in its annual report the following statistics:

(i) The hours of labor and number of sex engaged in manual labor;

(ii) The aggregate and average daily wages classified by sex and occupation;

(iii) The number and character of accidents;

(iv) The working conditions of all industrial establishments (including manufacturing establishments, hotels, stores, workshops, theaters, halls and other places where labor is employed);

(v) Other information relating to industrial, economic, social, educational, moral and sanitary conditions of the workers; and

(vi) The results of its inspection of industrial establishments.

**27-2-106. Repealed by Laws 1990, ch. 63, § 3.**

**27-2-107. Repealed by Laws 1990, ch. 63, § 3.**

**27-2-108. Right of entry.**

The director of the department of workforce services may designate employees of the department who shall have power to enter any manufacturing establishment, mill, workshop, office, bakery, laundry, store, hotel, theater, hall, or any public or private works where labor is employed, rooms are rented to the public, or machinery is used, for the purpose of enforcing the provisions of this act.

**27-2-109. Examination of witnesses.**

(a) The director of the department of workforce services may designate employees of the department who shall have the power to administer oaths, to examine witnesses under oath, to compel the attendance of witnesses and the giving of testimony in any part of this state.

(b) Repealed by Laws 1990, ch. 63, § 3; ch. 71, § 2.

(c) Repealed by Laws 1990, ch. 63, § 3; ch. 71, § 2.

(d) Repealed by Laws 1990, ch. 63, § 3; ch. 71, § 2.

(e) Repealed by Laws 1990, ch. 63, § 3; ch. 71, § 2.

(f) Repealed by Laws 1990, ch. 63, § 3; ch. 71, § 2.

(g) Except as otherwise provided by law, final agency decisions of the department of workforce services with regard to chapters 4, 5, 6, 7, 8 and 9 of title 27, shall be issued only after an opportunity for hearing pursuant to the Wyoming Administrative Procedure Act. Any party aggrieved by a final agency decision of the department of workforce services with regards to chapters 4, 5, 6, 7, 8 and 9 of title 27, shall have the right to appeal to district court pursuant to the Wyoming Administrative Procedure Act.

**27-2-110. Repealed by Laws 1990, ch. 63, § 3.**

**27-2-111. Repealed By Laws 2002, Ch. 100, § 4.**

**27-2-112. Sale of office publications; exception.**

The department of workforce services may sell any publication or other duplicated or printed material, other than the biennial report, which it prepares and which the public may desire to purchase.

**27-2-113. Sale of office publications; limitation on charges.**

The charges made by the department of workforce services shall not exceed the cost of materials, printing, duplication, packaging and postage.

**27-2-114. Repealed by Laws 1990, ch. 63, § 3.**

## CHAPTER 3 - UNEMPLOYMENT COMPENSATION

### ARTICLE 1 - IN GENERAL

**27-3-101. Short title.**

This act is and may be cited as the "Wyoming Employment Security Law".

**27-3-102. Definitions generally.**

(a) Except as otherwise provided, as used in this act:

(i) "Base period" means the first four (4) of the last five (5) completed calendar quarters immediately preceding

the first day of an individual's benefit year or any other twelve (12) month period specified by commission regulation. A calendar quarter used in one (1) base period of a valid claim shall not be used in a subsequent base period. If a combined wage claim under W.S. 27-3-608, the base period is as provided under law of the paying state;

(ii) "Benefit" means a payment to an individual for unemployment under this act;

(iii) "Benefit year" means:

(A) The fifty-two (52) consecutive calendar week period beginning the first week of a claim series established by the filing of a valid initial claim for benefits following the termination of any previously established benefit year; or

(B) The fifty-three (53) consecutive calendar week period beginning the first week of a claim series if filing a new valid claim results in the overlapping of any quarter of the base period of a previously filed claim; or

(C) If a combined wage claim under W.S. 27-3-608, the benefit year is as provided under law of the paying state.

(iv) "Calendar quarter" means a period of three (3) consecutive calendar months ending on March 31, June 30, September 30 or December 31;

(v) "Commission" means the unemployment insurance commission of Wyoming within the department of workforce services;

(vi) "Contribution" means payments to the unemployment compensation fund required by this act including payments instead of contributions under W.S. 27-3-509;

(vii) "Employing unit" means any individual or type of organization employing one (1) or more individuals in this state including any partnership, association, trust, estate, corporation, domestic or foreign insurance company or corporation, a receiver, trustee in bankruptcy, trustee or a successor or the legal representative of a deceased person and including any limited liability corporation. Also, any individual or organization not previously subject to this act shall be an employing unit upon acquiring any entity already

subject to this act. An individual performing services within this state for any employing unit maintaining two (2) or more separate places of business in the state is employed by a single employing unit. An individual employed to perform for or assist any agent or employee of an employing unit is employed by the employing unit whether hired or paid directly by the employing unit or by the agent or employee if the employing unit had actual or constructive knowledge of the work;

(viii) "Employment office" means a free public employment office or branch operated by any state as part of a state controlled system of public employment offices or by a federal agency administering an unemployment compensation program or a system of free public employment offices;

(ix) "Fund" means the unemployment compensation fund established by this act;

(x) "Hospital" means any institution, building or agency maintaining, furnishing or offering hospitalization of the sick and injured or chronic or convalescent care by individuals employed by the state or any political subdivision;

(xi) "Institution of higher education" means any college or university in this state and any other public or nonprofit educational institution:

(A) Admitting as regular students only high school graduates or the recognized equivalent;

(B) Legally authorized to provide post secondary education in this state; and

(C) Providing an educational program for which a bachelor's or higher degree is awarded or which is accepted as full credit toward this degree, providing a program of postgraduate or postdoctoral study or a training program preparing students for gainful employment in a recognized occupation.

(xii) "Insured work" means employment for employers;

(xiii) "Nonprofit hospital" means any institution performing services specified by paragraph (x) of this subsection and organized and operated under W.S. 35-2-302(a) (vi) and authority of the state department of health;

(xiv) "State" means any of the fifty (50) states of the United States, the District of Columbia, the commonwealth of Puerto Rico or the Virgin Islands;

(xv) "Unemployment" means any week in which an individual performs no services and receives no wages or performs less than full-time work if wages payable for that week are less than his weekly benefit amount and are in accordance with regulations of the commission;

(xvi) "Valid claim" means a claim filed by an individual earning wages for insured work in amounts specified under W.S. 27-3-306(d) for which no misrepresentation is made of unemployment requirements of this act;

(xvii) "United States" used in a geographical sense means the fifty (50) states, the District of Columbia, the commonwealth of Puerto Rico and the Virgin Islands;

(xviii) "Wage" means remuneration payable for services from any source including commissions, bonuses and cash. The reasonable cash value of remuneration other than cash or check shall be prescribed by rule of the commission. To the extent the following are not considered wages under 26 U.S.C. §§ 3301 through 3311, "wage" does not include:

(A) For purposes of W.S. 27-3-503 through 27-3-509, remuneration greater than fifty-five percent (55%) of the statewide average annual wage calculated pursuant to W.S. 27-3-303(a) and rounded to the lowest one hundred dollars (\$100.00), which is paid during any calendar year to an individual by each employer or a predecessor within any calendar year including employment under any other state unemployment compensation law unless the amount is subject to a federal tax against which credit may be taken for contributions paid into any state unemployment fund;

(B) Any premium paid by an employing unit under a plan, system or into a fund for insurance or annuities to provide an employee or class of employees retirement, sickness or accident disability, medical and hospitalization expenses for sickness or accident disability or death benefits if the employee cannot receive any part of this payment instead of the death benefit or any part of the premium if the benefit is insured and cannot assign or receive cash instead of the benefit upon withdrawal from or termination of the plan, system, policy or services with the employing unit;

(C) A payment by an employing unit not deducted from an employee's remuneration for the tax imposed under 26 U.S.C. § 3101;

(D) Dismissal payments which the employing unit is not obligated to make;

(E) That portion of tips or gratuities not reportable under 26 U.S.C. § 3306(s);

(F) The value of any meals or lodging furnished by and for the convenience of the employer to the employee if the meals are furnished on the business premises of the employer or in the case of lodging, the employee is required to accept lodging on the business premises of his employer as a condition of his employment;

(G) Remuneration received by an employee as sick pay following a six (6) month continuous period of illness;

(H) Any benefit under a cafeteria plan specified by 26 U.S.C. § 125, excluding cash;

(J) Wages of a deceased worker paid to a beneficiary or estate following the calendar year of the worker's death;

(K) Services received under any dependent care assistance program to the extent excluded from gross income under 26 U.S.C. § 129;

(M) Repealed By Laws 2010, Ch. 66, § 2.

(N) Services or benefits received under any educational assistance program;

(O) Any benefit or other value received under an employee achievement award;

(P) The value of any qualified group legal services plan to the extent payments are excluded from gross income under 26 U.S.C. § 120;

(Q) Costs of group term life insurance;

(R) Repealed By Laws 2010, Ch. 66, § 2.

(S) Any moving expenses;

(T) Employer contributions to any qualified retirement and pension plan or individual retirement account and distributions from qualified retirement and pension plans and annuities under 26 U.S.C. § 403(b);

(U) Benefit payments under any supplemental unemployment compensation plan; and

(W) Any benefits paid under the Wyoming Worker's Compensation Act or any other worker's compensation law of another state.

(xix) "Week" means a period of seven (7) consecutive calendar days beginning Sunday and the commission may by regulation prescribe that a week is within the benefit year which includes the greater part of that week;

(xx) "Department" means the divisions within the department of workforce services established under W.S. 9-2-2002 which contain the principal operating units that administer the unemployment compensation program pursuant to the Social Security Act;

(xxi) "Casual labor" means service not within the normal course of business and for which the remuneration paid is less than fifty dollars (\$50.00);

(xxii) "Erroneous payment" means a payment that, but for the failure by the employer or the employer's agent to provide requested information with respect to the claim for unemployment compensation, would not have been made;

(xxiii) "Pattern of failing" means repeated documented failure on the part of the employer or the agent of the employer to respond to a written request from the department for information relating to a claim for benefits, taking into consideration the number of instances of failure in relation to the total volume of requests by the department to the employer or the employer's agent;

(xxiv) "Misconduct connected with work" means an act of an employee which indicates an intentional disregard of the employer's interests or the commonly accepted duties,

obligations and responsibilities of an employee. "Misconduct connected with work" does not include:

- (A) Ordinary negligence in isolated instances;
- (B) Good faith errors in judgment or discretion;
- (C) Inefficiency or failure in good performance as the result of inability or incapacity.

(xxv) "This act" means W.S. 27-3-101 through 27-3-811.

**27-3-103. "Employer" defined; qualifications; employment services in other states included.**

(a) As used in this act, "employer" means any employing unit:

(i) For whom a worker performs service as an employee;

(ii) Acquiring the organization, business, trade or substantially all of the assets of an employer subject to this act at the time of acquisition;

(iii) Electing coverage under this act pursuant to W.S. 27-3-502(d);

(iv) Not otherwise qualifying as an employer under this section and liable for any federal tax on services employed against which credit may be taken for contribution payments into any state unemployment fund;

(v) Not otherwise qualifying as an employer under this section and as a condition for full tax credit against the tax imposed by 26 U.S.C. §§ 3301 through 3311, is required to be an employer under this act;

(vi) Employing services defined as employment under W.S. 27-3-105(a)(i), except as provided by paragraphs (viii) and (ix) of this subsection;

(vii) Employing services defined as employment under W.S. 27-3-105(a)(ii), except as provided by subsection (b) of this section;

(viii) Employing agricultural labor defined under W.S. 27-3-107;

(ix) Employing domestic service defined under W.S. 27-3-107(g); or

(x) That is an Indian tribe, as defined by section 3306 of the federal Unemployment Tax Act, for which service in employment, as defined by this act, is performed.

(b) Domestic service shall not be considered by the department in determining if an employing unit is an employer under paragraph (a)(i), (vi), (vii) or (viii) of this section. Agricultural labor shall not be considered by the department in determining if an employing unit is an employer under paragraph (a)(i), (vi), (vii) or (ix) of this section.

(c) Employment under this section shall include services performed entirely within another state pursuant to an agreement under W.S. 27-3-608(b) and otherwise qualifying as employment under this act.

**27-3-104. "Employment" defined; generally; exceptions.**

(a) As used in this act, "employment" means service:

(i) Performed by an employee defined under 26 U.S.C. § 3306(i) including service in interstate commerce, except 26 U.S.C. § 3121(d)(2) does not apply;

(ii) Subject to any federal tax against which credit may be taken for contribution payments into any state unemployment fund;

(iii) Required to be employment under this act as a condition for full tax credit against the tax imposed by 26 U.S.C. §§ 3301 through 3311; and

(iv) Otherwise specified under W.S. 27-3-104 through 27-3-108.

(b) An individual who performs service for wages is an employee for purposes of this act unless it is shown that the individual:

(i) Is free from control or direction over the details of the performance of services by contract and by fact;

(ii) Repealed by Laws 1991, ch. 153, § 1.

(iii) Repealed by Laws 1995, ch. 121, § 3.

(iv) Repealed by Laws 1995, ch. 121, § 3.

(v) Represents his services to the public as a self-employed individual or an independent contractor; and

(vi) May substitute another individual to perform his services.

(c) As used in this act, "employment" does not include service performed by a person acting as a fiduciary, as that term is defined in W.S. 4-10-103(a)(vii), and receiving reasonable compensation for fiduciary services pursuant to the Uniform Trust Code or the Wyoming Probate Code.

**27-3-105. "Employment" defined; employment for state, and other organizations; exceptions.**

(a) Employment under this act includes service performed for:

(i) This state, any of its political subdivisions, including service as an appointed official of any political subdivision, or for this state and any other state or its political subdivisions and this service is excluded from employment under 26 U.S.C. §§ 3301 through 3311 solely by 26 U.S.C. § 3306(c)(7);

(ii) A religious, charitable, educational or other organization if excluded from employment under 26 U.S.C. §§ 3301 through 3311 solely by 26 U.S.C. § 3306(c)(8) and the organization employed four (4) or more individuals for part of one (1) day for twenty (20) weeks within the current or preceding calendar year; and

(iii) An Indian tribe, as defined by section 3306 of the federal Unemployment Tax Act, if the service is excluded from employment, as defined by the federal Unemployment Tax Act, only because of the application of section 3306(c)(7) of that act and is not otherwise excluded from employment as defined by this act.

(b) Subsection (a) of this section does not include service performed:

(i) For a church or convention or association of churches;

(ii) For an organization operated primarily for religious purposes and supervised, controlled or principally supported by a church or convention or association of churches;

(iii) As an ordained, commissioned or licensed minister of a church in the exercise of his ministry;

(iv) As a member of a religious order in the exercise of required duties of the order;

(v) As an elected official;

(vi) As a member of a legislative body or the judiciary of the state or any political subdivision;

(vii) As a member of the state national guard or air national guard;

(viii) For a governmental agency as a temporary employee for fire, storm, snow, earthquake, flood or similar emergencies;

(ix) By a major nontenured policymaking or advisory position pursuant to law or by a policymaking or advisory position not ordinarily requiring more than eight (8) hours of service per week;

(x) By an individual receiving rehabilitative services from a facility providing rehabilitation programs for individuals with impaired earning capacities because of age, physical or mental deficiencies or injury or providing remunerative work for individuals not readily absorbed into the labor market because of physical or mental deficiencies;

(xi) By an individual receiving a wage as part of a work experience or workfare program assisted or financed by the federal government or any state or local government, except for those programs employing an individual in on-the-job training for which wages are wholly or partially paid by the employer;

(xii) By an inmate of a state custodial or penal institution; or

(xiii) As an election official or election worker if the amount of remuneration received by the individual during the calendar year for services performed as an election official or election worker is less than one thousand dollars (\$1,000.00).

**27-3-106. "Employment" defined; employment outside United States; exceptions; "American employer" defined; localized service specified.**

(a) Employment under this act includes service performed outside the United States except in Canada and the Virgin Islands by a United States citizen for an American employer if:

(i) The employer's principal place of business in the United States is located in this state;

(ii) The employer has no place of business in the United States and is a resident of this state, a corporation organized under state law or a partnership or trust and the number of partners or trustees resident of this state is greater than the number of residents of any other state;

(iii) The employer elected coverage under this act;  
or

(iv) A claim for benefits based on this service is filed under this act and the employer failed to elect coverage in any state.

(b) As used in subsection (a) of this section, "American employer" means a:

(i) Resident of the United States;

(ii) Partnership and two-thirds (2/3) or more of the partners are residents of the United States;

(iii) Trust and the trustees are United States residents; or

(iv) Corporation organized under federal or any state law.

(c) Notwithstanding subsection (a) of this section, employment includes service performed in this state, both in and outside this state or in Canada if the service is:

(i) Localized in this state;

(ii) Not localized in any state, a part of the service is performed in this state and the base of operations is located in this state or if the base of operations is not located in any state, the individual is a resident of this state; or

(iii) Not subject to the law of any state or Canada and the service is directed or controlled from a location in this state.

(d) Service not covered under subsection (c) of this section, performed entirely outside this state and contributions are not required or paid under federal or any state law is employment under this act if the individual performing the service is a resident of this state and the department approves the election of the employing unit for coverage under this act.

(e) Service is localized within a state if it is performed entirely within the state or both within and outside the state if the service performed outside the state is incidental.

**27-3-107. "Agricultural labor" defined; "farm" defined; "crew leader" defined; when domestic services included; exception.**

(a) As used in this section, "agricultural labor" means remunerated service performed:

(i) On a farm for any person involving cultivating the soil or raising or harvesting any agricultural or horticultural commodity including training and managing livestock, bees, poultry, wildlife or furbearing animals;

(ii) For the owner, tenant or other operator of a farm involving the maintenance of the farm and any tools and equipment if the major part of the service is performed on the farm;

(iii) For the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, delivering to storage or market in its

unmanufactured state or delivering to a carrier for transportation to market, any agricultural or horticultural commodity if the operator produced more than fifty percent (50%) of the commodity;

(iv) For the operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for supplying and storing water for farming purposes;

(v) In the production or harvesting of an agricultural commodity as defined under 12 U.S.C. § 1141j(g);

(vi) For a group of farm operators or a cooperative organization of which the operators are members for services specified under paragraph (iii) of this subsection if the operators produced more than fifty percent (50%) of the commodity. This paragraph does not apply to service involving commercial canning, commercial freezing or any agricultural or horticultural commodity after delivery to a terminal market for distribution for consumption.

(b) As used in subsection (a) of this section, "farm" means stock, dairy, poultry, fruit and furbearing animal operations, truck farms, ranches, nurseries, ranges, orchards, greenhouses and other operations primarily engaged in the raising of agricultural or horticultural commodities.

(c) Agricultural labor is employment under this act if it is performed for a person who:

(i) Paid cash wages of twenty thousand dollars (\$20,000.00) or more during any calendar quarter in the current or preceding calendar year to individuals employed in agricultural labor; or

(ii) Employed ten (10) or more individuals in agricultural labor for a part of one (1) day for twenty (20) calendar weeks within the current or preceding calendar year.

(d) For purposes of this section, any member of a crew furnished by a crew leader to perform service in agricultural labor for any other person is an employee of the crew leader if:

(i) The crew leader is certified under 29 U.S.C. 1801 through 1872; or

(ii) Substantially all crew members operate or maintain tractors, mechanized harvesting or crop dusting equipment or other mechanized equipment provided by the crew leader; and

(iii) The individual is not an employee of any other person under W.S. 27-3-104 through 27-3-108.

(e) As used in this section, "crew leader" means an individual who:

(i) Furnishes individuals to perform agricultural labor for any other person;

(ii) Pays for himself or for others the cash wages of individuals furnished by him for agricultural labor; and

(iii) Has not entered into a written agreement with the other person designating the individuals as employees of that person.

(f) If an individual furnished by a crew leader to perform agricultural labor for another person is not an employee of the crew leader pursuant to subsection (d) of this section, the other person is the employer and shall pay cash wages of the individual equal to the amount paid by the crew leader for the service performed for that person.

(g) Employment under this act includes domestic service performed for a person in a private home, local college club or local chapter of a college fraternity or sorority for which cash wages of one thousand dollars (\$1,000.00) or more are paid for any calendar quarter of the current or preceding calendar year.

(h) Service performed during any period in which exemptions from federal unemployment tax liability are provided for under 26 U.S.C. § 3306(c)(1)(B) including any amendments or extensions thereto, by an alien admitted to the United States to perform service in agricultural labor under 8 U.S.C. §§ 1101 through 1503, is exempt from this section.

**27-3-108. Services excluded from scope of employment.**

(a) Employment under this act does not include service performed:

(i) By an individual for his spouse or child or by a person under twenty-one (21) years of age for his parent or for a partnership consisting only of his parents;

(ii) For the federal government or any federal agency exempt from this act by federal constitution, except service for those agencies otherwise required by law to contribute to any state unemployment compensation fund;

(iii) For an employer or employee representative defined under 45 U.S.C. § 351 et seq. unless an agreement is in effect pursuant to W.S. 27-3-608;

(iv) By an individual under the age of eighteen (18) or as a direct seller or independent contractor in the business of distributing or delivering newspapers or shopping news excluding the delivery or distribution at any point for further delivery or distribution but including directly related services such as soliciting customers and collecting receipts, provided:

(A) All or substantially all of the individual's pay for the service, whether or not paid in cash, directly relates to sales or other output rather than to the number of hours worked; and

(B) The individual performs the service under a written contract with the newspaper or shopping news publisher which specifies that the individual will not be treated as an employee with respect to the services for federal tax purposes.

(v) As real estate activity under W.S. 33-28-102(b)(xlv) by a responsible broker, associate broker or salesperson licensed under the Real Estate License Act, W.S. 33-28-101 through 33-28-401;

(vi) In the employ of a school, college or university by a student enrolled and regularly attending the school, college or university or by the spouse of a student if the spouse is informed at the time employed that employment is provided under a financial assistance program and the employment is not covered by unemployment compensation;

(vii) By an individual enrolled in a full-time program of an educational institution combining academic instruction with work experience if the service is an integral part of the program and is certified by the institution to the

employer. This paragraph does not apply to service performed in a program established for an employer or group of employers;

(viii) By a hospital patient employed by the hospital;

(ix) In a barber shop licensed under W.S. 33-7-108 or salon licensed under W.S. 33-12-127 if:

(A) Use of shop facilities by an individual performing services is contingent upon payment of a flat rate of compensation to the shop owner; and

(B) The individual performing services receives no compensation from the shop owner for services performed.

(x) By an individual who is the owner and operator of a motor vehicle which is leased or contracted with driver to a for-hire common or contract carrier. The owner-operator shall not be an employee for purposes of this act if he performs the service pursuant to a contract which provides that the owner-operator shall not be treated as an employee for purposes of the Federal Insurance Contributions Act, the Social Security Act, the Federal Unemployment Tax Act and income tax withholding at source;

(xi) Services performed as casual labor;

(xii) Repealed By Laws 2010, Ch. 66, § 2.

(xiii) By a member of a limited liability company, unless the limited liability company elects coverage in accordance with W.S. 27-3-502(d).

#### **27-3-109. Amendment and repeal; vested rights denied.**

The legislature reserves the right to amend, modify or repeal all or any part of the Wyoming Employment Security Law at any time. There is no vested private right of any kind under this act.

### **ARTICLE 2 - FUND ADMINISTRATION**

#### **27-3-201. Establishment and composition of unemployment compensation fund.**

(a) The unemployment compensation fund is established and shall be administered by the department for purposes of this act.

(b) The fund shall consist of:

(i) Contributions collected under this act, excluding revenues for the employment support fund under W.S. 27-3-505(a);

(ii) Funds received under 42 U.S.C. § 1321;

(iii) Interest earned on the fund balance;

(iv) Any property or securities acquired by the fund and any earnings of the acquired property or securities;

(v) Any other funds received for the fund from any other source; and

(vi) Funds credited to Wyoming's account in the unemployment trust fund pursuant to 42 U.S.C. § 1103.

**27-3-202. Administration of fund.**

(a) The department is the custodian of the fund and shall administer the fund and issue warrants upon the fund in accordance with the directions of the department or regulations of the commission. The state treasurer shall maintain a clearing account, an unemployment trust fund account and a benefit account separately within the fund as specified by the department.

(b) All funds payable to the fund shall be deposited by the department or its authorized representative in the clearing account, with receipt and acknowledgement submitted to the state treasurer. In addition, all funds collected from the employment support fund under W.S. 27-3-505(a) shall be deposited by the department in the clearing account, for clearance only, and shall not become a part of the fund. After clearance, funds collected for the employment support fund under W.S. 27-3-505(a) shall be deposited in the employment support fund created by W.S. 27-3-211. Thereafter, refunds payable pursuant to W.S. 27-3-515 may be paid from the clearing account upon warrants issued by the state auditor under regulation of the commission. Remaining funds in the clearing account shall be immediately deposited with the United States secretary of the treasury in

Wyoming's account within the unemployment trust fund established pursuant to 42 U.S.C. § 1104(e).

(c) The benefit account consists of all funds withdrawn from Wyoming's account in the unemployment trust fund. Funds shall be withdrawn from Wyoming's account only for the payment of benefits in accordance with regulations of the commission, except as provided by W.S. 27-3-204. The department shall withdraw funds from the unemployment trust fund in amounts necessary to pay benefits for a reasonable future period. Withdrawals from the unemployment trust fund shall not exceed the balance of Wyoming's account within the trust fund. Upon receipt, the department shall deposit the funds in the benefit account, with receipt and acknowledgement submitted to the state treasurer, and shall issue warrants for the payment of benefits from the benefit account. Any funds remaining unclaimed or unpaid in the benefit account after the expiration of the period for which they were withdrawn shall be deducted from estimates and used for the payment of benefits during succeeding periods or deposited with the United States secretary of the treasury in Wyoming's account in the unemployment trust fund.

(d) Except as otherwise provided by this act, the department may deposit funds of the clearing and benefit accounts, under regulation of the commission and separate from other state funds, in an approved public depository in the manner provided by W.S. 9-4-801 through 9-4-815. Any collateral pledged for this purpose shall be separate from collateral pledged to secure other state funds. All funds recovered from losses sustained by the fund shall be deposited into the fund. The department may request an examination of any return or report of a national banking association required by this act pursuant to 26 U.S.C. § 3305(c).

(e) Warrants for payment of benefits and refunds from the benefit and clearing accounts shall be signed by the state auditor and the department or its authorized agent.

**27-3-203. Discontinuance or nonmaintenance of fund; disposition of assets.**

If the unemployment trust fund is discontinued or Wyoming's account is no longer maintained, the provisions of W.S. 27-3-201 and 27-3-202 relating to the unemployment trust fund are no longer effective. All funds, properties or securities of the Wyoming unemployment compensation fund shall be transferred to the state treasurer. The treasurer shall hold, invest, transfer,

sell, deposit and release the funds, properties or securities in a manner approved by the commission in accordance with law and this act. Any investment shall allow sufficient conversion of fund assets for payment of benefits.

**27-3-204. Withdrawal funds credited to federal unemployment trust fund.**

(a) Funds credited to Wyoming's account in the unemployment trust fund pursuant to 42 U.S.C. § 1103 may be withdrawn only for the payment of benefits and expenses for the administration of this act pursuant to this section except as provided by W.S. 27-3-208 and for the payment of expenses for the administration of public employment offices administered by the department of workforce services pursuant to W.S. 9-2-2601(e).

(b) Funds shall be withdrawn for administrative expenses by legislative appropriation. The appropriation shall:

(i) Specify the amounts and purposes for which the funds are appropriated;

(ii) Limit the period in which the funds may be obligated to not more than two (2) years after the date of enactment; and

(iii) Limit the amount which may be obligated to an amount which does not exceed the amount by which the amounts transferred to Wyoming's account pursuant to 42 U.S.C. § 1103 exceed the aggregate of the amounts used by Wyoming pursuant to this act and charged against the amounts transferred to Wyoming's account.

(c) Funds withdrawn for payment of administrative expenses pursuant to this section shall be deposited in the employment security administration account and shall remain a part of the unemployment fund until spent. The department shall maintain a separate record of the deposit, obligation, expenditure and return of funds deposited. Any funds deposited and not spent for purposes specified within the legislative appropriation or remaining at the expiration of the period specified by the appropriation shall be deposited with the United States secretary of the treasury in Wyoming's account in the unemployment trust fund.

**27-3-205. Employment security administration account.**

(a) The employment security administration account is established and shall be administered by the department. The department, with receipt and acknowledgement submitted to the state treasurer, may deposit funds within the account separate from other state funds in an approved public depository in accordance with W.S. 9-4-801 through 9-4-815. Funds deposited into the account are available to the department for expenditure in accordance with this act and shall not be transferred to any other account. Account expenditures, except funds received pursuant to W.S. 27-3-204, shall be only for the payment of necessary administrative expenses of this act as determined by the United States secretary of labor and for the establishment and maintenance of public employment offices pursuant to W.S. 9-2-2601(e). All funds deposited into the account pursuant to W.S. 27-3-204 shall remain a part of the unemployment compensation fund and shall be used in accordance with W.S. 27-3-204.

(b) The account shall consist of:

(i) Funds appropriated by the legislature, funds received under 29 U.S.C. § 49 et seq. and other federal funds and funds received from any other source for purposes specified in this section;

(ii) Federal funds and funds from any other state received as compensation for services or facilities supplied from the account;

(iii) Funds from any surety bond, insurance policy or other source for losses sustained by the account including damage to equipment or supplies purchased by the account; and

(iv) Any proceeds from the sale or disposition of equipment or supplies purchased by the account.

**27-3-206. Replacement of certain funds; how implemented; reports.**

The state shall replace any federal funds received under 42 U.S.C. § 501 et seq., any funds granted to the state under 29 U.S.C. § 49 et seq. and any funds of the state or any political subdivision which are matched by federal funds under 29 U.S.C. § 49 et seq. and found by the federal government to be lost or spent for purposes other than or in amounts in excess of those amounts necessary for the administration of this act.

Replacement of funds pursuant to this section shall be by legislative appropriation from the state general fund to the employment security administration account for expenditure as provided by W.S. 27-3-205. The department shall report to the governor and the governor to the legislature through the report required under W.S. 9-2-1014 the amount required for the replacement.

**27-3-207. Employment security revenue account.**

(a) The employment security revenue account is created as a separate account in the employment security administration account. Monies within the account may only be expended by legislative appropriation. The account shall be used:

(i) To replace any funds pursuant to W.S. 27-3-206;

(ii) For necessary expenses of this act for which no federal funds are available provided the expenditures from the account are not substituted for federal funds which would otherwise be available; and

(iii) Instead of federal funds requested but not received provided the account is reimbursed upon receipt of requested federal funds.

(b) Notwithstanding W.S. 27-3-201, 27-3-202 and 27-3-205, the employment security revenue account shall consist of:

(i) Interest collected under W.S. 27-3-510(a) and deposited in the clearing account, provided a sufficient balance is kept within the clearing account to pay interest refunds; and

(ii) All federal funds accruing to the Wyoming unemployment trust fund with the United States secretary of the treasury under 26 U.S.C. § 3301 et seq. which are for administrative purposes.

(c) Funds deposited in the Wyoming unemployment trust fund pursuant to paragraph (b)(ii) of this section may be withdrawn according to procedures established by the United States secretary of the treasury.

**27-3-208. Advances from federal unemployment trust fund.**

(a) The governor may apply for and receive advances to the state of Wyoming from its account in the federal unemployment

trust fund and shall be responsible for the advances in accordance with the conditions specified in Title XII of the "Social Security Act", as amended, in order to secure to Wyoming the advantages available under that title.

(b) Principal repayments shall only be made from federal revenues credited to or received by Wyoming under this act or interfund borrowing under section 5 of this act [Laws 1983, Sp. Sess., ch. 2, § 5, as amended by Laws 1984, ch. 50, § 2] and repayments of interest, if any, shall only be made from revenues available by a legislative appropriation for that purpose or interfund borrowings under section 5 of this act [Laws 1983, Sp. Sess., ch. 2, § 5, as amended by Laws 1984, ch. 50, § 2].

**27-3-209. State unemployment insurance trust fund established.**

(a) There is established the state unemployment insurance trust fund. All state unemployment insurance contributions collected under W.S. 27-3-503 through 27-3-505, less refunds, shall be deposited into the fund and held in trust for the sole and exclusive use of payment on unemployment insurance benefits. The state treasurer shall invest available revenues in the fund in accordance with law, and earnings from those investments shall be credited to the workforce development training fund established in W.S. 9-2-2604.

(b) The director may determine when and in what amounts withdrawals from the state unemployment insurance trust fund for payment of benefits are necessary.

(c) If the state unemployment insurance trust fund is dissolved, all money then in that fund, less earnings, shall be immediately transferred to the credit of the state's account in the unemployment compensation fund, regardless of other provisions of law. The governor may dissolve the state unemployment insurance trust fund if he finds it to be unnecessary based upon the solvency of the unemployment compensation fund and need for training for Wyoming workers.

(d) Earnings from the investment of the state unemployment insurance trust fund may be credited to the workforce development training fund established in W.S. 9-2-2604 in amounts determined by the director, subject to the limitations of this subsection. If the balance of the state unemployment insurance trust fund at the end of the fiscal year is less than the balance of the fund on July 1, 2023:

(i) A portion of the earnings from the investment of the fund shall be retained in the fund until the balance of the fund is restored to the balance of the fund on July 1, 2023; and

(ii) The annual amount of earnings retained shall be not less than fifty percent (50%) of the annual earnings or the amount necessary to restore the balance of the fund to the balance of the fund on July 1, 2023, whichever is less.

**27-3-210. Repealed By Laws 2002, Ch. 100, § 4.**

**27-3-211. Employment support fund established.**

(a) There is established the employment support fund. Revenues allocated pursuant to W.S. 27-3-505(a) shall be credited to the employment support fund by the department, with receipt and acknowledgement submitted to the state treasurer. The state treasurer shall invest available revenues in the fund in accordance with law, and earnings from those investments shall be credited to the fund. Notwithstanding W.S. 9-2-1008 and 9-4-207, the monies in the employment support fund shall not revert.

(b) Monies from the employment support fund shall be expended only upon appropriation by the legislature and shall be withdrawn solely for unemployment compensation benefits or administrative expenses to:

(i) Offset funding deficits for program administration under this act;

(ii) Collect and administer the revenues collected under W.S. 27-3-505(a);

(iii) Further support programs to strengthen unemployment fund solvency;

(iv) Support employment office programs administered by the department of workforce services.

(c) The department shall report annually to the joint appropriations committee and the joint labor, health and social services interim committee not later than September 1 of each year on the status of the employment support fund, detailing fund expenditures and the fund's current balance.

## ARTICLE 3 - BENEFITS

### **27-3-301. Definitions.**

(a) As used in this article:

(i) "Additional benefits" means benefits payable under state law to exhaustees due to high unemployment conditions or other special factors and totally financed by any state;

(ii) "Applicable benefit year" means an individual's most recent benefit year or an individual's current benefit year if at the time of filing a claim for extended benefits his benefit year is unexpired only in the state in which filing;

(iii) "Eligibility period" means those weeks in an individual's benefit year beginning in an extended benefit period and if his benefit year ends within the extended benefit period, any weeks beginning in this period;

(iv) "Extended benefits" means benefits payable to an individual under this article for weeks of unemployment in his eligibility period including benefits payable to federal employees and veterans under 5 U.S.C. § 8501 et seq.;

(v) "Most recent benefit year" means the benefit year with the latest ending date for individuals filing a claim for extended benefits with unexpired benefit years in more than one (1) state or, if the benefit years have the same ending date, the benefit year in which the latest continued claim for regular benefits was filed;

(vi) "Regular benefits" means benefits, excluding extended and additional benefits, payable to an individual under this act or any other state law including dependent's allowances and benefits payable to federal employees or veterans under 5 U.S.C. § 8501 et seq.;

(vii) "State law" means the unemployment insurance law of any state approved by the United States secretary of labor under 26 U.S.C. § 3304.

### **27-3-302. Payment; liability.**

(a) Benefits provided by this article are payable from the unemployment compensation fund established by W.S. 27-3-201. All

benefits shall be paid through department offices in accordance with regulations of the commission.

(b) The department is liable for benefit payments only to the extent provided by this act and to the extent that funds are available within the fund.

**27-3-303. Weekly amount; computation; payment.**

(a) Subject to subsection (d) of this section, the weekly benefit amount for an eligible individual is four percent (4%) of his total wages payable for insured work in that quarter of his base period in which his wages were highest computed to the next lower multiple of one dollar (\$1.00). The amount shall not be more than the statewide weekly wage multiplied by fifty-five percent (55%) and computed to the next lower multiple of one dollar (\$1.00). The statewide weekly wage is the total wages reported by employers, excluding the limitation on the amount of wages subject to contributions under this act, for employment during the calendar year preceding June 1 divided by the product of fifty-two (52) times the twelve (12) month average of the number of employees in the pay period and rounded to the nearest cent. The statewide average annual wage is the total wages reported by employers, excluding the limitation on the amount of wages subject to contributions under this act, for employment during the calendar year preceding June 1 divided by the twelve (12) month average of the number of employees in the pay period and rounded to the nearest cent. The pay period reported by employers shall include the twelfth day of each month during the same year. The minimum and maximum weekly benefit paid under this subsection to any individual applies only to the benefit year beginning on or after July 1.

(b) Repealed by Laws 1985, ch. 175, § 3.

(c) An eligible individual unemployed in any week shall be paid his weekly benefit for that week less any earnings payable to him for that week which exceeds fifty percent (50%) of his weekly benefit amount. The reported earnings and resulting payment shall be computed to the next lower multiple of one dollar (\$1.00).

(d) Effective April 1, 1984, and any other time thereafter, when the revenues in the fund excluding legislative appropriations and interfund borrowing are certified by the governor to be inadequate to pay the benefits computed as provided in subsection (a) of this section and inadequate to

repay interfund or federal loans, the weekly benefit of any individual whose benefits computed under subsection (a) of this section would equal or exceed ninety dollars (\$90.00) per week shall be reduced to eighty-five percent (85%) of that computed under subsection (a) of this section rounded to the next lower multiple of one dollar (\$1.00). No individual receiving benefits of ninety dollars (\$90.00) or more per week shall receive less than ninety dollars (\$90.00) per week because of the reduction provided under this subsection. The reduced benefits shall continue until the governor and the state treasurer certify to the department that the fund is adequately solvent to pay the benefits computed under subsection (a) of this section. A reduction in an individual's weekly benefit amount resulting from the imposition of this provision will not increase the number of full weeks of benefits to which the individual would otherwise have been entitled had the provision not been invoked. The amounts paid under this subsection shall be in complete satisfaction of a claimant's rights and benefits under this act.

(e) Repealed by Laws 2023, ch. 165, § 2.

**27-3-304. Maximum payment.**

Except as provided by W.S. 27-3-316, the maximum amount of benefits payable to any eligible individual in a benefit year shall not exceed twenty-six (26) times his weekly benefit or thirty percent (30%) of his wages payable for insured work in his base period, whichever is less. This amount shall be computed to the next higher multiple of his weekly benefit.

**27-3-305. Disclosure of child support obligations required; notification; amount withheld; payment; applicability of provisions.**

(a) An individual filing a new claim for benefits payable under this act shall disclose if he owes child support obligations enforced pursuant to a plan described in 42 U.S.C. § 654 and approved under 42 U.S.C. § 651 et seq. If the individual owes child support obligations and is eligible for benefits, the department shall notify the state or local child support enforcement agency operating pursuant to a plan described in 42 U.S.C. § 654 and enforcing the obligation that the individual is eligible for benefits.

(b) The department shall withhold from benefits payable to an individual owing child support obligations enforced pursuant to a plan approved under 42 U.S.C. § 651, et seq.:

(i) Repealed By Laws 2005, ch.186, § 3.

(ii) The amount determined pursuant to an agreement under 42 U.S.C. § 654(19)(B)(i) and submitted to the department by the state or local child support enforcement agency.

(iii) Repealed By Laws 2005, ch. 186, § 3.

(c) Any amount withheld under subsection (b) of this section shall be paid by the department to the appropriate state or local child support enforcement agency, treated as if paid to the individual as benefits under this act and as if paid by the individual to the state or local child support enforcement agency in satisfaction of his child support obligations.

(d) This section applies only if arrangements are made for reimbursement by the state or local child support enforcement agency for administrative costs incurred by the department attributable to child support obligations enforced by the agency and if the obligations are being enforced pursuant to a plan approved under 42 U.S.C. § 651, et seq.

**27-3-306. Eligibility requirements; waiver or amendment authorized; unemployed waiting period; registration and referral for suitable work.**

(a) An unemployed individual is eligible for benefits under this article for any week if he:

(i) Registers for work with the department of workforce services and actively seeks work in accordance with regulations of the commission, unless he will be recalled to full-time work:

(A) By an employer who paid fifty percent (50%) or more of his base period wages;

(B) Within twelve (12) weeks by an employer.

(ii) Files a benefit claim for that week in accordance with regulations of the commission;

(iii) Is able and available for work;

(iv) Repealed By Laws 2005, ch. 186, § 3.

(v) Earned wages for insured work in amounts specified by subsection (d) of this section;

(vi) As a corporate officer, is unemployed, certifies unemployment and otherwise satisfies the requirements of this subsection;

(vii) Continues to report to a department office in accordance with regulations of the commission; and

(viii) Participates in reemployment services such as job search assistance services if the individual is determined to be likely to exhaust regular benefits and to require reemployment services pursuant to a profiling system established by the department, unless the department determines:

(A) The individual has completed reemployment services; or

(B) There is justifiable cause for the claimant's failure to participate in these services.

(b) The commission may by regulation waive or amend the requirements of this section for individuals attached to regular work or other situations in which these requirements are inconsistent with this act. Regulations of the commission shall not conflict with W.S. 27-3-303.

(c) Repealed By Laws 2005, ch. 186, § 3.

(d) To qualify under paragraph (a)(v) of this section, an individual shall have earned:

(i) Wages for insured work during his base period of not less than eight percent (8%) of the statewide average annual wage computed under W.S. 27-3-303(a) rounded to the lowest fifty dollars (\$50.00);

(ii) Repealed by Laws 1993, ch. 19, § 2.

(iii) Wages for insured work of one and four-tenths (1.4) times the high quarter earnings in his base period; and

(iv) Not less than eight (8) times the weekly benefit amount of his current claim for services after the beginning of the next preceding benefit year in which benefits were received. This paragraph applies only if the base period is the first four

(4) of the last five (5) completed calendar quarters immediately preceding the first day of the benefit year. Services under this paragraph must be performed in an employer-employee relationship but are not required to qualify as employment under W.S. 27-3-104 through 27-3-108.

(e) The department of workforce services shall register and refer eligible benefit claimants under this article to suitable work meeting criteria prescribed by W.S. 27-3-312 for regular benefits and by W.S. 27-3-317(e) for extended benefits.

**27-3-307. Eligibility when enrolled in approved training program; standards for training program approval.**

(a) Notwithstanding W.S. 27-3-306(a)(i) and (iii) or 27-3-311(a)(ii) and (iii) or any federal law relating to availability for, active search for, failure to apply for or refusal to accept suitable work, an otherwise eligible individual is eligible for benefits for any week if he is:

(i) Enrolled in a training program approved by the department pursuant to subsection (b) of this section; or

(ii) In training approved under federal law.

(b) Standards for training program approval under subsection (a) of this section are:

(i) Licensed or accredited by the appropriate agency;

(ii) Preparation for job skills for occupations with good employment opportunities;

(iii) Individual interest, aptitude and motivation determined necessary by the department to complete the course successfully;

(iv) Regular class attendance, satisfactory progress in course work and individual compliance with other training requirements of the institution;

(v) Training is to prepare an individual for entry level or upgraded employment in a recognized skilled vocational or technical occupation and such training is designed to facilitate the learning of particular skills; and

(vi) Current skills of the individual are obsolete or offer minimal employment opportunities.

(c) Notwithstanding W.S. 27-3-311(a)(i), an otherwise eligible individual is eligible for benefits in any week if he:

(i) Is in training approved under federal law; or

(ii) Left work to enter approved training if the work is not suitable, as defined under federal law.

(d) Notwithstanding W.S. 27-3-306(a)(i) and (iii) or 27-3-311(a)(i) through (iii) or any federal law relating to availability for, active search for, failure to apply for or refusal to accept suitable work, an otherwise eligible individual is eligible for benefits for any week if he is not receiving wages or compensation while participating in training in an apprenticeship program approved by the department if he:

(i) Is attending instruction related to the program when the instruction does not exceed eight (8) weeks during the benefit year of the individual and the attendance in the instruction is required as a condition of the individual's continued enrollment in the apprenticeship program;

(ii) Provides the department with a copy of his apprenticeship agreement;

(iii) Files claims in accordance with the rules of the department;

(iv) Establishes to the satisfaction of the department that the training is an approved apprenticeship program; and

(v) Has his most recent employer approve his participation in the training.

#### **27-3-308. Services excluded for eligibility.**

(a) An individual is not eligible for benefits based on service:

(i) In an instructional, research or principal administrative capacity for an educational institution for any week of unemployment beginning between two (2) successive academic years, two (2) regular terms whether or not successive

or during a paid sabbatical leave and he has a reasonable assurance to perform services in any such capacity for any educational institution in the second academic year or term or end of the paid sabbatical leave;

(ii) In any other capacity for any educational institution for weeks of unemployment beginning September 3, 1982, and thereafter for any week of unemployment beginning between two (2) successive academic years or terms if he is employed in the first academic year or term with a reasonable assurance for employment in the second year or term for any educational institution. If compensation is denied to any individual under this paragraph and he was not offered an opportunity to perform services for the educational institution for the second academic year or term, the individual is entitled to retroactive payment of compensation for each week he filed a timely claim for compensation but was denied compensation solely because of this paragraph;

(iii) For training, preparing and participating in sporting or athletic events for any week of unemployment beginning between two (2) successive seasons or periods if he is employed in the first season or period with reasonable assurance of employment in the second season or period.

(b) With respect to any service described in paragraphs (a)(i) and (ii) of this section, benefits are not payable on the basis of services in any such capacities to any individual for any week which commences during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before the vacation period or holiday recess, and there is a reasonable assurance that the individual will perform the services in the period immediately following the vacation period or holiday recess. With respect to any services described in paragraphs (a)(i) and (ii) of this section, and in this subsection, benefits shall not be payable on the basis of services in any such capacities as specified in paragraphs (a)(i) and (ii) of this section, and in this subsection, to any individual who performed the services in an educational institution while in the employ of an educational service agency and who has a reasonable assurance of continued employment with an educational service agency. For purposes of this subsection, "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing the services to one (1) or more educational institutions. With respect to services to which W.S. 27-3-105(a)(i) and (ii)

applies, if the services are provided to or on behalf of an educational institution, benefits shall not be payable under the same circumstances and subject to the same terms and conditions as described in paragraphs (a)(i) and (ii) of this section and this subsection.

**27-3-309. Eligibility of aliens; standard of proof required.**

(a) Benefits shall not be payable on the basis of services performed by an alien unless the alien was lawfully admitted for permanent residence in the United States at the time the services were performed, was lawfully present for purposes of performing the services, or was permanently residing in the United States under color of law at the time the services were performed, pursuant to section 212(d)(5) of the Immigration and Nationality Act.

(b) Information necessary to determine alien status for benefit eligibility shall be uniformly required of all benefit applicants. Determination of benefit eligibility under this section shall be by a preponderance of the evidence.

**27-3-310. Eligibility after receiving worker's compensation.**

Notwithstanding requirements for the base period and other compensation factors provided under this act, an individual receiving compensation under the Wyoming Worker's Compensation Act for a continuous period of sickness or injury resulting in temporary total disability and otherwise eligible for benefits under this article may preserve unused wage credits for the four (4) completed calendar quarters immediately preceding the date identified as the date of injury under the Wyoming Worker's Compensation Act. Benefit rights shall not be preserved unless a benefit claim is filed within sixty (60) calendar days following the date notice is mailed to the claimant that he is no longer eligible to receive temporary total disability benefits pursuant to W.S. 27-14-404(c) and within the thirty-six (36) month period immediately following the date of injury.

**27-3-311. Disqualifications from entitlement; grounds; forfeiture.**

(a) An individual shall be disqualified from benefit entitlement beginning with the effective date of an otherwise valid claim or the week during which the failure occurred, until

he has been employed in an employee-employer relationship and has earned at least eight (8) times the weekly benefit amount of his current claim for services after that date, if the department finds that he:

(i) Left his most recent work voluntarily without good cause attributable directly to his employment, except:

(A) For bona fide medical reasons involving his health;

(B) If returning to approved training which meets the requirements of W.S. 27-3-307;

(C) If forced to leave the most recent work as a result of being a victim of documented domestic violence; or

(D) If unemployed as a result of relocation due to the transfer of the unemployed individual's spouse, either within or outside the state, from which it is impractical to commute to the place of employment, and upon arrival at the new residence, the individual is in all respects able and available for suitable work and registers for work with the department of workforce services or an equivalent agency of another state where the individual is residing. To qualify under this subparagraph, the individual shall be married to a member of the United States armed forces whose relocation is the result of an assignment on active duty as defined in 10 U.S.C. 101(d)(1), active guard or reserve duty as defined in 10 U.S.C. 101(d)(6), active duty pursuant to title 10 of the United States Code, or training or other duty performed by a member of the army national guard of the United States or the air national guard of the United States under section 316, 502, 503, 504 or 505 of title 32 of the United States Code. Any benefits awarded under this subparagraph shall be noncharged benefits and shall not affect an employer's experience rating account.

(ii) Failed without good cause to apply for available suitable work;

(iii) Failed without good cause to accept any offer of suitable work;

(iv) Repealed by Laws 1983, Sp. Sess., ch. 2, § 3.

(v) Following four (4) weeks of unemployment, failed to apply for or accept an offer of suitable work other than in

his customary occupation offering at least fifty percent (50%) of the compensation of his previous insured work in his customary occupation; or

(vi) Following twelve (12) weeks of unemployment, as a member of a labor organization fails to apply for or accept suitable nonunion work in his customary occupation.

(vii) Repealed by Laws 2003, Ch. 73, § 2.

(b) Repealed by Laws 1983, Sp. Sess., ch. 2, § 2.

(c) Repealed by Laws 1993, ch. 19, § 2.

(d) Repealed by Laws 1985, ch. 175, § 3.

(e) Any person who knowingly files a claim for benefits which contains a false statement or misrepresentation of a material fact, as determined by the department, shall be disqualified from receiving benefits for a fifty-two (52) week period beginning the week in which the false statement or misrepresentation was made or beginning the week following the date that notice of the overpayment is mailed to the person who filed the claim.

(f) An individual shall be disqualified from benefit entitlement beginning with the effective date of an otherwise valid claim or the week during which the failure occurred, until he has been employed in an employee-employer relationship and has earned at least twelve (12) times the weekly benefit amount of his current claim for services after that date, if the department finds that he was discharged from his most recent work for misconduct connected with his work.

#### **27-3-312. Determination of suitable work.**

(a) In determining if work is suitable for purposes of W.S. 27-3-311(a), the department shall consider:

(i) The risk involved to an individual's health, safety and morals;

(ii) The individual's physical fitness;

(iii) The length of unemployment of the individual;

(iv) The prospects for securing local employment in the individual's customary occupation;

(v) The distance of available employment from the individual's residence; and

(vi) If the individual is capable of performing the work.

(b) Notwithstanding any other provision of this act, work is not suitable if:

(i) It is available because of a strike, lockout or other labor dispute;

(ii) The wages, hours or other conditions are substantially less favorable for the individual than those prevailing for similar work within the locality; or

(iii) An individual is required to join a company union or resign from or refrain from joining any bona fide labor organization as a condition for employment.

(c) Repealed by Laws 1984, ch. 50, § 3.

**27-3-313. Other grounds for disqualification.**

(a) For any week with respect to which the following situations occur or payments have been or will be received, an individual shall be disqualified from benefit entitlement if:

(i) Total or part total unemployment for any week is due to work stoppage resulting from a labor dispute on the employment premises at which he was last employed. This paragraph does not apply if the department finds the individual is not participating in, financing or directly interested in the labor dispute and is not a member of a grade or class of workers with members employed on the premises and participating in, financing or directly interested in the dispute. If separate types of work commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each department is a separate premises under this paragraph;

(ii) Repealed By Laws 2003, Ch. 73, § 2.

(iii) Unemployment benefits are applied for or received under law of another state or the federal government. This paragraph does not apply if the other state or the federal government determines the individual is not entitled to benefits or to benefits received under an agreement between this state and the federal government pursuant to law;

(iv) Self-employed for profit in an independently established trade, occupation, profession or business for more than three (3) days in any week or net earnings from self-employment are in excess of the weekly benefit amount. If net earnings computed to the next lower multiple of one dollar (\$1.00) are less than the weekly benefit amount, the individual is entitled to an amount reduced by the net earnings;

(v) Retirement annuities, pensions or other payments are received from a base period employer or any trust or fund contributed to by a base period employer, and the individual made no contribution to the annuity, pension or other payment. Lump sum payments of retirement annuities, pensions or other payments which are rolled over into other private funds and which are not deemed income by the internal revenue service shall not be deducted under this subsection. If the payments decreased to the next lower multiple of one dollar (\$1.00) are less than the weekly benefit amount otherwise due under this article, the individual is entitled to benefits in an amount reduced by the payments.

(b) Payments received under this section shall be allocated pursuant to the regulations of the commission.

(c) The individual shall be disqualified from benefit entitlement during any week for which the individual has filed a claim for benefits and remuneration is received as a severance payment, termination allowance, sick pay or earned vacation. If the remuneration decreased to the next lower multiple of one dollar (\$1.00) is less than the weekly benefit amount, the amount of the payment shall be deducted from the amount of benefits the individual would otherwise be entitled to receive during that week.

**27-3-314. Extended benefit period; state "on" and "off" indicators; notice.**

(a) An extended benefit period begins with the third week following a week in which there is a state "on" indicator and ends with the third week after the first week in which there is

a state "off" indicator or the thirteenth consecutive week of the extended benefit period, whichever occurs later. An extended benefit period may not begin until the fourteenth week following the end of a prior extended benefit period.

(b) A state "on" indicator for a week exists if the insured unemployment rate under this act for that week and the preceding twelve (12) weeks is equal to or greater than one hundred twenty percent (120%) of the average rates for the corresponding thirteen (13) week period ending in each of the preceding two (2) calendar years and is equal to or greater than five percent (5%). A state "off" indicator for a week exists if either of the conditions for the existence of a state "on" indicator is not satisfied for that week and the preceding twelve (12) weeks. The insured unemployment rate under this subsection is the average weekly number of individuals filing unemployment claims for regular compensation in this state for the most recent thirteen (13) consecutive week period divided by the average monthly employment covered under this act for the first four (4) of the most recent six (6) completed calendar quarters ending before the end of the thirteen (13) week period. Computations required for the insured unemployment rate shall be made by the department in accordance with regulations of the United States secretary of labor.

(c) The department shall provide prior public notice of the beginning and the end of an extended benefit period within this state.

**27-3-315. When individual deemed exhaustee; matters excluded from determination of regular benefits.**

(a) An individual is an exhaustee under this article for any week of unemployment in his eligibility period if he has:

(i) Received prior to that week all regular benefits available to him under this article or any other state law in his applicable benefit year which includes that week; or

(ii) Prior to that week and after cancellation of part or all of his wage credits or reduction of part or all of his regular benefit rights, received all regular benefits available to him under this article or any other state law in his applicable benefit year which includes that week; or

(iii) Insufficient wages, employment or both, his benefit year ended prior to that week and he is eligible for a

new benefit year in any state which includes that week or, having established a new benefit year which includes that week, he is not eligible for regular benefits under W.S. 27-3-306(d) or similar provisions of other state laws meeting the requirement of 26 U.S.C. § 3304(a)(7); and

(iv) No unemployment benefit or allowance rights under 45 U.S.C. § 351 et seq., 19 U.S.C. § 1801 et seq. or other federal laws specified under regulation of the United States secretary of labor; and

(v) Not received or claimed unemployment benefits for that week under unemployment compensation laws of the Virgin Islands or Canada unless determined ineligible for these benefits.

(b) An individual shall have received all regular benefits under paragraphs (a)(i) and (ii) of this section regardless of:

(i) Any pending appeal for wages or employment not included in the original regular benefit amount for his current benefit year which may entitle him to additional regular benefits;

(ii) Any seasonal provision of another state law disqualifying him from regular benefits for that week of unemployment although he may be entitled to future benefits in the next season or off-season in his applicable benefit year, and he is otherwise an exhaustee under this section for regular benefits under state law seasonal provisions during the season or off-season in which that week of unemployment occurs; or

(iii) Any disqualification cancelling his wage credits or reducing all rights to regular benefits for his established benefit year.

**27-3-316. Applicability of regular claim and payment provisions to extended benefits; determination of amount.**

(a) Except as otherwise provided by this article and regulation of the commission, regular benefit claim and payment provisions of this act apply to extended benefits.

(b) An eligible individual's weekly extended benefit amount for a week of total unemployment in his eligibility period is equal to his weekly benefit amount payable during the applicable benefit year except as hereafter provided:

(i) If the amount of extended benefits reimbursed by the federal government under the federal-state extended unemployment compensation act is reduced or increased, then an eligible claimant's weekly and potential maximum extended benefit amount shall be similarly reduced or increased by an amount sufficient to assure that the federal government and the state of Wyoming share the cost on an equal basis. The reduced weekly extended benefit amount, if not a full dollar amount, shall be rounded to the next lower multiple of one dollar (\$1.00);

(ii) The provisions in W.S. 27-3-509(c) which determine the reimbursable rate of certain employers shall not be affected by paragraph (i) of this subsection.

(c) An eligible individual's total extended benefit amount for his applicable benefit year is the lesser of:

(i) Fifty percent (50%) of his total amount of regular benefits under this article in the applicable benefit year; or

(ii) Thirteen (13) times his weekly benefit amount under this article for a week of total unemployment in the applicable benefit year. A reduction in an eligible claimant's weekly and potential maximum extended benefit amount, resulting from the application of paragraph (b)(i) of this section, will not increase the number of weeks of extended benefit entitlement beyond that specified in paragraphs (i) and (ii) of this subsection.

(d) Notwithstanding any other provision of this act and if the benefit year of an individual ends within an extended benefit period, the remaining balance of extended benefits the individual is otherwise entitled to receive in that extended benefit period for unemployment beginning after the end of the benefit year shall be reduced by the product of the number of weeks he received an amount as trade readjustment allowances within that benefit year multiplied by his weekly extended benefit amount. Extended benefits shall not be reduced below zero by reason of this subsection.

**27-3-317. Eligibility for extended benefits; exceptions; qualifications.**

(a) An individual is eligible for extended benefits under this article for any week of unemployment in his eligibility period if for that week he qualifies as an exhaustee under W.S. 27-3-315 and meets regular benefit eligibility requirements of this article.

(b) Except as provided in subsection (a) of this section, an individual is not eligible for extended benefits for any week if, pursuant to an interstate claim filed in any state under the interstate benefit payment plan, no extended benefit period is effective that week for that state. This subsection does not apply to the first two (2) weeks that extended benefits are payable to an individual from his extended benefit account for that benefit year pursuant to an interstate claim filed under the interstate benefit payment plan.

(c) An individual not eligible for extended benefits because of failure to comply with the actively seeking work requirements of subsection (d) of this section shall be denied extended benefits until employed in an employee-employer relationship for four (4) weeks beginning the first day of the week following the week in which the failure occurred and wages of not less than four (4) times the extended weekly benefit amount are earned.

(d) For purposes of extended benefit eligibility, an individual is actively seeking work under W.S. 27-3-306(a)(iii) for any week if he:

(i) Has engaged in a systematic and sustained effort to obtain work during the week; and

(ii) Furnishes the department with tangible evidence of his effort for that week.

(e) Notwithstanding W.S. 27-3-312(a), suitable work for extended benefit eligibility purposes shall pay gross average weekly wages for work within an individual's capabilities that:

(i) Exceed the individual's weekly benefit amount under W.S. 27-3-316(b) plus any supplemental unemployment benefits received under 26 U.S.C. § 501(c)(17)(D) for that week; and

(ii) Are not less than the higher of the minimum wage pursuant to 29 U.S.C. § 206(a)(1) excluding any exemptions or the applicable state or local minimum wage.

(f) An individual shall not be denied extended benefits for failure to accept an offer of or apply for suitable work meeting the criteria of subsection (e) of this section if:

(i) It is not offered in writing or not listed with the state employment service; or

(ii) The failure is not a denial of regular benefits under W.S. 27-3-312(a) to the extent the criteria of suitability are consistent with subsection (c) of this section; or

(iii) He furnishes satisfactory evidence to the department of good employment prospects in his customary occupation within a reasonably short time, in which case the determination of suitable work shall be made in accordance with W.S. 27-3-312(a).

(g) An individual disqualified from benefit entitlement under W.S. 27-3-311 shall be denied extended benefits until requalified as follows:

(i) If disqualified from benefit entitlement under W.S. 27-3-311(a)(i), (ii) or (iii), the individual shall be employed in an employee-employer relationship for not less than twelve (12) weeks, whether or not consecutive, following the date of disqualification and have earned wages of not less than twelve (12) times his weekly benefit amount for this employment; or

(ii) If disqualified from benefit entitlement under W.S. 27-3-311(f), the individual shall be employed in an employee-employer relationship for not less than four (4) weeks, whether or not consecutive, following the date of disqualification and have earned wages of not less than four (4) times his weekly benefit amount for this employment; and

(iii) In no event shall an individual receive extended benefits during a period in which he is disqualified from benefit entitlement.

(h) For purposes of extended benefit eligibility and notwithstanding W.S. 27-3-306(d)(iii), earned wages for insured work shall be at least one and five-tenths (1.5) times the high quarter earnings in his base period.

(j) Subsections (c) through (g) of this section shall not apply to weeks of unemployment beginning after March 6, 1993, and before January 1, 1995.

**27-3-318. Payment of benefits accrued by deceased.**

The department may pay benefits accrued under this article by a deceased individual to his surviving spouse, children or parents without letters testamentary or letters of administration.

**27-3-319. Waiver agreements void; exception; assignments void; exemption from levy.**

(a) Except as provided by W.S. 27-3-305, 27-3-320 and 27-3-321, any agreement to waive, release or commute benefit rights or any other rights under this act is void and any agreement by any employed individual to pay any portion of an employer's contribution required by this act is void.

(b) Except as provided by W.S. 27-3-305, 27-3-320 and 27-3-321, the assignment, transfer, pledge or encumbrance of benefit rights under this act is void.

(c) Benefit rights are exempt from levy, execution, attachment or other debt collection remedy. Benefits received by an individual under this act and not combined with other funds of the recipient are exempt from debt collection remedies except those incurred for necessities furnished to the individual, his spouse or dependents during his unemployment. A waiver of exemptions provided by this subsection is void.

**27-3-320. Benefit withholding for federal income taxes; department notification; procedure; withholding status election.**

(a) The department shall at the time of filing, advise an individual filing an initial claim for benefits payable under this act that:

(i) Benefits are subject to federal income tax;

(ii) Estimated federal income tax payments are required by the federal internal revenue service;

(iii) Effective January 1, 1997 and each year thereafter, federal income tax may be deducted and withheld from benefits at the amount specified by federal law upon election by the individual; and

(iv) Previously elected federal income tax withholding status under this section may be changed once during any one (1) benefit year.

(b) Effective January 1, 1997 and each year thereafter and upon request by an individual filing an initial claim for benefits payable under this act, the department shall, subject to subsection (d) of this section, deduct and withhold federal income tax from benefits payable to the individual in the amount specified by federal law and in accordance with procedures specified by the United States department of labor and the internal revenue service. Amounts deducted and withheld pursuant to this section shall remain in the fund until transferred to the internal revenue service as payment of federal income tax.

(c) The department shall by rule and regulation establish procedures for administering this section and shall permit an individual to change his withholding status once during each benefit year.

(d) Amounts shall not be deducted and withheld under this section until amounts are deducted and withheld for any overpayment, child support obligation or any other amount required or allowed to be deducted and withheld under this act.

**27-3-321. Disclosure of supplemental nutrition assistance program overissuance required; notification; amount withheld; payment; applicability of provisions.**

(a) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not he owes an uncollected overissuance of supplemental nutrition assistance program benefits as defined in section 13(c)(1) of the Food and Nutrition Act of 2008. The department shall notify the department of family services of any individual who discloses that he owes an uncollected overissuance and who is determined to be eligible for unemployment compensation.

(b) The department shall deduct and withhold from any unemployment compensation payable to an individual who owes an uncollected overissuance of supplemental nutrition assistance benefits:

(i) The amount specified by the individual to the department to be deducted and withheld under this section;

(ii) The amount determined pursuant to an agreement under section 13(c)(3)(A) of the Food and Nutrition Act of 2008 and submitted to the department of family services; or

(iii) Any amount otherwise required to be deducted and withheld from unemployment compensation pursuant to section 13(c)(3)(B) of the Food and Nutrition Act of 2008, whichever is greater.

(c) Any amount deducted and withheld under this section shall be paid by the department to the department of family services.

(d) Any amount deducted and withheld under subsection (b) of this section shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the department of family services as repayment of the individual's uncollected overissuance.

(e) For purposes of this section, the term "unemployment compensation" means any benefits payable under this act and any amounts payable by the department pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to unemployment.

(f) This section applies only if arrangements have been made for reimbursement by the department of family services for the administrative costs incurred by the department under this section which are attributable to the repayment of uncollected overissuances to the department of family services.

#### ARTICLE 4 - BENEFIT CLAIMS

##### **27-3-401. Filing notice and electronic communications.**

(a) Benefit claims shall be filed in accordance with regulations of the commission.

(b) Employers shall post information on benefit rights in locations accessible to employed individuals. Copies of regulations and information on benefit rights shall be supplied by the department at no cost.

(c) A claimant or employer may elect to have determinations, decisions or notices transmitted electronically through an internet application approved by the department, in lieu of transmission through the regular mail. Once the election is made by the claimant or employer, any determination, decision or notice required to be mailed to that claimant or employer by this article may be transmitted instead through an internet application approved by the department. Upon the completion of every electronic transmission authorized by this subsection, the department shall provide to the claimant or employer an electronic acknowledgement specifying the date and time when the transmission was sent or received. Except as otherwise required by rules applicable to appeals to the courts of this state, determinations, decisions or notices transmitted by an approved electronic means may be appealed or protested by use of the same means. For the purpose of all relevant time limits established by this article, electronically transmitted information shall be deemed delivered on the date indicated on the acknowledgment required by this subsection, or if no acknowledgement exists, on the date the electronic delivery is initiated by the party sending the information.

**27-3-402. Determination; generally; referral to special examiner; redetermination; notice; appeal.**

(a) Determination of a claim filed pursuant to W.S. 27-3-401(a) shall be made promptly by a deputy designated by the department. If a claim is denied, the determination shall state the reasons for denial. Except as provided by subsection (c) of this section, a determination is final unless a party entitled to notice applies for redetermination or appeals the determination within twenty-eight (28) days after notice is mailed to his last known address of record.

(b) Repealed By Laws 1999, ch. 73, § 3.

(c) A monetary determination at the beginning of a benefit year shall specify if the claimant earned wages in amounts required by W.S. 27-3-306(d) and, if so, the first day of the benefit year, his weekly benefit amount and the maximum total amount of benefits payable for the benefit year. The deputy may reconsider a monetary determination if he finds an error in computation or identity, or discovers wages of the claimant relevant to but not considered in the determination. A monetary determination is final unless a party entitled to notice files a timely protest provided, however, that the department in its discretion may make a monetary redetermination at any time prior

to the end of the benefit year whether or not a party has filed a timely protest.

(d) Notice of a determination shall be mailed promptly to the claimant at his last known address of record. Notice of a determination involving application of W.S. 27-3-308, 27-3-311(a)(i) and (f) and 27-3-313(a)(i), together with reasons, shall be given to the last employing unit of the claimant at the last known address of record of the employing unit or, if the address is unavailable, the best available address. Notices shall be mailed to all base period employers at the address of record.

(e) The claimant or any other party entitled to notice of a determination may appeal the determination to an appeal tribunal. The appeal shall be filed with the tribunal within twenty-eight (28) days after notice is mailed to the last known address of record of the interested party.

**27-3-403. Determination; disputed claims; hearing; decision; notice.**

(a) The commission shall appoint an impartial appeal tribunal to hear and decide disputed claims. The tribunal shall be a salaried examiner or a body consisting of three (3) members, one (1) a salaried examiner serving as chairman, one (1) a representative of employers and one (1) a representative of employees. The representatives of employers and employees shall serve at the pleasure of the commission and shall receive not more than ten dollars (\$10.00) per day of service plus necessary expenses. No person shall serve or participate on behalf of the commission if he is an interested party to the proceeding. The commission may designate an alternate to serve in the absence or disqualification of a member of an appeal tribunal. The chairman shall act alone in the absence or disqualification of any member. A hearing shall not proceed unless the chairman is present.

(b) After providing interested parties notice of and reasonable opportunity for hearing, the appeal tribunal shall make findings and conclusions and shall render a decision to affirm, modify or reverse a determination. If an appeal involves a question of services performed by a claimant in employment or for an employer, the tribunal shall give special notice of the issue and the pendency of the appeal to the employing unit and to the commission. After notice, both are parties to the

proceeding and shall be given opportunity to offer evidence bearing on the question.

(c) Notice of the tribunal's decision shall be given promptly to the interested party by delivery or by mail to his last known address of record. The notice shall include a copy of the decision and the findings and conclusions in support of the decision. The decision is final unless further review is initiated pursuant to W.S. 27-3-404.

**27-3-404. Determination; review by commission; disposition; notice; reconsideration.**

(a) The commission may within twenty-eight (28) days after notice is mailed or delivered:

(i) Review a decision of an appeal tribunal;

(ii) Review a determination of a special examiner; or

(iii) Grant an appeal from a decision upon application filed by any party entitled to notice. An appeal shall be granted if a decision is not unanimous or if a determination is not affirmed by the appeal tribunal.

(b) Upon review or appeal and based on evidence previously submitted or upon additional evidence it may direct be taken, the commission may affirm, modify or reverse the findings and conclusions of the appeal tribunal. Proceedings before an appeal tribunal may be removed to the commission or transferred to another tribunal. A proceeding removed to the commission prior to completion of the hearing shall be heard by the commission in accordance with requirements for tribunal proceedings.

(c) The commission shall promptly notify parties to a proceeding of its decision including findings and conclusions. The decision is final unless judicial review is initiated pursuant to this article. A denial of an appeal by the commission is subject to judicial review. Review shall be initiated within the prescribed time beginning from the date notice of the denial is mailed or delivered.

(d) Subject to limitations prescribed under W.S. 27-3-402(c), the commission may reconsider a determination provided by a final decision of an appeal tribunal and may apply to the tribunal for a revised decision.

**27-3-405. Conduct of hearing or appeal; consolidation of claims; record; witness expenses.**

(a) A hearing or appeal before a tribunal under this article shall be conducted in accordance with the Wyoming Administrative Procedure Act.

(b) Hearings on claims by more than one (1) individual or on claims by an individual for two (2) or more weeks of unemployment may be consolidated for purposes of adjudication if there is substantially similar evidence and the examiner or tribunal with jurisdiction determines the consolidation is not prejudicial to any party.

(c) A record shall be kept of all testimony and proceedings before a special examiner or an appeal tribunal. Records shall be maintained under this subsection until final disposition of the matter.

(d) Witnesses subpoenaed pursuant to this act shall be reimbursed at a rate determined by the commission. The commission may refuse reimbursement to any employer who after notice fails to voluntarily appear for any determination of liability. Expenses of witnesses subpoenaed on behalf of the commission or any claimant are part of the expense of administering this act.

**27-3-406. Determinations deemed conclusive; matters of law binding; limiting actions.**

(a) Except for reconsideration pursuant to W.S. 27-3-402(c) and 27-3-404(d), a right, fact or matter in issue adjudicated in a final determination, redetermination or decision on appeal under this article is conclusive for purposes of this act. Subject to appeal proceedings and judicial review and regardless of notice, a determination, redetermination or decision on benefit rights is not subject to collateral attack by an employing unit.

(b) Unless expressly or impliedly overruled by the commission or a court of competent jurisdiction, principles of law adjudicated under a final decision of the commission or an appeal tribunal are binding on the commission, a special examiner and an appeal tribunal in proceedings involving similar questions of law.

(c) Any determination, redetermination, finding of fact, conclusion of law, order, decision or final judgment entered or made by a deputy, appeal tribunal, special examiner, the department, the commission or a court of competent jurisdiction pursuant to this act or the rules and regulations of the commission is binding only between the department and all adverse parties thereto, and is not binding, conclusive or admissible in any separate or subsequent action or proceeding between an individual and employing unit previously subject to this act, regardless of whether the prior action before the department or commission was between the same or related parties or involved the same facts.

(d) Any determination, finding of fact, conclusion of law, order, decision or final judgment, not made or entered by the department or commission, is not binding upon the department when administering this act except when the department or commission was a party to an action or proceeding brought in a court of competent jurisdiction of this state or of the United States.

**27-3-407. Right to judicial review; appeal to supreme court; entry of order by commission.**

(a) Any person aggrieved or adversely affected by a final decision under this act may obtain judicial review by filing a petition for review with the district court of jurisdiction. Review by the court shall be as provided by the Wyoming Administrative Procedure Act and shall be given precedence over all other civil cases except those under the Wyoming Worker's Compensation Act.

(b) A decision of the district court may be appealed to the supreme court. The appeal shall be taken in the same manner as other civil cases.

(c) Exceptions to the ruling of the commission and posting of bond are not required to initiate a proceeding for judicial review or to enter an appeal from the decision of the court. The commission shall enter an order in accordance with the court decision.

**27-3-408. Right of department and commission to notice and representation; fees; access to records.**

(a) The department and commission shall be treated as one (1) party entitled to notice in any proceeding before a special

examiner, an appeal tribunal or a court of appeal. In any proceeding for judicial review under W.S. 27-3-407, the department and commission may be represented by a qualified attorney employed pursuant to W.S. 27-3-609.

(b) A claimant shall not be assessed fees for proceedings under this act by the department, commission or the court. The claimant may be represented by counsel or other authorized agent at the claimant's expense.

(c) Records of the department are open to inspection by the claimant, the employer or their legal representatives to the extent necessary to present or contest a claim or appeal in any proceeding under this act.

**27-3-409. Payment of benefits upon determination; repayment of overpaid benefits; penalty.**

(a) Benefits shall be paid in accordance with a determination, redetermination or decision until modified or reversed by a subsequent or pending redetermination or decision. A proceeding for judicial review under this article shall not operate as a supersedeas or stay nor shall the commission or the court issue an injunction, supersedeas, stay or other writ or process suspending the payment of benefits. Except as provided in W.S. 27-3-506(e), if a determination, redetermination or decision is reversed or modified, an employer's account shall not be charged for benefits paid under an erroneous determination and benefits shall be paid or denied in accordance with the modifying or reversing redetermination or decision.

(b) An individual receiving benefits under this act to which he is not entitled shall be liable for and repay the benefit. Repayment of the benefits shall be had by any combination of recoupment, recovery by civil action, offset through the treasury offset program of the United States treasury, 26 U.S.C. Section 6402(f), or voluntary reimbursement agreement:

(i) The department in its discretion, may recoup the benefit amount liable to be repaid by offsetting, without civil action, against future benefits payable to the individual under this act within five (5) years from the effective date of the claim resulting in the overpayment if the claim was not fraudulent. If the claim resulting in the overpayment was fraudulent, the five (5) year limit on recoupment shall not apply. The department shall waive recoupment if an individual

is without fault in receiving the benefits and it defeats the purpose of this act or is against equity and good conscience as considered by the department in accordance with regulations of the commission;

(ii) The department may also recover overpaid benefits from an individual by civil action brought in the name of the department;

(iii) The department in its discretion, without civil action, may accept repayment of overpaid benefits by reimbursement from an individual pursuant to a payment schedule approved by the department.

(c) The department may recoup or recover overpayment of benefits to any individual under another state law if a state certifies to the department the facts involved, the overpaid individual is liable for repayment of benefits and the state requests the department to do so. Repayment either by recoupment or recovery shall be had pursuant to subsection (b) of this section. Repayment shall be equal to the amount of overpayment determined by the requesting state.

(d) Any overpayment of benefits fraudulently received shall be assessed a penalty equal to twenty percent (20%) of the amount of overpayment and an additional five percent (5%) penalty on the remaining unpaid balance at the end of every six (6) months. One-fourth ( $1/4$ ) of the amounts collected pursuant to the initial penalty and all of the additional penalties shall be paid into the employment security revenue account and the department shall utilize those collected amounts for administrative costs of overpayment collection, fraud investigation, developing and providing educational programs for this act. Three-fourths ( $3/4$ ) of the amounts collected pursuant to the initial penalty shall be paid into the unemployment trust fund account. Offset shall not be used to recover amounts due under this section.

(e) The department shall cancel the amount of overpayment or penalty due on any overpayment when:

(i) The individual is deceased with no estate or the estate is closed and all assets are distributed; or

(ii) The individual is adjudicated insolvent by a court of competent jurisdiction with no remaining assets.

(f) The department may cancel the amount of overpayments or penalty due on any overpayment after eight (8) years from the effective date of the claim resulting in the overpayment when:

(i) The individual cannot be located;

(ii) The individual is totally unable to work; or

(iii) The department's records show the individual earned covered wages of less than one-half (1/2) the average weekly wage within Wyoming in the most recent calendar year.

#### ARTICLE 5 - EMPLOYER CONTRIBUTIONS

##### **27-3-501. Definitions.**

(a) As used in this article:

(i) "Benefit ratio" means the quotient of total benefits charged to an employer's account and paid during the preceding experience period divided by total taxable wages payable by the employer for that experience period excluding any portion of wages for which contributions were not paid as of July 31 of the preceding calendar year;

(ii) "Experience period" means the thirty-six (36) consecutive month period or, in the case of a new employer not previously subject to this act the twenty-four (24) consecutive month period, ending June 30 of the preceding year;

(iii) "Ineffectively charged benefits" means benefits charged to an employer's experience rating account after benefits previously charged to his account qualified him for the maximum rate of contributions;

(iv) "Noncharged benefits" means benefits not charged to an employer's experience rating account pursuant to W.S. 27-3-504(e) and 27-3-608(b);

(v) "Nonprofit organization" means an organization defined by 26 U.S.C. 501(c)(3) and exempt from federal income tax under 26 U.S.C. 501(a);

(vi) "Organization" means a hospital, institution of higher education, this state or any political subdivision, an Indian tribe as defined under section 3306 of the federal Unemployment Tax Act and a group of organizations established

pursuant to regulations of the commission for purposes of joint accounts, employing services qualifying as employment under W.S. 27-3-105(a) (i);

(vii) "Client" means any entity that utilizes one (1) or more workers that have been contracted for and supplied by a service supplier. The client has the right to control the manner and means of the workers performing services for it;

(viii) "Service supplier" means any entity that is primarily engaged in the business of contracting with the client to provide one (1) or more workers to perform services for the client and performs all of the following functions:

(A) Assigns the worker to perform services for the client;

(B) Sets the rate of pay of the worker, whether or not through negotiations;

(C) Pays the worker directly;

(D) Retains the authority to assign or refuse to assign a worker to other clients if the worker is unacceptable to a specific client;

(E) Determines assignments of workers even though the worker may retain the right to refuse specific assignments;

(F) Negotiates with the client on matters of time, place, type of work, working conditions, quality and price of the service.

(ix) "Temporary service contractor" means any individual, firm, association, partnership, limited liability company, corporation or other type of organization conducting a business that employs individuals directly for the purpose of furnishing services of the employed individuals on a temporary basis to others. "Temporary service contract" does not include a service supplier as defined in paragraph (viii) of this subsection;

(x) "Temporary worker" means a worker whose services are furnished to another employer on a temporary basis to substitute for a permanent employee on leave or to meet an emergency or short-term workload need. "Temporary worker" does

not include a person working for a service supplier as defined in paragraph (viii) of this subsection;

(xi) For purposes of W.S. 27-3-507 and 27-3-706, "person" means an individual or entity, including any partnership, association, trust, estate, corporation, limited liability company, domestic or foreign insurance company or corporation, a receiver, trustee in bankruptcy, trustee, successor or the legal representative of a deceased person.

**27-3-502. Determination of employer and employment; election of coverage; records and reports; injunction; service suppliers.**

(a) Upon its own motion or application of an employing unit and after notice and opportunity for hearing, the department may determine if an employing unit is an employer and if services performed for the employing unit qualify as employment. The department shall consider employment occurring during a ten (10) year period preceding the date of employer determination. A determination by the department is final as to the employing unit fifteen (15) days after mailing its findings and determination to the employing unit. The employing unit may appeal a determination in accordance with W.S. 27-3-506.

(b) Except as provided by subsection (d) of this section, an employing unit qualifying as an employer within any year is subject to this act for that entire calendar year.

(c) An employer enumerated under this subsection may apply in writing to the department before January 31 for termination of coverage under this act for that calendar year. The department may waive the application filing requirement for good cause. Employers to which this subsection applies include:

(i) Repealed By Laws 1999, ch. 73, § 3.

(ii) An agricultural employer paying wages of less than twenty thousand dollars (\$20,000.00) each quarter during the preceding calendar year or employing less than ten (10) workers on any day of twenty (20) or more different weeks within a calendar year;

(iii) A domestic employer paying wages of less than one thousand dollars (\$1,000.00) in each quarter of the preceding calendar year;

(iv) A nonprofit organization paying wages for less than four (4) individuals or for less than twenty (20) weeks in the preceding year.

(d) An employing unit not qualifying as an employer or for which services not qualifying as employment are performed may elect coverage under this act for a period of not less than two (2) years by filing written notice of its election with the department. If the department approves the election in writing, coverage is effective on the date of approval. Application for termination of coverage as an employer under this subsection shall be filed in writing with the department not less than thirty (30) days before January 1 of any year following the initial two (2) years of coverage and for termination of coverage of employment, not less than thirty (30) days after January 1. The department may terminate coverage under this subsection for good cause by giving notice to the employer.

(e) An employing unit shall maintain accurate employment records containing information prescribed by the commission. Records shall be open to inspection by and submitted to the department upon request. An employing unit shall submit reports on employees upon request of the department or an appeal tribunal.

(f) Any employing unit subject to this act shall not commence business or engage in work within this state without registering under this act and otherwise complying with this act. A prime or general contractor subcontracting any part of a contract shall require notification and compliance by any subcontractor under this subsection before awarding a contract or permitting a subcontractor to begin work. The state, a county, municipality or any other political subdivision shall require the prime or general contractor to register and comply with this act before authorizing the contractor to begin work under any public contract. The secretary of state shall report to the department the names and addresses of all business entities registering with that agency during the preceding month. The Wyoming department of transportation and the department of administration and information shall report to the department the names and addresses of business entities awarded a contract by that agency during the preceding month. Any employing unit failing to comply with this subsection or W.S. 27-3-510(c) or (d) or delinquent for filing reports or paying contributions required under this act may be enjoined by the department from engaging or continuing in business subject to this act until required reports are filed or payments are made

and the unit otherwise complies with this act. All costs of the action including a reasonable attorney fee shall be paid by the employing unit against which the injunction is sought. In addition to the penalties and remedies provided by W.S. 27-3-510 through 27-3-512 and 27-3-704, the department may assess and collect an additional fee of up to three (3) times the amount of delinquent contributions payable under this act for any employing unit failing to comply with this subsection. This additional fee is part of the payment due for all purposes if an action is instituted under this subsection. If the employing unit is a subcontractor, the general contractor or the project owner may be held liable for payment of the contributions and any additional assessment due.

(g) Notwithstanding any other provisions of this act:

(i) A service supplier is the employing unit of the worker provided to the client and shall be liable to pay the contributions on wages paid by it to the worker performing services for the client;

(ii) If an entity is not a service supplier as defined by W.S. 27-3-501(a)(viii) or if the client pays wages to the worker directly, then the client is the employing unit of the worker and shall be liable to pay the contributions on wages paid by it to the worker performing services for the client;

(iii) Notwithstanding the foregoing, if an entity pays the worker and that entity is not the employing unit of the worker as determined herein, that entity is deemed the agent of the employing unit so determined;

(iv) If the service supplier fails to pay all contributions or submit required reports which are due, then the client shall be jointly and severally liable for those which are attributable to wages for services performed for the client by the worker provided by the service supplier;

(v) The service supplier shall keep separate records, submit a list of all clients to the department on a quarterly basis and submit separate quarterly reports for each client;

(vi) Repealed By Laws 2007, Ch. 177, § 2.

(vii) A temporary service contractor is the employing unit of the temporary worker provided to an employer and shall be liable to pay the contributions on wages paid by the

temporary service contractor to the temporary worker performing services for the employer.

(h) If an employing unit fails to comply with an injunction order issued under subsection (f) of this section, the department may file with the district court of the county in which the employing unit resides, conducts business or may be found, a verified application showing that the employing unit received notice of an injunction order and has failed to comply with its terms. Upon receipt of the department's application, the court shall provide the employing unit with an opportunity for a hearing within twenty (20) days. Upon finding that the employing unit has violated the department's injunction, the court may issue an order directing the employing unit, including any partners or corporate officers, to comply with the injunction order and may assess a fine of up to one thousand dollars (\$1,000.00) per day for each day of violation. Any officer or director having at least twenty percent (20%) ownership interest of a corporate employing unit, who controls or supervises filing contribution reports or making payment contributions under this act and who willfully fails to file the reports or make required payments, may be held jointly and severally liable for the contributions and interest due from the employing unit. In any court proceeding for the enforcement of an injunction order, the department shall not be required to show that it lacks adequate legal remedy or is suffering irreparable harm due to the violation of the injunction order. Any employing unit failing to comply with an order of the court issued under this subsection may be cited for contempt.

**27-3-503. Payment; base rate; failure to pay; rate variations; benefit ratio; new employer rate; special reserve rate.**

(a) Employment wage contributions imposed under this section are payable by employers subject to this act. Contributions shall be paid to the department for the fund in accordance with regulations of the commission and shall not be deducted from employee wages.

(b) Except as otherwise provided by law, the base rate of contributions assigned to any employer is eight and one-half percent (8.5%) for 1988 and each calendar year thereafter subject to rate variations under subsections (d) and (f) of this section in addition to the adjustment factors computed under W.S. 27-3-505. Except as hereafter provided, a contributing employer failing to pay all contributions, interest and

penalties or to submit all quarterly contribution reports due on his account or any account assumed under W.S. 27-3-507 on or before September 30 preceding the effective date of his assigned rate shall be assigned a delinquent rate which shall include a two percent (2%) tax rate increase in his base rate and shall also include in addition thereto the adjustment factors for the next calendar year beginning January 1. The delinquent rate shall not exceed the maximum assignable rate. The delinquent rate shall continue to be assigned through and including the calendar quarter in which the delinquent employer satisfies his delinquent account by paying all contributions, interest and penalties due and submitting all contribution reports due. Upon satisfaction of the delinquent account, the contributing employer shall be assigned the contribution rate otherwise applicable under this article beginning the next full calendar quarter. Provided however, that a delinquent employer shall pay an assigned delinquent rate for at least the first quarter even if the account is satisfied before January 1 of the new calendar year.

(c) Upon reviewing the account of a delinquent employer, the department may eliminate or reduce contributions payable due to the two percent (2%) delinquency tax rate increase imposed under subsection (b) of this section either upon a showing of good cause, or a finding that:

(i) The delinquency is less than one thousand dollars (\$1,000.00);

(ii) After notice of the changed rate, the employer protested his delinquency tax rate in writing to the department pursuant to W.S. 27-3-506(b);

(iii) All delinquent amounts are paid by December 31 preceding the calendar year for which the delinquent rate has been assigned; and

(iv) All delinquent wage records are submitted.

(d) Rate variations from the base rate of contributions based upon the employer's benefit ratio shall be assigned to eligible employers each calendar year.

(e) Benefit ratios shall be computed for those employers whose accounts have been chargeable for benefits throughout the employer's experience period. An employer's benefit ratio shall be the contribution rate provided his rate is not more than

eight and one-half percent (8.5%) in addition to the adjustment factors computed under W.S. 27-3-505. Benefit ratios shall be computed to the fourth decimal on the basis of the experience period preceding the calculation date of the rate.

(f) Any new employer not previously subject to this act or having no established experience period shall pay contributions at a rate equal to the average rate of contributions paid by his major industrial classification for the calendar year preceding the year in which he first employed workers in this state in addition to the adjustment factors computed under W.S. 27-3-505. In no case, however, will any new employer be assigned a rate of less than one percent (1%), plus the adjustment factors computed under W.S. 27-3-505. This rate shall be adjusted annually and the rate shall remain in effect until the employer has established an experience period in accordance with this article. The commission shall by rule and regulation develop the major industrial classifications for the state and the department shall annually determine the contribution rate for each classification based upon contributions paid during the preceding calendar year.

(g) Repealed by Laws 2003, Ch. 123, § 3.

(h) Any employer subject to this act solely due to having met the liability requirements under W.S. 27-3-105(a)(ii), 27-3-107(c) or (g) for the first time during the preceding calendar year shall be exempt from the delinquent rate provisions in subsection (b) of this section for the subsequent year, provided the employer has submitted all reports and contributions by April 30 of the subsequent year.

(j) Notwithstanding subsection (b) of this section, upon full satisfaction of an employer's delinquent account and at the written request of the employer, the department may, for good cause shown, reduce or eliminate the additional amounts payable as a result of the two percent (2%) delinquency rate.

**27-3-504. Separate employer's accounts; charging of accounts; when accounts not charged.**

(a) Separate accounts shall be maintained for each employer and benefits paid to an individual shall be charged to the account of his base period employer.

(b) If an individual is employed by two (2) or more employers during his base period, the base period employer's

account shall be charged an amount bearing the same ratio to total benefits paid to the individual as the amount of wages payable by the employer bears to total wages payable by all employers during the individual's base period.

(c) Benefits paid to an individual by this state pursuant to a wage-combining arrangement under W.S. 27-3-608(b) and attributable in part to wages and employment covered by this act shall be charged in accordance with this section to the account of that individual's base period employer. If, however, the benefits are paid by another state, the amount chargeable to employers in this state for whom the individual was previously employed, shall be the amount reimbursed by this state to the paying state. The amount chargeable to employers in this state shall be an amount bearing the same ratio of total wages payable by all employers in this state during the individual's base period.

(d) If extended benefits are paid under W.S. 27-3-314 to an individual employed during his base period by an organization defined under W.S. 27-3-501(a)(vi) and the organization is subject to W.S. 27-3-503, one-half (1/2) of the extended benefits attributable to employment by the organization shall be charged to its account.

(e) Benefits shall not be charged to an employer's account if:

(i) They are paid in error;

(ii) The individual receiving benefits voluntarily leaves work without good cause attributable to employment or was discharged from employment for misconduct in connection with this work, provided however, that chargeability of an employer's account for benefits paid to a claimant in a particular benefit year shall be based solely on the last separation that occurred before the filing of the claimant's claim for which the claimant is monetarily eligible and shall not be affected by a separation that occurs after the filing of the initial claim and during the benefit year;

(iii) Repealed by Laws 1984, ch. 50, § 3.

(iv) The base period employer provided part-time employment and during the individual's current benefit year provides the same number of hours and wages provided during the base period. If the hours or wages are reduced during the

current benefit year or the individual is terminated from part-time employment for reasons other than those specified under paragraph (ii) of this subsection, the employer's account shall be charged pursuant to this section;

(v) They are paid for an extended benefit period pursuant to W.S. 27-3-314, except as provided by subsection (d) of this section;

(vi) An individual receives benefits under this act for unemployment resulting directly from a major disaster declared by the United States President under 42 U.S.C. § 5122(2) and the individual is otherwise eligible for federal disaster unemployment assistance;

(vii) The individual receiving benefits is enrolled in an approved program pursuant to W.S. 27-3-307;

(viii) An individual receives benefits under this act for unemployment resulting directly from the reinstatement of another employee upon that employee's completion of service in the uniformed services, as provided in W.S. 19-11-103(a)(ix) and 38 U.S.C. 4303(13).

(f) Repealed by Laws 1989, ch. 222, §§ 2, 3.

**27-3-505. Adjustment for noncharged and ineffectively charged benefits; adjustment for positive and negative fund balance; computations; exception; maximum rate.**

(a) An adjustment factor for noncharged and ineffectively charged benefits shall be computed to the fourth decimal by dividing the total noncharged and ineffectively charged benefits to all employers' experience rating accounts during the experience rating period ending June 30 by the total taxable wages payable during the experience period and added to the rate provided by W.S. 27-3-503. The total taxable wages payable under this subsection shall not include wages payable by employers electing payments instead of contributions under W.S. 27-3-509. Of this adjustment factor, twenty percent (20%) shall be allocated to the unemployment compensation fund, sixty percent (60%) shall be allocated to the employment support fund created by W.S. 27-3-211 and twenty percent (20%) shall be allocated to the workforce development training fund established in W.S. 9-2-2604.

(b) If the fund balance on October 31 of the year immediately preceding the calendar year for which the contribution rate is being computed is less than three and one-half percent (3½%) of the total payrolls reported to the department by September 30 for that year ending June 30, a positive fund balance adjustment factor shall be computed. The adjustment factor shall be computed annually to the fourth decimal by dividing the total reported taxable payrolls for the year ending June 30 of the year immediately preceding the calendar year for which the contribution rate is being computed, into a sum equal to twenty-five percent (25%) of the difference between the amount in the fund on October 31 of the same year and five percent (5%) of the total payrolls for that year ending June 30. The adjustment factor shall be effective until the fund balance on October 31 of the year immediately preceding the effective date of the contribution rate equals three and one-half percent (3½%) or more of the total payrolls for that year ending June 30. The department shall by rule and regulation establish an additional formula to apportion the positive fund balance adjustment factor between those employers whose accounts have incurred a benefit ratio, pursuant to W.S. 27-3-503(e), of zero (0) and those employers whose accounts have incurred a benefit ratio that is greater than zero (0). For purposes of the apportionment, those employers having no established experience period pursuant to W.S. 27-3-503(f) shall be treated the same as those employers whose accounts have incurred a benefit ratio that is greater than zero (0). The apportionment formula shall reflect:

(i) The proportion of contribution revenue received from each of the two (2) groups of employers during the previous calendar year;

(ii) An additional surcharge for employers whose accounts have incurred a benefit ratio that is greater than zero (0).

(c) If the fund balance on October 31 of the year immediately preceding the calendar year for which the contribution rate is being computed exceeds four percent (4%) of the total payrolls reported to the department by September 30 for that year ending June 30, a negative fund balance adjustment factor shall be computed. The negative adjustment factor shall be computed annually to the fourth decimal by dividing the total reported taxable payrolls for the year ending June 30 of the year immediately preceding the calendar year for which the contribution rate is being computed, into a sum equal to twenty-

five percent (25%) of the difference between the amount in the fund as of October 31 of the same year and four percent (4%) of the total payrolls for that year ending June 30. The adjustment factor shall be effective until the fund balance on October 31 of the year immediately preceding the effective date of the contribution rate is equal to or less than four percent (4%) of the total payrolls for that year ending June 30.

(d) The adjustment factors computed pursuant to this section are separate from an employer's experience rating, shall be algebraically added to the employer's contribution rate and payable by each employer subject to this article. The adjustment factor computed under subsection (c) of this section shall be algebraically added only to the contribution rate of those employers eligible for an experience rating. The adjustment factors applied to an employer's contribution rate shall not be less than zero (0).

(e) Repealed by Laws 1983, Sp. Sess., ch. 2, § 3.

(f) For purposes of this section, the fund balance includes any amount credited to the state unemployment insurance trust fund pursuant to W.S. 27-3-202(b) but does not include any amount credited to Wyoming's account in the unemployment trust fund pursuant to 42 U.S.C. § 1103 and appropriated for administrative expenses.

(g) Repealed by Laws 1984, ch. 50, § 3.

(h) Effective for the period beginning January 1, 1991, the adjustment factors computed under subsections (a) and (b) of this section shall not exceed one and five-tenths percent (1.5%) to be chargeable against employers.

**27-3-506. Notice of rates and charges; relief, review or redetermination.**

(a) The department shall notify an employer of his contribution rate determined pursuant to this article and of total benefit charges to his account within a reasonable time after the close of each experience period. A base period employer shall be notified of the filing of all initial claims which may be charged to his account. Except as otherwise provided by the legislature and on or before January 1 of each year, the department shall notify each employer of his projected contributions payable under W.S. 27-3-503 and 27-3-505 for the

ensuing calendar year. Notice under this section shall be by mail to the last known address of record.

(b) A determination of contribution rates by the department for any calendar year is binding upon the employer unless within thirty (30) days after notice is mailed, he files an application for review and redetermination in accordance with this section.

(c) An employer may apply in writing to the department within twenty-eight (28) days after the mailing or delivery of notice of benefits charged to his account for relief of benefit charges under W.S. 27-3-504(e)(i), (ii), (iv) or (viii). The application shall state the reasons for relief. Determinations of benefits not charged to an employer's account and which are paid from the trust fund shall be recorded and shall specify the reasons therefor. The records are open to inspection by an employer or his legal representative.

(d) An employer may apply to the department for review of a decision or determination involving contribution liability, contribution rates or the charging of benefit payments under W.S. 27-3-509. The application shall be in writing and shall state the reasons for review. The department, on behalf of the commission, shall notify the employer of its acceptance or denial of the application for review or of a redetermination by the commission. If the commission grants review, the employer shall be given opportunity for hearing in accordance with W.S. 27-3-401 through 27-3-409 to the extent not inconsistent with this article. An employer in any proceeding involving contribution rates or liability may not contest benefits paid and charged to his account in accordance with a determination, redetermination or decision pursuant to W.S. 27-3-401 through 27-3-409 unless he was not a party to the proceeding. A denial or redetermination is final unless within thirty (30) days after notice is mailed a petition for judicial review is filed in accordance with W.S. 27-3-407.

(e) An employer's account shall not be relieved of charges relating to a payment that was made erroneously from the unemployment compensation fund after July 1, 2013 if the department determines that:

(i) The erroneous payment was made because the employer, or the agent of the employer, was at fault for failing to respond timely or adequately to a written request, sent by United States mail or by electronic mail, from the department

for information relating to the claim for benefits which resulted in the erroneous payment; and

(ii) The employer or agent has established a pattern of failing to respond timely or adequately to requests similar to those identified in paragraph (i) of this subsection.

(f) For purposes of subsection (e) of this section, "timely" means within fifteen (15) days after a notice or request is sent by United States mail or by electronic mail to the address of record of the employer or employer's agent. The department shall acknowledge receipt of the requested information within fifteen (15) days, if requested by the employer or the employer's agent. Acknowledgment shall be by United States mail or electronic mail.

**27-3-507. Person acquiring trade of employing unit; transfer of experience and assignment of rates.**

(a) A person acquiring the trade, organization, business or substantially all the assets of an employer subject to this act shall assume the employer's account, benefit experience and contribution rate. If the acquiring person is an employer subject to this act, the department shall consolidate the separate accounts and benefit experience and shall determine the contribution rate of the acquiring person effective the first day of the calendar quarter following the date of acquisition. A delinquency rate shall be assumed by the acquiring person as provided in W.S. 27-3-503(b) when the acquiring person owned or controlled an interest in the transferring employer or if the acquiring person is a member of the immediate family of the transferring employer.

(b) The transfer of some or all of an employer's workforce to another person shall be considered a transfer of trade or business when, as a result of the transfer, the transferring employer no longer performs trade or business with respect to the transferred workforce, and the trade or business is performed by the person to whom the workforce is transferred.

(c) If an employer transfers all or a portion of its trade or business to another employer and, at the time of the transfer, there is substantially common ownership, management or control of the two (2) employers, then the unemployment insurance experience attributable to the transferred trade or business shall be transferred to the employer to whom the business is transferred. The rates of both employers shall be

recalculated and made effective the first day of the calendar quarter immediately following the date of the transfer of trade or business. Both employers may be given a delinquency rate as provided in W.S. 27-3-503(b) if applicable.

(d) If, following a transfer of experience under this section, the department determines that a substantial purpose of the transfer of the trade or business was to obtain a reduced liability for contributions, then the accounts of the employers involved shall be combined into a single account and a single rate assigned to the account.

(e) If a person is not an employer under this section at the time the person acquires the trade or business of an employer, the unemployment insurance experience of the acquired employer shall not be transferred to the person if the department finds that the person acquired the trade or business of the employer solely or primarily for the purpose of obtaining a lower rate of contributions. Instead, the person shall be assigned the applicable new employer rate under W.S. 27-3-503(b). In determining whether the trade or business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the department shall use objective factors which may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long the business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

(f) The department shall establish procedures to identify the transfer or acquisition of a business for purposes of this section and W.S. 27-3-706.

#### **27-3-508. Rates for joint ventures.**

A joint venture composed of two (2) or more employers with accounts meeting the requirements of W.S. 27-3-503(b) and (c) shall apply in writing to the department within four (4) months after the date of formation of the joint venture for determination of a contribution rate. The department shall, upon receipt of application and pursuant to this article, assign a contribution rate based upon the benefit ratio computed on the consolidation of the separate accounts and benefit experiences of the employers for the experience period. The contribution rate shall be determined and assigned by the department to the

joint venture each calendar year until its separate account and benefit experience qualify as an experience period.

**27-3-509. Election of substitute payments by certain organizations authorized; filing and liability period; billing; posting of security; exceptions.**

(a) An organization or nonprofit organization defined by W.S. 27-3-501(a)(v) and (vi) and subject to this act may instead of paying contributions otherwise required by this article, elect to pay an amount determined pursuant to subsection (c) of this section. If an organization or nonprofit organization elects payment liability at the time it is determined an employer subject to this act, it shall file written notice of its election with the department not later than thirty (30) days following the date of determination. Liability for payments shall be at least one (1) year from the date of determination and shall continue until written notice is filed with the department terminating its election. Notice shall be filed not later than thirty (30) days before the beginning of the taxable year for which the termination is effective. An organization or nonprofit organization previously paying contributions under this act may file written notice of election for payment liability with the department not later than thirty (30) days prior to the beginning of any taxable year. The election shall not be changed for at least two (2) years from the effective date.

(b) The department may for good cause extend the required filing period for notice of election or termination and may permit an election to be retroactive to January 1 of the year in which the election is made. It shall notify an organization of its determination of employer status, the effective date of an election and a termination of election. Determinations are subject to reconsideration, appeal and review in accordance with W.S. 27-3-506.

(c) At the end of each calendar quarter or other period determined by the department, the department shall bill each nonprofit organization electing payment liability under this section for an amount equal to the total amount of regular benefits plus one-half (1/2) of the amount of extended benefits paid during the quarter or other prescribed period attributable to employment in the nonprofit organization. An organization electing payment liability under this section shall be billed in a similar manner for an amount equal to the total amount of extended benefits attributable to employment by the organization

during the billing period. Payment shall be made not later than thirty (30) days after the bill is mailed or delivered unless an application for review and redetermination is filed. Payments shall not be deducted from employee wages and if not paid when due, the employer is subject to interest under this article. The department shall notify each employer of transactions affecting its account and its right to review pursuant to W.S. 27-3-506.

(d) The commission may by regulation require an employer electing payments under this section to post surety bonds or other securities.

(e) Noncharging provisions under W.S. 27-3-409(a) and 27-3-504(e) and the right to protest benefit charges under W.S. 27-3-506(c) do not apply to employers electing payments under this section.

(f) Any employer failing to make required payments under this section, including assessments of interest and penalties, within ninety (90) days after receipt of a bill, shall not be eligible for making payments under this section for the following tax year unless full payment is received by the department before the contribution rates for the next tax year are computed under this act, subject to the following:

(i) Any employer losing the option to make payments under this section because of late payments or nonpayment under this subsection shall have the option reinstated if after one (1) year, all contributions have been paid on a timely basis and no contributions, payments instead of contributions for paid benefits, penalties or interest remain outstanding;

(ii) Failure of the tribe or any tribal unit to make payments required under this section including assessment of interest and penalties, after exhaustion of all collection efforts determined necessary by the department, shall exclude services performed for the tribe from employment for purposes of W.S. 27-3-105(a)(iii);

(iii) Upon termination or reinstatement of any tribe or tribal unit under this section, the department shall notify the United States internal revenue service and the United States department of labor;

(iv) Notice of payment and reporting delinquency to any Indian tribe or tribal unit under this subsection shall

include information that failure to make full payment within the prescribed time:

(A) Imposes a tax liability upon the tribe under the federal Unemployment Tax Act;

(B) Eliminates eligibility of the tribe for election of payments under this section;

(C) May result in exclusion of the tribe as an employer under this act as defined by W.S. 27-3-103(a)(x) and the exclusion of services performed for the tribe from employment covered under this act pursuant to paragraph (ii) of this subsection.

**27-3-510. Delinquencies; interest to be charged; deposit; collection by civil action; jeopardy assessments; posting of bond; liability of corporate officers and directors.**

(a) Contributions not paid on the date due shall bear interest of two percent (2%) per month or any fractional portion thereof from the due date until payment plus accrued interest is received by the department. Interest collected pursuant to this subsection shall be paid into the employment security revenue account.

(b) If after notice an employer defaults in any contribution or interest payment, the amount due shall be collected by civil action in the name of the department. An employer adjudged liable shall pay the costs of the action. Civil actions brought under this subsection shall be given preference over all other civil actions except petitions for judicial review under this act and cases under the Wyoming Worker's Compensation Act.

(c) If an employer or employing unit neglects or refuses to submit reports and pay contributions or interest required by this act, discontinues business at any of its places of business or leaves this state without submitting reports and paying contributions or interest and the neglect, refusal, discontinuance or removal jeopardizes the fund or any rights to benefits, the department may make a jeopardy assessment against the employer or employing unit. The department shall immediately notify the employer of the assessment in writing by mail. The assessment is final unless the employer files a written protest of the assessment with the department within fifteen (15) days after mailing. An employer filing a protest may request a

hearing before the commission in writing. After the hearing the department shall notify the employer of findings of the commission. If an assessment is made, it is final upon issuance of notice and the department shall collect the assessment of any delinquent contributions or interest.

(d) The department may require any employing unit which has been habitually delinquent in making contributions, filing returns or qualifying as required by this act to file a bond or other security with the department which will insure the payment of future contributions required by this act.

(e) Any officer or director having at least twenty percent (20%) ownership interest of a corporate employing unit and any manager of a limited liability company having at least twenty percent (20%) ownership interest of a limited liability company employing unit, who controls or supervises filing contribution reports or making payment contributions under this act and who fails to file the reports or make required payments, and the employing unit fails to pay the amounts due the department, is liable for the contributions or reimbursement including interest, penalties and costs. Liability under this subsection shall:

(i) Survive dissolution, reorganization, bankruptcy, receivership or assignment for the benefit of creditors of or by the corporate or limited liability company employing unit;

(ii) Be initially determined by the department. The department's determination is final unless the officer or director determined to be liable files a written appeal within fifteen (15) days after the date notice of the determination is mailed to his address or the address of the corporate or limited liability company employing unit. The burden of proof rests with the department and the appeal shall be conducted in the manner provided under W.S. 27-3-506 for appeals from employer liability determinations.

**27-3-511. Delinquencies; lien; foreclosure; notice and hearing; satisfaction and release; remedies not exclusive.**

(a) If contributions or interest under this act are not paid on the date due, the department may file a lien certificate verified under oath with the county clerk of the county in which the employer has his principal place of business and a copy with any other county. The certificate shall state the amount of the contributions and interest due, the name and last known address

of the delinquent employer and that the department complied with computation and levy requirements for contributions and interest under this act. The county clerk shall number, file and index the certificate under employment security contributions' liens and under chattel mortgages.

(b) The amount of contributions and interest due the department is a lien upon all real and personal property including motor vehicles owned or acquired by the employer. The lien is in effect from the time of filing the certificate and covers all property of the employer in any county in which filed. The department may initiate proceedings for foreclosure in district court within ten (10) years from the date of filing. After the date of filing, no person shall remove property subject to a lien under this section from the state.

(c) Before filing the certificate, the delinquent employer shall be given opportunity for hearing before the commission or its duly authorized representative. Notice of the time and place of the hearing shall be mailed at least fifteen (15) days prior to the hearing. If the delinquent employer or his representative fails to appear at the hearing or fails to establish to the satisfaction of the commission that contributions and interest are erroneous, the department may file the certificate. The certificate may be filed without opportunity for hearing if a delinquent employer is leaving the state with intent to default.

(d) If a lien is entered and the contributions are paid or found erroneous, the department shall file notice of satisfaction of the lien certificate with the county clerk of any county in which the lien is filed. The department may release any property from the lien or subordinate the lien if it determines contributions and interest are secured by a lien on other property or the collection of contributions and interest is not in jeopardy. The department shall certify release or subordination under this subsection.

(e) The remedies provided by this section are not exclusive.

(f) Notwithstanding any other provision of this section, the department may enter into installment payment agreements for delinquent tax and interest liabilities where repayment requirements are met and where payment in a lump sum would cause severe inconvenience to the taxpayer.

(g) For purposes of this section, "employer" includes those individuals described in W.S. 27-3-510(e) under the conditions described in that section.

**27-3-512. Priority over other claims under receivership.**

If an employer's assets are distributed by court order under receivership, assignment, adjudicated insolvency or other proceeding, contributions under this act shall have priority over all claims except taxes and claims for wages of not more than two hundred fifty dollars (\$250.00) per claimant and earned within six (6) months before the proceeding. Priority of contributions in cases adjudicated under 11 U.S.C. § 101 et seq. shall be as provided by 11 U.S.C. § 507(a).

**27-3-513. Prevention of collection prohibited.**

A court shall not prevent the collection of any contributions under this act.

**27-3-514. Action for recovery of payments under protest; procedure.**

An employer paying contributions under protest may within six (6) months after payment initiate action for recovery against the department in a court of competent jurisdiction. The protest shall be verified and filed at the time payment is made and shall state the grounds for objection. Failure to initiate action within six (6) months is a waiver of recovery under this subsection. Review by the court is limited to the objections stated in the protest. If judgment is for the employer, the amount shall be credited to his account for contributions and interest due under this act. Any remaining balance shall be refunded to the employer from the clearing account.

**27-3-515. Adjustment or refund for erroneous collection; reduction of contributions and interest in certain cases; recovery by department.**

(a) An employer may apply to the commission or the commission may on its own motion provide for an adjustment of contributions or interest or for a refund if the adjustment cannot be made. This subsection applies only to payments made within three (3) years before the date of application or determination. Upon determination of an erroneous collection, the department shall grant an adjustment without interest for

future contribution payments or if the adjustment cannot be made, refund the amount without interest from the fund.

(b) The department may upon its own motion or written application reduce or waive the amount of interest due under W.S. 27-3-510(a) if the collection of the full amount of interest is against equity and good conscience. If an employer is no longer subject to this act pursuant to W.S. 27-3-502, the department may reduce or cancel the amount of contributions or interest due upon a determination based on findings entered into the record that the employer is:

(i) Adjudicated insolvent by a court of competent jurisdiction with no remaining assets;

(ii) Deceased with no estate or the estate is closed and all assets are distributed;

(iii) A dissolved corporation with no remaining assets;

(iv) Not found within three (3) years after the date of termination of coverage under this act and has no property located in the state; or

(v) Not capable of paying the total amount due within three (3) years after the date of termination of coverage under this act, has no property in the state and failure to accept a partial amount of the total as settlement may result in a substantial loss to the fund.

(c) Subsection (b) of this section does not prevent the department from collecting the balance of interest and contributions not paid if its action was based upon a misrepresentation or omission of facts or if amounts due under this act are collectible at a future date.

#### **27-3-516. Incremental bond for impact industries.**

(a) Any project in Wyoming with an estimated construction cost equal to or greater than the threshold construction cost defined by the industrial siting council pursuant to W.S. 35-12-102(a)(vii), a majority of which is planned to be completed or discontinued within a period of seven (7) years, and which will require the employment of at least two hundred fifty (250) people is subject to this section. After the project is initiated, each employing unit working on a project

which meets the criteria specified under this section shall report annually to the department any change in contract bids within the state as may have been determined under subsection (b) of this section.

(b) If the department determines that the project is within the criteria stated by this section, it may assess and collect from the general or prime contractor or, in those situations where there is no general or prime contractor, the owner for whom the project is being constructed, on behalf of each employing unit, an additional amount of one-half percent (.5%) times the successful bid amount on the project awarded to each employing unit but not to exceed one-half percent (.5%) times the total amount allowed under all bids accepted under the project. The amount is in addition to any other contribution required by this act and shall be treated as incremental bond payments to insure payment for all benefits ultimately claimed. The payments are not contributions until the ultimate determination of liability is made under subsection (d) of this section. The department shall amend the amount assessed under this section in accordance with any increases in contract bids reported by an employing unit under subsection (a) of this section. An employing unit may be enjoined by the department from engaging or continuing in business until all payments required under this subsection are made.

(c) Repealed by Laws 1986, ch. 52, § 2.

(d) The amount collected under this section shall be credited to a separate account. Within one (1) year after completion or discontinuance of the project or after an employing unit completes its phase of the work, the department shall determine the total benefits paid to employees of the employing unit or units and if total contributions made by the units under W.S. 27-3-503 exceed total benefits paid to the employees of the units, the difference plus accrued interest shall be refunded to the appropriate general or prime contractor or the owner who paid the additional contribution under subsection (b) of this section but not exceeding the amount paid under this section plus accrued interest. The amount not refunded shall be credited to the unemployment compensation fund.

(e) Repealed By Laws 2007, Ch. 177, § 2.

**27-3-517. Electronic delivery of information.**

Whenever this article requires any determination, decision or notice to be transmitted through the mail, the determination, decision or notice may be transmitted by an internet application approved by the department but only upon an election by the claimant or employer to receive the information by electronic transmission. Upon the completion of every electronic transmission authorized by this section, the department shall provide to the claimant or employer an electronic acknowledgement specifying the date and time when the transmission was sent or received. Except as otherwise required by rules applicable to appeals to the courts of this state, determinations, decisions or notices transmitted by an approved electronic means may be appealed or protested by use of the same means. For the purpose of all relevant time limits established by this article, electronically transmitted information shall be deemed delivered on the date indicated on the acknowledgment required by this section, or if no acknowledgement exists, on the date the electronic delivery is initiated by the party sending the information.

#### ARTICLE 6 - ADMINISTRATION

**27-3-601. Unemployment insurance commission created; composition; terms; vacancies; salary; chairman; quorum; removal; office; seal.**

(a) The unemployment insurance commission of Wyoming is created within the department of workforce services and shall consist of three (3) members serving a term of six (6) years each. Appointments, vacancies and expiration of terms shall be in accordance with W.S. 28-12-101 through 28-12-103. A member shall not hold any state office or serve as an officer or on a committee of any political organization during the term of membership. No more than seventy-five percent (75%) of the members shall be of the same political party.

(b) Every two (2) years one (1) member shall be elected by the membership to serve as chairman. Two (2) members is a quorum. A vacancy does not prevent the remaining members from exercising powers of the commission. One (1) member shall not exercise powers if two (2) vacancies occur at the same time.

(c) Commission members shall receive a salary equal to the per diem paid to members of the Wyoming legislature under W.S. 28-5-101 for each day of actual service and when engaged in necessary travel plus necessary expenses.

(d) The governor may remove a commissioner as provided in W.S. 9-1-202.

(e) The office of the commission shall be located in Casper, Wyoming and the commission shall have an official seal which shall be judicially noticed.

**27-3-602. Powers and duties of unemployment insurance commission; personnel.**

(a) The commission shall:

(i) Adopt rules necessary for the administration of this act by the department of workforce services and the department, in accordance with law, may make expenditures, require reports, make investigations and take other action it considers necessary;

(ii) Determine its methods of procedure in accordance with this act;

(iii) Repealed by Laws 1990, ch. 63, § 3.

(iv) Through the department, and if possible, provide a reserve against fund liability for future benefit payments in excess of contributions in accordance with accepted actuarial principles based on employment, business activity and other relevant factors;

(v) Through the department, recommend to the governor and the legislature a change in contribution or benefit rates when necessary to protect fund solvency;

(vi) Define and prescribe by regulation necessary procedures for total unemployment and part total unemployment;

(vii) Through the department, publish provisions of this act, rules and regulations, reports and other relevant material and furnish copies in accordance with W.S. 16-4-204 to any person upon application.

(b) The commission may adopt, amend or rescind rules and regulations after notice and public hearing in accordance with the Wyoming Administrative Procedure Act.

(c) In administering this act, the commission or any authorized representative of the department may administer oaths

and affirmations, take depositions, certify official acts, subpoena witnesses and require the production of books, papers or other records material to the administration of this act.

(d) If a subpoena issued to any person pursuant to subsection (c) of this section is disobeyed, the district court of the district in which the inquiry is conducted or the person is found, resides or conducts business shall, upon application by the commission or department, issue to the person refusing to obey the subpoena an order requiring the person to appear before the commission or department to produce evidence if ordered or to give evidence touching the matter in question. Any person failing to obey the court order may be punished by the court for contempt and upon conviction, shall be fined not less than two hundred dollars (\$200.00), imprisoned not more than sixty (60) days, or both. Each day of violation is a separate offense.

(e) The privilege of self-incrimination is not a defense for violating subsection (c) of this section nor shall a person be incriminated for providing testimony or evidence under subsection (c) of this section except for perjury committed during testimony.

(f) The department of workforce services shall provide personnel necessary to administer this act in accordance with rules of the commission and determinations of the commission authorized by law. The commission shall not exercise supervisory authority over those personnel.

### **27-3-603. Confidentiality of information.**

Except as otherwise provided, information maintained pursuant to this act shall not be disclosed in a manner which reveals the identity of the employing unit or individual. The confidentiality limitations of this section do not apply to transfers of information between the divisions of the department of workforce services so long as the transfer of information is not restricted by federal law, rule or contract. Any employee who discloses information outside of the department in violation of federal or state law may be terminated without progressive discipline.

### **27-3-604. Repealed by Laws 1990, ch. 63, § 3.**

### **27-3-605. Responsibilities of department of workforce services.**

(a) The department of workforce services shall administer the unemployment compensation program in this state.

(b) Repealed By Laws 2002, Ch. 100, § 4.

(c) Repealed By Laws 2002, Ch. 100, § 4.

**27-3-606. Department duties regarding unemployment and reemployment.**

(a) Repealed by Laws 1996, ch. 4, § 3.

(b) Repealed by Laws 1996, ch. 4, § 3.

(c) The department shall take appropriate steps to:

(i) Repealed By Laws 2005, ch. 186, § 3.

(ii) Repealed By Laws 2005, ch. 186, § 3.

(iii) Repealed By Laws 2005, ch. 186, § 3.

(iv) Repealed By Laws 2005, ch. 186, § 3.

(v) Conduct and publish results of investigations and research studies.

**27-3-607. Cooperation by department with federal, state and local agencies; disclosure and submission of specified information; limitations.**

(a) The department shall:

(i) Cooperate with and report to the federal government pursuant to requirements of 42 U.S.C. § 902 et seq. and comply with federal regulations governing expenditures of funds paid to the state under 42 U.S.C. § 501 et seq.;

(ii) Furnish upon request of any federal agency administering public works programs or public employment assistance, the name, address, ordinary occupation and employment status of benefit recipients and their right to future benefits under this act;

(iii) Upon request, pursuant to contract and on a reimbursable basis, of any state or political subdivision, furnish wage information obtained pursuant to this act

determined necessary by regulation of the United States health and human services department for determining eligibility or assistance under 42 U.S.C. § 601 et seq.;

(iv) Upon request, pursuant to contract and on a reimbursable basis, disclose to officers or employees of any state or local child support enforcement agency operating pursuant to a plan described under 42 U.S.C. § 654 or to the federal parent locator service, any wage or unemployment compensation claim information obtained under this act for an identified individual;

(v) Upon request, pursuant to contract and on a reimbursable basis, disclose to officers and employees of the United States department of agriculture and any state supplemental nutrition assistance program agency defined under 7 U.S.C. § 2012(n)(1), any wage information obtained under this act for an identified individual, any record of application for or receipt of benefits and the amount received, his most recent home address and any refusal of an offer of employment and a description of this employment;

(vi) Upon request, pursuant to contract and on a reimbursable basis, provide unemployment insurance benefit and wage information to the department of housing and urban development and to other public housing agencies. Such information shall be provided as required by the McKinney Homeless Act of 1988, section 904(c) and in a manner as prescribed by the secretary of labor;

(vii) Disclose information contained in its records to the United States secretary of health and human services or his designee, as necessary for the purposes of the national directory of new hires established under section 453 of the Social Security Act. The requesting agency shall reimburse the department for the cost of furnishing this information. The department shall work in conjunction with other states to ensure that adequate safeguards exist at the federal level so that state information being provided under this section is not disclosed for any purpose, except as authorized by law;

(viii) Upon request, pursuant to contract and on a reimbursable basis, disclose and furnish copies of records relating to the administration of this act to the railroad retirement board;

(ix) Require any recipient of information disclosed under this subsection to comply with any safeguards necessary and specified in federal law to ensure that the information furnished shall be used only for the purposes authorized.

(b) A requesting agency shall agree that information obtained under paragraph (a)(iv) of this section be used only for establishing and collecting child support obligations from and locating individuals owing obligations enforced pursuant to a plan described under 42 U.S.C. § 654, and that information obtained under paragraph (a)(v) of this section be used only for determining the applicant's eligibility for benefits or the amount of benefits under the supplemental nutrition assistance program. The agency shall also reimburse the department for the cost of furnishing this information. Requirements for confidentiality of information under this act and the penalties for improper disclosure apply to the use of this information by officers and employees of any child support or supplemental nutrition assistance program agency and the United States department of agriculture.

(c) The department may, on a reimbursable basis unless otherwise provided:

(i) Repealed By Laws 2005, ch. 186, § 3.

(ii) Notwithstanding W.S. 27-3-603 and subject to regulations of the commission and pursuant to contract, disclose necessary information obtained from any employing unit or individual under this act and any determination of benefit rights to any state or federal agency administering Wagner-Peyser Act or federal Workforce Innovation and Opportunity Act or subsequent similar enactments training services;

(iii) Repealed By Laws 2005, ch. 186, § 3.

(iv) Cooperate with any federal agency administering any unemployment compensation law;

(v) Allow access to information obtained pursuant to the administration of this act to the division of criminal investigation of the attorney general's office, upon a written request by the director which demonstrates there is a reasonable basis to believe the health or safety of a person is in danger and the information may lead to the elimination of that danger;

(vi) Allow the state auditor's office and the division of worker's compensation access to certain information obtained under this act limited to the name, address, social security identification number and other general information pertaining to benefit entitlement and employers. Disclosure of information under this paragraph is for purposes of comparing information of the department with that of a requesting state agency for the detection of improper or fraudulent claims or the determination of potential tax liability, for employer compliance with notification, registration, certification or qualification requirements or for the collection of amounts owed the department;

(vii) Upon request, disclose information not otherwise restricted by law or contract to the bureau of labor statistics;

(viii) Upon written request, disclose any information obtained under this act to director or agency head, or his designee or agent, in the executive branch of federal or state government to be used by the public official only for official business in connection with the administration of a law or in the enforcement of a law by that public official. The requesting agency shall reimburse the department for the cost of furnishing this information unless the cost is insignificant;

(ix) Inform a project owner or contractor if his prime contractor or any subcontractor has notified the department and whether or not the prime contractor or any subcontractor is in compliance with this act;

(x) Pursuant to contract, disclose wage information on a nonreimbursable basis to the social security administration utilizing the unemployment insurance interstate inquiry system;

(xi) Require any recipient of information disclosed under this subsection to comply with any safeguards necessary as specified in federal regulation to ensure that the information furnished shall be used only for the purposes authorized;

(xii) Notwithstanding W.S. 27-3-603 and subject to regulations of the commission, disclose necessary information obtained from any employing unit or individual under this act and any determination of benefit rights to any state or federal agency administering unemployment compensation laws or federal tax laws and to the office of the United States bankruptcy trustee.

(d) The department may conduct and publish statistical analysis of payroll and employment of state agencies in the executive branch and of school districts, which may reveal the identity of state agency and school district employing units.

**27-3-608. Agreements by department with other states, federal government and foreign governments authorized.**

(a) Notwithstanding W.S. 27-3-104 through 27-3-108, the department may enter into arrangements with other states for services performed by an individual ordinarily performing services in more than one (1) state for a single employing unit. Subject to election by the employing unit and approval of the affected states, the arrangement may specify that service is performed entirely within the state in which:

(i) Any part of the individual's services are performed;

(ii) The employing unit maintains its principal place of business; or

(iii) The individual has his residence.

(b) The department is also authorized to enter into agreements with other states or the federal government for wages or services entitled to benefits under the law of another state or the federal government to be wages for insured work under this act or under the law of another state or the federal government. The department shall participate in arrangements approved by the United States secretary of labor for the payment of compensation by combining an individual's wages and employment covered under this act with those covered under the laws of other states which assure the prompt and full payment of compensation, apply the base period of a single state law to a claim involving the combination of wages and employment covered under two (2) or more state laws and avoid duplication of wages and employment. No arrangement under this subsection shall be entered into unless the participating state or federal agency agrees to reimburse the fund for the amount of benefits paid under this act for wages or services the department finds fair and reasonable. The department shall reimburse to other state or federal agencies a reasonable portion of benefits paid under their law.

(c) The department may make and receive reimbursements from or to the fund in accordance with arrangements pursuant to this section. For purposes of this act, reimbursements payable are benefits.

(d) To the extent authorized by federal law and constitution and agreements entered into between the federal government and foreign governments, the department may enter into or cooperate in agreements for facilities and services provided by a foreign government for use in receiving claims and paying benefits under this act or similar law of the foreign government.

**27-3-609. Legal representation in civil and criminal actions.**

(a) In any civil action to enforce this act, the department may be represented by a qualified attorney employed by the department or by the attorney general at the request of the department.

(b) All criminal actions for violation of this act or any rules or regulations issued pursuant to this act shall be prosecuted by the attorney general or at his request and under his direction, by the district attorney for the county in which the prosecution is brought.

**27-3-610. Establishment of fee schedule and payment for certain services.**

The department may charge a fee and require payment to recover the cost of services for photocopying, preparation of forms or other material in responding to inquiries to provide information not confidential by law, furnishing publications prepared by the department and any other services rendered by the department which are not directly related to the administration of this act. Such fees shall be deposited into the employment security administration account.

**27-3-611. Maintenance of records by department; procedures.**

The department may maintain any or all of its records on a computer imaging system that maintains true and accurate copies or images of original documents. The department may destroy original documents after putting the documents in the computer imaging system. True and accurate copies generated by the

computer imaging system shall be admissible in court or administrative hearings under the same conditions as the original document would be admissible.

## ARTICLE 7 - PENALTIES

### **27-3-701. Financing of contributions or waiver of rights by employees.**

No employer shall directly or indirectly make, require or accept any deduction from wages or payments by employees to finance contributions required by this act or require or accept any waiver of an employee's right under this act. Any employer or his officer or agent violating this section shall be fined not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00), imprisoned for not more than six (6) months, or both. Each violation is a separate offense.

### **27-3-702. Obtaining benefits by fraud; disqualification of benefits; penalties.**

(a) No person shall, for himself or any other person, knowingly make a false statement or misrepresentation or knowingly fail to disclose a material fact to obtain or increase benefits or other payments under this act or other state or federal law. Any person violating this section is guilty of:

(i) A misdemeanor punishable by a fine of not more than seven hundred fifty dollars (\$750.00), imprisonment for not more than ninety (90) days, or both, if the amount of benefits obtained in violation of this section is less than one thousand dollars (\$1,000.00); or

(ii) A felony punishable by imprisonment for not more than five (5) years, a fine of not more than five thousand dollars (\$5,000.00), or both, if the amount of benefits obtained under fraud is one thousand dollars (\$1,000.00) or greater.

(b) Upon conviction the court shall require the defendant to make restitution to the department in the amount of benefits or other payments improperly paid due to the defendant's fraud. Each false statement, misrepresentation or failure to disclose a material fact is a separate offense. This section shall not preclude prosecution under any other applicable law.

(c) In addition to the penalties provided by this section, a person convicted under this section or any other applicable

law shall be disqualified from receiving benefits in any week beginning within a two (2) year period immediately following conviction.

**27-3-703. Fraud by employing unit; refusal to furnish reports; failure to make required payments; failure to comply with injunction order; penalties.**

(a) No officer, agent or any other individual of an employing unit shall knowingly make a false statement or misrepresentation or knowingly fail to disclose a material fact with the intention of preventing or reducing the payment of benefits to any entitled individual, to avoid being subject to this act or to avoid or reduce any contribution or other payment required from an employing unit under this act, or willfully fail or refuse to make any contribution or other payment. Any such individual violating this subsection is guilty of a misdemeanor punishable by imprisonment for not more than ninety (90) days, a fine of not more than seven hundred fifty dollars (\$750.00), or both. Each false statement, misrepresentation or failure to disclose a material fact is a separate offense.

(b) Any employing unit or if the employing unit is a corporation, any officer or director liable under W.S. 27-3-510(e), fraudulently failing to pay contributions required under this act for a period of two (2) or more consecutive calendar quarters or the total of which exceeds five hundred dollars (\$500.00), is guilty of a felony punishable by a fine of not more than five thousand dollars (\$5,000.00), imprisonment for not more than five (5) years, or both.

(c) Any officer, agent or other individual of an employing unit who willfully refuses or fails to furnish any report or to produce or permit the inspection of records required by this act is guilty of a misdemeanor. Each day of any failure or refusal is a separate offense.

(d) Any employing unit failing to comply with a court order issued pursuant to W.S. 27-3-502(h), or any partner or corporate officer of the employing unit aiding or assisting the employing unit in not complying with the court order, is guilty of a misdemeanor.

(e) This section shall not preclude prosecution under any other applicable state law.

**27-3-704. General penalty.**

Any person willfully violating this act or any order, rule or regulation under this act for which no specific penalty is provided is guilty of a misdemeanor and shall be fined not more than seven hundred fifty dollars (\$750.00), imprisoned not more than sixty (60) days, or both. Each day of violation is a separate offense.

**27-3-705. Improper filing of claims; penalties.**

An individual who knowingly and with the intent to defraud allows or authorizes another person to sign the individual's name or use his personal identification number to make or file a claim for benefits on the individual's behalf is subject to the penalties prescribed in W.S. 27-3-311(e) and 27-3-702(a).

**27-3-706. Experience rating manipulation; penalties.**

(a) A person who knowingly, or with deliberate ignorance or reckless disregard of the true facts or the requirements of this act, violates or attempts to violate W.S. 27-3-507 or any other provision of this act related to determining the assignment of a contribution rate, or who knowingly advises another to violate the requirements of W.S. 27-3-507 or any other provision of this act related to determining the assignment of a contribution rate, shall be subject to the following penalties:

(i) A person who is an employer shall be assigned, for the rate year during which the noncompliance or misrepresentation occurred and for the following three (3) rate years, the highest rate assignable under W.S. 27-3-503. If the person's business is already at the highest rate for any year, or if the amount of increase in the person's rate would be less than two percent (2%) for that year, then a penalty rate of two percent (2%) of taxable wages shall be imposed for that year. This penalty may exceed the maximum assignable rate;

(ii) A person who is not an employer shall be subject to a civil penalty of not more than fifty thousand dollars (\$50,000.00). Funds received by the division under this paragraph shall be paid over to the state treasurer to be credited to the public school fund of the county in which the violation for which the penalty imposed occurred;

(iii) In addition to the penalty imposed pursuant to paragraphs (i) and (ii) of this subsection, any violation or

attempted violation of W.S. 27-3-507 or any other provision of this act related to determining the assignment of a contribution rate may be prosecuted as a felony punishable by a fine of not more than fifty thousand dollars (\$50,000.00), imprisonment for not more than five (5) years, or both. The fine under this paragraph shall be paid over to the state treasurer to be credited to the public school fund of the county in which the violation for which the penalty imposed occurred.

## ARTICLE 8 - SHORT TIME COMPENSATION PROGRAM

### **27-3-801. Definitions.**

(a) As used in this article:

(i) "Affected unit" means a specified plant, department, shift or other definable unit of an employer that includes two (2) or more employees to which an approved short time compensation plan applies;

(ii) "Director" means the director of the department of workforce services or the director's designee responsible for approving applications for participation in a short time compensation plan;

(iii) "Health and retirement benefits" means employer provided health benefits and retirement benefits under a defined benefit pension plan as defined in section 414(j) of the Internal Revenue Code or contributions under a defined contribution plan defined in section 414(i) of the Internal Revenue Code that are incidents of employment in addition to the cash remuneration earned;

(iv) "Short time compensation" means the unemployment benefits payable to employees in an affected unit under an approved short time compensation plan, as distinguished from the benefits otherwise payable under this act;

(v) "Short time compensation plan" means a plan submitted by an employer for approval by the director under which the employer requests the payment of short time compensation to employees in an affected unit of the employer to avert layoffs;

(vi) "Unemployment compensation" means the benefits payable under this act other than short time compensation and includes any amounts payable pursuant to an agreement under any

federal law providing for compensation, assistance or allowances with respect to unemployment;

(vii) "Usual weekly hours of work" means the usual hours of work for full-time or part-time employees in the affected unit when that affected unit is operating on the unit's regular basis, not to exceed forty (40) hours and not including hours of overtime work.

**27-3-802. Participation in the short time compensation program; director approval.**

(a) An employer seeking to participate in the short time compensation program shall submit a signed written short time compensation plan in a form acceptable to the department for approval by the director. No plan shall be approved under this article unless the employer is in good standing with the department.

(b) The department shall develop an application form for an employer to request approval of a short time compensation plan and an approval process. The director may approve a short time compensation plan only if the plan:

(i) Describes the affected unit covered by the plan, including the number of full-time and part-time employees in the unit and the percentage of employees in the unit covered by the plan;

(ii) Identifies each employee in the affected unit by name, social security number and any other information required by the director to identify the plan participants;

(iii) Provides a description of how employees in the affected unit will be notified of the employer's participation in the short time compensation plan, including how the employer will notify those employees in a collective bargaining unit as well as any employees in the affected unit who are not in a collective bargaining unit. If the employer is unable to provide advance notice to employees in the affected unit, the employer shall explain in the application why it is not feasible to provide the notice required under this paragraph;

(iv) Identifies the usual weekly hours of work for the employer's employees in the affected unit and the specific percentage by which the employees' hours shall be reduced during all weeks covered by the plan. A short time compensation plan

shall only be approved if the percentage by which the employees' hours will be reduced is not less than ten percent (10%) and not more than sixty percent (60%). If the plan includes any week for which the employer regularly provides no work then the week shall be identified by the employer;

(v) Certifies that if the employer provides health and retirement benefits to any employee whose usual weekly hours of work are reduced under the short time compensation plan, the benefits will continue to be provided to employees participating in the short time compensation program under the same terms and conditions as though the usual weekly hours of work of such employee had not been reduced or to the same extent as other employees not participating in the short time compensation program. In addition, the following shall apply:

(A) For defined benefit retirement plans, the hours that are reduced under the short time compensation plan shall be credited for purposes of participation, vesting and accrual of benefits as though the usual weekly hours of work had not been reduced. The dollar amount of employer contributions to a defined contribution plan that are based on a percentage of compensation may be less due to the reduction in the employee's compensation;

(B) A short time compensation plan may satisfy the certification requirement under this paragraph when a reduction in health and retirement benefits scheduled to occur during the duration of the plan will be applicable equally to employees who are not participating in the short time compensation program and to those employees who are participating.

(vi) Certifies that the aggregate reduction in work hours is in lieu of layoffs. The plan shall include an estimate of the number of employees who would have been laid off in the absence of the short time compensation plan;

(vii) Certifies that the employer agrees to furnish reports to the department relating to the administration of the plan and authorizes the department to access all records necessary for the director to assess a short time compensation plan for approval and to monitor and evaluate the administration of the plan. The employer shall also agree to follow any other directives necessary for the department to implement the plan and which are consistent with the requirements of this article;

(viii) Certifies that the employer's participation in the short time compensation plan and the plan's implementation are consistent with the employer's obligations under applicable federal and state laws;

(ix) Certifies that the plan shall expire not later than the end of the twelfth full calendar month after the effective date of the plan;

(x) Satisfies any other requirements specified by the department that the United States secretary of labor determines to be appropriate for purposes of a short time compensation program.

**27-3-803. Approval of a short time compensation plan.**

The director shall approve or deny a short time compensation plan submitted by an employer within thirty (30) days of receipt of the plan and promptly notify the employer of the decision. A decision denying a plan shall clearly identify the reasons for the denial. The director's decision shall be final. An employer whose plan is not approved shall be allowed to submit another short time compensation plan for approval in accordance with rules specified by the commission.

**27-3-804. Effective date and duration of the short time compensation plan.**

(a) An approved short time compensation plan shall be effective on the date that is mutually agreed upon by the employer and the director. The plan shall expire at the end of the twelfth full calendar month after the plan's effective date or an earlier date proposed in the approved short time compensation plan. The effective date and expiration date of an approved plan shall be specified in a notice of approval provided to the employer by the department.

(b) If a short time compensation plan is revoked by the director under W.S. 27-3-806, the plan shall terminate on the date specified in the director's written order of revocation.

(c) An employer may terminate a short time compensation plan at any time upon written notice to the director as specified by rule of the commission. Upon receipt of such notice from the employer, the director shall promptly notify each employee of the affected unit of the termination date. An employer may submit a new application to participate in another

short time compensation plan at any time after the expiration or termination of a previous plan.

**27-3-805. Modification of an approved short time compensation plan.**

(a) An employer may request a substantial modification of an approved short time compensation plan by submitting a written request to the department. The request shall specify the proposed provisions to be modified and explain why the modification is appropriate. Subject to subsection (b) of this section, the director shall approve or deny in writing the proposed modification within twenty (20) days of receipt and promptly notify the employer.

(b) The director may approve a substantial modification request under subsection (a) of this section based on conditions that have changed since the short time compensation plan was originally approved provided that the modification is consistent with and supports the purposes for which the plan was initially approved. A modification shall not extend the expiration date of the original plan. If the director approves a substantial plan modification request, the effective date of the modification shall be included in the notice provided to the employer.

(c) An insubstantial plan modification shall not require director approval but the employer shall promptly report every change to the plan in writing to the director. If the director determines that the reported change is substantial, the department shall require the employer to submit a substantial plan modification request. The director may revoke an employer's plan if the employer fails to meet the reporting requirement under this subsection.

**27-3-806. Revocation of short time compensation plan approval.**

(a) The director may revoke approval of a short time compensation plan for good cause at any time including upon the request of any of the affected unit's employees. Good cause shall include an employer's failure to comply with the assurances and certifications given in the employer's plan under W.S. 27-3-802, unreasonable revision of productivity standards for an affected unit, conduct or occurrences tending to defeat the intent and effective operation of the short time compensation plan and violation of any criteria on which approval of the plan was based.

(b) Any revocation by the director of a short time compensation plan shall be provided to the employer in writing and shall specify the reasons for the revocation and the date the revocation is effective. A revocation under this section shall be subject to review under the Wyoming Administrative Procedure Act.

(c) The department may periodically review the operation of short time compensation plans to assure that no good cause exists for revocation of approved plans.

**27-3-807. Eligibility for short time compensation benefits.**

(a) An employee shall only be eligible to receive short time compensation with respect to any week if:

(i) The employee is monetarily eligible for unemployment compensation;

(ii) The employee is not otherwise disqualified for unemployment compensation;

(iii) During that week, the employee is employed as a member of an affected unit under an approved short time compensation plan that was approved prior to that week and the plan is in effect with respect to the week for which short time compensation is claimed.

(b) Notwithstanding any other provision of this act relating to an employee's availability for work and actively seeking work, the employee is eligible to receive shared work benefits for a week in which the employee is able to work and is available for additional hours of work or for full-time work with the employee's short time compensation employer. Participating in training as approved by the department to enhance job skills or participating in employer-sponsored training or training funded under the federal Workforce Innovation and Opportunity Act shall satisfy the requirements of this section.

(c) Notwithstanding any other provision of law, an employee covered by a short time compensation plan is deemed unemployed in any week during the duration of such plan if the employee's remuneration is reduced based on a reduction of the

employee's usual weekly hours of work under an approved short time compensation plan.

(d) Notwithstanding any other provision of law, an eligible employee shall not be denied short time compensation benefits because of any provision of this act that provides requirements concerning:

(i) Availability for work;

(ii) Actively searching for work;

(iii) Any refusal to apply for or accept work with an employer other than the participating employer whose plan is approved under this article.

#### **27-3-808. Benefits.**

(a) The short time compensation weekly benefit amount available to employees under an approved plan shall be the product of the employee's regular weekly unemployment compensation amount for a week of total unemployment multiplied by the percentage of reduction in the employee's usual weekly hours of work.

(b) An employee may be eligible for short time compensation or unemployment compensation except no employee shall be:

(i) Eligible for combined benefits in any benefit year in an amount more than the maximum entitlement established for regular unemployment compensation;

(ii) Paid short time compensation benefits for more than fifty-two (52) weeks under a short time compensation plan.

(c) The short time compensation paid to an employee shall be deducted from the maximum entitlement amount of regular unemployment compensation established for that employee's benefit year.

(d) Provisions applicable to unemployment compensation claimants under this act shall apply to short time compensation claimants to the extent that they are not inconsistent with W.S. 27-3-801 through 27-3-810. The department shall issue a monetary determination to any employee who files an initial claim for short time compensation benefits.

(e) Employees who work in an affected unit of a short time compensation employer and another employer during weeks covered by the approved short time compensation plan shall be subject to the following:

(i) If the combined hours of work in a week for both employers do not result in a reduction of at least ten percent (10%) of the usual weekly hours of work with the short time employer, the employee shall not be entitled to benefits under the short time compensation plan;

(ii) If the combined hours of work for both employers results in a reduction equal to or greater than ten percent (10%) of the usual weekly hours of work for the short time compensation employer, the short time compensation benefit amount payable to the employee shall be reduced for that week in an amount determined by multiplying the weekly unemployment benefit amount for a week of total unemployment by the percentage by which the combined hours of work have been reduced by ten percent (10%) or more of the employee's usual weekly hours of work. A week for which benefits are paid under this paragraph shall be reported as a week of short time compensation;

(iii) If an employee worked the reduced percentage of the usual weekly hours of work for the short time compensation employer and is available for all his usual hours of work with the short time compensation employer and the employee did not work any hours for the other employer either because of the lack of work with that employer or because the employee is excused from work with the other employer, the employee shall be eligible for short time compensation for that week. The benefit amount for such week shall be calculated as provided in subsection (a) of this section.

(f) An employee who is not provided any work during a week by the short time compensation employer or any other employer and who is otherwise eligible for unemployment compensation shall be eligible for the amount of regular unemployment compensation to which they would otherwise be eligible.

(g) An employee who is not provided any work by the short time compensation employer during a week but who works for another employer and is otherwise eligible may be paid unemployment compensation for that week subject to the

disqualifying income and other provisions applicable to claims for regular unemployment compensation.

**27-3-809. Charging short time compensation benefits.**

Short time compensation shall be charged to employers' experience rating accounts in the same manner as unemployment compensation is charged under this act. The department may relieve an employer of charges or not require reimbursement for short time compensation benefits if the benefits are subject to one hundred percent (100%) reimbursement by the federal government or as otherwise specified by law.

**27-3-810. Extended benefits.**

An employee who has received all of the short time compensation or combined unemployment compensation and short time compensation available in a benefit year shall be considered an exhaustee for purposes of extended benefits as provided under W.S. 27-3-315 and if otherwise eligible under those provisions shall be eligible to receive extended benefits.

**27-3-811. Reporting requirements.**

Not later than November 1 of each year until November 1, 2026, the department shall report to the joint appropriations committee on the short time compensation program established pursuant to this article. The report shall describe the administration of the short time compensation program, the number of employers participating in the program and the amount of funds that have been expended by the department on the program.

CHAPTER 4 - WAGES

ARTICLE 1 - IN GENERAL

**27-4-101. Semimonthly payments required; method of payment; agricultural operations exempt; payment in case of labor dispute or temporary layoff.**

(a) Every person, firm or corporation, engaged in the operation of any railroad, mine, refinery, and work incidental to prospecting for, or the production of, oil and gas, or other factory, mill or workshop, within the state of Wyoming, shall, on or before the first day of each month, pay their employees the wages earned by them during the first half of the preceding

month ending with the fifteenth day of the month, and on or before the fifteenth day of each month pay their employees the wages earned by them during the last half of the preceding month; provided, however, that if at any time of payment any employee shall be absent from his or her regular place of labor, and shall not receive his or her wages, at that time due and owing, through a duly authorized representative, he or she shall be entitled to payment at any time thereafter upon demand on the proper paymaster or at the place where wages are usually paid; provided, further, that if the first or the fifteenth of the month occurs on a day which is not a working day, that the last preceding working day shall be the payday, for all personnel who are regularly paid at one (1) location, provided, every employer shall establish and maintain regular paydays as herein provided and shall post and maintain copies of this law printed in plain type in at least two (2) conspicuous places where the notices can be seen by the employees.

(b) Every employer shall, at the time of each payment of wages, furnish each of his employees with a detachable part of the check, draft or voucher, paying the employees' wages, giving an itemized statement in writing showing all deductions made from such wages. If the employer does not make his payroll payments in the aforementioned manner, then he shall provide such itemized statement on a slip attached to such payment. Nothing in W.S. 27-4-101 through 27-4-103 shall be construed to prohibit an employer from depositing wages due or to become due or an advance on wages to be earned, in an account in any bank, savings and loan association, credit union or other financial institution authorized by the United States or one (1) of the several states to receive deposits in the United States if the employee has voluntarily authorized such deposit.

(c) Agricultural operations shall be exempt from the provisions provided herein.

(d) When work of any employee is suspended as a result of a labor dispute, or when an employee for any reason whatsoever is temporarily laid off, the employer shall pay in full to such employee on the next regular payday, either through the regular pay channels or by mail if requested by the employee, wages earned to the time of suspension or layoff.

**27-4-102. Repealed By Laws 2001, Ch. 162, § 2.**

**27-4-103. Semimonthly payments required; penalty.**

Every person violating any of the provisions of this act, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than seven hundred fifty dollars (\$750.00), or by imprisonment in the county jail for a period of not more than six (6) months, or by both fine and imprisonment.

**27-4-104. Payment of employee quitting or discharged and suit for wages; generally.**

(a) Whenever an employee quits service or is discharged, the employee shall be paid whatever wages are due him in lawful money of the United States of America, or by check or draft which can be cashed at a bank, no later than the employer's usual practice on regularly scheduled payroll dates or at a time specified under the terms of a collective bargaining agreement between the employer and the employee. The employer may offset from any monies due the employee as wages, any sums due the employer from the employee which have been incurred by the employee during his employment. This section does not apply to the earnings of a sales agent employed on a commission basis and having custody of accounts, money or goods of his principal where the net amount due the agent may not be determinable except after an audit or verification of sales, accounts, funds or stocks.

(b) Whenever an employee who has quit, has been discharged from service, or because of action taken by the employer is prevented from working has cause to bring suit for wages earned and due, and shall establish in court the amount which is justly due, the court shall allow to the plaintiff interest on the past due wages at the rate of eighteen percent (18%) per annum from the date of discharge or termination or from the date when unpaid wages are required to be paid as specified in this act, together with a reasonable attorney fee and all costs of suit. Prosecution of a civil action to recover unpaid wages does not preclude prosecution under W.S. 27-4-105.

**27-4-105. Payment of employee quitting or discharged and suit for wages; penalty.**

Every person, firm or corporation willfully violating any of the provisions of W.S. 27-4-104 is guilty of a misdemeanor and shall be punished by a fine of not less than five hundred dollars (\$500.00) nor more than seven hundred fifty dollars (\$750.00) for each offense.

**27-4-106. Assignment of certain accounts and prosecution of certain suits prohibited; generally.**

It is hereby declared unlawful for any creditor or other holder of any evidence of debt, book account, or claim of any name or nature against any laborer, servant, clerk or other employee of any corporation, firm or individual in this state for the purpose below stated, to sell, assign, transfer, or by any means dispose of any such claim, book account, bill or debt of any name or nature whatever, to any person or persons, firm, corporation or institution, or to institute elsewhere than in this state or prosecute any suit or action for any such claim or debt against any such laborer, servant, clerk or employee, by any process seeking to seize, attach or garnish the wages of such person or persons earned within sixty (60) days prior to the commencement of such proceedings for the purpose of avoiding the effect of the laws of the state of Wyoming concerning exemptions.

**27-4-107. Assignment of certain accounts and prosecution of certain suits prohibited; aiding violation deemed unlawful.**

It is hereby declared unlawful for any person or persons to aid, assist, abet or counsel a violation of W.S. 27-4-106 for any purpose whatever.

**27-4-108. Assignment of certain accounts and prosecution of certain suits prohibited; prima facie evidence.**

In any proceeding, civil or criminal, growing out of a breach of W.S. 27-4-106 and 27-4-107, proof of the institution of a suit or service of garnishment summons by any persons, firm or individual in any court of any state or territory other than this state, to seize by process of garnishment or otherwise, any of the wages of such persons as defined in section 1 of this act shall be deemed prima facie evidence of an evasion of the laws of the state of Wyoming, and a breach of the provisions of W.S. 27-4-106 through 27-4-109 on the part of the creditor or resident in Wyoming causing the same to be done.

**27-4-109. Assignment of certain accounts and prosecution of certain suits prohibited; liability and penalty for unlawful assignment.**

Any person, firm, company, corporation, or business institution guilty of a violation of W.S. 27-4-106 and 27-4-107 shall be liable to the party so injured for the amount of the debt sold,

assigned, transferred, garnisheed, or sued upon, with all costs and expenses, and a reasonable attorney's fee to be recovered in any court of competent jurisdiction in this state, and shall further be liable by prosecution to punishment by a fine not exceeding the sum of one hundred dollars (\$100.00) and costs of prosecution.

**27-4-110. Assignments of wages; acceptance by employer; filing.**

No assignment of, or order for, wages to be earned in the future to secure a loan of less than two hundred dollars (\$200.00) shall be valid against an employer of the person making said assignment or order until said assignment or order is accepted in writing by the employer, and said assignment or order and the acceptance of the same have been filed and recorded with the clerk of the city or town where the party making said assignment or order resides, if a resident of this state, or in which he is employed, if not a resident of the commonwealth.

**27-4-111. Assignments of wages; consent of marital spouse required.**

No assignment of or order for, wages to be earned in the future shall be valid, when made by a married individual, unless the written consent of the spouse to the assignment is attached thereto.

**27-4-112. Assignments of wages; certain banks exempt from assignment provisions.**

National banks and all banking institutions which are under the supervision of the bank examiner shall be exempt from the provisions of this act.

**27-4-113. Contracts for alien labor; when unenforceable.**

No contract made for labor or services with any alien or foreigner previous to the time that such alien or foreigner may come into the state shall be enforced within this state for any period after six (6) months from the date of such contract.

**27-4-114. Contracts for alien labor; measure of recovery; defenses.**

Any alien or foreigner who shall hereafter perform labor or services for any person or persons, company or corporation

within this state, shall be entitled to recover from such person or persons, company or corporation, a reasonable compensation for such labor or services, notwithstanding such person or persons, company or corporation may have paid any other party or parties for the same; and in actions for the price of such labor or services, no defense shall be admitted to the effect that the defendant or defendants had contracted with other parties who had, or pretended to have, power or authority to hire out the labor or services of such party or parties, or to receive the pay or price for such labor or services.

**27-4-115. Contracts for alien labor; third party receiving pay for alien's labor prohibited.**

Any person, whether he or she acts for himself or herself, or as agent, attorney or employee for another or others, who shall, in pursuance of, or by virtue of, any contract made with any alien or foreigner, made before such alien or foreigner came into this state, receive or offer to receive any money, pay or remuneration for the labor or services of any alien or foreigner, excepting the person so performing such labor or services, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in a sum not less than five hundred dollars (\$500.00), and not more than five thousand dollars (\$5,000.00), and imprisoned in the county jail for not less than three (3) nor more than twelve (12) months, for each and every offense.

**27-4-116. Employee not liable for dishonored check; penalty.**

(a) No employer shall withhold money from an employee's wages for accepting a check on behalf of the employer which is not paid because the check is dishonored unless:

(i) The employer has provided written instructions as to procedures for accepting checks and the employee fails to follow the procedures; or

(ii) The employer reasonably believes that the employee has been a party to a fraud or other wrongdoing in taking a dishonored check.

(b) Every employer who violates this section is guilty of a misdemeanor punishable by a fine of not more than seven hundred fifty dollars (\$750.00).

## ARTICLE 2 - MINIMUM WAGES

### **27-4-201. Definitions.**

(a) As used in this act:

(i) "Wage" means compensation due to an employee by reason of his employment;

(ii) "Employ" includes to suffer or to permit to work;

(iii) "Employer" includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee;

(iv) "Employee" includes any individual employed by an employer but shall not include:

(A) Any individual employed in agriculture;

(B) Any individual employed in domestic service in or about a private home;

(C) Any individual employed in a bona fide executive, administrative, or professional capacity;

(D) Any individual employed by the United States, or by the state or any political subdivision thereof;

(E) Any individual engaged in the activities of an educational, charitable, religious, or nonprofit organization where the employer-employee relationship does not, in fact, exist or where the services rendered to such organization are on a voluntary basis;

(F) Repealed By Laws 2001, Ch. 1, § 2.

(G) Any individual employed as an outside salesman whose compensation is solely commission on sales;

(H) Any individual whose employment is driving an ambulance or other vehicle from time to time as necessity requires but who is on call at any time;

(J) Repealed By Laws 2001, Ch. 1, § 2.

(v) In this act, "shall" is used in an imperative sense and "may" is used in a permissive sense;

(vi) "Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which individuals are gainfully employed.

#### **27-4-202. Minimum wage rates.**

(a) Every employer shall pay to each of his or her employees wages at a rate of not less than five dollars and fifteen cents (\$5.15) per hour.

(b) Effective April 1, 2001 and thereafter, all employers who employ tipped employees shall not pay less than two dollars and thirteen cents (\$2.13) per hour to his tipped employees. Provided further, if the wage paid by the employer combined with the tips received by the employee during a given pay period does not equal at least the applicable minimum wage as prescribed in subsection (a) of this section, the employer shall pay the difference to the tipped employee. For the purposes of this act, all "tip" employees shall furnish monthly to their respective employers the daily record of tips required to be kept by "tip" employees under the laws of the United States and upon the forms prescribed by the internal revenue service of the United States treasury department. The daily record of tips shall constitute prima facie proof of the amount of tips received by the employee. Proof of a customary tipping percentage of sales or service shall also be an admissible form of proof of the amount of tips. A "tip" employee is one who customarily and regularly receives more than thirty dollars (\$30.00) a month in tips.

(c) In lieu of the rate prescribed in subsection (a) of this section, any employer may pay any employee who has not attained the age of twenty (20) years a wage which is not less than four dollars and twenty-five cents (\$4.25) per hour during the first ninety (90) consecutive days after the employee is initially employed by the employer. No employer may take any action to displace employees, including partial displacements such as reduction in hours, wages or employment benefits for purposes of hiring individuals at the wage authorized in this subsection.

#### **27-4-203. Record of work of employees required.**

Every employer subject to this act shall make, and keep for a period of not less than two (2) years in or about the premises wherein any employee is employed, a record of the name, address and occupation of each of his employees, the rate of pay, and the amount paid each pay period to each such employee, the hours worked each day and each work week by such employee.

**27-4-204. Liability for unpaid minimum wage; suit for collection.**

(a) Any employer who shall pay to any employee wages at a rate less than that prescribed in the foregoing section shall be liable in a civil action, to the employee in the amount of his or her unpaid minimum wage, and the aggrieved employee may bring a civil action for enforcement of this act and the recovery of his or her unpaid wages together with reasonable attorney fees and the costs of the action.

(b) Repealed by Laws 1990, ch. 71, § 2.

(c) Repealed by Laws 1990, ch. 71, § 2.

ARTICLE 3 - EQUAL PAY

**27-4-301. Definitions.**

(a) "Employee" means any individual employed by an employer.

(b) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee.

(c) "Employ" includes to suffer or permit to work.

(d) "Occupation" includes any industry, trade, business or branch thereof, or any employment or class of employment.

(e) "Director" means the director of the department of workforce services or his designee who is authorized to administer W.S. 27-4-301 through 27-4-304.

(f) "Person" includes one (1) or more individuals, partnerships, corporations, associations, legal representatives, trustees, trustees in bankruptcy or receivers.

**27-4-302. Prohibition on paying employees less for same work.**

(a) No employer shall discriminate, within the same establishment in which the employees are employed, between employees on the basis of gender by paying wages to employees at a rate less than the rate at which the employer pays wages to employees of the opposite gender for equal work on jobs the performance of which requires equal skill, effort and responsibility and which are performed under similar working conditions, except where the payment is made pursuant to:

(i) A seniority system;

(ii) A merit system;

(iii) A system which measures earning by quantity or quality of production; or

(iv) A differential based on any other factor other than gender.

**27-4-303. Liability of employer generally; liquidated damages; individual and group actions; assignment of claim.**

(a) An employer who violates the provisions of W.S. 27-4-302 shall be liable to the employee or employees affected in the amount of their unpaid wages, and in an additional equal amount as liquidated damages. Action to recover liability may be maintained in any court of competent jurisdiction by any one (1) or more employees for and in behalf of the employee or the employees and other employees similarly situated, and no agreement by the employee to work for less than the wage to which the employee is entitled under this act shall be a defense to any action.

(b) Upon receipt of a written claim by any employee of a violation of this act, the director shall process, investigate and determine the validity of the claim. The director shall have power to join various claims against the same employer in one (1) claim. If either the employer or employee is aggrieved by the director's determination, the aggrieved party may request a fair hearing. The aggrieved party must file a written request for hearing within fifteen (15) calendar days of receipt of the director's determination. Upon receipt of a timely submitted request for hearing, the director shall appoint an independent hearing officer to conduct the fair hearing between the employer

and employee. The fair hearing shall be conducted pursuant to the Wyoming Administrative Procedure Act. The hearing officer's determination shall constitute the director's final agency action. Upon a finding by the hearing officer that the claim is valid, the director shall order the employer to pay the amount of wages due plus an additional equal amount as liquidated damages. Where the employer failed to appeal an adverse determination to the district court and failed to comply with the director's order, the director shall refer the matter to the appropriate county attorney for enforcement of the director's order.

#### **27-4-304. Penalty for violations.**

Any employer who willfully violates any provision of this act, or who discharges or in any other manner discriminates against any employee because the employee has made any complaint to his employer, the director or any other person, or instituted, or caused to be instituted any proceeding under or related to this act, or has testified or is about to testify in the proceedings, shall, upon conviction by a court of competent jurisdiction, be punished by a fine of not more than five hundred dollars (\$500.00), by imprisonment for not more than six (6) months, or both.

### **ARTICLE 4 - PREVAILING WAGES**

#### **27-4-401. Short title.**

This act may be known and may be cited as the Wyoming Prevailing Wage Act of 1967.

#### **27-4-402. Definitions.**

(a) As used in this act:

(i) "Construction" includes construction, reconstruction, improvement, enlargement, alteration or repair of any public improvement fairly estimated to cost one hundred thousand dollars (\$100,000.00) or more;

(ii) "Director" shall mean the director of the department or his designee;

(iii) "Prevailing hourly rate of wages" means the wages paid generally to and the associated customary and usual

fringe benefit costs paid on behalf of workers engaged in work of a similar character;

(iv) Repealed By Laws 2001, Ch. 145, § 2.

(v) "Maintenance work" means the repair, but not the replacement, of existing facilities when the size, type or extent of the existing facilities is not thereby changed or increased;

(vi) "Public body" means the state of Wyoming or any officer, board or commission of the state;

(vii) "Public works" means all fixed works constructed for public use, whether or not done under public supervision or direction, or paid for wholly or in part out of public funds or assessment of property owners or rights users;

(viii) "Workmen" means laborers, workmen and mechanics employed directly upon the actual construction site by contractors or subcontractors or the public body;

(ix) "Locality" for public heavy, highway projects and public building projects means the following districts wherein the physical work is performed:

(A) For federal highway and construction projects:

(I) The entire state of Wyoming excluding any area defined as a metropolitan statistical area pursuant to 44 U.S.C. 3504(e)(3) and 31 U.S.C. 1104(d);

(II) Any area defined as a metropolitan statistical area pursuant to 44 U.S.C. 3504(e)(3) and 31 U.S.C. 1104(d).

(B) For state only heavy and highway projects, the entire state of Wyoming;

(C) For public building projects, the entire state of Wyoming.

(x) "Department" means the department of workforce services;

(xi) "This act" means W.S. 27-4-401 through 27-4-413.

**27-4-403. Prevailing hourly wage on public works projects; transportation of materials; exception for trainees.**

(a) Except as provided by subsection (c) of this section, not less than the prevailing hourly rate of wages for work of a similar character in the locality in which the work is performed, shall be paid to all workmen employed by or on behalf of any public body engaged in the construction of public works, exclusive of maintenance work. Only such workmen as are directly employed in actual construction work on the site of the building or construction job shall be deemed to be employed on public works.

(b) When the hauling of materials or equipment includes some phase of construction other than the mere transportation to the site of the construction, workmen engaged in the dual capacity shall be deemed employed directly on public works when such work shall be more than incidental to the regular duties of the hauling.

(c) Notwithstanding subsection (a) of this section, an employee employed pursuant to and registered in a training or an apprenticeship program approved by the United States department of labor or a training program approved by the department of transportation and the federal highway administration, except where specified by registered or approved training or apprenticeship programs, shall be paid as follows:

(i) During the first half of the training period, at a rate not less than sixty percent (60%) of the appropriate minimum journeyman's wage rate specified within the employment contract;

(ii) During the period commencing upon completion of the first half of the training program and ending upon completion of seventy-five percent (75%) of the program, at a rate not less than seventy-five percent (75%) of the appropriate minimum journeyman's wage rate specified within the employment contract;

(iii) During the remaining portion and until completion of the training program, at a rate not less than ninety percent (90%) of the appropriate minimum journeyman's wage rate specified within the employment contract.

**27-4-404. Director to investigate complaints; rules and regulations.**

Upon complaint of violation of this act or upon reasonable suspicion that a violation of this act has occurred, the director shall investigate, and shall institute actions for penalties herein prescribed when proven violations are considered by him to be intentional and willful in nature. The director may establish rules and regulations for the purpose of carrying out the purposes of this act.

**27-4-405. Duty of public authority to ascertain wage rate for public works; requirement as to call for bids.**

(a) Before any public body awards a contract for public works, it shall obtain from the department the prevailing hourly rate of wages in the locality in which the work is to be performed, for each craft or type of workman needed to execute the contract or project. The public body shall specify in the resolution or ordinance and in the call for bids for the contract, what the prevailing hourly rate of wages in the locality is for each craft or type of workman needed to execute the contract, and it shall be mandatory upon the contractor to whom the contract is awarded and upon any subcontractor under him, to pay not less than the specified rates to all workmen employed by them in the execution of the contract. The public body awarding the contract shall cause to be inserted in the contract a stipulation to the effect that not less than the prevailing hourly rate of wages as determined by the department pursuant to W.S. 27-4-406, or determined by the court on review, shall be paid to all workmen performing work under the contract. It shall also require in all the contractor's bonds that the contractor include such provision as will guarantee the faithful performance of the prevailing hourly wage clause as provided by the contract. The finding of the department specifying the prevailing hourly rate of wages in accordance with this subsection, shall be final for all purposes of the contract then being considered, unless reviewed under the provisions of this act. A public body doing public works directly shall comply with the prevailing hourly rate of wages portion of this subsection for each craft or type of workman so employed. In reviewing bids for public works contracts, the public body shall only award a bid preference in the percentage specified in W.S. 16-6-102(a) to any prospective contractor who participated, as certified by the department, in the department's wage survey for the period applicable to the contract being awarded.

(b) In determining prevailing hourly wage rates, the department shall ascertain and consider the applicable hourly wage rates established by collective bargaining agreements, if any, such hourly wage rates as are paid generally within the locality and the most current department hourly wage survey as adjusted in W.S. 27-4-406.

**27-4-406. Wage rate to be filed with director and mailed to employers and certain employees.**

(a) The department shall annually determine the prevailing hourly rate of wages within the state for all occupations, crafts or type of workers expected to be required for public works in the state. In carrying out this subsection, the department shall:

(i) Repealed By Laws 2007, Ch. 109, § 2.

(ii) Provide for a moving average wage adjustment as defined in rules and regulations of the department;

(iii) Customize a survey for the construction trades.

(b) Upon determining the prevailing hourly rate of wages under subsection (a) of this section, the department shall provide notice of its determination to:

(i) The general public by publication in a newspaper of general circulation within each locality for which a prevailing wage rate is determined; and

(ii) Each state agency and, upon written request, to any employer or other person. Notice under this paragraph shall be made promptly by certified mail.

**27-4-407. Objection to rates filed; hearing; ruling; judicial review.**

(a) At any time within fifteen (15) days after publication and notification of wage determinations under W.S. 27-4-406, any affected person may object in writing to the determination or part thereof by filing a written notice with the director, stating the specific grounds of the objection. The written objection shall be a public record and available for inspection by any person who may be affected.

(b) Within ten (10) days of the receipt of the objection, the director shall set a date for a hearing on the objection. The date for the hearing shall be within thirty (30) days of the receipt of the objection. Written notice of the time and place of the hearing shall be given to the objectors at least five (5) days prior to the date set for the hearing.

(c) The director may hear each written objection separately or consolidate for hearing any two (2) or more written objections. At the hearing the department shall introduce in evidence the methodology it used and any other facts which were considered at the time of the original determination which formed the basis for its determination. The department or any objectors thereafter may introduce evidence which is material to the issues. In no case shall the department be required to disclose any payroll data or survey data which was used in making a determination under W.S. 27-4-406 which can be used to identify any individual employer.

(d) Within ten (10) days of the conclusion of the hearing, the director shall rule on the written objections and make a final determination as the evidence warrants. Immediately upon a final determination, the director shall serve a certified copy upon on all parties to the proceedings by personal service or by registered mail.

(e) The final decision of the director of the prevailing wages in the locality shall be subject to review in accordance with the provisions of the Wyoming Administrative Procedure Act. All proceedings in any district court affecting a determination of the director shall have priority in hearing and determination over all other civil proceedings pending in the court, except election contests.

**27-4-408. Director's finding final unless reviewed; payments in excess of prevailing rate not prohibited; hours of work not limited.**

The findings of the director ascertaining and declaring the prevailing hourly rate of wages shall be final for the locality, unless reviewed as provided by law. Nothing in this act, however, shall be construed to prohibit the payment to any workman employed on any public work of a sum exceeding the prevailing hourly rate of wages. Nothing in this act shall be construed to limit the hours of work which may be performed by any workman in any particular period of time.

**27-4-409. Hearing procedure.**

The procedure before the director for hearing of objections shall be as provided in the Wyoming Administrative Procedure Act.

**27-4-410. Records of contractors.**

The contractor and each subcontractor or the officer of the public body in charge of the project shall keep an accurate record showing the names and occupations of all workmen employed by them, in connection with the public work, and showing also the actual wages paid to each of the workmen, which record shall be open at all reasonable hours to the inspection of the director or the public body awarding the contract, its officers and agents.

**27-4-411. Workman's right to recover difference in wages.**

Any workman who shall be paid for his services a sum less than the stipulated rates for work done under the contract, shall have a right of action for whatever difference there may be between the amount so paid and the rates provided by the contract, and shall be entitled to a reasonable attorney fee if successful.

**27-4-412. Penalty for violations.**

Any officer, agent or representative of any public body who willfully violates, or omits to comply with any of the provisions of this act, and any contractor or subcontractor, or agent or representative thereof, doing public work who intentionally or willfully neglects to keep an accurate record of the names, occupation and actual wages paid to each workman employed by him, in connection with the public work, or who intentionally or willfully refuses to allow access to same at any reasonable hour to any person authorized to inspect same under this act, or who intentionally or willfully has failed to pay the prevailing hourly rate of wages, shall be punished by a fine not exceeding five hundred dollars (\$500.00), or by imprisonment not exceeding six (6) months, or by both such fine and imprisonment when convicted by a court of competent jurisdiction.

**27-4-413. Inapplicability and exemptions.**

The provisions of W.S. 27-4-401 through 27-4-413, are not applicable where in conflict with federal statutes, rules or regulations relating to prevailing wage determinations. All work and labor performed by prisoners, patients and other inmates of state penal, correctional and charitable institutions and city or county jails, are exempt from the provisions of this act. All work and labor performed by workmen regularly employed by the public body are exempt from the provisions of W.S. 27-4-401 through 27-4-413 if the cost of construction does not exceed twenty-five thousand dollars (\$25,000.00).

## ARTICLE 5 - COLLECTION OF UNPAID WAGES

### **27-4-501. Definitions.**

(a) Whenever used in this act:

(i) "Employer" means any individual, partnership, association, joint stock company, trust, corporation, labor organization, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, employing any person;

(ii) "Employee" means any person who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee;

(iii) "Wages" means compensation, including fringe benefits, for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis, but does not include the value of vacation leave accrued at the date of termination if the written policies of the employer provide that accrued vacation is forfeited upon termination of employment and the written policies are acknowledged in writing by the employee;

(iv) "Department" means the department of workforce services;

(v) "This act" means W.S. 27-4-501 through 27-4-508.

### **27-4-502. Claims for unpaid wages; anti-retaliation.**

(a) The department is hereby empowered to take claims for unpaid wages under the provisions of W.S. 27-4-101 and 27-4-104. The department in taking a claim for unpaid wages as provided for in this act is not to exceed the maximum amount specified in

section 507(a)(4) of title 11, United States Code for claims arising out of bankruptcy or two (2) months wages for any claims not arising out of bankruptcy, per employee per wage claim.

(b) It shall be an unlawful employment practice for any employer to discharge, harass, discipline or in any other manner discriminate against any employee because the employee filed a claim for unpaid wages or made any other complaint or instituted or caused to be instituted any proceeding under or related to this act or testified, assisted or participated in any manner in an investigation, proceeding or hearing under this act. Any employer who violates the provisions of this subsection shall be liable for legal or equitable relief as may be appropriate to effectuate the purposes of this act including continued employment, reinstatement, promotion and the payment of wages lost and an additional equal amount as liquidated damages.

**27-4-503. Repealed By Laws 2001, Ch. 162, §2.**

**27-4-504. Investigation and determination of unpaid wage claims; hearing; orders; collection of unpaid wages.**

(a) Upon receipt of a written claim for unpaid wages, the department shall process, investigate and determine the validity of the claim.

(b) If either the employer or employee is aggrieved by the department's determination, the aggrieved party may request a fair hearing. The aggrieved party must file a written request for hearing within fifteen (15) calendar days of receipt of the department's determination. Upon receipt of a timely submitted request for hearing, the director shall appoint an independent hearing officer to conduct the fair hearing between the employer and employee. The fair hearing shall be conducted pursuant to the Wyoming Administrative Procedure Act. The hearing officer's determination shall constitute the director's final agency action.

(c) Upon a finding by the hearing officer that the unpaid wage claim is valid and either the time for judicial review has passed or the decision has been affirmed by final judicial review, the department shall order the employer to pay the amount of unpaid wages due. The department's order is not appealable or subject to judicial review. The department shall, with the assistance of the county attorney, initiate legal proceedings to collect the unpaid wages in the court having jurisdiction based on the total amount of unpaid wages due.

(d) An employer's failure to comply with a department's order is punishable by a civil fine not to exceed two hundred dollars (\$200.00) for each day the employer fails to comply with the order.

**27-4-505. County attorney to assist in collection of unpaid wages.**

In suits commenced under this act where the employer failed to comply with the department's order to pay the unpaid wages due, the department shall refer the matter to the appropriate county attorney for enforcement of the department's order.

**27-4-506. Limitation on attempts to make payment of wages collected; unclaimed wages.**

The department shall attempt for a period of not less than four (4) months from the date of the collection, to make payments of wages collected under this act to the persons entitled to the wages. Wages collected by the department which remain unclaimed for a period of more than four (4) months from the date of collection, shall be unclaimed property for purposes of W.S. 34-24-101 through 34-24-140.

**27-4-507. Tips and gratuities; unlawful to pay lower wage than that agreed upon; unlawful to fraudulently fail to pay fringe benefits agreed upon.**

(a) Tips and gratuities received by an employee or employees shall be the sole property of such employee or employees and not payable in whole or in part to the employer or any other person.

(b) It shall be unlawful for any employer to pay to any employee a lower wage, salary, or compensation than that provided for or agreed upon by (1) a collective bargaining agreement; (2) a contract between the employer and employee. In no event shall a collective bargaining agreement or a contract provide for compensation lower than any applicable existing statute of this state.

(c) Whenever an employer has agreed with any employee or his agent to provide or make payments to a health or welfare fund, pension fund, vacation plan, apprenticeship program, or other such employment benefits, it shall be unlawful for said

employer to willfully, or with intent to defraud, fail to make the payments required by the terms of any such agreement.

**27-4-508. Agreements for reciprocal enforcement; of claim to another state.**

(a) The department is hereby empowered to enter into agreements with agencies of other states or the federal government for the reciprocal enforcement and collection of wage claims if those states have a statute authorizing the same.

(b) In the event the department has taken a wage claim for collection and the employer against which the claim has been filed has moved to another state, the department may refer the claim with the written approval of the employee to the proper agency of the other state for collection, provided that there is in existence at the time a reciprocal agreement with the state for the collection of claims. The department is also authorized to accept claims from other states for collection of wages from employers who have removed to Wyoming.

CHAPTER 5 - HOURS OF LABOR

**27-5-101. State and county employees; overtime compensation.**

(a) The period of employment of state and county employees is eight (8) hours per day and forty (40) hours per week which constitute a lawful day's and week's work respectively.

(b) Except for employees whose maximum salary is remitted by statute, any state or county employee may be compensated at a rate one and one-half (1 1/2) times their regular compensation for each hour of service required to be performed in excess of eight (8) hours per day and forty (40) hours per week. If overtime compensation is paid pursuant to this section, no additional benefits, including compensatory time off, shall be allowed to the employee receiving the overtime compensation.

(c) Overtime compensation may only be authorized by the appropriate employing governing body subject to the following:

(i) For employees of the executive branch of state government, pursuant to rules and regulations of the human resources division of the department of administration and information. The human resources division shall specify what employees may receive overtime compensation, may require

notification of an intent to pay overtime compensation preceding rendering of the additional services, and may prescribe any other limitations deemed desirable;

(ii) For employees of the legislative branch of state government, pursuant to rules and regulations of the management council of the legislative service office or resolution of the legislature;

(iii) For employees of the judicial branch of state government, pursuant to rules and regulations of the Wyoming supreme court;

(iv) For county employees, pursuant to rules and regulations of the respective boards of county commissioners.

**27-5-102. Working day; mines generally.**

(a) The lawful working day in all underground mines is eight (8) hours per day, except:

(i) In case of emergency;

(ii) By mutual agreement between an employer and employee or employees' representative for a longer period of employment, but not to exceed sixteen (16) hours in any twenty-four (24) hour period.

**27-5-103. Repealed by Laws 1979, ch. 87, § 4.**

**27-5-104. Repealed by Laws 1979, ch. 87, § 4.**

**27-5-105. Repealed by Laws 1979, ch. 87, § 4.**

**27-5-106. Repealed by Laws 1979, ch. 87, § 4.**

**27-5-107. Repealed by Laws 1979, ch. 87, § 4.**

**27-5-108. Punitive action prohibited; penalty.**

Any employer who takes or threatens punitive action against any employee who refuses to work more than eight (8) hours in any twenty-four (24) hour period, except as provided by W.S. 27-5-102, is guilty of a misdemeanor and subject to the penalty provided by W.S. 27-5-110.

**27-5-109. Definitions.**

(a) As used in this act:

(i) "Emergency" means any condition which, if not corrected immediately, will jeopardize:

(A) Human life; or

(B) Property.

(ii) "Employer" means any owner, lessee, agent, operator or manager of any underground mine;

(iii) "Punitive action" means to discharge, suspend or reprimand or threaten to discharge, suspend or reprimand, or diminish or threaten to diminish in any way any person's position or salary for refusing to work more than eight (8) hours in any twenty-four (24) hour period, in other than an emergency situation;

(iv) "Working day" means eight (8) hours of employment in any twenty-four (24) hour period;

(v) "This act" means W.S. 27-5-102, 27-5-108, 27-5-109 and 27-5-110.

#### **27-5-110. Penalties.**

Any person who violates any of the provisions of this act is guilty of a misdemeanor and upon conviction, for each offense, shall be punished by a fine of not more than five hundred dollars (\$500.00), or by imprisonment for not more than six (6) months, or both.

#### **CHAPTER 6 - EMPLOYMENT OF WOMEN AND CHILDREN**

**27-6-101. Repealed by Laws 1996, ch. 8, § 1.**

**27-6-102. Repealed by Laws 1996, ch. 8, § 1.**

**27-6-103. Repealed by Laws 1996, ch. 8, § 1.**

**27-6-104. Repealed by Laws 1996, ch. 8, § 1.**

**27-6-105. Repealed by Laws 1996, ch. 8, § 1.**

**27-6-106. Repealed by Laws 1996, ch. 8, § 1.**

**27-6-107. Children; proof of age required; prohibited employment.**

It shall be unlawful for any person, firm or corporation to employ, permit or allow any child under the age of fourteen (14) years to work at any gainful occupation except farm, domestic or lawn and yard service. To ensure that a child is of proper age to be employed under this section, every person, firm or corporation employing a child under sixteen (16) years of age shall procure and have on file where the child is employed, a form of proof of age as required under W.S. 27-6-108; provided however that under no circumstances shall any child under sixteen (16) years of age be employed in any occupation listed in W.S. 27-6-112 or in any occupation declared by the department of workforce services to be hazardous for children under sixteen (16) years of age.

**27-6-108. Children; proof of age required; inspection and form.**

(a) The proof of age required by W.S. 27-6-107 shall be made available for inspection by any official charged with the enforcement of laws regulating the employment of minors. The acceptable forms of proof of age include the following:

- (i) A duly attested birth certificate;
- (ii) A properly prepared immigration and naturalization form I-9 showing the age of the child; or
- (iii) Any other document showing the age of the child as approved by the department of workforce services.

(b) Repealed By Laws 1997, ch. 182, § 2.

(c) Repealed By Laws 1997, ch. 182, § 2.

**27-6-109. Repealed By Laws 1997, ch. 182, § 2.**

**27-6-110. Children; hours of labor.**

(a) No child under sixteen (16) years of age shall be employed, permitted or suffered to work at any gainful occupation except farm or domestic service, for more than eight (8) hours in any twelve (12) hour period, or before the hour of five (5:00) o'clock a.m. or after the hour of ten (10:00)

o'clock p.m. on nights followed by a school day, or after the hour of twelve (12:00) midnight on days which are not followed by a school day.

(b) Provided however that children between the ages of fourteen (14) and sixteen (16) years who are not enrolled in school may be employed at any gainful occupation for an eight (8) hour period between the hours of five (5:00) a.m. and twelve (12:00) midnight of any one (1) day.

**27-6-111. Children; employment during school prohibited.**

No child under the age of sixteen (16) who is enrolled in any private or public school in the state of Wyoming shall be employed, permitted, or suffered to work at any occupation or service during the time that the classes of said school in which the said child is enrolled are in session.

**27-6-112. Children; prohibition of employment in certain occupations.**

(a) No child under sixteen (16) years of age shall be employed, permitted, or allowed to work at, in, or in connection with any of the following occupations, or at any of the following kinds of work except for the purpose of instruction in the public schools:

(i) The operation of or working on heavy construction equipment;

(ii) Employment requiring contact with or exposure to explosives or dangerous chemicals; or in any other occupation declared by the department of workforce services as hazardous, for the employment of children under sixteen (16) years of age.

(b) The department of workforce services is hereby authorized to declare any occupation hazardous for the employment of children under sixteen (16) years of age.

**27-6-113. Children; penalty for violations.**

(a) Any person employing any child or children in violation of the provisions of this chapter, or any child, subject hereto, who willfully and intentionally violates the provisions of this chapter, or any person who permits a violation, is guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than seven

hundred fifty dollars (\$750.00), imprisonment for not more than one hundred (100) days, or both.

(b) Nothing in this chapter applies to or prevents a child under fourteen (14) years of age to be employed in a nonhazardous occupation outside of school hours by his parents, grandparents or legal guardian, or by a business owned by his parents, grandparents or legal guardian.

**27-6-114. Employment of children under 16 in amusement, immoral or dangerous pursuits forbidden; exceptions.**

(a) It is unlawful for any person having the care, custody or control of any child under the age of sixteen (16) years to:

(i) Exhibit, use or employ that child:

(A) As an actor or performer in any concert hall or room where alcoholic liquors and malt beverages are sold or given away except as provided in subsection (b) of this section;

(B) For any illegal or immoral purpose;

(C) For any business or in any place, situation, exhibition or vocation injurious to the morals, health or safety of the child.

(ii) Cause, procure or encourage a child to engage in any practice specified in paragraph (a) (i) of this subsection.

(b) Nothing in this section applies to or prevents:

(i) The employment or use of any child as:

(A) A singer or musician in any church, school or academy;

(B) A dishwasher, busboy or delivery person in a place where alcoholic liquors and malt beverages are sold.

(ii) The teaching or learning of the science or practice of music;

(iii) The physical development of a child's body in any respectable gymnasium or natatorium;

(iv) Children from taking part in amateur entertainments or theatricals for charity, or not for profit, in schools, churches, settlement houses or boys' or girls' clubs.

**27-6-115. Repealed by Laws 1996, ch. 8, § 1.**

**27-6-116. Repealed by Laws 2019, ch. 137, § 2.**

## CHAPTER 7 - LABOR UNIONS; DISPUTES AND INJUNCTIONS; RIGHT TO WORK

**27-7-101. Policy of state; organized labor permitted.**

It is hereby declared to be the policy of the state of Wyoming that workers have the right to organize for the purpose of protecting the freedom of labor, and of bargaining collectively with employers of labor for acceptable terms and conditions of employment, and that in the exercise of the aforesaid rights, workers should be free from the interference, restraint or coercion of employers of labor, or their agents in any concerted activities for their mutual aid or protection.

**27-7-102. Issuance of injunctions limited by public policy.**

No court of the state of Wyoming shall have jurisdiction to issue any restraining order or temporary or permanent injunction contrary to the public policy declared in this chapter.

**27-7-103. Acts not subject to be enjoined.**

(a) No court of the state of Wyoming shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute from doing, whether singly or in concert, any of the following acts:

(i) Ceasing or refusing to perform any work or to remain in any relation of employment;

(ii) Becoming or remaining a member of any labor organization or of any employer organization;

(iii) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any

strike or unemployment benefits or insurance, or other moneys or things of value;

(iv) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any state;

(v) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(vi) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(vii) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(viii) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(ix) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise.

**27-7-104. Unlawful combination or conspiracy not grounds for injunction.**

No court of the state of Wyoming shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in W.S. 27-7-103.

**27-7-105. Hearing prerequisite for injunction; temporary restraining orders.**

No court of the state of Wyoming shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered. Provided, however, that nothing in this section shall prevent any such court from issuing a temporary restraining

order in accordance with the code of civil procedure, but any such restraining order shall provide that a hearing for a temporary injunction shall be held not later than three (3) days after the granting of such restraining order, and such restraining order shall not be effective beyond the date of such hearing for a temporary injunction.

**27-7-106. Injunction to include only specific acts.**

Every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the petition filed in such case and sustained by competent evidence adduced in open court.

**27-7-107. Limitation on liability of officers, members or organizations.**

No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the state of Wyoming for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or ratification of such acts after actual knowledge thereof.

**27-7-108. Right to work; definitions.**

(a) The term "labor organization" means any organization, or any agency or employee representation committee, plan or arrangement, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(b) The term "person" shall include a corporation, association, company, firm or labor organization, as well as a natural person.

**27-7-109. Right to work; membership in labor organization not required.**

No person is required to become or remain a member of any labor organization as a condition of employment or continuation of employment.

**27-7-110. Right to work; abstention from membership in labor organization not required.**

No person is required to abstain or refrain from membership in any labor organization as a condition of employment or continuation of employment.

**27-7-111. Right to work; payment or nonpayment of dues not required.**

No person is required to pay or refrain from paying any dues, fees, or other charges of any kind to any labor organization as a condition of employment or continuation of employment.

**27-7-112. Right to work; connection with or approval by labor organization not required.**

No person is required to have any connection with, or be recommended or approved by, or be cleared through, any labor organization as a condition of employment or continuation of employment.

**27-7-113. Right to work; misdemeanor to impose or try to impose prohibited requirements; civil liability.**

Any person who directly or indirectly places upon any other person any requirement or compulsion prohibited by this act, or who makes any agreement written or oral, express or implied, to do so, or who engages in any lockout, layoff, strike, work stoppage, slow down, picketing, boycott or other action or conduct, a purpose or effect of which is to impose upon any person, directly or indirectly, any requirement or compulsion prohibited by this act, is guilty of a misdemeanor and shall also be liable in damages to any person injured thereby.

**27-7-114. Right to work; injunction against prohibited conduct.**

Any person injured or threatened with injury by any action or conduct prohibited by this act shall, notwithstanding any other law to the contrary, be entitled to injunctive relief therefrom.

**27-7-115. Right to work; penalties.**

Any person convicted of a misdemeanor, as defined in this act, shall be punished by a fine not to exceed one thousand dollars

(\$1,000.00), or imprisonment in the county jail for a term not to exceed six (6) months, or both.

## CHAPTER 8 - EMPLOYMENT OFFICES AND AGENCIES

### **27-8-101. Licenses required; fees; posting.**

No person, firm or corporation shall open, operate or maintain in this state any employment office or agency for the purpose of furnishing employers with persons seeking employment at manual labor or in clerical, industrial, commercial or business pursuits, or for the purpose of securing employment for such described persons, or where a fee, commission or other consideration is charged or exacted or received from applicants either for employment or for help, without first obtaining a license for the same from the department of workforce services. The uniform fee for such license in cities of five thousand (5,000) inhabitants and over shall be twenty-five dollars (\$25.00) per annum, and in cities containing less than five thousand inhabitants, ten dollars (\$10.00) per annum. Every license shall contain a designation of the city, street and number of the building in which such office or agency is conducted, and such license together with a copy of this act shall be posted in a conspicuous place in each and every employment agency.

### **27-8-102. Termination and cost of license.**

All licenses issued after this act takes effect shall terminate on the thirty-first day of December of each year, and shall be paid for at the rate per year established in this act; provided, however, that no license for any fractional part of the year shall be issued for any sum less than one-third of the full annual rate, and that fractional months shall be counted as full months in every case.

### **27-8-103. Bond of licensee.**

The department of workforce services shall require with each application for a license a bond in the sum of five hundred dollars (\$500.00) with one (1) or more sureties to be approved by the department, and conditioned that the obligors will not violate any of the duties, terms, conditions, provisions or requirements of this act, or of other laws germane hereto. For any violation of the conditions of said bond, the department is authorized to commence and prosecute an action or actions on

said bond or bonds in the name of the state of Wyoming, through the attorney general or other proper prosecuting officer.

**27-8-104. Revocation of license; complaint; hearing.**

Whenever a written complaint shall be filed with the department of workforce services stating that any party so licensed as aforesaid, shall have violated any of the provisions of this act, the department shall give to said licensee notice of such complaint and appoint a day for a hearing thereon. If after a full and fair hearing, the department finds that the party licensed has violated any of the provisions of this act, the department is authorized to revoke the license theretofore issued to said party.

**27-8-105. Licensed agencies to maintain registers.**

It shall be the duty of every licensed agency to keep a register in which shall be entered with dates the name and address of every person who shall make application for help or servants, and the name and nature of such employment for which such help shall be wanted. Such register shall, at all reasonable hours be kept open to the inspection and examination of the department of workforce services.

**27-8-106. Registration fee.**

Where a registration fee is charged for receiving or filing application for employment of help, such fee shall in no case exceed the sum of one dollar (\$1.00), unless the salary or wages to be paid shall be more than three dollars (\$3.00) per day, in which case a fee of not more than two dollars (\$2.00) may be charged. A duplicate receipt shall be given for such fee, (one (1) copy to be kept by the employee and the other by the employer) in which receipt there shall be stated the name and address of the applicant, the date of such application, the amount of the fee, and the nature of the work to be done or the situation to be procured. In the event that the said applicant shall not obtain a situation or employment through such licensed agency, then after the expiration of three (3) days from the time of registration such licensed agency shall repay and return to such applicant, upon demand being made therefor, the full amount of the fee paid or deposited by said applicant to such licensed agency.

**27-8-107. Fraudulent notices or advertisements, and false information or promises prohibited.**

No licensed agency shall publish or cause to be published any false or fraudulent notice or advertisement, or give any false information or make any false promise concerning or relating to work or employment to anyone who shall apply for employment, and no licensed agency shall make any false entry in the register to be kept as herein provided.

**27-8-108. Duty of department to file complaints of violations; duty to enforce.**

It shall be the duty of the department of workforce services, when informed of any violation of this act, to file complaint of such violation with the attorney general or with the district attorney for the county in which such violation is alleged to have occurred and it shall be the duty of the official informed to institute proceedings for the enforcement of the penalties.

**27-8-109. Department of workforce services to account.**

All money or monies received from fees under this act shall be forthwith accounted for by the department of workforce services and turned over to the state treasurer, taking the state treasurer's receipt for the same. Such monies shall become a part of the state general fund.

**27-8-110. Free employment bureaus and university placement services excepted.**

Free employment bureaus and placement services of the University of Wyoming now or hereafter organized or established in this state, are not subject to this act.

**27-8-111. Penalty.**

Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00), or by imprisonment in the county jail for a period not exceeding six (6) months, or by both such fine and imprisonment as the court may direct.

CHAPTER 9 - FAIR EMPLOYMENT PRACTICES

**27-9-101. Short title.**

This article may be known and may be cited as the "Wyoming Fair Employment Practices Act of 1965."

**27-9-102. Definitions.**

(a) "Court" shall mean the district court in and for the judicial district of the state of Wyoming in which the asserted unfair employment practice occurred, or, if said court be not in session at that time, then any judge of said court.

(b) "Employer" shall mean the state of Wyoming or any political subdivision or board, commission, department, institution or school district thereof, and every other person employing two (2) or more employees within the state; but it does not mean religious organizations or associations. "Employer" shall include those divisions of the Wyoming military department that are authorized by federal authority.

(c) "Unfair employment practice" shall mean those practices specified as discriminatory or unfair in W.S. 27-9-105.

(d) As used in W.S. 27-9-101 through 27-9-106, "department" means the department of workforce services and the term "director" means the director of the department or his designee who is authorized to administer W.S. 27-9-101 through 27-9-106.

**27-9-103. Repealed by Laws 1990, ch. 63, § 3.**

**27-9-104. Powers and duties of department of employment.**

(a) The department shall have the following powers and duties:

(i) To call upon any state agency, institution, or employee, for advice, counsel, and assistance in the enforcement of this article;

(ii) To adopt, publish, amend, and rescind regulations consistent with and for the enforcement of this article;

(iii) To receive, investigate, and determine the validity of complaints alleging discrimination in employment or the existence of a discriminatory or unfair employment practice;

(iv) Repealed By Laws 2001, Ch. 162, § 2.

(v) For the purposes of all counseling, mediation or investigations the department shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any books, papers, documents or records that the department deems relevant or material to the inquiry or determination;

(vi) In case of disobedience to a subpoena the department may invoke the aid of any district court in the state in requiring the attendance and testimony of witnesses and the production of documentary evidence. Any failure to obey the order of the court may be punished by the court as a contempt of court;

(vii) To enter into agreements, exchange information and otherwise assist the equal employment opportunity commission, and to accept from the equal employment opportunity commission reimbursement for services rendered;

(viii) To enter into agreements, exchange information and otherwise assist the Wyoming military department to counsel, mediate, investigate and determine claims by members of the Wyoming national guard and employees of the military department. As used in this paragraph, "claims" means claims under this chapter or claims under the federal laws enforced by the equal employment opportunity commission, as applicable. The department shall promulgate rules that coordinate with the military department rules promulgated under W.S. 19-7-103(b)(xxv) to accomplish the powers and duties in this paragraph and W.S. 19-7-103(b)(xxv), consistent with equal employment opportunity commission rules and requirements and federal law.

(b) The department shall contract with an independent hearing officer to conduct any hearing under W.S. 27-9-101 through 27-9-106.

**27-9-105. Discriminatory and unfair employment practices enumerated; limitations.**

(a) It is a discriminatory or unfair employment practice:

(i) For an employer to refuse to hire, to discharge, to promote or demote, or to discriminate in matters of compensation or the terms, conditions or privileges of

employment against, a qualified disabled person or any person otherwise qualified, because of age, sex, race, creed, color, national origin, ancestry or pregnancy;

(ii) For a person, an employment agency, a labor organization, or its employees or members, to discriminate in matters of employment or membership against any person, otherwise qualified, because of age, sex, race, creed, color, national origin, ancestry or pregnancy, or a qualified disabled person;

(iii) For an employer to reduce the wage of any employee to comply with this chapter;

(iv) For an employer to require as a condition of employment that any employee or prospective employee use or refrain from using tobacco products outside the course of his employment, or otherwise to discriminate against any person in matters of compensation or the terms, conditions or privileges of employment on the basis of use or nonuse of tobacco products outside the course of his employment unless it is a bona fide occupational qualification that a person not use tobacco products outside the workplace. Nothing within this paragraph shall prohibit an employer from offering, imposing or having in effect a health, disability or life insurance policy distinguishing between employees for type or price of coverage based upon the use or nonuse of tobacco products if:

(A) Differential rates assessed employees reflect an actual differential cost to the employer; and

(B) Employers provide written notice to employees setting forth the differential rates imposed by insurance carriers.

(b) The prohibitions against discrimination based on age in this section apply only to persons at least forty (40) years of age.

(c) It is not a discriminatory practice for an employer, employment agency or labor organization to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension or insurance plan, which is not a subterfuge to evade the purposes of this chapter, except that no employee benefit plan shall excuse the failure to hire any individual, and no seniority system or employee benefit plan shall require or permit involuntary retirement of any individual

protected under this chapter because of age. Involuntary retirement is not prohibited if permitted under Title 29, United States Code § 631(c).

(d) As used in this section "qualified disabled person" means a disabled person who is capable of performing a particular job, or who would be capable of performing a particular job with reasonable accommodation to his disability.

**27-9-106. Filing of complaint; determination; appeal for hearing.**

(a) Any person claiming to be aggrieved by a discriminatory or unfair employment practice may, personally or through his attorney, make, sign and file with the department within six (6) months of the alleged violation a verified, written complaint in duplicate which shall state the name and address of the person, employer, employment agency or labor organization alleged to have committed the discriminatory or unfair employment practice, and which shall set forth the particulars of the claim and contain other information as shall be required by the department. The department shall investigate to determine the validity of the charges and issue a determination thereupon.

(b) Repealed By Laws 2001, Ch. 162, § 2.

(c) Repealed By Laws 2001, Ch. 162, § 2.

(d) Repealed By Laws 2001, Ch. 162, § 2.

(e) Repealed By Laws 2001, Ch. 162, § 2.

(f) Repealed By Laws 2001, Ch. 162, § 2.

(g) Repealed By Laws 2001, Ch. 162, § 2.

(h) Repealed By Laws 2001, Ch. 162, § 2.

(j) Repealed By Laws 2001, Ch. 162, § 2.

(k) If the employer, employment agency, labor organization or employee is aggrieved by the department's determination, the aggrieved party may request a fair hearing. The fair hearing shall be conducted pursuant to the Wyoming Administrative Procedure Act.

(m) The department shall issue an order within fourteen (14) days of the decision being rendered, requiring the employer, employment agency or labor organization to comply with the hearing officer's decision. If the employer, employment agency or labor organization does not timely appeal or comply with the order within thirty (30) days, the department may petition the appropriate district court for enforcement of the order.

(n) Where the hearing officer determines that the employer, employment agency or labor organization has engaged in any discriminatory or unfair employment practice as defined in this chapter, the hearing officer's decision may:

(i) Require the employer, employment agency or labor organization to cease and desist from the discriminatory or unfair practice;

(ii) Require remedial action which may include hiring, retaining, reinstating or upgrading of employees, referring of applications for employment by a respondent employment agency or the restoration to membership by a respondent labor organization;

(iii) Require the posting of notices, the making of reports as to the manner of compliance and any other relief that the hearing officer deems necessary and appropriate to make the complainant whole; or

(iv) Require the employer, employment agency or labor organization to pay backpay or front pay.

**27-9-107. Repealed By Laws 2001, Ch. 162, § 2.**

**27-9-108. Repealed By Laws 2001, Ch. 162, § 2.**

#### CHAPTER 10 - COLLECTIVE BARGAINING FOR FIRE FIGHTERS

**27-10-101. Definitions.**

(a) As used in this act the following terms shall, unless the context requires a different interpretation, have the following meanings:

(i) The term "fire fighters" shall mean the paid members of any regularly constituted fire department in any city, town or county within the state;

(ii) The term "corporate authorities" shall mean the council, commission or other proper officials of any city, town or county, whose duty or duties it is to establish wages, salaries, rates of pay, working conditions, and other conditions of employment of fire fighters.

**27-10-102. Right to collective bargaining and representation by bargaining agent.**

The fire fighters in any city, town or county shall have the right to bargain collectively with their respective cities, towns or counties and to be represented by a bargaining agent in such collective bargaining as to wages, rates of pay, working conditions and all other terms and conditions of employment.

**27-10-103. Selection of exclusive bargaining agent by majority; withdrawal of agent by majority.**

The organization selected by the majority of the fire fighters in any city, town or county shall be recognized as the sole and exclusive bargaining agent for all of the members of the department, unless and until recognition of such bargaining agent is withdrawn by vote of a majority of the fire fighters.

**27-10-104. Obligation of city, town or county to meet with agent after written notice; written contract of agreement.**

It shall be the obligation of the city, town or county, through its corporate authorities, to meet and confer in good faith with the representative or representatives of the bargaining agent within ten (10) days after receipt of written notice from said bargaining agent of the request for a meeting for collective bargaining purposes. This obligation shall include the duty to cause any agreement resulting from negotiations to be reduced to a written contract, provided that no such contract shall exceed the term of two (2) years.

**27-10-105. When issues to be submitted to arbitration.**

In the event that the bargaining agent and the corporate authorities are unable, within thirty (30) days from and including the date of their first meeting, to reach an agreement on a contract, any and all unresolved issues shall be submitted to arbitration.

**27-10-106. Selection of arbitrators.**

Within five (5) days from the expiration of the thirty (30) day period referred to in W.S. 27-10-105, the bargaining agent and the corporate authorities shall each select and name one (1) arbitrator and shall immediately thereafter notify each other in writing of the name and address of the person so selected. The two (2) arbitrators so selected and named shall, within ten (10) days from and after the expiration of the five (5) day period hereinbefore mentioned, agree upon and select and name a third arbitrator. If on the expiration of the period allowed therefor the arbitrators are unable to agree upon the selection of a third arbitrator, a district judge of the judicial district within which the city is located, shall select him upon request in writing from either the bargaining agent or the corporate authorities. The third arbitrator, whether selected as a result of agreement between the two (2) arbitrators previously selected, or selected by a district judge, shall act as chairman of the arbitration board.

**27-10-107. Arbitration procedure.**

Arbitration shall proceed pursuant to the provisions of the Uniform Arbitration Act.

**27-10-108. Collective bargaining contract; duration of contract.**

Any agreements actually negotiated between the bargaining agent and the corporate authorities either before, or within thirty (30) days after arbitration, shall constitute the collective bargaining contract governing fire fighters and said city, town or county for the period stated therein provided that term of such contract shall not exceed two (2) years.

**27-10-109. Notice of request for bargaining prior to day on which money can be appropriated.**

Whenever wages, rates of pay, or any other matter requiring appropriation of money by any city, town or county are included as matter of collective bargaining conducted under the provisions of this act, it is the obligation of the bargaining agent to serve written notice of request for collective bargaining on the corporate authorities at least one hundred twenty (120) days before the last day on which money can be appropriated by the city, town or county to cover the contract period which is the subject of the collective bargaining procedure.

## CHAPTER 11 - OCCUPATIONAL HEALTH AND SAFETY

### **27-11-101. Short title.**

This act shall be known and may be cited as the "Wyoming Occupational Health and Safety Act."

### **27-11-102. Declaration of policy.**

(a) It is hereby declared to be the policy of the state of Wyoming, that the primary purposes of this act are:

(i) That the prevention of accidents and occupational diseases and abiding by rules and regulations are the responsibility of both the employer and the employee;

(ii) To help and assist employers and employees in accident and occupational disease prevention through educational means, which shall be made available to all industries, businesses, employees, employee groups and associations;

(iii) The commission shall furnish consultant services on development of safety programs, procedures and training services for employees, supervisors and groups;

(iv) Commission members and its employees shall be neutral in labor management relations in carrying out the provisions of this act;

(v) Enforcement shall be used only to obtain compliance with the act and the rules and regulations established by the commission;

(vi) It is also the purpose of this act to include everyone who works in private or public employment or is self-employed; except that in the case of self-employed persons in agriculture, its purpose shall be limited to education.

### **27-11-103. Definitions.**

(a) As used in this act:

(i) "Commission" means the occupational health and safety commission;

(ii) "Department" means the department of workforce services of the state of Wyoming;

(iii) "Employee" means a person permitted to work by an employer in employment;

(iv) "Employer" means any individual or organization including the state and all its political subdivisions, which has in its employ one (1) or more individuals performing services for it in employment;

(v) "Employment" means all services for pay under a contract of hire;

(vi) "Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party;

(vii) "Person" means an individual, governmental agency, partnership, association, corporation, business, trust, receiver, trustee, legal representative or successor to any of the foregoing;

(viii) "Place of employment" means plant, premises, or any other place where directed by the employer or about which an employee is permitted to work;

(ix) "This act" means W.S. 27-11-101 through 27-11-114.

**27-11-104. Occupational health and safety commission; generally.**

(a) There is hereby created an occupational health and safety commission, hereinafter referred to as the "commission," which shall be composed of seven (7) members comprised of one (1) from the general field of employees or employee organizations; one (1) from the general field of business or industry; one (1) medical doctor; and four (4) from the public at large who shall all be appointed by the governor with the advice and consent of the senate without regard to political affiliation. The commission members shall choose the commission chairman annually.

(b) The governor may remove any commission member as provided in W.S. 9-1-202.

(c) The terms of the members shall be for six (6) years, except that of the initially appointed members: one (1) from the field of business, and one (1) from the field of labor shall serve six (6) years and one (1) medical doctor who shall serve for a term of six (6) years; and four (4) members from the public at large, one (1) to serve a term of two (2) years, one (1) to serve a term of three (3) years and one (1) to serve a term of four (4) years and one (1) to serve a term of five (5) years. The terms of the members shall terminate on the last day of February of the sixth year after their appointment, except as initially appointed. The governor shall appoint a member to fill a vacancy in accordance with W.S. 28-12-101.

(d) The commission shall hold at least four (4) regular meetings per year at such time and place as the chairman shall specify. Special meetings may be called by the chairman, and special meetings must be called by the chairman upon a written request by four (4) or more members. Four (4) members shall constitute a quorum. Rules, regulations and variances shall not be devised, formulated, adopted, amended or repealed except by majority vote of the entire membership of the commission. All other matters shall be decided by a majority vote of those in attendance and constituting a quorum.

(e) Repealed by Laws 1990, ch. 63, § 3.

(f) No member of the commission nor any member of any advisory committees hereinafter referred to, not otherwise in full-time employment of the state, shall receive any salary but shall receive the same per diem, mileage and expense allowance while attending and traveling to and from meetings as officers or employees of the state are allowed.

(g) The commission shall contract with an independent hearing officer to hear all contests of notice of violation, proposed penalty or abatement periods for violations, as written in the notice of violation received by the employer. The hearing officer shall be a qualified member of the bar of Wyoming and may not be an employee of the office of the attorney general or the department or a member of the commission:

(i) The employer shall have the right to contest the alleged violation, abatement period or proposed penalty for violation as written in the notice of violation;

(ii) The employee or the employee representative shall have the right to contest the abatement period as stated

in the notice of violation and to participate in any hearings concerning such abatement period;

(iii) The hearing shall be held as soon after receiving the letter of contest and in a city as near the site of occurrence as is practicable;

(iv) All hearings shall be conducted pursuant to the Wyoming Administrative Procedure Act. The hearing officers have the powers specified in W.S. 16-3-112(b). The hearing officer shall make written findings of fact and conclusions of law in each contested case;

(v) The hearing officer shall recommend a decision to the commission. The decision of the commission is the final administrative decision. A party adversely affected by a decision of the commission may appeal to the district court in the county where the violation allegedly occurred.

(h) Effective July 1, 1979, appointments and terms of commission members shall be in accordance with W.S. 28-12-101 through 28-12-103.

**27-11-105. Occupational health and safety commission; powers and duties of commission and department.**

(a) The department, in consultation with the commission, has the powers and is hereby charged with the duties:

(i) Repealed by Laws 1990, ch. 63, §§ 2, 3.

(ii) To develop and formulate, a comprehensive program for the prevention, control and abatement of unsafe and unhealthy working conditions and to direct state agencies and their staffs to compile statistics, do research, do investigation and any other duties where practical, possible and not inconsistent with the purposes of this act;

(iii) To assure that all agencies and their staffs shall comply with directives of the commission in regard to occupational health and safety;

(iv) To cooperate, as specified in W.S. 27-2-105 and in section 24(a) of Public Law 91-596 in the collection, compilation and analysis of data relative to the occurrence of occupational injuries and illnesses;

(v) To compile statistics and to require such reports as may be needed to aid in accomplishing this purpose;

(vi) To do research on the causes and methods of preventing occupational diseases and accidents;

(vii) To promote accident prevention and occupational disease prevention programs and to provide consultative and educational assistance;

(viii) Repealed by Laws 1990, ch. 63, §§ 2, 3.

(ix) Repealed by Laws 1990, ch. 63, §§ 2, 3.

(x) To select or give emphasis to those areas and segments of the business and industrial community which need the concentrated attention and assistance of the commission and its employees;

(xi) Repealed by Laws 1990, ch. 63, §§ 2, 3.

(xii) To enter into agreements with agencies of the United States government for assistance, cooperation and enforcement of safety laws and to accept funds from such federal agencies for the purpose of carrying out any of the provisions of this act;

(xiii) Repealed by Laws 1990, ch. 63, §§ 2, 3.

(xiv) Repealed by Laws 1990, ch. 63, §§ 2, 3.

(xv) Repealed by Laws 1990, ch. 63, §§ 2, 3.

(xvi) To institute or cause to be instituted appropriate civil or criminal actions to enforce the provisions of this act and the rules and regulations promulgated under this act.

(b) The commission has the following powers and duties:

(i) To prescribe rules of practice and procedure;

(ii) To promulgate, devise, formulate, adopt, amend, and repeal rules and regulations and to appoint advisory committees equally composed of employers and employees from the industries involved to assist and advise the commission:

(A) All rules and regulations shall be reviewed as needed and revised as necessary. Such review would be under the same procedures as the original establishment of the rules and regulations;

(B) The standards set by rule and regulation by the commission shall take into consideration recognized and accepted national codes, recognized industrial standards or similar, in whole or in part, but shall not be limited exclusively to these;

(C) The rules and regulations shall not be more stringent than corresponding federal rules and regulations. If there are no corresponding federal rules or regulations the commission may adopt applicable state rules and regulations.

(iii) To exempt from coverage under this act any trade or business when the commission deems federal or other authority is adequate and dual or overlapping authority would result. If any trade or business is exempted under this section the commission shall file a detailed report with the governor showing the reasons for such exemption together with an affirmance by the federal or other authority that the coverage is adequate;

(iv) To require that any rules and regulations of the commission be a part of construction, maintenance or servicing contracts or other contracts as the commission may determine;

(v) To consider and grant in accordance with and subject to the terms and limitations provided in W.S. 27-11-111, variances from standards, rules and regulations promulgated under this act;

(vi) To require the employer to be charged with the following duties:

(A) Each employer shall furnish to his employees, a place of employment and employment which are free from recognized hazards that are causing or that are likely to cause death or serious physical harm;

(B) Each employer shall comply with occupational safety and health standards, rules, regulations and orders issued pursuant to this act.

(vii) To require the employee to be charged with the following duty, each employee shall comply with occupational safety and health standards and all rules, regulations and orders issued pursuant to this act which are applicable to his own actions and conduct.

**27-11-106. Enforcement and administration.**

(a) The department shall enforce and administer this act and the rules, regulations and orders promulgated and issued under this act. The commission shall have authority to hold hearings for the promulgation of rules and regulations in accordance with the Wyoming Administrative Procedure Act. In any case that goes uncontested the commission may after opportunity to show cause, enter an order of final disposition which may be enforced by any district court.

(b) If an imminent danger to health or safety exists, whether it is in a specific industry where rules and regulations are in effect or not, the commission or any employee of the department so authorized is hereby empowered to direct the person where such imminent danger to health and safety exists to cease operations immediately in order to eliminate such danger to health or safety. If such person does not cease operations so as to eliminate such danger, the commission, its chairman, or any employee of the department so authorized, may, with the concurrence of the attorney general, bring a civil suit in the name of the state in the district court of the county where such danger exists, or in the United States district court for Wyoming (if it otherwise has jurisdiction), to restrain such person from continuing such operations where an imminent danger to health or safety exists.

(c) In contested cases where no appeal has been taken from the decision of the commission within the time provided for such an appeal, the commission shall adopt the decision and order the department and employer to act in accordance with the decision. Any state district court may enforce commission orders issued in that county after a hearing where no appeal has been taken. The United States district court for Wyoming (if it otherwise has jurisdiction) may also enforce any commission order.

(d) Any suit, action or appeal involving this act or rule, regulation or order of the commission, shall be advanced for trial and determined as expeditiously as feasible and no postponement or continuance shall be granted unless deemed imperative by the court.

**27-11-107. Penalty.**

(a) Any employer willfully and knowingly violating any of the provisions of this act, any health and safety standards, rules or regulations promulgated under this act or any existing rule or regulation governing the conditions of employment promulgated by the commission, which causes death of an employee, upon conviction, shall be punished by a fine of not more than ten thousand dollars (\$10,000.00) or by imprisonment of not more than six (6) months or both. If the conviction is for a violation committed after a first conviction of the same person, punishment shall be by a fine of not more than twenty thousand dollars (\$20,000.00) or by imprisonment for not more than one (1) year, or by both.

(b) Any employer willfully and knowingly violating any of the provisions of this act, any safety and health standards, rules or regulations promulgated under this act or any existing rule or regulation governing the conditions of employment promulgated by the commission may be assessed a civil penalty in an amount determined by the commission pursuant to subsection (j) of this section for each violation.

(c) Any employer violating any provision of this act, any health and safety standards or rules and regulations promulgated under this act or any existing rule or regulation governing the conditions of employment promulgated by the commission, the violation specifically determined to be of a serious nature, shall be assessed a civil penalty in an amount determined by the commission pursuant to subsection (j) of this section.

(d) Any employer violating any provision of this act, any health and safety standards or rules and regulations promulgated under this act or any existing rule or regulation governing the conditions of employment promulgated by the commission, the violation determined not to be of a serious nature, may be assessed a civil penalty in an amount determined by the commission pursuant to subsection (j) of this section for each offense as noted in the notice of violation.

(e) Whoever knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this act, upon conviction, shall be punished by a fine of not more than ten thousand dollars

(\$10,000.00) or by imprisonment for not more than six (6) months, or both.

(f) Any employer who violates any of the posting requirements, as prescribed under the provisions of this act, may be assessed a civil penalty in an amount determined by the commission pursuant to subsection (j) of this section for each violation.

(g) Any employer who fails to correct a violation for which a notice of violation has been issued, which notice of violation is not contested or appealed under W.S. 27-11-104 and 27-11-106, initiated by the employer, may be assessed a civil penalty in an amount determined by the commission pursuant to subsection (j) of this section for each day the failure or violation continues.

(h) Payment of all fines and penalties imposed under this section shall be made to the county treasurer of the county in which the violation occurs to be credited to the county school fund.

(j) Unless otherwise specified in this section, the commission shall through rule and regulation set the civil penalty amounts to be imposed under subsections (b) through (d), (f) and (g) of this section. The amount of the civil penalty shall be no greater than the corresponding federal penalty for the specified violation as promulgated under the Occupational Safety and Health Act, 29 U.S.C. § 666, and shall include any adjustments made to the penalty under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461.

**27-11-108. Right of entry and inspection; consultation with employees; penalty for giving advance notice.**

(a) Any department authorized employee or representative of the department may enter and inspect any property, premises or place, except private residences where persons are employed, at any reasonable time to investigate health and safety conditions and compliance with safety and health laws, rules and regulations. No person conducting an inspection under this subsection shall unreasonably interfere with the operations, business or work of any employer or employee. At the opening conference, immediately before an inspection commences, the department shall notify employers in writing of their right to refuse its employees entry to investigate health and safety

conditions unless the employees have a warrant issued by a court of competent jurisdiction.

(b) A representative or representatives of the employer and a representative or representatives authorized by the employees shall be given an opportunity to accompany any duly authorized employee or representative of the department before or during the physical inspection of any workplace for the purpose of aiding such inspection. Where there is no authorized employee representative, any duly authorized employee or representative of the department shall consult with a reasonable number of employees concerning matters of safety and health.

(c) Any person who gives advance notice of any inspection, investigation or response to a complaint to be conducted under the authority, and for the purpose of enforcement of this act, without the consent of the department shall, upon conviction, be guilty of a misdemeanor and shall be punished by a fine of not more than ten thousand dollars (\$10,000.00) or by imprisonment for not more than six (6) months or both.

**27-11-109. Investigation of violations; proceedings; confidentiality of trade secrets.**

(a) The commission or chairman, in their discretion, may make such public or private investigations as they deem necessary to determine whether any person or employer has violated, or is about to violate, any provision of this act, or any rules, regulation, or order hereunder, or to aid in the enforcement of this act, or in the prescribing of rules and regulations hereunder, may require or permit any person to file a statement in writing, under oath or otherwise, as they determine, as to all the facts and circumstances concerning the matter to be investigated and may publish information concerning any violation of this act, rule, regulation or order hereunder.

(b) For the purpose of any investigation or proceeding under this act any member of the commission or any officer designated by the chairman may administer oaths and affirmations, subpoena witnesses, and compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records, which the commission or its chairman deem relevant or material to the inquiry.

(c) In case of contumacy by or refusal to obey a subpoena issued to any person, any Wyoming district court, upon

application by the commission or its chairman, may issue to the person an order requiring him to appear before the commission or the officer designated by them, to produce documentary evidence if so ordered, or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as contempt of court.

(d) When the commission or the department shall discover or have reason to believe that any provision of the employment health and safety laws or any rule is being violated, written notice shall be served upon the person violating the same to comply with the notice within a reasonable time, to be fixed in the notice, which notice shall specify the time to be not more than thirty (30) days, except that such time may be extended for good cause shown. The notice shall specify the violation and shall be posted at or near the site of violation for a period of three (3) days or until the violation is abated, whichever is longer:

(i) In fixing the time in such notice and any extension of time, consideration shall be given to the nature of the failure or defect constituting the violation, the probable danger thereof, and the probable length of time and amount of labor required to correct the violation;

(ii) If the violation continues after the expiration of the period of time fixed in the notice, including any such extension of time, enforcement in this type of case will be sought by the commission or by the department by filing a complaint and seeking a cease and desist order in the district court;

(iii) Proposed penalty amounts shall be clearly stated as part of the notice of violation, but shall be a separate document which need not be posted with the notice of violation;

(iv) Nothing in paragraphs (i) and (ii) of this subsection shall be applicable to W.S. 27-11-106(b).

(e) No employer shall discharge or in any manner discriminate against any employee because such employee has filed any notice of complaint or has instituted, or caused to be instituted, any proceeding under or related to this act or has testified or is about to testify in any such proceeding, or because of the exercise by such employee on behalf of himself or others any right afforded by this act.

(f) All information reported or likewise obtained by the department in connection with any inspection or investigation under this act which contains or which might reveal a trade secret shall be considered as confidential for the purpose of this act: except that such information may be disclosed to other representatives of the department concerned with carrying out this act or when relevant in any proceedings as required under this act. In any such proceedings, the department, the commission, the review board or the court shall issue orders as may be appropriate to protect the confidentiality of trade secrets.

**27-11-110. Injunction; bond; effect on sovereign immunity.**

Whenever it appears to the commission that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act, or any rule, regulation, or order hereunder, the commission, its chairman, or any person so authorized by the commission may bring an action in the name of the state in the district court of any county in which the violation occurred or where it appears a violation may occur to enjoin the acts or practices to enforce compliance with this act, rule or regulation or order hereunder. Upon a proper showing a permanent or temporary injunction or restraining order shall be granted. This action shall not exempt the person so enjoined from penalty, as provided in W.S. 27-11-107, or from enforcement of any other section of the act. The court may not require the commission, its chairman, or any person authorized to bring such action, to post a bond for more than fifty thousand dollars (\$50,000.00), and the state of Wyoming does hereby waive sovereign immunity up to and including the amount of the bond the court requires posted in each suit but in no event shall such waiver be more than fifty thousand dollars (\$50,000.00) for liability incurred due to wrongfully causing a court to order a person to cease operating his business pursuant to this act.

**27-11-111. Variances.**

(a) Any person affected by this act may request a variance to any standard, rule or regulation promulgated under this act.

(b) The commission or department shall be empowered to issue a temporary variance when the employer establishes that:

(i) He is unable to comply with the standard, rule or regulation because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance;

(ii) He has taken all available steps to safeguard his employees against the hazards covered by the standard, rule or regulation;

(iii) He has an effective program for coming into compliance with the standard, rule or regulation as quickly as practical; and

(iv) He has advised his employees of his request for the variance.

(c) A variance may be granted when it shall be determined, after opportunity for an inspection and a hearing, that the employer requesting the variance has demonstrated by a sufficient amount of evidence that the conditions, practices, means, methods, operations or processes used or proposed to be used by the employer will provide employment and a place of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard, rule or regulation.

(d) Procedures for the issuing of a variance are set by rule as provided in W.S. 27-11-105.

**27-11-112. Investigation of health and safety charges and complaints.**

The department of workforce services shall investigate charges and complaints of violation of the laws of this state with respect to health and safety and any order, rules, or regulations of the commission made in connection therewith and report them to the commission.

**27-11-113. Physical examination of employees; religious exemption.**

Any employer may require an employee to submit to a physical examination before employment or at any time during employment, and shall provide for a physical examination, as deemed necessary, due to exposure or contact with hazards or environmental conditions which may be detrimental to the health of the employee. Nothing in this or any other provision of this

act shall be deemed to authorize or require medical examination, immunization or treatment for those who object thereto on religious grounds, except where such is necessary for the protection of the health or safety of others. The results of such examinations shall be furnished only to the department, the employer and, upon request, to the employee and the employee's physician. The employer shall pay for such examination.

**27-11-114. Limitations.**

(a) Nothing in this act shall:

(i) Limit or restrict the present jurisdiction or authority of the public service commission except employee safety and occupational health;

(ii) Supersede or limit the present authority for making rules and regulations pertaining to coal mines;

(iii) Affect the rules and regulations now in force until the commission shall adopt rules and regulations pertaining to noncoal mines and until the same shall become effective;

(iv) Affect the appointment of the state mine inspector and deputy mine inspectors;

(v) Affect the powers and duties of the state mine inspector and deputy mine inspectors as to their present powers and duties until July 1, 1970.

**CHAPTER 12 - WORKER'S COMPENSATION**

**27-12-101. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.**

**27-12-102. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.**

**27-12-103. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.**

**27-12-104. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.**

**27-12-105. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.**

**27-12-106. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.**

**27-12-107. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.**

27-12-108. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-109. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-110. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-201. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-202. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-203. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-204. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-205. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-206. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-207. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-208. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-301. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-302. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-303. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-304. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-305. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-306. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-307. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-401. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-402. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-403. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-404. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-405. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-406. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-407. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-408. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-409. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-410. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-411. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-412. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-501. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-502. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-503. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-504. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-505. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-506. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-507. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-508. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-509. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-510. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-511. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-512. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-601. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-602. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-603. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-604. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-605. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-606. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-607. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-608. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-609. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-610. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-611. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-612. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-613. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-614. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-615. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-616. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-617. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-618. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-701. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-702. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-703. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-704. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-705. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-706. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-801. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-802. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-803. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-804. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

27-12-805. Repealed by Laws 1986, Sp. Sess., ch. 3, § 3.

## CHAPTER 13 - DISPLACED WORKER EDUCATION AND TRAINING

### **27-13-101. Definitions.**

(a) As used in this act:

(i) "Demand occupation" means an occupation in a labor market area in which the director determines that work opportunities are available and that there is not a surplus of qualified applicants;

(ii) "Director" means the director of the division;

(iii) "Displaced workers" means:

(A) Those workers unemployed due to plant closures or substantial plant layoffs;

(B) Workers eligible for retraining under the federal trade adjustment assistance act;

(C) Unemployed workers otherwise affected by economic or industrial changes which have resulted in loss or reduction of their employment opportunities, as determined by the director.

(iv) "Division" means the department of workforce services;

(v) "Local education or training agency" means:

(A) A board of trustees of a school district;

(B) A public or private educational institution or agency having administrative control and direction of a vocational education program;

(C) A board of a community college district; or

(D) A board of cooperative educational services.

(vi) "Program" means:

(A) "Occupational transfer programs and retraining services" including:

(I) Services necessary to assist displaced workers in identifying those skills they possess which are transferable to other related demand occupations;

(II) Education and training activities necessary to prepare displaced workers for occupations to which their preexisting skills are readily transferable.

(B) "Education and training program" including a course or program of instruction which:

(I) Relates to an occupation or skill for which there are, or are expected to be in the immediate future, reasonable employment opportunities in the labor market area or areas in the state in which the participating individual intends to seek work and for which there is not a surplus of workers with requisite skills in that area, as determined by the director;

(II) Ordinarily can be completed within one (1) year and is intended for the primary purpose of enabling participants to obtain immediate employment in a demand occupation. The training shall not be primarily intended to meet the requirements of any degree from a college, community college or university.

(vii) "This act" means W.S. 27-13-101 through 27-13-103.

**27-13-102. Powers and duties; rules and regulations.**

(a) The division shall, in conjunction with the department of education, the business council, the department of workforce services, the workforce development council, the University of Wyoming and the community college commission, establish and maintain a plan to implement the occupational transfer and retraining programs and services for displaced workers created under this act. The plan shall designate:

(i) Responsibilities of state agencies in administering this act;

(ii) Procedures for coordination between the state and local agencies and existing employment, training, education and other occupationally related activities and resources in the state;

(iii) Procedures to encourage involvement on the part of labor, management, local government and local education and training agencies in the establishment, operation and ongoing direction of programs to assist displaced workers.

(b) The division shall:

(i) Identify statutes, rules and regulations which inhibit the implementation of programs under this act; and

(ii) Recommend modifications to or waivers of statutes, rules and regulations to permit design of cost-effective programs under this act;

(iii) Repealed By Laws 2014, Ch. 7, § 3.

(c) The director may enter into contracts and agreements with local education or training agencies to implement this act.

(d) The governor, in consultation with the director, may promulgate reasonable rules and regulations to implement this act.

#### **27-13-103. Programs; funding.**

(a) Programs established under this act shall be funded to the maximum extent feasible through existing federal, state and local resources, both public and private. The plan required under W.S. 27-13-102(a) shall include an estimate of funds available from sources other than from the state.

(b) The division may, to the extent funded by the legislature, establish and maintain programs under this act.

### **CHAPTER 14 - WORKER'S COMPENSATION**

#### **ARTICLE 1 - GENERALLY**

#### **27-14-101. Short title; statement of intent.**

(a) This act may be cited as the "Wyoming Worker's Compensation Act".

(b) It is the intent of the legislature in creating the Wyoming worker's compensation division that the laws administered by it to provide a worker's benefit system be interpreted to assure the quick and efficient delivery of

indemnity and medical benefits to injured and disabled workers at a reasonable cost to the employers who are subject to the Worker's Compensation Act. It is the specific intent of the legislature that benefit claims cases be decided on their merits and that the common law rule of "liberal construction" based on the supposed "remedial" basis of workers' benefits legislation shall not apply in these cases. The worker's benefit system in Wyoming is based on a mutual renunciation of common law rights and defenses by employers and employees alike. Accordingly, the legislature declares that the Worker's Compensation Act is not remedial in any sense and is not to be given a broad liberal construction in favor of any party.

#### **27-14-102. Definitions.**

(a) As used in this act:

(i) "Artificial replacement" means the addition of an artificial part to the human body which replaces a part lost, damaged or in need of correction, excluding any personal item, artificial heart, automobile or the remodeling of an automobile or other physical structure or any item of furniture except as provided by rule and regulation of the division. If a wheelchair is approved by the division for use during impairment or disability, "artificial replacement" may include necessary cost effective physical structures such as ramps, automobile devices or remodeling, bars and rails, and other necessary equipment or devices aiding the body during impairment or disability, subject to the following criteria:

(A) A physical structure for which artificial replacement is claimed shall be the primary residence of the claimant;

(B) Only one (1) automobile at a time shall be eligible for devices or remodeling under this paragraph.

(ii) "Ascertainable loss" means that point in time in which it is apparent that permanent physical impairment has resulted from a compensable injury, the extent of the physical impairment due to the injury can be determined and the physical impairment will not substantially improve or deteriorate because of the injury;

(iii) "Child" means any unmarried minor or physically or mentally incapacitated individual receiving court ordered support or substantially all of his financial support from the

employee at the time of injury or death of the employee and includes an adopted child, stepchild, posthumous child or acknowledged illegitimate child but does not include a parent or spouse of the employee;

(iv) "Delinquent payment" means any payment required of an employer under this act which is not paid within thirty (30) days after the date due as specified by this act;

(v) "Administrator" means the administrator of the division;

(vi) "Division" means the worker's compensation division within the department of workforce services;

(vii) "Employee" means any person engaged in any extra hazardous employment under any appointment, contract of hire or apprenticeship, express or implied, oral or written, and includes student learners engaged in any extra hazardous employment, legally employed minors, aliens authorized to work by the United States department of justice, office of citizenship and immigration services, and aliens whom the employer reasonably believes, at the date of hire and the date of injury based upon documentation in the employer's possession, to be authorized to work by the United States department of justice, office of citizenship and immigration services. "Employee" does not include:

(A) Any individual whose employment is determined to be casual labor;

(B) A sole proprietor or a partner of a business partnership unless coverage is elected pursuant to W.S. 27-14-108(k);

(C) An officer of a corporation unless coverage is elected pursuant to W.S. 27-14-108(k);

(D) Any individual engaged as an independent contractor;

(E) A spouse or dependent of an employer living in the employer's household;

(F) A professional athlete, except as provided in W.S. 27-14-108(q);

- (G) An employee of a private household;
- (H) A private duty nurse engaged by a private party;
- (J) An employee of the federal government;
- (K) Any volunteer unless covered pursuant to W.S. 27-14-108(e);
- (M) Any adult or juvenile prisoner or probationer unless covered pursuant to W.S. 27-14-108(d)(ix);
- (N) An elected public official or an appointed member of any governmental board or commission, except for a duly elected or appointed county officer or a member of the legislature;
- (O) The owner and operator of a motor vehicle which is leased or contracted with driver to a for-hire common or contract carrier. The owner-operator shall not be an employee for purposes of this act if he performs the service pursuant to a contract which provides that the owner-operator shall not be treated as an employee for purposes of the Federal Insurance Contributions Act, the Social Security Act, the Federal Unemployment Tax Act and income tax withholding at source;
- (P) A member of a limited liability company unless coverage is elected pursuant to W.S. 27-14-108(k);
- (Q) A foster parent providing foster care services for the department of family services or for a certified child placement agency;
- (R) An individual providing child day care or babysitting services, whose wages are subsidized or paid in whole or in part by the Wyoming department of family services. This exclusion from coverage does not exclude from coverage an individual providing child day care or babysitting services as an employee of any individual or entity other than the Wyoming department of family services;
- (S) A responsible broker, associate broker or salesperson licensed under the Real Estate License Act, W.S. 33-28-101 through 33-28-401, who receives compensation for the services identified in W.S. 33-28-102(b)(xlv). The receipt of

additional compensation for the performance of other real estate related services shall not negate this exemption.

(viii) "Employer" means any person or entity employing an employee engaged in any extrahazardous occupation or electing coverage under W.S. 27-14-108(j) or (k) and at least one (1) of whose employees is described in W.S. 27-14-301. "Employer" includes:

(A) Repealed By Laws 1999, ch. 46, § 2.

(B) The governmental entity for which recipients of public assistance perform work if that work does not otherwise establish a covered employer and employee relationship;

(C) The governmental entity for which volunteers perform the specified volunteer activities under W.S. 27-14-108(e);

(D) The governmental entity for which prisoners and probationers work or perform community service under W.S. 27-14-108(d)(ix) or (xv);

(E) An owner-operator of a mine at which any mine rescue operation or training occurs;

(F) A temporary service contractor for a temporary worker;

(G) Any person, contractor, firm, association or corporation otherwise qualifying under this paragraph as an employer and who utilizes the services of a worker furnished by another contractor, joint employer, firm, association, person or corporation other than a temporary service contractor, joint employer, independent contractor or owner and operator excluded as an employee under subparagraph (a)(vii)(O) of this section;

(H) Any employer otherwise qualifying under this paragraph as an employer and participating in a school-to-work program approved by the department of workforce services, any local school district board of trustees, community college district board of trustees or the department of education, and the employer previously elected coverage in writing pursuant to W.S. 27-14-108(m);

(J) Any corporation, limited liability company, partnership or sole proprietorship electing coverage pursuant to W.S. 27-14-108(k), whether or not the corporation, limited liability company, partnership or sole proprietorship has other employees covered by this act;

(K) A collective group of county governments or county governmental entities as specified under W.S. 27-14-109.

(ix) "Gross earnings" means remuneration payable for services from any source including commissions, bonuses and cash and excluding tips and gratuities. The reasonable cash value of remuneration other than cash or check shall be prescribed by rule and regulation of the division. To the extent the following are not considered wages under 26 U.S.C. §§ 3301 through 3311, "gross earnings" does not include:

(A) Any premium paid by an employer under a plan, system or into a fund for insurance or annuities to provide an employee or class of employees retirement, sickness or accident disability, medical and hospitalization expenses for sickness or accident disability or death benefits if the employee cannot receive any part of this payment instead of the death benefit or any part of the premium if the benefit is insured and cannot assign or receive cash instead of the benefit upon withdrawal from or termination of the plan, system, policy or services with the employer;

(B) A payment by an employer not deducted from an employee's remuneration for the tax imposed under 26 U.S.C. § 3101;

(C) Any dismissal payment which the employer is not obligated to make;

(D) The value of any meals or lodging furnished by and for the convenience of the employer to the employee if the meals are furnished on the business premises of the employer or in the case of lodging, the employee is required to accept lodging on the business premises of his employer as a condition of his employment;

(E) Remuneration received by an employee as sick pay following a six (6) month continuous period of illness;

(F) Any benefit received under a cafeteria plan specified by 26 U.S.C. § 125, excluding cash;

(G) Wages of a deceased worker paid to a beneficiary or estate following the calendar year of the worker's death;

(H) Services received under any dependent care assistance program to the extent excluded from gross income under 26 U.S.C. § 129;

(J) Wages paid to a disabled worker during the year following the year in which he became entitled to disability insurance benefits under the Social Security Act;

(K) Services or benefits received under any educational assistance program;

(M) Any benefit or other value received under an employee achievement award;

(N) The value of any qualified group legal services plan to the extent payments are excludable from gross income under 26 U.S.C. § 120;

(O) Costs of group term-life insurance;

(P) Any loan repayment which is repaid at interest rates below established market rates;

(Q) Any moving expenses;

(R) Employer contributions to any qualified retirement or pension plan or individual retirement account and distributions from qualified retirement and pension plans and annuities under 26 U.S.C. § 403(b);

(S) Benefit payments under any supplemental unemployment compensation plan; and

(T) Any benefits paid under this act or any other worker's compensation law of another state.

(x) "Health care provider" means doctor of medicine, chiropractic or osteopathy, dentist, optometrist, podiatrist, psychologist or advanced practitioner of nursing, acting within the scope of his license, licensed to practice in this state or in good standing in his home state;

(xi) "Injury" means any harmful change in the human organism other than normal aging and includes damage to or loss of any artificial replacement and death, arising out of and in the course of employment while at work in or about the premises occupied, used or controlled by the employer and incurred while at work in places where the employer's business requires an employee's presence and which subjects the employee to extrahazardous duties incident to the business. "Injury" does not include:

(A) Any illness or communicable disease unless the risk of contracting the illness or disease is increased by the nature of the employment. For the period beginning January 1, 2020 through March 31, 2022 unless otherwise extended by the legislature, if any employee in an employment sector for which coverage is provided by this act is infected with the COVID-19 Coronavirus, it shall be presumed that the risk of contracting the illness or disease was increased by the nature of the employment;

(B) Injury caused by:

(I) The fact the employee is intoxicated or under the influence of a controlled substance, or both, except any prescribed drug taken as directed by an authorized health care provider. The division shall define "intoxicated" and "under the influence of a controlled substance" for purposes of this subparagraph in its rules and regulations; or

(II) The employee's willful intention to injure or kill himself or another.

(C) Injury due solely to the culpable negligence of the injured employee;

(D) Any injury sustained during travel to or from employment unless the employee is reimbursed for travel expenses or is transported by a vehicle of the employer;

(E) Any injury sustained by the prisoner during or any harm resulting from any illegal activity engaged in by prisoners held under custody;

(F) Any injury or condition preexisting at the time of employment with the employer against whom a claim is made;

(G) Any injury resulting primarily from the natural aging process or from the normal activities of day-to-day living, as established by medical evidence supported by objective findings;

(H) Any injury sustained while engaged in recreational or social events under circumstances where an employee was under no duty to attend and where the injury did not result from the performance of tasks related to the employee's normal job duties or as specifically instructed to be performed by the employer; or

(J) Any mental injury unless it is:

(I) Caused by a compensable physical injury, it occurs subsequent to or simultaneously with, the physical injury and it is established by clear and convincing evidence, which shall include a diagnosis by a licensed psychiatrist, licensed clinical psychologist or psychiatric mental health nurse practitioner meeting criteria established in the most recent edition of the diagnostic and statistical manual of mental disorders published by the American Psychiatric Association. In no event shall benefits for a compensable mental injury under this subdivision be paid for more than thirty-six (36) months after an injured employee's physical injury has healed to the point that it is not reasonably expected to substantially improve; or

(II) Experienced by a first responder and established by clear and convincing evidence, which shall include a diagnosis by a licensed psychiatrist, licensed clinical psychologist or psychiatric mental health nurse practitioner meeting criteria established in the most recent edition of the diagnostic and statistical manual of mental disorders published by the American Psychiatric Association. The mental injury shall not be considered a compensable injury if the mental injury is directly attributed to disciplinary action, work evaluation, job transfer, layoff, demotion, termination or similar action taken by an employer. In no event shall any disability benefit for a compensable mental injury under this subdivision extend more than thirty-six (36) months beyond the diagnosis of a compensable injury.

(xii) "Medical and hospital care" when provided by a health care provider means any reasonable and necessary first aid, medical, surgical or hospital service, medical and surgical supplies, apparatus, essential and adequate artificial

replacement, body aid during impairment, disability or treatment of an employee pursuant to this act including the repair or replacement of any preexisting artificial replacement, hearing aid, prescription eyeglass lens, eyeglass frame, contact lens or dentures if the device is damaged or destroyed in an accident and any other health services or products authorized by rules and regulations of the division. "Medical and hospital care" does not include any personal item, automobile or the remodeling of an automobile or other physical structure, public or private health club, weight loss center or aid, experimental medical or surgical procedure, item of furniture or vitamin and food supplement except as provided under rule and regulation of the division and paragraph (a)(i) of this section for impairments or disabilities requiring the use of wheelchairs;

(xiii) "Nonresident employer" means:

(A) An individual who was not domiciled in Wyoming for at least twelve (12) months prior to commencing operations in the state; or

(B) A partnership or other association if any member does not qualify under subparagraph (A) of this paragraph; or

(C) A corporation in which more than three-fourths (3/4) of the capital stock is owned by individuals who do not qualify under subparagraph (A) of this paragraph; and

(D) A person who uses or employs covered individuals in Wyoming and who has not been a continuous contributor under this act for twelve (12) months preceding the use or employment.

(xiv) "Payroll" means "gross earnings" as defined under paragraph (a)(ix) of this section;

(xv) "Permanent partial disability" means the economic loss to an injured employee, measured as provided under W.S. 27-14-405(j), resulting from a permanent physical impairment;

(xvi) "Permanent total disability" means the loss of use of the body as a whole or any permanent injury certified under W.S. 27-14-406, which permanently incapacitates the employee from performing work at any gainful occupation for which he is reasonably suited by experience or training;

(xvii) "Spouse" means any individual legally married to an employee at the time of injury or death;

(xviii) "Temporary total disability" means that period of time an employee is temporarily and totally incapacitated from performing employment at any gainful employment or occupation for which he is reasonably suited by experience or training. The period of temporary total disability terminates at the time the employee completely recovers or qualifies for benefits under W.S. 27-14-405 or 27-14-406;

(xix) "Joint employer" means any person, firm, corporation or other entity which employs joint employees, is associated by ownership, commonly managed or controlled and contributes to the worker's compensation account as required by this act;

(xx) "Employer making contributions required by this act" means the employee's employer and any joint employer when the employer or any joint employer reports the employee's wages to the division on an account or through a consolidated worker's compensation account and contributions are made to the account as required by this act;

(xxi) "Joint employee" means any person:

(A) Who has an express or implied contract for employment with more than one (1) joint employer at the same time;

(B) Whose work is controlled by more than one (1) joint employer; and

(C) Who is engaged in the performance of work for more than one (1) joint employer.

(xxii) "Consolidated Wyoming worker's compensation account" means an account maintained by the Wyoming workers' compensation division to which an employer reports the wages of its employees and joint employees for its own account and the account of its joint employers, pursuant to which contributions are made to the account as required by this act;

(xxiii) "Independent contractor" means an individual who performs services for another individual or entity and:

(A) Is free from control or direction over the details of the performance of services by contract and by fact;

(B) Repealed By Laws 1998, ch. 117, § 2.

(C) Represents his services to the public as a self-employed individual or an independent contractor; and

(D) May substitute another person to perform his services.

(xxiv) "Casual labor" means service of less than two (2) consecutive weeks and not within the normal course of business;

(xxv) "Temporary service contractor" means any person, firm, association or corporation conducting a business that employs individuals directly for the purpose of furnishing services of the employed individuals on a temporary basis to others;

(xxvi) "Temporary worker" means a worker whose services are furnished to another employer on a temporary basis to substitute for a permanent employee on leave or to meet an emergency or short-term workload;

(xxvii) "This act" means W.S. 27-14-101 through 27-14-902;

(xxviii) "State employee" means any individual entering into service of or working under an employment contract with any agency of the state of Wyoming for which compensation is paid or which qualifies the individual to participate in the state retirement account. Effective on and after July 1, 2002, "state employee" shall include the University of Wyoming;

(xxix) "Professional athlete" means an individual who receives payment from a team owner for competing on a baseball, basketball, football, hockey or soccer team having its principal place of business in Wyoming;

(xxx) For purposes of W.S. 27-14-207 and 27-14-806, "person" means as defined in W.S. 8-1-102;

(xxxi) "First responder" means a peace officer or an employee who is employed or volunteers as a firefighter, search and rescue personnel or ambulance personnel;

(xxxii) "Member of the legislature" means a duly elected or appointed member of the Wyoming legislature commencing when the member's term begins if elected or upon being sworn into office if appointed and until such time as the member's seat is vacated as provided in W.S. 22-18-101 or the member's term ends;

(xxxiii) "Student learner" means a person between the ages of sixteen (16) years and eighteen (18) years who is currently enrolled in a Wyoming school district, community college or technical school and who enters into a student training agreement with an employer pursuant to a student learner agreement between the employer and the student learner's school district. For purposes of this act, a student learner shall be considered an employee under paragraph (vii) of this subsection;

(xxxiv) "Student learner agreement" means an agreement between a Wyoming school district, community college or technical school and an employer that:

(A) Authorizes an employer to provide vocational training and work experience to student learners;

(B) Provides for the student learner to receive course credit from the school district, community college or technical school for completing the vocational training or both course credit and compensation from the employer;

(C) Specifies terms and conditions for any student learner who is not eighteen (18) years of age in accordance with federal law and regulation concerning the performance of certain particularly hazardous work as defined by federal regulation;

(D) Authorizes the student learner to be covered under the worker's compensation program established under this act.

(xxxv) "Student training agreement" means an agreement entered into between an employer and a student of a school district, community college or technical school with a student learner agreement with the employer and that specifies the terms and conditions included in the student learner agreement and that is subject to the provisions of W.S. 27-14-110. For students under the age of eighteen (18), a student

training agreement shall be signed by the student's parent or guardian unless the student is an emancipated minor under W.S. 14-1-201 through 14-1-206.

**27-14-103. Repealed by Laws 1991, ch. 190, § 2.**

**27-14-104. Exclusive remedy as to employer; nonliability of co-employees; no relief from liability; rights as to delinquent or noncontributing employer.**

(a) The rights and remedies provided in this act for an employee including any joint employee, and his dependents for injuries incurred in extrahazardous employments are in lieu of all other rights and remedies against any employer and any joint employer making contributions required by this act, or their employees acting within the scope of their employment unless the employees intentionally act to cause physical harm or injury to the injured employee, but do not supersede any rights and remedies available to an employee and his dependents against any other person.

(b) No contract, rule, regulation or device shall operate to relieve an employer from any liability created by this act except as otherwise provided by this act.

(c) This act does not limit or affect any right or action by any employee and his dependents against an employer for injuries received while employed by the employer when the employer at the time of the injuries has not qualified under this act for the coverage of his eligible employees, or having qualified, has not paid the required premium on an injured employee's earnings within thirty (30) days of the date due. When an employee's employment starts within the same month as the injury, the status of delinquency or not contributing shall not apply until after the regular payroll reporting date.

**27-14-105. Action against third party; notice; subrogation; legal representation; payment under reservation of rights; actions by department.**

(a) If an employee covered by this act receives an injury under circumstances creating a legal liability in some person other than the employer to pay damages, the employee if engaged in work for his employer at the time of the injury is not deprived of any compensation to which he is entitled under this act. He may also pursue his remedy at law against the third party or the coemployee to the extent permitted by W.S.

27-14-104(a). Except as provided by subsections (b), (e) and (f) of this section, if the employee recovers from the third party or the coemployee in any manner including judgment, compromise, settlement or release, the state is entitled to be reimbursed for all payments made, or to be made, to or on behalf of the employee under this act but not to exceed one-third (1/3) of the total proceeds of the recovery without regard to the types of damages alleged in the third-party action. Any recovery by the state shall be reduced pro rata for attorney fees and costs in the same proportion as the employee is liable for fees and costs. All money received by the state under this section shall be credited to the worker's compensation account and considered in computing the employer's experience rating.

(b) The director and the attorney general shall be served by certified mail return receipt requested with a copy of the complaint filed in any suit initiated pursuant to subsection (a) of this section. Service of the complaint on the director and attorney general is a jurisdictional requirement in order to maintain the suit. The director and the attorney general shall be notified in writing by certified mail return receipt requested of any judgment, compromise, settlement or release entered into by an employee. Before offering settlement to an employee, a third party or its insurer shall notify the state of the proposed settlement and give the state fifteen (15) days after receipt of such notice in which to object. If notice of proposed settlement is not provided, the state is entitled to initiate an independent action against the third party or its insurer for all payments made to and any amount reserved for or on behalf of the employee under this act. If there is a settlement, compromise or release entered into by the parties in claims against a person other than the employer, the attorney general representing the director shall be made a party in all such negotiations for settlement, compromise or release. The attorney general and the director, for purposes of facilitating compromise and settlement, may in a proper case authorize acceptance by the state of less than the state's claim for reimbursement. The proceeds of any judgment, settlement, compromise or release are encumbered by a continuing lien in favor of the state to the extent of the total amount of the state's claim for reimbursement under this section and for all current and future benefits under this act. The lien shall remain in effect until the state is paid the amount authorized under this section. In addition the person paying the settlement remains liable to the state for the state's claim unless the state through the attorney general signs the release prior to payment of an agreed settlement.

(c) If the injury causes the death of the employee, the rights and remedies in this section inure to and the obligations are binding upon the personal representative of the deceased employee for the benefit of his dependents.

(d) Any attorney who fails to notify the director and attorney general of any settlement or fails to ensure the state receives its share of the proceeds of any settlement or judgment under subsection (a) of this section shall be reported to the grievance committee of the Wyoming state bar.

(e) At any time before the statute of limitation bars an employee or his estate from commencing a claim for personal injury or wrongful death, and upon the unsolicited written request of the employee or estate, the department may commence such an action on behalf of the employee or his estate. From any amounts recovered under this subsection, the state is entitled to an amount equal to all sums awarded as benefits to the employee or his estate and all anticipated future medical costs. Any excess recovery shall be paid to the injured employee or his estate.

(f) The department or employer shall have an additional six (6) month limitation period beyond the date on which the employee or his estate is barred under the statute of limitations from commencing a claim for personal injury or wrongful death, in which to commence such an action on behalf of the employee or his estate. From any amounts recovered under this subsection, the state is entitled to an amount equal to all sums awarded as benefits to the employee or his estate, all anticipated future medical costs and all costs of litigation. Any excess recovery shall be paid to the injured employee or his estate.

(g) For purposes of subsections (e) and (f) of this section, nothing in this section prohibits any third party from reimbursing the worker's compensation account for medical or temporary total disability costs without prejudice prior to any judgment, settlement or release.

**27-14-106. Minor employee to be free of any legal disability.**

A minor shall be deemed free of any legal disability for the purposes of this act and no other person has any cause of action

or right to compensation for his injury except as expressly provided in this act.

**27-14-107. Repealed by Laws 1995, ch. 121, § 3.**

**27-14-108. Extrahazardous industries, employments, occupations; enumeration; definitions; optional coverage.**

(a) This act applies to the following, which shall be deemed extrahazardous employment:

(i) Repealed by Laws 2002, Ch. 30, § 2.

(ii) Regardless of individual occupation, all workers employed in the following sectors, subsectors, industry groups and industries, as each is defined in the most recent edition of the North American Industry Classification System (NAICS) manual:

(A) Agriculture, sector 11:

(1) Industry group 1133, logging.

(B) Mining, sector 21;

(C) Utilities, sector 22;

(D) Construction, sector 23;

(E) Manufacturing, sector 31-33;

(F) Wholesale trade, sector 42:

(I) Subsector 424, wholesale trade,  
nondurable goods:

(1) Industry group 4245, farm product  
raw materials, wholesale;

(2) Industry group 4246, chemical and  
allied products, wholesale;

(3) Industry group 4247, petroleum and  
petroleum products, wholesale;

(4) Industry group 4248, beer, wine,  
and distilled alcoholic beverages, wholesale;

(5) Industry group 4249, miscellaneous nondurable goods, wholesale.

(G) Retail trade, sector 44-45:

(I) Subsector 441, motor vehicle and parts dealer;

(II) Subsector 444, building materials and garden equipment and supplies:

(1) Industry group 4441, building materials and supplies dealers:

a. NAICS industry 44418, other building materials.

(III) Subsector 445, food and beverage stores:

(1) Industry group 4452, specialty food stores:

a. NAICS industry 44524, meat retailers;

b. NAICS industry 44525, fish and seafood retailers;

c. NAICS industry 44529, other specialty stores.

(IV) Subsector 457, gasoline stations and fuel dealers;

(V) Repealed by Laws 2023, ch. 18, § 2.

(H) Transportation and warehousing, sector 48-49:

(I) Subsector 481, air transportation;

(II) Subsector 484, truck transportation;

(III) Subsector 485, urban transit systems;

transportation; (IV) Subsector 486, pipeline

(V) Subsector 491, postal service;

messengers; (VI) Subsector 492, couriers and

storage. (VII) Subsector 493, warehousing and

(J) Information, sector 51:

(I) Subsector 513, publishing industries:

(1) Industry group 5131, newspaper, periodical, book and directory publishers.

(K) Real estate and rental and leasing, sector 53:

(I) Subsector 531, real estate:

(1) Industry group 5311, lessors of real estate.

(II) Subsector 532, rental and leasing services:

(1) Industry group 5321, automotive equipment rental and leasing.

(M) Administrative and support and waste management and remediation services, sector 56:

(I) Subsector 561, administrative and support services:

(1) Industry group 5616, investigation, guard and armored car services;

(2) Industry group 5617, services to buildings and dwellings.

(II) Subsector 562, waste management and remediation services.

(N) Educational services, sector 61:

(I) Subsector 611, educational services:

(1) Industry group 6116, other schools  
and instruction:

a. NAICS industry 61161, fine  
arts schools;

b. NAICS industry 61162, sports  
and recreation instruction;

c. NAICS industry 61169, all  
other schools and instruction:

i. United States NAICS  
industry 611692, automobile driving schools.

(O) Health care and social services, sector 62:

(I) Subsector 621, ambulatory health care  
services;

(II) Subsector 622, hospitals;

(III) Subsector 623, nursing and  
residential care facilities;

(IV) Subsector 624, social assistance:

(1) Industry group 6241, individual  
and family services;

(2) Industry group 6242, community  
food and housing, and emergency and other relief services;

(3) Industry group 6243, vocational  
rehabilitation services.

(P) Except as provided under subsection (o) of  
this section, arts, entertainment and recreation, sector 71;

(Q) Accommodation and food services, sector 72;

(R) Other services (except public  
administration), sector 81:

(I) Subsector 811, repair and maintenance;

(II) Subsector 812, personal and laundry services:

(1) Industry group 8123, dry-cleaning and laundry services;

(2) Industry group 8129, other personal services:

a. NAICS industry 81291, pet care (except veterinary services).

(S) Public administration, sector 92:

(I) Subsector 922, justice, public order and safety activities:

(1) Industry group 9221, justice, public order and safety activities:

a. NAICS industry 92212, police protection;

b. NAICS industry 92214, correctional institutions;

c. NAICS industry 92215, parole offices and probation offices;

d. NAICS industry 92216, fire protection, including firefighters while performing under the direction of a duly authorized officer in charge and engaged in competition at employer sanctioned training events, construction, maintenance or improvement of equipment or facilities utilized in fire protection activities, fundraising, civic affairs or other similar authorized activities.

(II) Subsector 923, administration of human resource programs:

(1) Industry group 9231, administration of human resource programs:

a. NAICS industry 92312,  
administration of public health programs;

b. NAICS industry 92313,  
administration of human resource programs (except education,  
public health and veterans' affairs programs);

c. NAICS industry 92314,  
administration of veterans' affairs.

(III) Subsector 924, administration of  
environmental quality programs.

(b) Repealed by Laws 1992, ch. 33, § 2.

(c) Repealed By Laws 1996, ch. 71, § 2, 1995, ch. 121, §  
3.

(d) This act applies to governmental entities engaged in  
an industrial classification listed under subsection (a) of this  
section and to employees of governmental entities engaged in or  
employed as the following:

(i) Janitors, groundskeepers and maintenance workers;

(ii) Federal programs which require coverage for  
their participants;

(iii) State employees and effective until June 30,  
2002, employees of the University of Wyoming while traveling in  
the performance of their duties;

(iv) Repealed By Laws 2001, Ch. 132, § 2.

(v) Repealed By Laws 2001, Ch. 132, § 2.

(vi) Casual employees engaged in fighting forest or  
grass fires when employed by a governmental entity;

(vii) Applicants or recipients of general welfare or  
relief who are employed by a governmental entity;

(viii) Repealed By Laws 2001, Ch. 132, § 2.

(ix) All adult and juvenile prisoners and  
probationers when performing work pursuant to law or court  
order;

(x) Diagnostic and analytical laboratory employees;

(xi) Hazardous substance workers;

(xii) Power equipment operators;

(xiii) Motor delivery drivers;

(xiv) Workshop employees;

(xv) Persons performing community service pursuant to a criminal sentencing order or a diversion agreement entered into with a prosecuting authority, if the governing body of the jurisdiction for whom the service is performed has made a prior written election of coverage for the community service work;

(xvi) Public school educational assistants who provide services to special education students while working directly with special education students and certified special education teachers and related services providers as defined by 34 C.F.R. 300.18 and 300.156 and W.S. 21-2-802 and 21-7-303 who provide services to eligible students while working directly with eligible students;

(xvii) County coroners and deputy county coroners;

(xviii) Fire protection, including firefighters while performing under the direction of a duly authorized officer in charge and engaged in competition at employer sanctioned training events, construction, maintenance or improvement of equipment or facilities utilized in the fire protection activities, fundraising, civic affairs or similar authorized activities;

(xix) A member of the legislature while engaged in an activity or traveling to or from an activity in the member's official capacity as a member of the legislature.

(e) Specifically enumerated volunteers to whom this act applies are:

(i) Firefighters while:

(A) Firefighting;

(B) Performing rescue work;

(C) Participating in a hazardous material response;

(D) Responding to any other situation where the health or safety of the public is at risk;

(E) Training for the activities enumerated in subparagraphs (A) through (D) and (F) of this paragraph, including while engaged in competition at employer sanctioned training events;

(F) Constructing, maintaining or improving equipment or facilities utilized in the activities enumerated in subparagraphs (A) through (E) of this paragraph; or

(G) Performing under the direction of a duly authorized officer in charge and engaged in fundraising, civic affairs or other similar authorized activities.

(ii) Search and rescue personnel;

(iii) Law enforcement personnel;

(iv) Search pilots;

(v) Mine rescue workers;

(vi) Ambulance personnel;

(vii) Hazardous substance workers;

(viii) Emergency management agency personnel;

(ix) Elected county or local officials volunteering to perform governmental services on behalf of the jurisdiction to which they are elected, where the services are outside of the elected officials' regular duties, if the governing body of the jurisdiction has made a prior written election of coverage for the volunteer work;

(x) Volunteers working on projects approved by the Wyoming game and fish commission or the Wyoming department of state parks and cultural resources;

(xi) Law enforcement aides while:

(A) Conducting patrols, reporting suspicious activities or controlling traffic and crowds on an authorized work schedule agreed to by and within the jurisdiction of the law enforcement agency to which the volunteer service is provided;

(B) Training under the auspices of a law enforcement agency.

(f) As used in this section:

(i) Repealed by Laws 1992, ch. 33, § 2.

(ii) "Diagnostic and analytical laboratory employees" means all laboratory personnel handling or analyzing or otherwise exposed to infections, chemical or biological hazardous materials or employed in a laboratory in which infections, chemical or biological hazardous materials are handled or stored;

(iii) Repealed By Laws 1999, ch. 46, § 2.

(iv) "Workshop" means any location where power driven machinery is used and manual labor is exercised by way of trade or gain or otherwise incidental to the process of making, altering, repairing, printing or ornamenting, finishing or adapting for sale or otherwise any article or part of article, over which location the employer of the person working at the location has the right of access or control. Workshop includes any location where power machinery is being used and manual labor is exercised for recycling, crushing, incinerating, disposal or otherwise altering any article including but not limited to, paper products, metal, glass, rubber and plastic, over which location the employer of the person working at the location has the right of access or control. A workshop does not include any location on which only office fans, typewriters, adding machines, calculators, computers, dictaphones or other similar equipment driven by electric motors are operated which are sufficiently protected not to constitute a hazard to employees;

(v) Repealed by Laws 1992, ch. 33, § 2.

(vi) "Power equipment operator" means any worker who operates power machinery;

(vii) "Mine rescue team" means mine rescue workers and the employers of the workers performing actual rescue operations or training rescue operations at any underground mine pursuant to the consent of the owner of the mine and the employers of the members of the team. Mine rescue team members while engaged in mine rescue operations and training, shall be considered employees of the employer at whose mine they engage in mine rescue work;

(viii) "Hazardous substance" means those substances designated or enumerated within the notification of hazardous waste activity publication of the federal environmental protection agency;

(ix) "Hazardous substance worker" means a trained employee or volunteer involved with performing emergency response and post emergency response operations for the release or substantial threat of release of hazardous substances;

(x) "Eligible student" means a student with behavioral, emotional, cognitive, learning, physical or health disabilities who requires educational services to be provided outside of the regular classroom because the use of supplementary aids and services cannot be achieved satisfactorily in the regular classroom.

(g) This act does not apply to the following:

- (i) Repealed by Laws 1995, ch. 121, § 3.
- (ii) Repealed By Laws 1995, ch. 121, § 3.
- (iii) Repealed By Laws 1995, ch. 121, § 3.
- (iv) Repealed By Laws 2006, Chapter 2, § 2.
- (v) Repealed by Laws 1995, ch. 121, § 3.
- (vi) Repealed By Laws 1995, ch. 121, § 3.
- (vii) Repealed By Laws 1995, ch. 121, § 3.
- (viii) Repealed By Laws 1995, ch. 121, § 3.
- (ix) Repealed By Laws 1995, ch. 121, § 3.

(x) Those individuals excluded as an employee under W.S. 27-14-102(a)(vii)(A) through (O).

(h) Repealed by Laws 2002, Ch. 30, § 2.

(j) Any employee not enumerated under subsections (a) through (g) of this section or not employed in an extrahazardous employment enumerated under this section may be covered and subject to the provisions of this act and his employment shall be treated as if extrahazardous for purposes of this act, if his employer elects to obtain coverage under this act and makes payments as required by this act. An employer electing coverage pursuant to this subsection may only elect to cover all his employees. An employer may withdraw coverage elected under this subsection at any time if the elected coverage has been in effect for at least two (2) years and the employer is current on all contributions and payments required under this act.

(k) Any corporation, limited liability company, partnership or sole proprietorship may elect to obtain coverage under this act for any or all of its corporate officers, limited liability company members, partners in a partnership or sole proprietor by notifying the division in writing of its election upon initial registration with the division, or thirty (30) days prior to the beginning of a calendar quarter. Any employer electing coverage pursuant to this subsection shall, if it has other employees, simultaneously elect coverage for its employees, as provided in subsection (j) of this section, if those employees are not already covered under this act. Notwithstanding subsection (j) of this section, an employer shall not withdraw coverage at any time during the subsequent eight (8) calendar quarters. Application for termination of coverage under this subsection shall be filed in writing with the division. Termination of coverage shall be effective the first day of the month following the division's receipt of the notice of termination which shall specify whether the termination is for the officers, members and partners or for the officers, members, partners and all electively covered employees.

(m) Any employer may elect to obtain coverage under this act for school-to-work participants engaging in program activities at his place of business in accordance with rules and regulations of the division.

(n) Repealed by Laws 2002, Ch. 10, § 2.

(o) Notwithstanding subparagraph (a)(ii)(P) of this section and upon request of an employer, the department may exclude employment from coverage under this act if it determines the primary source of revenue of the employer's business is derived from operations classified under subparagraph (a)(ii)(P) of this section and any of the following industries:

(i) Agriculture, forestry, fishing and hunting, sector 11:

(A) Subsector 111, crop production;

(B) Subsector 112, animal production;

(C) Subsector 113, forestry and logging:

(I) Industry group 1131, timber tract operations;

(II) Industry group 1132, forest nurseries and gathering of forest products.

(D) Subsector 115, support activities for agriculture and forestry.

(p) Any university of the state of Wyoming or any community college, school district or private or parochial school or college may elect to obtain coverage under this act for any person who may at any time be receiving training under any work or job training program for the purpose of training or learning trades or occupations. The bona fide student so placed shall be deemed an employee of the respective university, community college, school district or private or parochial school or college sponsoring the training or rehabilitation program.

(q) A team owner shall obtain coverage under this act for professional athletes as defined in W.S. 27-14-102(a)(xxix). For the purpose of determining employer contributions under this act, all professional athletes for whom coverage is obtained are deemed to be paid, for each month during which competition or team practice is held, the average monthly wage most recently computed pursuant to W.S. 27-14-802(b). Notwithstanding any other provision of law, the division shall classify professional athletes covered under this subsection under NAICS industry code number 711211, sports teams and clubs, and shall keep that classification separate for rate making purposes.

**27-14-109. Collective system for county governments or county governmental entities.**

The division, upon application, may allow county governments or county governmental entities to establish a collective system to report payroll, pay premiums, process injury reports, manage claims and provide other services required under this chapter for the employees of the county governments or county governmental entities. The division shall adopt rules and regulations to implement this section.

**27-14-110. Student learner agreements.**

(a) A Wyoming school district, community college or technical school and an employer may enter into a student learner agreement for the purposes of providing student learners vocational work and training opportunities and for student learners to earn course credit from the school district, community college or technical school, compensation from the employer, or both. A copy of any student learner agreement entered into under this section shall be submitted by the employer to the division.

(b) A student learner may enter into a student training agreement with an employer to complete work or vocational training at the employer's business for course credit from the school district, community college or technical school, compensation from the employer, or both. A copy of any student training agreement entered into under this section shall be submitted by the employer to the division.

(c) The employer shall notify the division if:

(i) A student learner agreement is terminated or extended with a school district, community college or technical school, and if terminated, the date of termination;

(ii) A student training agreement is extended or terminated, and if terminated, the date of termination.

(d) An employer may enter into student learner agreements with more than one (1) Wyoming school district, community college or technical school, provided that the employer shall enter into separate student learner agreements with each school district, community college or technical school.

(e) The division shall create and maintain standard student learner agreements and student training agreements for use by employers, student learners, school districts, community colleges and technical schools. The standard agreements shall be maintained on the department's website and provided to employers, students, school districts, community colleges and technical schools.

(f) A student learner who enters into a student training agreement with an employer who has a valid and current student learner agreement with the student learner's school district, community college or technical school shall be covered under the worker's compensation program established in this act. Each employer shall pay the premiums charged for each student learner as required under this act. The division shall account for student learners in calculating benefits charged to an employer's experience rating account under this act.

(g) The division shall establish rules and regulations necessary for the implementation of this section.

## ARTICLE 2 - PREMIUMS AND RATES

### **27-14-201. Rates and classifications; rate surcharge.**

(a) The worker's compensation program shall be neither more nor less than self-supporting. Employments affected by this act shall be divided by the division into classes, whose rates may be readjusted annually as the division actuarially determines. Any employer may contest his classification as determined by the division following the contested case provisions of the Wyoming Administrative Procedure Act except that the division shall carry the burden of proving that the classification is correct. Information shall be kept of the amounts collected and expended in each class for actuarially determining rates, but for payment of compensation, the worker's compensation account shall be one and indivisible.

(b) If it is determined at any time and in any manner that a determination by the division of an industrial or employment classification is incorrect, premiums under any corrected classification shall be charged only from the date of change in classification. This subsection shall not apply to any employer's categorization of an employee's gross earnings to an industrial or employment classification.

(c) Upon compliance with the rate making provisions of the Wyoming Administrative Procedure Act and written approval by the governor, the division shall determine the hazards of the different classes of employments and fix the premiums therefor at the lowest rate consistent with maintenance of an actuarially sound worker's compensation account and the creation of actuarially sound surplus and reserves, and for such purpose shall adopt a system of rating in such a manner as to take account of the peculiar hazard of each risk, mathematically and equally based on actual costs to the program in terms of number and extent of injuries and deaths, and shall use consultants or rating organizations as it determines necessary. The department shall submit an annual report with respect to proposed annual rate adjustments under this section to the joint labor, health and social services interim committee no later than October 1 of the year preceding the implementation of the rate adjustment. The total annual rate adjustment for any employment classification under this section is subject to the following limitations:

(i) Repealed by Laws 1994, ch. 86, § 3.

(ii) Repealed by Laws 1994, ch. 86, § 3.

(iii) Repealed By Laws 1998, ch. 117, § 2.

(iv) Repealed By Laws 1998, ch. 117, § 2.

(v) For the calendar year commencing January 1, 1999 and each calendar year thereafter, any increase in the base rate for each employment classification shall not exceed fifty percent (50%) of the base rate imposed for that employment classification during the immediately preceding year;

(vi) To compensate for the difference between revenues generated under base rate adjustment limitations imposed under paragraph (c)(v) of this section and revenues which would have been generated if base rates had been adjusted without limitations, the division may limit base rate decreases for any employment classification by not more than fifty percent (50%) of the actuarially determined decrease;

(vii) Repealed By Laws 1998, ch. 117, § 2.

(viii) In determining rates under this section for employers specified under W.S. 27-14-108(a)(ii)(G)(I), the division shall base the rates on one (1) rate classification for

sales personnel and one (1) rate classification for all other personnel other than clerical;

(ix) Notwithstanding paragraph (v) of this subsection, for the calendar year beginning January 1, 2003, rates shall be adjusted to reflect the reclassification of industry codes in accordance with the North American Industry Classification System (NAICS) manual, but in no case shall the base premium rate for any classification for the calendar year beginning January 1, 2003 exceed one hundred fifty percent (150%) of the lowest base rate assigned to any employer in that classification under the standard industrial classification manual for the preceding year.

(d) In addition, the plan of rating shall use an experience rating system based on three (3) years claim experience, or as much thereof as is available, for employers enrolled under it. This system shall reward employers with a better than average claim experience, penalize employers with a worse than average claim experience and may provide for premium volume discount so long as the account remains actuarially sound. Discounts from or penalties added to base employment classification rates because of claim experience shall not exceed sixty-five percent (65%) for rates through calendar year 2016 and shall not exceed eighty-five percent (85%) for rates beginning with calendar year 2017. An employer who is current on premium payments required by this act may apply to the division for a determination of experience modification rating chargeability for an injury to the employer's employee. The division's determination of chargeability shall be reviewable as provided in W.S. 27-14-601(k)(iii) and (iv). If the division, by a preponderance of the evidence, determines that an employee's injury was primarily caused by a third party, the injury shall not be charged to the employer's account. The employer shall bear the burden of proof in any action brought by the employer for a chargeability determination. If an employer's account is determined to be unchargeable under this subsection, the employer's account shall not be further credited upon recovery from a third party by the division. The division shall by rule and regulation establish necessary procedures for a determination of chargeability. Any determination by the division regarding causation of an injury pursuant to this subsection shall be used only for ratemaking purposes and shall not be admissible in any civil litigation regarding the injury.

(e) The division in fixing rates shall provide for the costs of benefits and the expenses of administering the worker's compensation account allowed by law, subject to the following:

(i) The account shall be one (1) account but shall include provision for all expenses allowed by this act, loss adjustment expenses and unpaid losses, including:

(A) Case reserves;

(B) Future development on known claims;

(C) Reopened claims reserve;

(D) Claims incurred but not reported;

(E) Claims incurred and reported but not yet recorded;

(F) An actuarially reasonable provision for adverse deviation to reflect the uncertainty inherent in estimates of unpaid losses and loss adjustment expenses.

(ii) The account shall be fully reserved on or before December 31, 2013;

(iii) The division shall annually obtain a report from a qualified actuary rendering an opinion regarding the reasonableness of the booked loss and loss adjustment expense reserve and carried contingency reserve;

(iv) The division shall provide the opinion required by paragraph (iii) of this subsection to the joint labor, health and social services interim committee, or its successor, by November 1 of each year;

(v) For purposes of calculating reserves, future liabilities shall be discounted to present value using a discount factor selected by the division. The discount factor selected by the division and the reason for its selection shall be included in the annual report to the joint labor, health and social services interim committee or its successor;

(vi) The collection through premiums of any deficiency in reserves and surpluses that exceeds five percent (5%) of the fund balance shall be averaged over a ten (10) year period;

(vii) For purposes of this section:

(A) "Fully reserved" means that the workers' compensation account established by W.S. 27-14-701 has, in the opinion of a qualified actuary, funds sufficient on a discounted basis to provide for all unpaid loss and loss adjustment expenses as well as an actuarially reasonable provision for adverse deviation;

(B) "Qualified actuary" means a person who is a fellow of the Casualty Actuarial Society or who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries.

(viii) Investment earnings from the investment of the amount held as the actuarially reasonable provision for adverse deviation shall be considered revenue to the worker's compensation account as provided in this paragraph. The annual amount of investment earnings available for consideration as revenue under this paragraph shall be determined by the department in an amount equal to not less than zero percent (0%) and not more than five percent (5%) of the previous five (5) year average market value of the amount held as the actuarially reasonable provision for adverse deviation, calculated from the first day of the fiscal year.

(f) The division is given full power and authority to annually determine premium rates and classifications according to the standards set forth under subsections (b), (c) and (d) of this section provided that no change in the classification or rates prescribed shall be effective until thirty (30) days after the date of the order making the change.

(g) Policies or statements of coverage may be issued to each covered employer. The division shall collect all costs in certifying coverage under this act from the person requesting the certification except for one (1) policy or statement of coverage which may be issued to the employer at no charge.

(h) Approximate rates applicable to each employer pursuant to this section shall be annually provided to the employer by October 1.

(j) All data and formulas used by the division, including the employment classification base rate and claim experience

rating, to determine rates for an employer shall be made available to the employer upon request of the employer.

(k) Repealed by Laws 1989, ch. 149, § 3, 1994, ch. 86, § 3.

(m) Repealed by Laws 1987, ch. 94, § 2.

(n) Repealed By Laws 1998, ch. 117, § 2.

(o) The division shall in accordance with its rules and regulations, grant a discount to rates established under this section in an amount not to exceed ten percent (10%) of the base rate for the employment classification of any employer if the employer complies with a safety program approved by the division and a discount in an amount not to exceed ten percent (10%) of the base rate for the employment classification if the employer complies with a drug and alcohol testing program approved by the division and a discount in an amount not to exceed ten percent (10%) of the base rate for the employment classification if the employer complies with a health and safety consultation program developed by the department of workforce services in consultation with the occupational health and safety commission. In no instance shall the sum total of discounts under this subsection exceed thirty percent (30%) of the base rate for the employment classification for the employer. The discount for the health and safety consultation program shall only remain in effect for three (3) years after the employer is certified to be in compliance with the health and safety consultation program recommendations. In determining safety program approval, drug and alcohol program approval, health and safety consultation program approval and the total discount granted under this subsection, the division shall consider:

(i) The probability the program will reduce the number of accidents and the probable savings which may be realized from the reduction;

(ii) Relevant experience, if any, depicting actual reduction in accidents and actual savings which is compared to an industry standard;

(iii) The adequacy and accuracy of determining participation in the program and the eligibility for a discount by individual employers;

(iv) The administrative costs incurred by the division in implementing a rate discount for an applicable employment classification;

(v) Whether the employer adopts and enforces policies establishing a drug-free workplace which may include an employee assistance program to assist employees with alcohol or other drug problems. The division shall follow rules adopted by the department of workforce services in consultation with the department of health for the effective implementation of this paragraph. Rules adopted pursuant to this paragraph shall not impose on any employer the requirement to pay the costs of treatment or any other intervention. Employers enrolled in a safety discount program under this paragraph shall have one (1) year from the effective date of those rules within which to come into compliance.

(p) Repealed By Laws 1998, ch. 117, § 2.

(q) The division may, in accordance with its rules and regulations, grant a premium credit to rates established under this section if it is determined by a qualified actuary retained by the division that the fund will remain fully reserved after the premium credit is granted and implemented. If the division determines to grant a premium credit, the percentage of credit allowed for the rate year shall be the same for all employers qualified pursuant to paragraph (iii) of this subsection. The following provisions shall also apply to the premium credit program:

(i) The premium credit can only be used to offset premiums, and in no case can the premium be redeemed by an employer for cash;

(ii) Any premium credits shall expire as provided by law. If no law provides for the expiration of credits, credits shall expire as determined by the division;

(iii) The premium credit, if granted, shall only be given to those employers who paid premiums during the preceding year and whose accounts are current on all amounts owed under the act, including premiums, case cost liability and penalties.

(r) In an industrial classification with less than twelve (12) employers in which a single employer contributes greater than fifty percent (50%) of the total premium in that classification, the director of the department of workforce

services, with the concurrence of the governor, may adjust the base rate for the employer established pursuant to this section, not to exceed twenty-five percent (25%) subject to the following:

(i) An affected employer submits a written application to the division in the format prescribed by the division after October 1 and before December 31 of the year preceding the year in which the adjustment will be made;

(ii) The affected employer's experience modification rating is lower than the average for the employer's industrial classification;

(iii) The director determines that the employer has been adversely affected due to the distribution of premiums within the industrial classification; and

(iv) The employer is contributing less than twenty-five percent (25%) of the total premium of the industrial classification.

(s) Any loss of premium due to an adjustment pursuant to subsection (r) of this section shall be distributed among all rate classes in the annual base rate adjustment in the year subsequent to the year in which the adjustment was made.

(t) The division may, in accordance with its rules and regulations, create and implement a premium deductible program. The following provisions shall apply to the premium deductible program:

(i) Participating employers shall sign a contract with the division, clearly identifying the terms of the program;

(ii) Participating employers shall be assigned a reduced industry base rate for premium calculation purposes. The industry base rate reduction shall be determined in a manner that reflects the dollar amount of the deductible and is consistent with an actuarially sound workers' compensation account;

(iii) Participating employers shall be financially stable and in good standing with the division;

(iv) Participating employers shall report all work injuries within the timeframes specified in W.S. 27-14-506;

(v) Participating employers failing to meet the requirements of the premium deductible program shall have their premium base rate reinstated at the full industry base rate, retroactive to the reporting period in which the employer first became noncompliant. Employers whose premium base rate is reinstated at the full industry base rate under this paragraph shall not be re-eligible for the premium deductible program for a minimum of eight (8) calendar quarters;

(vi) Participation in the premium deductible program cannot be transferred to a successor employer nor can it be incorporated as part of a merger among employing units.

(u) No compensable injury related to COVID-19 that occurs during the period beginning January 1, 2020 and ending March 31, 2022 for which coverage is provided under this act and for which a claim was filed on or before March 31, 2023 shall be chargeable to an employer's experience rating under this section.

**27-14-202. Premium payments; payroll reports; department authority to establish joint reporting; remedies for incorrect earnings categorizations by employers.**

(a) Except as provided under subsection (e) of this section, each employer shall forward to the division on forms provided by the division, a true copy of the payroll of his employees engaged in extrahazardous employment during the current calendar month or quarterly reporting period, certified and affirmed by himself or a person having knowledge of the payrolls under penalty of perjury. Payroll reports and monthly payments under this act shall be submitted on or before the last day of the month following the month in which the earnings are paid, unless otherwise provided by rule and regulation of the division.

(b) The director may permit an employer to file payroll reports for quarterly payroll periods ending March 31, June 30, September 30 and December 31 if the diligence of prior reporting payment of premium and other factors warrant. The privilege of quarterly reporting may be revoked by the division if an employer is delinquent in reporting or making payments in accordance with this act. Upon notice of revocation, the employer shall file payroll reports on a monthly basis. Quarterly payroll reports shall be filed and payments made on or

before the last day of the month following the quarterly periods.

(c) An employer shall notify the director at the time he ceases to employ individuals in covered employment.

(d) Any employer or joint employer contributing as required by this act and employing employees or joint employees covered under this act that would qualify as separate classifications, may elect to report gross earnings of the covered entities under one (1) consolidated Wyoming worker's compensation account. A payroll report submitted pursuant to this subsection shall classify the employer's payroll under separate industrial classifications specified under W.S. 27-14-108. Any employer electing to report under a consolidated account shall provide written notice to the division of its intent. The election shall remain in effect for one (1) year or until withdrawn in writing, whichever occurs later. Any employer or joint employer contributing as required by this act and employing employees or joint employees covered by this act who elects to report the payrolls under one (1) consolidated account pursuant to this subsection shall be treated as a single employer for all purposes of this act with the exception of determining the experience rating pursuant to W.S. 27-14-201(d) and the premium tax credit pursuant to W.S. 27-14-201(q).

(e) Notwithstanding subsections (a) and (b) of this section, an employer may elect to submit payroll reports and make premium payments in advance pursuant to rule and regulation of the division. In its rules and regulations established under this subsection, the division shall provide for adjustment of premium payments for any fiscal year in accordance with overpayments or underpayments made during the preceding fiscal year.

(f) Notwithstanding subsections (a) and (b) of this section and commencing January 1, 1994, governmental entity employers shall make payments for rates established by the division under W.S. 27-14-201 for any calendar year commencing on July 1 of that calendar year and ending June 30 of the immediately succeeding calendar year. For purposes of this subsection "governmental entity employer" includes state, county, municipal, school district, community college, university and special district employers.

(g) The department of workforce services shall by rule and regulation establish a joint payroll reporting system for the

purposes of the Wyoming Worker's Compensation Act and Wyoming Employment Security Law. Nothing in this subsection shall require the department to provide a joint payroll reporting system to all qualifying employers.

(h) An employer's categorization in its payroll reports of an employee's gross earnings to the appropriate industrial or employment classification shall be in accordance with division rules and regulations. If the division finds any employee gross earnings to be incorrectly categorized to an industrial or employment classification, the division shall within a one (1) year period beginning with the current rate year and including the previous rate year, credit or debit the employer's account for the overpayment or underpayment as appropriate. The division shall waive any underpayment amount, interest, penalties or claim reimbursements if the incorrect employee gross earnings categorization was caused by reliance on a written determination of the division and the employer provided full and truthful disclosure of all pertinent information in requesting a determination or if the employer makes a good faith error in categorization. The division may waive any interest, penalties or claim reimbursement caused by an underpayment due to an otherwise incorrect employee gross earning categorization of an employee's earnings in any other case if it determines there are sufficient extraordinary circumstances which warrant a waiver. If an employer's account has been debited pursuant to this subsection, the employer shall not be considered contributing as required by this act if he does not pay the underpayment within thirty (30) days of his account being debited or within thirty (30) days of completion of any appeals of the determination of an underpayment, whichever occurs later.

(j) The division, on or about the fifteenth of the month following the due date, shall send a written notice of delinquency to an employer failing to submit a report as required by this section. An employer failing to submit a report required by this section within thirty (30) days of the date due shall, in addition to any delinquent premium penalty pursuant to W.S. 27-14-203, be assessed a penalty of one hundred dollars (\$100.00) for each delinquent report.

**27-14-203. Failure of employer to make payments; interest; lien; injunction; nonexclusive remedies.**

(a) Any employer not applying for coverage of eligible employees or, after obtaining coverage under this act, any employer failing, neglecting or refusing to make payments

required by this act within thirty (30) days of the date due and against whom any injured employee is held entitled to worker's compensation benefits is liable to the state for an amount equal to all awards, both paid and reserved entered for payment to or for the employee under this act. If the employer fails, neglects or refuses to satisfy his liability within the thirty (30) day period, the amount may be recovered by civil action in the name of the director. The entry of final order by the division or hearing examiner approving and allowing an award of compensation is prima facie proof of the liability of an employer failing to comply with this act.

(b) Repealed by Laws 1993, ch. 176, § 2.

(c) Premiums not paid on or before the date due shall bear interest of one percent (1%) per month or any fractional portion thereof from the due date until payment plus accrued interest is received by the division. The interest is part of the payment due for all purposes if suit is instituted as provided in this act.

(d) If premiums, liabilities pursuant to subsection (a) of this section, interest and penalties provided by this section are not paid within thirty (30) days of the date due and following notice by the division to the employer of the remedies authorized under this section, and the consequences of these remedies the attorney general may bring suit in the name of the state for the collection of all delinquent payments, liabilities pursuant to subsection (a) of this section, interest and penalties. If a judgment is rendered in favor of the state, the judgment shall be for the amount of the premiums, liabilities pursuant to subsection (a) of this section, interest and penalties together with costs.

(e) If payments under this act are not paid on or before the date due and following notice under subsection (d) of this section, the director may file a lien with the county clerk of the county in which the employer has his principal place of business and a copy with any other county. The amount due is a lien upon all real and personal property of the employer and is in effect from the time of filing and covers all property of the employer in any county in which filed. The director shall file notice of satisfaction of the lien with the county clerk if payments are collected or found erroneous and may release any property from the lien or subordinate the lien if he determines payments are secured by a lien on other property or the collection of payments are not in jeopardy.

(f) Any employer employing any person in any covered employment who, following notice by the division of the remedies authorized under this section, fails to apply for coverage under this act or, after obtaining coverage under this act, fails to make payments within thirty (30) days of the date due, may be enjoined in an action instituted by the director from engaging or continuing in a business covered by this act. Operations may, in whole or in part, be enjoined until required payments are made and the employer complies with this act. The director is not required to give bond in the action.

(g) Remedies provided by this act are cumulative and are not exclusive.

(h) If judgment is rendered in favor of the employer in any action under this section, he shall be entitled to recover all his costs including a reasonable attorney's fee from the division. This recovery shall not affect the employer's experience rating.

(j) The division may enter into an installment payment agreement with a delinquent employer where payment in a lump sum would cause severe inconvenience to the employer, provided that:

(i) The agreement shall be agreed upon within thirty (30) days of the notice provided pursuant to subsection (d) of this section;

(ii) The term of the installment payment agreement shall not exceed twelve (12) months; and

(iii) Prospective liabilities which are reasonably expected to accrue during the term of the installment payment agreement may be included in the installment payment agreement.

(k) No additional interest, penalties or other liabilities authorized under this section shall accrue to the employer for the employer's delinquencies if the employer has entered into an installment payment agreement pursuant to subsection (j) of this section and is in compliance with the terms of the agreement. The employer's relief from liability provided pursuant to W.S. 27-14-104(a) shall remain in effect while the employer is in compliance with the agreement, provided that the employer has no further delinquencies under this section. If an employer fails to comply with the terms of its installment payment agreement, all premiums, liabilities pursuant to subsection (a) of this

section, interest and penalties provided by this section shall be applied as of the original delinquency date minus any payments made and the division may exercise any remaining remedies authorized under this act.

**27-14-204. Coverage of out-of-state injuries; filing.**

(a) Repealed By Laws 1997, ch. 177, § 2.

(b) The payment or award of benefits under the worker's compensation law of another state to an employee or his dependents otherwise entitled on account of the injury or death to the benefits of this act is not a bar to a claim for benefits under this act if a claim under this act is filed within the time limits set forth in W.S. 27-14-503. If compensation is paid or awarded under this act, the total amounts of medical and related income and death benefits paid or awarded under another worker's compensation law shall be credited against the total corresponding medical and related income and death benefits due under this act.

(c) Repealed by Laws 1989, ch. 29, §§ 1, 2.

(d) Any employee injured outside of the state of Wyoming and coming under the provisions of this section shall file his application for compensation with the division.

**27-14-205. State contributions; presumed pay of specified employees.**

(a) State agencies shall administer this act as an employer with respect to its employees including filing payroll reports and submitting premium payments for those employees engaged in extrahazardous employment and covered under this act. Each state agency having officers or employees subject to this act shall file payroll reports and submit premium payments as required by this act. Premium payments for coverage of any employee employed under a federally funded program administered by an agency may be made from available federal funds.

(b) For the purpose of determining employer contributions under this act, all school-to-work participants for which coverage has been elected under W.S. 27-14-108(m), all persons receiving training under any work or job training program for which coverage has been elected under W.S. 27-14-108(p), all volunteers covered under this act, mine rescue team members, recipients of any welfare program performing work for a

governmental entity, federal programs which require coverage for their participants, prisoners and probationers under W.S. 27-14-108(d)(ix) and persons performing community service pursuant to a criminal sentencing order, or a diversion agreement entered into with a prosecuting authority, under W.S. 27-14-108(d)(xv), are deemed to be paid for each month of active service, an amount established by rule and regulation of the division based upon the cost of the specific employment category to the worker's compensation account. This amount shall be established solely as a basis for determining employer contributions and is not binding upon any employer as an actual required salary for any volunteer or other individual enumerated under this subsection.

(c) For purposes of determining employer contributions under this act for officers of a corporation or members of a limited liability company electing coverage under W.S. 27-14-108(k), rates shall be applied for each officer or member covered under this act against the statewide average wage for the preceding twelve (12) month period as determined under W.S. 27-14-802(b).

(d) Notwithstanding any other provision of this act, a school district or community college district may make payroll reports and payments on behalf of any employer electing coverage for school-to-work participants under W.S. 27-14-108(m). If a school or community college district elects to make payments under this subsection, the district shall continue to make reports and payments for the duration of participation by the school-to-work participant with that employer.

**27-14-206. Public contract work; coverage procedure; responsibility on private contracts.**

(a) If the state, county, University of Wyoming, community college district, school district, special district or municipality engages in work in which employees are employed for wages and if the work is being done by contract, the payroll of the prime or general contractor or subcontractor shall be the basis of computation for the payroll assessment. The required payments shall be subject to the provisions of this act and the state, the county, university, community college district, school district, special district or municipality, shall be entitled to collect from the prime or general contractor the full amount payable under this act unless the subcontractor primarily liable for the payment of premiums has paid the premiums as provided for in this act.

(b) The prime or general contractor shall secure certification when a contract is awarded or before permitting a subcontractor to begin work, that the subcontractor has in good standing an account under this act that covers all coverable employees in the employ of the subcontractor.

(c) The state, county, university, community college district, school district, special district or municipality shall secure certification before allowing a prime or general contractor to permit coverable employees to start work on a contract, that the contractor, prime or general, has in good standing an account under this act that covers employees who are subject to this act.

(d) Before final settlement is made by the state, county, university, community college district, school district, special district or municipality, the contractor shall furnish evidence that all obligations for covered employees on the contract have been paid as provided by this act.

(e) In private work a contractor who subcontracts all or any part of a contract is liable for the payment of worker's compensation premiums for the employees of the subcontractor unless the subcontractor primarily liable for the payment of premiums has paid the premiums as provided for in this act. Any contractor or his carrier who becomes liable for the premiums may recover the amount of the premiums paid and necessary expenses from the subcontractor primarily liable therefor. For premiums paid on behalf of the employees of any subcontractor pursuant to this subsection, the contractor shall be afforded all privileges and immunities under this act as if he were the employer of the subcontractor's employees.

(f) The owner or lessee of land shall be deemed a contractor when he contracts with another who shall be deemed a subcontractor to have work performed of a kind which is a regular or recurrent part of the work of the trade, business, occupation or profession of the owner or lessee. This subsection shall not apply to the owner or lessee of land principally used for agriculture.

**27-14-207. Employer registration required; person acquiring trade of another employer; transfer of experience and assignment of rates; out of state employers.**

(a) Any employer subject to this act shall not commence business or engage in work in this state without applying for coverage under this act and receiving a statement of coverage from the division.

(b) Except as provided in subsection (c) of this section, a person acquiring the trade, organization, business or substantially all of the assets of an employer subject to this act shall assume the previous employer's account, experience rating and premium rate as assigned by the division, provided the previous employer is not participating in the premium deductible program under W.S. 27-14-201(t). If the previous employer is participating in the premium deductible program, the acquiring person shall assume the previous employer's account, experience rating and premium rate as determined without premium deductible program eligibility. The acquiring person shall assume the premium rate which is in effect at the time of the acquisition based on the existing account's classification, experience rating and any surcharge which may apply, as determined without premium deductible program eligibility.

(c) A person acquiring the trade, organization, business or substantially all of the assets of any employer subject to this act whose owners or shareholders have not held an ownership interest in the employer being acquired within one (1) year previous to the date of acquisition shall assume the previous employer's account number, experience rating and premium rate as assigned by the division, provided the previous employer is not participating in the premium deductible program under W.S. 27-14-201(t). If the previous employer is participating in the premium deductible program, the acquiring person shall assume the previous employer's account, experience rating and premium rate as determined without premium deductible program eligibility.

(d) The transfer of some or all of an employer's workforce to another person shall be considered a transfer of trade or business when, as a result of the transfer, the transferring employer no longer performs trade or business with respect to the transferred workforce, and the trade or business is performed by the person to whom the workforce is transferred.

(e) If an employer transfers all or a portion of its trade or business to another employer and, at the time of the transfer, there is substantially common ownership, management or control of the two (2) employers, then the workers' compensation experience attributable to the transferred trade or business

shall be transferred to the employer to whom the business is transferred. The rates of both employers shall be recalculated and made effective the first day of the calendar quarter immediately following the date of the transfer of trade or business.

(f) If, following a transfer of experience under this section, the department determines that a substantial purpose of the transfer of the trade or business was to obtain a reduced premium liability, then the accounts of the employers involved shall be combined into a single account.

(g) If a person is not an employer under this section at the time the person acquires the trade or business of an employer, the workers' compensation experience of the acquired employer shall not be transferred to the person if the department finds that the person acquired the trade or business of the employer solely or primarily for the purpose of obtaining a lower premium rate. Instead, the person shall be assigned the applicable industry base rate in effect at the time of the acquisition. In determining whether the trade or business was acquired solely or primarily for the purpose of obtaining a lower premium rate, the department shall use objective factors which may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long the business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

(h) Where an employer has not had prior operations in Wyoming and has not had prior worker's compensation insurance coverage in Wyoming, and moves or expands operations from another state into Wyoming, and begins operations that are the same or similar to operations outside of Wyoming, the division shall assign the employer experience modification rate as calculated per the current experience modification rating formula in place at the time. The division shall assign such experience modification to the partial year ending June 30 after the start of coverage in Wyoming and to the first full policy year subsequent to the start of coverage in Wyoming.

(j) The division by rule and regulation shall establish procedures to identify the transfer or acquisition of a business, or the movement of an out of state operation to Wyoming, for purposes of this section and W.S. 27-14-806. The division may require by regulation an out of state employer to

submit any information necessary for the purpose of determining an experience modification rate under subsection (h) of this section.

### ARTICLE 3 - NONRESIDENT EMPLOYERS

#### **27-14-301. Applicability of provisions; reciprocity.**

(a) This act applies to all injuries and deaths occurring in Wyoming in employment described in W.S. 27-14-108(a), (d), (e), (j), (k) or (m) but applies to injuries and deaths occurring in Wyoming to employees of nonresident employers only if the worker's compensation or similar law of the nonresident employer's home state applies to all injuries and deaths occurring in that state or the nonresident employer's home state and Wyoming have an active agreement under W.S. 27-14-306(d). This act applies to all injuries and deaths occurring outside of Wyoming in employment described in W.S. 27-14-108(a), (d), (e), (j), (k) or (m) under the following conditions:

(i) Repealed by Laws 2006, Chapter 2, § 2.

(ii) The employee at the time of the injury is working under a contract for hire made in Wyoming for employment by an employer who has a principal place of business within the state established for legitimate business-related purposes and the employment is within the United States, a United States territory, Canada or Mexico, but which is not principally localized in any other state, United States territory, Canada or Mexico; or

(iii) The employee at the time of the injury is working under a contract for hire made in Wyoming for employment principally localized in another state, United States territory, Canada or Mexico, the workers' compensation law of which jurisdiction does not require that the employment be covered by a workers' compensation insurance policy issued under the laws of that jurisdiction.

(b) Repealed By Laws 2006, Chapter 2, § 2.

#### **27-14-302. Required reporting; security required for certain nonresident employers.**

(a) Nonresident employers before starting work, and from time to time after the work has been commenced, shall report to the director the nature and progress of the work, the location

of the work and the number of employees engaged in and upon the work and likely to be so engaged for the next thirty (30) days, giving further and detailed information as the director may reasonably demand.

(b) Before starting business or engaging work in this state, a nonresident employer as defined by W.S. 27-1-106(a) shall register as required by W.S. 27-14-207, and shall either pay an advance premium deposit as provided in the department's rules and regulations or shall file with the director a surety bond or other security approved by the director, as provided in W.S. 27-1-106.

(c) Repealed by Laws 1991, ch. 93, § 2.

(d) Repealed by Laws 1991, ch. 93, § 2.

(e) The requirements of this section shall be waived if the nonresident employer provides a certificate of coverage pursuant to W.S. 27-14-306(b).

**27-14-303. Contract with nonresident conditioned upon compliance.**

A contract shall not be let to a nonresident employer for work or services within the state until the contributions provided by this act have been paid.

**27-14-304. Return of deposit to nonresident employer after cessation of operations.**

Money, bonds or other security deposited pursuant to this act shall be returned to the nonresident employer in accordance with W.S. 27-1-106.

**27-14-305. Secretary of state designated agent for service of process.**

Nonresident employers upon engaging in any covered employment, unless they designate a resident agent for service of process, shall be deemed from the date of the commencement of work to have designated the secretary of state as their agent for service of any process upon them in any action prosecuted pursuant to this act. The secretary of state upon the receipt of any process shall send the process by certified or registered mail return receipt requested to the last known address of the employer.

**27-14-306. Extraterritorial applicability of provisions; reciprocity.**

(a) Repealed By Laws 1997, ch. 177, § 2.

(b) A certificate from an authorized officer of the worker's compensation department or similar agency of another state certifying that an employer of that state is bound by the worker's compensation or similar law of that state and the law will be applied to employees of the employer while in this state, is prima facie evidence of the application of the worker's compensation or similar law of the certifying state. This subsection shall apply only when the certifying state accepts Wyoming worker's compensation certification as prima facie evidence of the application of Wyoming worker's compensation or similar law or when the certifying state and Wyoming have an active agreement under subsection (d) of this section.

(c) The benefits under this act or similar laws of the other state that are received by the employee for an injury sustained while working for the employer in this state are the exclusive remedy against the employer and coemployees acting within the scope of their employment for an injury whether or not that injury resulted in death.

(d) Upon approval of the governor, the division shall enter into an agreement with any worker's compensation division or similar agency of another state to promulgate regulations not inconsistent with this act to carry out the extraterritorial application of the worker's compensation or similar law of the agreeing state.

**27-14-307. Penalty for failure to post bond.**

The willful failure of any nonresident employer in a covered employment to give bond or other security required by this act constitutes a misdemeanor, punishable by a fine of not more than five thousand dollars (\$5,000.00), imprisonment for not more than one (1) year, or both.

ARTICLE 4 - EMPLOYEE BENEFITS

**27-14-401. Medical, hospital and ambulance expenses; review of claim; employer and division designated providers;**

**contracts for bill review, case management and related programs;  
air ambulance reimbursement.**

(a) The expense of medical and hospital care of an injured employee shall be paid from the date of the compensable injury unless under general arrangement the employee is entitled to free medical and hospital care or the employer furnishes adequate and proper medical and hospital care to his employees.

(b) No fee for medical or hospital care under this section shall be allowed by the division without first reviewing the fee for appropriateness and reasonableness in accordance with its adopted fee schedules.

(c) Hospital care includes private nursing or nursing home care if approved by the director.

(d) Medical and hospital care shall be obtained if possible within Wyoming, or in an adjoining state if the hospital or health care provider in the adjoining state is closer to the scene of the accident or to the usual place of employment of the employee than a hospital or health care provider in Wyoming, unless otherwise authorized by the division. Except as otherwise authorized by the division, reimbursements for travel in obtaining medical and hospital care shall not be paid:

(i) For travel of less than ten (10) miles one (1) way except by ambulance travel as set forth in W.S. 27-14-401(e);

(ii) For travel other than that necessary to obtain the closest available medical or hospital care needed by the employee except in those instances where travel within Wyoming is at a greater distance than travel outside of Wyoming;

(iii) In excess of the rates at which state employees are paid per diem and mileage.

(e) If transportation by ambulance is necessary, the division shall allow a reasonable charge for the ambulance service at a rate not in excess of the rate schedule established by the director under the procedure set forth for payment of medical and hospital care, provided this subsection shall not apply to air ambulance transport services.

(f) Subject to subsection (h) of this section, an employer or the division may designate health care providers to provide nonemergency medical attention to his employees or to claimants under this act. Except as provided in subsection (h) of this section, the employee may for any reason, select any other health care provider. If the employee selects a health care provider other than the one (1) selected by the employer or the division, the employer or division may require a second opinion from a health care provider of their choice. The second opinion may include an independent medical evaluation, a functional capacity exam or a review of the diagnosis, prognosis, treatment and fees of the employee's health care provider. The independent medical evaluation, a functional capacity exam or the review by the employer's health care provider shall be paid for by the employer and the evaluation, a functional capacity exam or review by the division's health care provider shall be paid from the worker's compensation account.

(g) The division may engage in and contract for medical bill review programs, medical case management programs and utilization review programs. The division may also negotiate with out-of-state health care providers regarding the payment of fees for necessary medical care to injured workers, not to exceed the usual, customary charges for the comparable treatment in the community where rendered or the amount payable for the same services by the worker's compensation fund or account of the state where rendered, whichever is less.

(h) In the case of an inmate employed in a correctional industries program authorized by W.S. 25-13-101 through 25-13-107 or performing services pursuant to W.S. 7-16-202, the department of corrections shall select the health care provider for the inmate.

(j) Emergency and medically necessary air ambulance transport services for an employee shall be covered under W.S. 42-4-123, subject to availability and any limitations specified by the department under W.S. 42-4-123(a). The department of workforce services shall pay reimbursement for services under this section to the department of health as specified under W.S. 42-4-123. Application of this subsection shall be contingent on operation of the air ambulance transport services program under W.S. 42-4-123(b).

**27-14-402. Payment for artificial replacement.**

In addition to payment of medical and hospital care provided by this act, an injured employee may receive payment for essential and adequate artificial replacement of any part of the body which is amputated. If the injury requires artificial replacement an injured employee may receive payment for any adequate and essential artificial aid to hearing or sight, a spinal brace or other similar brace or for artificial dental replacement. Payment for artificial dental replacement shall be in accordance with the schedule adopted by the division.

**27-14-403. Awards generally; method of payment.**

(a) In addition to payment of medical and hospital care and artificial replacement, an injured employee and his dependents may be entitled to one (1) or more awards for:

(i) Temporary total disability or temporary light duty;

(ii) Permanent partial impairment;

(iii) Permanent partial disability or vocational rehabilitation as provided under W.S. 27-14-408;

(iv) Permanent total disability; or

(v) Death.

(b) Notwithstanding the date of death or the date of the determination of permanent total disability, in the case of permanent total disability or death, each child of an employee shall be paid two hundred fifty dollars (\$250.00) per month for payments made after July 1, 2009, until the child dies or reaches the age of twenty-one (21) years, whichever first occurs, or if the child is physically or mentally incapacitated until the child dies unless qualified for and receiving benefits under the Medicaid home and community based waiver program. If the child is enrolled or preregistered in a post secondary educational institution including a four-year college, community college or private trade school licensed pursuant to W.S. 21-2-401 through 21-2-407 and providing career, technical or apprenticeship training, the child shall receive the amount provided by this section until the child attains the age of twenty-five (25) years. The amount awarded under this subsection shall be adjusted for inflation annually by the division, using the consumer price index or its successor index of the United

States department of labor, bureau of labor statistics, or three percent (3%), whichever is less.

(c) All awards stated in this section except awards under paragraph (a)(i), subsection (b) and paragraphs (e)(ii), (iv) and (v) and (h)(ii) and subsection (k) of this section shall be paid monthly at the rates prescribed by this subsection. For permanent partial impairment under paragraph (a)(ii) of this section, the award shall be calculated at the rate of two-thirds ( $\frac{2}{3}$ ) of the statewide average monthly wage for the twelve (12) month period immediately preceding the quarterly period in which the benefits are first paid as determined pursuant to W.S. 27-14-802. For temporary total disability under paragraph (a)(i) of this section, the award shall be paid monthly at the rate of thirty percent (30%) of the statewide average monthly wage or two-thirds ( $\frac{2}{3}$ ) of the injured employee's actual monthly earnings at the time of injury, whichever is greater, but shall not exceed the lesser of one hundred percent (100%) of the injured employee's actual monthly earnings at the time of the injury or the statewide average monthly wage for the twelve (12) month period immediately preceding the quarterly period in which the injury occurred as determined pursuant to W.S. 27-14-802 with one-half ( $\frac{1}{2}$ ) of the monthly award paid on or about the fifteenth of the month and one-half ( $\frac{1}{2}$ ) paid on or about the thirtieth of the month. For temporary light duty under paragraph (a)(i) of this section, the award shall be paid monthly at the rate of eighty percent (80%) of the difference between the employee's light duty wage and the employee's actual monthly earnings at the time of injury. For permanent partial and permanent total disability or death under paragraphs (a)(iii), (iv) and (v) of this section, the award shall be paid monthly computed as follows:

(i) For those employees whose actual monthly earnings are less than seventy-three percent (73%) of the statewide average monthly wage, the award shall be ninety-two percent (92%) of the injured employee's actual monthly earnings;

(ii) For those employees whose actual monthly earnings are equal to or greater than seventy-three percent (73%) of the statewide average monthly wage, but less than the statewide average monthly wage, the award shall be two-thirds ( $\frac{2}{3}$ ) of the statewide average monthly wage;

(iii) For those employees whose actual monthly earnings are greater than or equal to the statewide average monthly wage, the award shall be two-thirds ( $\frac{2}{3}$ ) of the

employee's actual monthly earnings, but the award shall be capped at and shall not exceed the statewide average monthly wage;

(iv) In the case of death due to work related causes, and if the award computed under paragraph (i), (ii) or (iii) of this subsection is less than eighty percent (80%) of the statewide average monthly wage, the award shall be adjusted to an amount not less than eighty percent (80%) of the statewide average monthly wage or seventy-five percent (75%) of the injured employee's actual monthly earnings at the time of injury, whichever is greater. In no event shall the award exceed two (2) times the statewide average monthly wage for the twelve (12) month period immediately preceding the quarterly period in which the injury occurred as determined pursuant to W.S. 27-14-802;

(v) Awards for permanent total disability shall be adjusted for inflation annually by the division, using the consumer price index or its successor index of the United States department of labor, bureau of labor statistics, for the calendar year before the date of adjustment or three percent (3%), whichever is less. The adjustment provided by this paragraph shall apply to all awards for permanent total disability benefits in effect on or after July 1, 2009 using as the base for calculation the award in effect on that date or the first award, whichever is later. The adjustment shall become effective annually on July 1 and shall be applied to all awards for permanent total disability that were first made at least one (1) year before the effective date of the adjustment.

(d) If an injured employee entitled to receive or receiving an award under paragraph (a)(ii), (iii) or (iv) of this section dies due to causes other than the work related injury, the balance of the award shall be paid:

(i) To the surviving spouse;

(ii) If there is no surviving spouse or if the spouse remarries or dies, the balance of the award shall be paid to the surviving dependent children of the employee. Each surviving dependent child shall receive a share of the award in the proportion that the number of months from the death or remarriage until the child attains the age of majority, or if the child is physically or mentally incapacitated until the child attains the age of twenty-one (21) years, bears to the

total number of months until all children will attain these ages;

(iii) If there is no surviving spouse or if the spouse remarries or dies and there are no dependent children or the children have attained the age of majority or twenty-one (21) if physically or mentally incapacitated, or die, the balance of the award shall be paid to a surviving parent of the employee if the parent received substantially all of his financial support from the employee at the time of injury. If two (2) remaining parents of the employee who received substantially all of their financial support from the employee at the time of the injury survive the employee, the balance of the award shall be divided equally between the two (2) parents;

(iv) Payment of the award shall cease:

(A) If there is no surviving spouse, dependent children or dependent parents;

(B) Upon remarriage or death of a spouse and there are no dependent children or dependent parents;

(C) Upon the death of a dependent child as to payments to that child; and

(D) Upon the death of a dependent parent as to payments to that parent.

(e) If an injured employee dies as a result of the work related injury whether or not an award under paragraphs (a) (i) through (iv) of this section has been made:

(i) All awards under paragraphs (a) (i) through (iv) of this section shall cease as of the date of death;

(ii) The burial expenses of the deceased employee shall be paid in an amount not to exceed five thousand dollars (\$5,000.00) together with an additional amount of five thousand dollars (\$5,000.00) to cover other related expenses, unless other arrangements exist between the employer and employee under agreement;

(iii) The surviving spouse shall receive for one hundred (100) months a monthly payment as provided by subsection (c) of this section. If the surviving spouse dies before the award is entirely paid or if there is no surviving spouse, the

unpaid balance of the award shall be paid to the surviving dependent children of the employee in the manner prescribed by paragraph (d)(ii) of this section. If there are no dependent children, further payments under this paragraph shall cease as of the date of the spouse's death;

(iv) In addition to any amount paid under paragraph (e)(iii) of this section, surviving children shall receive an award as provided by subsection (b) of this section;

(v) If the employee died with no surviving spouse or dependent children but with one (1) surviving parent or two (2) surviving parents of the employee who received at least one-half (1/2) of his or their financial support from the employee at the time of injury, the surviving parent or parents shall receive a monthly payment as provided by subsection (c) of this section for sixty (60) months thereafter or until the parent or the survivor of them dies.

(f) Awards to an employee or a spouse for permanent partial disability, permanent total disability or death may, upon application to the division with a showing of exceptional necessity and notice to the employer, be paid in whole or in part in a lump sum. In no event shall an award for permanent partial impairment under W.S. 27-14-405 be paid in a lump sum.

(g) Following payment in full of any award, or if a lump sum settlement was made under subsection (f) of this section when the award would have been fully paid but for the lump sum settlement, to an employee for permanent total disability or to a surviving spouse for death of an employee, an additional award for extended benefits may be granted subject to the following requirements and limitations:

(i) In the case of an employee:

(A) A claim for compensation is filed by the employee or someone on his behalf;

(B) The employee establishes a reasonable effort on his behalf has been made to return to part time or full time employment including retraining and educational programs;

(C) The division in determining entitlement under this paragraph shall consider the amount of the monthly award made to an injured worker pursuant to W.S. 27-14-403(a)(iv), all earned income of the injured worker, all

employment based retirement income of the injured worker, all income derived by the injured worker as a result of the injury, excluding mortgage or any other loan credit insurance, or any supplemental income insurance purchased by or on behalf of the employee and any periodic payments from any other governmental entity to the injured worker. The division shall not consider any other income received by the injured worker or members of the injured worker's household;

(D) The maximum monthly amount of additional compensation shall not exceed the amount provided in subsection (c) of this section;

(E) The division may attach reasonable conditions to application for or receipt of awards under this subsection including retraining or educational programs and the award may be adjusted in accordance with fulfillment of the conditions;

(F) The division may decrease an award to qualify an employee eligible for maximum benefits under any other state or federal pension plan;

(G) Any award granted under this subsection shall not exceed twelve (12) months unless the division determines an award for a period exceeding twelve (12) months but not greater than four (4) years is appropriate.

(ii) In the case of a surviving spouse, upon application to the division and a showing of necessity, the division may award continued monthly payments to the spouse not to exceed one-third ( $1/3$ ) of the statewide average monthly wage for the twelve (12) month period immediately preceding the quarter in which the injury occurred. An award granted under this paragraph shall not exceed twelve (12) months but may be renewed and shall cease at the time the spouse dies or remarries.

(h) All awards to a minor or individual with a legal disability shall be paid:

(i) To the legal guardian or conservator if one exists; or

(ii) As the division determines to be in the best interests of the minor or individual if there is no legal guardian or conservator.

(j) As used in this section:

(i) "Actual monthly earnings" means the injured employee's actual monthly earnings at the time of injury excluding any payment for casual or unscheduled overtime and any fringe benefit;

(ii) "Overtime" means payments for work in excess of forty (40) hours per week;

(iii) "Statewide average monthly wage" means the statewide average monthly wage for the twelve (12) month period immediately preceding the quarterly period in which the injury occurred as determined pursuant to W.S. 27-14-802.

(k) Any injured worker who has or is receiving medical services entirely in Wyoming from a Wyoming health care provider shall be eligible if otherwise qualified for temporary total disability payments at the rate of seventy percent (70%) of the injured worker's actual monthly earnings at the time of the injury but not to exceed one hundred and three percent (103%) of the statewide average wage for the twelve (12) month period immediately preceding the quarterly period in which the injury occurred as determined pursuant to W.S. 27-14-802, with the following exceptions:

(i) If an injured worker is injured outside of Wyoming, the injured worker if otherwise qualified shall be eligible to receive temporary total disability payments at the rate provided in this subsection, provided the injured worker receives services entirely in Wyoming from a Wyoming health care provider after initial treatment following the injury;

(ii) An injured worker otherwise qualified for temporary total disability payments shall be eligible to receive temporary total disability payments at the rate provided in this subsection if the services or treatment by an out-of-state health care provider were rendered upon the instruction of the division; or

(iii) An injured worker otherwise qualified for temporary total disability payments shall be eligible to receive temporary total disability payments at the rate provided in this subsection if due to unavailability of medical services in Wyoming, the division provides written authorization, before or after treatment, to the injured worker to obtain the medical

services from an out-of-state health care provider and the out-of-state health care provider agreed to accept as full payment the fees paid by the division pursuant to the division's fee schedule. For purposes of this subsection, medical services shall be deemed unavailable in Wyoming if the distance from the injured worker's residence to an in-state health care provider is at least one hundred (100) miles greater than the distance from the injured worker's residence to an out-of-state medical provider;

(iv) An injured worker otherwise qualified for temporary total disability payments shall be eligible to receive temporary total disability payments at the rate provided in this subsection if the employer has a contractual agreement with an out-of-state health care provider.

**27-14-404. Temporary total disability; benefits; determination of eligibility; exceptions for volunteers or prisoners; period of certification limited; temporary light duty employment.**

(a) If after a compensable injury is sustained and as a result of the injury the employee is subject to temporary total disability as defined under W.S. 27-14-102(a)(xviii), the injured employee is entitled to receive a temporary total disability award for the period of temporary total disability as provided by W.S. 27-14-403(c). The period for receiving a temporary total disability award under this section for injuries resulting from any one (1) incident or accident shall not exceed a cumulative period of twenty-four (24) months, except that the division pursuant to its rules and regulations and in its discretion may in the event of extraordinary circumstances award additional temporary total disability benefits. The division's decision to grant such additional benefits shall be reviewable by a hearing examiner only for an abuse of discretion by the division.

(b) Any employee awarded benefits under W.S. 27-14-405 or 27-14-406 is not eligible for benefits under subsection (a) of this section unless the employee has returned to gainful employment and following employment, undergoes additional surgery not reasonably contemplated before the award for permanent impairment or disability and then only for a reasonable period of recuperation, confinement for medical care during the actual period of confinement or unless application is made and an award is granted under W.S. 27-14-605.

(c) Payment under subsection (a) of this section shall cease prior to expiration of the twenty-four (24) month maximum period specified under subsection (a) of this section if:

(i) Recovery is complete to the extent that the earning power of the employee at a gainful occupation for which he is reasonably suited by experience or training is substantially restored; or

(ii) The employee has an ascertainable loss, qualifies for benefits under W.S. 27-14-405 or 27-14-406 and the first monthly payment pursuant to either of those sections has been issued to the employee.

(d) Disability payments under this section shall not be allowed for the first three (3) days of disability unless the incapacity extends beyond eight (8) days. If payments cease for a period of eight (8) days or more, the employee may apply for reinstatement under W.S. 27-14-605 and any award granted shall be treated as an initial award. In determining the period of disability, the day the disability occurred shall be included unless the employee received full payment of wages for that day. No employee shall be forced to use sick leave before applying for or instead of benefits under this section. Benefits under subsection (a) of this section shall not be paid if:

(i) An employee or his personal representative fails to file a claim for benefits within thirty (30) days after the first day immediately succeeding the first thirty (30) days of any certified period of temporary total disability;

(ii) A claim is filed without the signature of the claimant and certification by the attending health care provider; or

(iii) An employee is receiving unemployment compensation under W.S. 27-3-101 through 27-3-704.

(e) Notwithstanding subsection (a) of this section, any volunteer or mine rescue team member covered under this act and sustaining a temporary total disability in the line of duty shall receive the maximum benefit allowable under this section.

(f) Any individual serving time in any penal or correctional institution who is an employee under this act or any probationer or parolee not covered by a qualifying employer-employee relationship performing work pursuant to court

order is not eligible for benefits under this section for injuries suffered during the period of incarceration, probation or parole. Upon release from the penal or correctional institution or upon completion of probation or parole, any remaining benefits for which the individual would otherwise qualify for under this section shall be paid from and after the date of release or completion. In addition, any individual classified as a school-to-work participant under this act is not eligible for benefits under this section for injuries suffered during the participation in a school-to-work program activity.

(g) Only a health care provider may certify temporary total disability under this act. The length of time of the initial certification or recertification of temporary total disability shall be established by the department after considering the recommendation of the health care provider and current medical literature. Subject to W.S. 27-14-609, the employer, employee or division may request recertification of the period of temporary total disability at intervals of not less than sixty (60) days, provided that in the event of extraordinary circumstances, the division may reconsider recertification at any time. The temporary total disability shall not exceed the period allowed by W.S. 27-14-404(a).

(h) Payment under subsection (a) of this section shall be suspended if the injured employee fails to appear at an appointment with his health care provider. Payment shall be suspended under this subsection until such time as the employee appears at a subsequent rescheduled appointment. Payment shall not be suspended for failing to appear at an appointment if the employee notifies the case manager or the division prior to the appointment or within twenty-four (24) hours after missing the appointment and the division determines, after recommendation by the case manager, that the employee made all reasonable efforts to appear at the appointment. At the time of the first benefit payment under this section, the division shall notify the employee of the requirements and other provisions of this subsection, including the procedures to be followed in notifying the case manager or the division. For purposes of this subsection, health care provider includes physical and occupational therapists.

(j) An employer may make a written offer of temporary light duty work to an employee receiving temporary total disability under subsection (a) of this section. The offer shall be a bona fide offer on a form supplied by the division, stating with specificity the proposed hours of employment,

starting date, wage and physical or other functional capacity requirements of the light duty work. If the employee accepts the offer, the temporary total disability award shall cease and the employee shall receive a temporary light duty award, subject to the following terms and conditions:

(i) After notice to the employer, the health care provider who certified temporary total disability has certified on the light duty work agreement that the employee is released to perform the light duty work described in the agreement;

(ii) All periods of light duty work may not exceed one (1) year cumulatively for any one (1) injury;

(iii) The temporary light duty assignment commences not less than fourteen (14) days following the written offer;

(iv) Payment of the temporary light duty award shall cease as provided for temporary total disability under subsection (c) of this section or if the employee's actual monthly earnings from all sources when combined with the temporary light duty award exceed ninety-five percent (95%) of the employee's actual monthly earnings at the time of injury;

(v) The employer shall provide the division before commencement of the light duty work with a copy of the light duty work agreement signed by the employer and the employee, and shall report to the division by the fifteenth of each month the employee's hours and rate of pay for the previous month;

(vi) The temporary total disability award of any employee refusing a bona fide written offer of temporary light duty work pursuant to this subsection shall be reduced by two-thirds ( $2/3$ ) unless the employee provides written proof to the employer and the division of enrollment by the employee in any collegiate, vocational retraining, general education development or other program approved by the division which is designed to retrain the employee for employment in an occupation other than that previously offered by the employer; and

(vii) The temporary light duty award under this subsection and the balance of a temporary total disability award under paragraph (vi) of this subsection shall not be charged to the employer's experience rating established under W.S. 27-14-201(d).

(k) If the employer objects to a division determination that an injury is compensable and the employee's health care provider has certified the employee as temporarily totally disabled, an injured worker may request an interim benefit while his case is under appeal. The amount of the benefit will be calculated at the temporary total disability rate as determined under W.S. 27-14-403(c) and shall be paid for up to three (3) months until a final compensability decision by a hearing examiner is issued or until the expiration of the period of certified temporary disability, whichever occurs first. The period during which the interim benefit is received shall be included in the time period allowed under W.S. 27-14-404(a). The experience rating of the employer against whom a claim is made shall not be charged for the interim benefit if the injury is determined after hearing not to be compensable. Only one (1) interim benefit under this subsection may be awarded per injury.

**27-14-405. Permanent partial disability; benefits; schedule; permanent disfigurement; disputed ratings.**

(a) Repealed by Laws 1994, ch. 86, § 3.

(b) Repealed by Laws 1994, ch. 86, § 3.

(c) Renumbered as (k) by Laws 1994, ch. 86, § 2.

(d) Repealed by Laws 1994, ch. 86, § 3.

(e) Renumbered as (m) by Laws 1994, ch. 86, § 2.

(f) An injured employee suffering an ascertainable loss may apply for a permanent partial impairment award as provided in this section.

(g) An injured employee's impairment shall be rated by a licensed physician using the most recent edition of the American Medical Association's guide to the evaluation of permanent impairment. The award shall be paid as provided by W.S. 27-14-403 for the number of months determined by multiplying the percentage of impairment by sixty (60) months.

(h) An injured employee awarded permanent partial impairment benefits may apply for a permanent disability award subject to the following terms and conditions:

(i) The injured employee is because of the injury, unable to return to employment at a wage that is at least

ninety-five percent (95%) of the monthly gross earnings the employee was earning at the time of injury;

(ii) An application for permanent partial disability is filed not before three (3) months after the date of ascertainable loss or three (3) months before the last scheduled impairment payment, whichever occurs later, but in no event later than one (1) year following the later date; and

(iii) The employee has actively sought suitable work, considering the employee's health, education, training and experience.

(j) The disability award under subsection (h) of this section shall be payable monthly in the amount provided by W.S. 27-14-403 for the number of months determined by adding the number of months computed under this subsection as follows:

(i) Fourteen (14) months, multiplied by a fraction in which the numerator is sixty-five (65) minus the employee's age at the date of injury and the denominator is forty-five (45);

(ii) Eight and one-half (8 1/2) months, multiplied by a fraction in which the numerator is four (4) minus the employee's completed years of education beyond the twelfth grade, not to exceed four (4) years, and the denominator is four (4);

(iii) Six (6) months, multiplied by a fraction in which the numerator is four (4) minus the number of different occupations in which the employee has worked at least eighteen (18) months in the eight (8) year period preceding the injury but not to exceed four (4), and the denominator is four (4);

(iv) Up to two (2) months if the employee at the time of injury was engaged in a formal education or training program for an occupation which was reasonably expected to pay more than the employee's employment at the time of injury and the employee, because of the permanent injury, will be unable to enter into the new occupation;

(v) One (1) month if the employee is forty-five (45) to forty-nine (49) years of age at the time of injury, two (2) months if the employee is fifty (50) to fifty-four (54) years of age at the time of injury, and three (3) months if the employee is fifty-five (55) years of age or older at the time of injury.

(k) An employee incurring permanent disfigurement due to an injury to the face or head which affects his earning capacity or ability to secure gainful employment shall receive in proportion to the extent of the disfigurement, an additional physical impairment award not to exceed six (6) months of compensation payable monthly as provided by W.S. 27-14-403(c). Any previous disfigurement to the face or head of the employee shall be considered when authorizing the award.

(m) If the percentage of physical impairment is disputed, the division shall obtain a second opinion and if the ratings conflict, shall determine the physical impairment award upon consideration of the initial and second opinion. Any objection to a final determination pursuant to this subsection shall be referred to the medical commission for hearing by a medical hearing panel acting as hearing examiner pursuant to W.S. 27-14-616.

(n) This section specifies the length of time amounts computed pursuant to W.S. 27-14-403(c) are to be awarded and except for amounts awarded under W.S. 27-14-408, shall not be construed to allow awards in excess of the amounts computed pursuant to W.S. 27-14-403(c).

#### **27-14-406. Permanent total disability; benefits.**

(a) Subject to W.S. 27-14-602, upon certification by a physician licensed to practice surgery or medicine that an injury results in permanent total disability as defined under W.S. 27-14-102(a)(xvi), an injured employee shall receive for eighty (80) months a monthly payment as provided by W.S. 27-14-403(c) and dependent children shall receive an award as provided by W.S. 27-14-403(b). The eighty (80) month period shall be reduced by the number of months for which previous awards under W.S. 27-14-405 were made for the injury that resulted in the determination of permanent total disability, with the injured worker receiving the monthly amount calculated pursuant to W.S. 27-14-403(c) for the balance of the eighty (80) month period. The monthly payment amount computed under W.S. 27-14-403(c) and any amount awarded under W.S. 27-14-408 shall constitute the exclusive benefit for both the physical impairment and the economic loss resulting from an injury, including loss of earnings, extra expenses associated with the injury and vocational rehabilitation. An employee shall not receive benefits under this section if receiving benefits under W.S. 27-14-404 or 27-14-405.

(b) This section specifies the length of time amounts computed pursuant to W.S. 27-14-403(c) are to be awarded and except for amounts awarded under W.S. 27-14-408, shall not be construed to allow awards in excess of the amounts computed pursuant to W.S. 27-14-403(c).

(c) Any objection to a final determination pursuant to this section shall be referred to the medical commission for hearing by a medical hearing panel acting as hearing examiner pursuant to W.S. 27-14-616.

**27-14-407. Forfeiture of benefits due to unsanitary or injurious practice.**

If an injured employee knowingly engages or persists in an unsanitary or injurious practice which tends to imperil or retard his recovery, or if he refuses to submit to medical or surgical treatment reasonably essential to promote his recovery, he forfeits all right to compensation under this act. Forfeiture shall be determined by the hearing examiner upon application by the division or employer.

**27-14-408. Vocational rehabilitation; application; eligibility; plan; limitation; modification, suspension or termination.**

(a) An injured employee may apply to the division to participate in a vocational rehabilitation program if:

(i) An award has been made under W.S. 27-14-405(f) and (g) or it is reasonably expected, due to the nature and extent of the injury, that an award will be made under W.S. 27-14-405(f) and (g);

(ii) The compensable injury will prevent the employee from returning to any occupation for which the employee has previous training or experience and in which the employee was gainfully employed at any time during the three (3) year period before the injury;

(iii) The employee's injury has not previously resulted in an award for vocational disability, whether denominated loss of earnings, loss of earning capacity or vocational award; and

(iv) The employee elects in writing to accept vocational rehabilitation instead of any permanent partial

disability award under W.S. 27-14-405(h) and (j) arising from the same physical injury.

(b) Upon receipt of an application, the division shall determine if the employee is eligible for participation in a rehabilitation program pursuant to this section.

(c) Upon final determination of an injured worker's eligibility for rehabilitation, the division shall immediately send a copy of the application and determination to the local office of the division of vocational rehabilitation of the department of workforce services.

(d) The division of vocational rehabilitation shall upon receipt of the determination of eligibility, immediately provide the injured employee with a written explanation of the rehabilitation services available to injured employees and its procedures for developing and supervising an individualized rehabilitation plan for the employee.

(e) The division of vocational rehabilitation shall in cooperation with the injured employee, develop an individualized rehabilitation plan for the employee agreed to by both the division of vocational rehabilitation and employee, that:

(i) Is reasonably contemplated to restore the employee's ability to return to former employment, a related occupation or other suitable employment which, to the extent reasonably possible, has an earnings level comparable to the employee's pre-injury earnings;

(ii) Shall not exceed five (5) years or a total cost of thirty thousand dollars (\$30,000.00) unless extended or increased for extenuating circumstances as defined by rule and regulation of the division;

(iii) Is the least costly feasible plan consistent with the rehabilitation goal established pursuant to paragraph (e)(i) of this section; and

(iv) Includes provisions for living expenses during the rehabilitation plan if the employee is not receiving payments for living expenses from any other government benefit program including worker's compensation, and other sources of household income are insufficient to pay minimally necessary living expenses, provided the vocational rehabilitation program is pursued as rapidly as possible.

(f) The division may modify, suspend or terminate the participation of an injured worker in the rehabilitation program upon certification by the division of vocational rehabilitation that the injured worker has failed to cooperate or maintain satisfactory progress toward the mutually agreed upon rehabilitation plan goals.

#### ARTICLE 5 - CLAIM PROCEDURE

##### **27-14-501. Report by health care provider accepting cases; report of examination; recertification; bills; filing of claims.**

(a) Within thirty (30) days after accepting the case of an injured employee and within thirty (30) days after each examination or treatment, a health care provider or a hospital shall file without charge a written medical report with the division. Upon request, the division shall provide a copy of the report to the employer or employee. The division shall notify the employer and the employee that they shall be provided a copy of the report upon request. The report shall state the nature of the injury, the diagnosis, prognosis and prescribed treatment. Any health care provider or hospital failing or refusing to file the report or transmit copies within the time prescribed by this subsection or presenting a claim for services not reasonably justified or which was not required as a result of the work related injury shall forfeit any remuneration or award under this act for services rendered or facilities furnished the employee. Fees or portions of fees for injury related services or products rendered shall not be billed to or collected from the injured employee. Any tests to be administered or other services proposed to be rendered by a health care provider which are clearly not germane to the injury shall be disclosed to the injured employee, if possible, and the employee shall be advised that the cost of the tests or services will be the responsibility of the employee if he consents to the tests or services. Any other necessary and reasonable test or report including initial and necessary follow-up testing for blood borne pathogens, which may be required by division policy or requested by the division, employer or employee may be paid in accordance with a fee schedule adopted by the division. The division shall by rule and regulation institute an appropriate policy for testing for blood borne pathogens after possible occupational exposure and for immediate prophylactic treatment if medically indicated, and shall inform hospitals and primary health care providers of this policy.

(b) Any health care provider attending an employee injured while engaged in any employment covered under this act and certifying temporary total disability under W.S. 27-14-404 shall examine the employee before certification and shall without charge file a written report with the division. Prior to each period of subsequent recertification of temporary total disability, the health care provider shall reexamine the employee and file without charge a written report with the division. In addition, the health care provider shall as soon as practical notify the division upon releasing an injured employee from temporary total disability. Upon request, the division, without delay, shall transmit copies to the employer or employee. The report shall specify reasons for temporary total disability or continued temporary total disability and is subject to the time limitations and penalties imposed under subsection (a) of this section. Any health care provider certifying or recertifying temporary total disability without an examination of the employee shall be reported to the state licensing board for the respective health care provider.

(c) Any bill for medical and hospital care which is not properly dated, itemized and certified by the claimant may be disallowed by the division.

(d) Within thirty (30) days after the first of the month succeeding the month in which services were rendered to the injured employee, itemized bills and claims for medical and hospital care shall be filed with the division. The division shall upon request provide copies to the employee or employer. Any bill or claim not filed by the claimant in accordance with this subsection may result in a denial of the bill or claim.

(e) An initial claim for temporary total disability benefits under W.S. 27-14-404 and any subsequent claim for temporary total disability following the initial period of certification shall be filed with the division and the division shall transmit a copy of the initial claim to the employer. Failure to file a claim for temporary total disability in accordance with W.S. 27-14-404(d) shall result in denial of the claim.

(f) A claim for permanent impairment or disability benefits under W.S. 27-14-405 and 27-14-406 and a claim for death benefits under W.S. 27-14-403 shall be filed with the division.

**27-14-502. Employee's injury report to employer and division; presumption raised by failure to file report; release of information.**

(a) As soon as is practical but not later than seventy-two (72) hours after the general nature of the injury became apparent, an injured employee shall, in writing or by other means approved by the department, report the occurrence and general nature of the accident or injury to the employer. In addition, the injured employee shall within ten (10) days after the injury became apparent, file an injury report with the employer and the division in a manner and containing information prescribed by division rule and regulation. If the injured employee is physically unable to comply, a personal representative of the employee, his dependents or a personal representative of the dependents in case of death shall, following notification by the employer or department of reporting requirements, make and file the report for the injured employee.

(b) If an injured employee, any dependent or personal representative makes a written report of the injury to the employer or his representative, the employer shall acknowledge receipt of the report in writing either upon the report or a copy of the report.

(c) Failure of the injured employee, any dependent or personal representative to report the accident or injury to the employer and to file the injury report in accordance with subsection (a) of this section is a presumption that the claim shall be denied. The presumption may be rebutted if the employee establishes by clear and convincing evidence a lack of prejudice to the employer or division in investigating the injury and in monitoring medical treatment.

(d) The filing of an employee's injury report under this section is a release of information for the duration of the benefit period and upon request and upon notice to the employee, any medical care provider, physician or hospital treating the employee for the injury shall release medical records pertaining to the injury to the division or the employer.

**27-14-503. Statute of limitations.**

(a) A payment for benefits involving an injury which is the result of a single brief occurrence rather than occurring over a substantial period of time shall not be made unless in

addition to the proper and timely filing of the injury reports, an application or claim for benefits is filed within one (1) year after the date the injury occurred or for injuries not readily apparent, within one (1) year after discovery of the injury by the employee. The injury report is not a claim for benefits.

(b) The right of compensation for an injury which occurs over a substantial period of time is barred unless a claim for benefits is filed within one (1) year after a diagnosis of injury is first communicated to the employee, or within three (3) years from the date of last injurious workplace exposure to the condition causing the injury, whichever occurs last, excluding injury caused by ionizing radiation to which the three (3) year limitation does not apply. If death results from ionizing radiation within one (1) year after a diagnosis of the medical condition is first communicated to the employee or if death occurs without the communication of a diagnosis to the employee, a claim shall be filed within one (1) year after the date of death.

(c) Repealed by Laws 1996, ch. 82, § 2.

**27-14-504. Amendment of employee's injury report.**

An employee's injury report may be amended at any time before an initial award is made in order that the employee may correctly set out the nature of his injury. Any amendment may be approved, disapproved or contested as if an original injury report.

**27-14-505. Tolling of statute of limitations while persons under disability.**

If an injured employee is mentally incompetent or a minor, or where death results from the injury and any of his dependents are mentally incompetent or minors, at the time when any right or privilege accrues under this act, no limitation of time provided for in this act shall run so long as the mentally incompetent or minor has no guardian.

**27-14-506. Employer's injury report; penalty for failure to report.**

(a) When an injury is reported by any employee, the employer shall file an employer's injury report with the division within ten (10) days after the date on which the employer is notified of the injury and he shall mail or deliver

a copy of the report to the employee. The employer's injury report shall be certified and shall contain any information provided by rules and regulations adopted by the director. The employer shall state on the injury report that either the injury is:

(i) Compensable and under the jurisdiction of this act; or

(ii) Not compensable under this act and the reasons therefor.

(b) Repealed by Laws 1996, ch. 82, § 2.

(c) Willful failure or gross negligence to report occurrences causing injury to any of his employees by an employer is a misdemeanor, punishable by a fine of not more than seven hundred fifty dollars (\$750.00), imprisonment for not more than six (6) months, or both.

**27-14-507. Employer required to post notice.**

Each employer shall keep posted in a conspicuous place for employees a notice which shall be furnished by the division and which shall contain a brief summary of this act and procedures for filing claims. Each employer shall also keep a copy of this act and have it available for all employees.

**27-14-508. Blank form supplied by director; instructions to employees, employers and health care providers; training programs for clerks of court.**

(a) The director shall:

(i) Prepare, print and supply free of charge any blank forms necessary in administering this act to be used insofar as possible in all procedures under this act;

(ii) Prepare and print instructions for making correct claims for the information and use of employees;

(iii) Repealed by Laws 1996, ch. 82, § 2.

(iv) Prepare and print instructions for proper claim procedures for the information and use of health care providers and providers of medical and hospital care;

(v) Prepare and print instructions for proper claim procedures including approving or objecting to claims for the information and use of employers.

(b) Repealed by Laws 1996, ch. 82, § 2.

**27-14-509. Autopsy may be required; procedure.**

Upon the filing of a claim for compensation for death for which an autopsy is necessary to accurately and scientifically ascertain and determine the cause of death, a hearing examiner may order an autopsy. The hearing examiner may designate a licensed physician who is a specialist in autopsies to perform or attend the autopsy and to certify his findings. The autopsy findings are a public record and shall be filed with the division. The hearing examiner may exercise the authority on his own motion or on an application made to him at any time by any party in interest upon the presentation of facts showing that a controversy may exist in regard to the cause of death or the existence of any compensable injury. All proceedings for compensation shall be suspended upon refusal of a claimant or his representative to permit an autopsy when ordered and no compensation shall be payable during the continuance of the refusal.

**27-14-510. Misrepresentations or false statements; failure of employer to establish account or furnish payroll report.**

(a) Any person who knowingly makes, authorizes or permits any misrepresentation or false statement to be made for the purpose of him or another person receiving payment of any kind under this act is guilty of:

(i) A misdemeanor punishable by a fine of not more than seven hundred fifty dollars (\$750.00), imprisonment for not more than six (6) months, or both, if the value of the payment is less than five hundred dollars (\$500.00);

(ii) A felony punishable by a fine of not more than ten thousand dollars (\$10,000.00), imprisonment for not more than ten (10) years, or both, if the value of the payment is five hundred dollars (\$500.00) or more.

(b) Any employer who knowingly makes a false statement in a payroll report or reports resulting in the avoidance of or reduction in the employer's premium obligation within a one (1) year period is guilty of:

(i) A misdemeanor punishable by a fine of not more than seven hundred fifty dollars (\$750.00), imprisonment for not more than six (6) months, or both, if the avoided premium or reduction in premium is less than five hundred dollars (\$500.00); or

(ii) A felony punishable by a fine of not more than ten thousand dollars (\$10,000.00), imprisonment for not more than ten (10) years, or both, if the avoided premium or reduction in premium is five hundred dollars (\$500.00) or more.

(c) Any employer who knowingly makes a false statement in an injury report with the intention of denying a worker benefits due under this act is guilty of:

(i) A misdemeanor punishable by a fine of not more than seven hundred fifty dollars (\$750.00), imprisonment for not more than six (6) months, or both, if the value of the benefits is less than five hundred dollars (\$500.00);

(ii) A felony punishable by a fine of not more than ten thousand dollars (\$10,000.00), imprisonment for not more than ten (10) years, or both, if the value of the benefits is five hundred dollars (\$500.00) or more.

(d) Any employer who knowingly fails to establish an account or knowingly fails to furnish a payroll report as required by this act is guilty of:

(i) A misdemeanor punishable by a fine of not more than seven hundred fifty dollars (\$750.00), imprisonment for not more than six (6) months, or both, for a first conviction; or

(ii) A felony punishable by a fine of not more than ten thousand dollars (\$10,000.00), imprisonment for not more than ten (10) years, or both, for a second or subsequent conviction.

#### **27-14-511. Recovery of benefits paid by mistake or fraud.**

The attorney general may bring a civil action to recover the value of any benefits or other monies paid under this act due to mistake, misrepresentation or fraud. The attorney general shall be entitled to recover the costs of suit and reasonable attorney fees in cases of misrepresentation or fraud. Nothing in this section shall prohibit a criminal prosecution where appropriate.

Any civil action for recovery of overpayment resulting from a mistake by the division shall be commenced within one (1) year after the alleged overpayment and shall be limited to recovery of those mistaken payments made within twelve (12) months before the commencement of the action.

#### ARTICLE 6 - CONTESTED CASES

**27-14-601. Payment or denial of claim by division; notice; objections; review and settlement of claims; filing fee; preauthorization of hospitalization or surgery.**

(a) Upon receipt, the division shall review the initial injury reports to determine if the injury or death resulting from injury is compensable and within the jurisdiction of this act. No subsequent claim for compensation under this act shall be approved if the division determines the injury or death is not compensable and under the jurisdiction of this act or if the employer states on his injury report that the injury is not compensable, until a determination is rendered by the division. The division shall provide notice of its determination to the employee, employer and the claimant.

(b) Following review of each bill and claim for medical and hospital care pursuant to W.S. 27-14-401(b), the division may approve or deny payment of all or portions of the entire amount claimed and shall:

(i) Notify the employee and the health care provider in writing of any portion of a claim for which the employee may be liable for payment;

(ii) Provide the health care provider with a detailed monthly statement of respective claims and bills for services rendered and the amount approved for payment;

(iii) Provide the employer with a detailed monthly statement of all medical and hospital claims affecting his experience rating.

(c) Repealed by Laws 1994, ch. 86, § 3.

(d) Upon receipt of a claim for impairment, disability or death benefits filed under W.S. 27-14-403(g) or 27-14-501(e) and (f) and if the initial injury or death resulting from injury is determined compensable and within the jurisdiction of this act, the division shall determine if the injured employee or his

dependents are eligible for benefits and shall approve or deny the claim in accordance with this act. If a claim is approved, the division shall determine the amount of the award for compensation in accordance with W.S. 27-14-403 through 27-14-406 and 27-14-408, if applicable. The division shall provide notice of any determination under this subsection to the employer, employee and the claimant.

(e) In accordance with this act, the division shall by rule and regulation establish necessary procedures for the review and settlement of the compensability of an injury or death resulting from injury and of claims filed under this act through interviews with employees, employers and health care personnel or through review of written reports. Nothing in this act shall prohibit the employer or division from reaching a settlement of up to two thousand five hundred dollars (\$2,500.00) under this subsection in any one (1) case without an admission of compensability or that the injury was work related.

(f) A health care provider receiving payment erroneously under this act pursuant to a determination by the division following review and settlement under subsection (e) of this section or a decision by a hearing examiner is liable for repayment to the worker's compensation account. Except in contested cases, the division may deduct the amount liable from future payments under this act limited to deduction of those mistaken payments made for services provided within twelve (12) months before the deduction. If necessary, the division may recover repayment by civil action as provided in W.S. 27-14-511.

(g) No claim for benefits under this act shall be denied based solely on the failure of the employer to have complied with the requirements of this act.

(h) If any claim under W.S. 27-14-404 through 27-14-406 which has been approved and for which an employee is receiving benefits is objected to by an employer, the employee shall be notified by the division within one (1) working day of the objection.

(j) Notice to any employee or his dependents under this section of a final determination by the division denying the compensability of an initial injury, a claim for medical or hospital care for which the employee or his dependents may be liable for payment or denying any impairment, disability or death benefit, shall include reasons for denial and a statement of the employee's or his dependents' rights to a hearing before

a hearing examiner as provided by this act and to legal representation.

(k) Determinations by the division pursuant to this section and W.S. 27-14-605 shall be in accordance with the following:

(i) The initial review of entitlement to benefits pursuant to subsections (a) and (e) of this section shall be made by the division within fifteen (15) days after the date the injury report or claim is filed. Following initial review, the division shall issue a final determination or if a final determination cannot be made based upon available information at that time, the division may issue a request for additional information as necessary;

(ii) Following issuance of a request for additional information under paragraph (k)(i) of this section, the division shall investigate the matter and issue its final determination within forty-five (45) days after issuing the request;

(iii) Notice of a final determination issued by the division under this subsection shall include a statement of reasons and notice of the right to a hearing;

(iv) Any interested party may request a hearing before a hearing examiner on the final determination of the division by filing a written request for hearing with the division within fifteen (15) days after the date the notice of the final determination was mailed by the division. If the division has not rendered a final determination within sixty (60) days following the date the claim was filed, any interested party may request a hearing before a hearing examiner in the manner prescribed by this paragraph. The date a written request for hearing is filed shall be determined pursuant to W.S. 16-4-301(a);

(v) Upon receipt of a request for hearing, the division shall immediately provide notice of the request to the appropriate hearing authority as determined pursuant to W.S. 27-14-616;

(vi) If timely written request for hearing is not filed, the final determination by the division pursuant to this subsection shall not be subject to further administrative or judicial review, provided however that, in its own discretion, the division may, whenever benefits have been denied to a

worker, make a redetermination within one (1) year after the date of an original determination regardless of whether or not a party has filed a timely appeal pursuant to paragraph (iv) of this subsection.

(m) Repealed by Laws 1996, ch. 82, § 2.

(n) The division shall maintain a complete and current file for every worker's compensation case filed with the division in accordance with this act.

(o) The division pursuant to its rules and regulations may issue a determination of preauthorization for an injured worker's nonemergency hospitalization, surgery or other specific medical care, subject to the following:

(i) The division's determination that the worker suffered a compensable injury is final and not currently subject to contested case or judicial review;

(ii) A claim for preauthorization is filed by a health care provider on behalf of the injured worker;

(iii) The division's determination pursuant to this subsection is issued in accordance with the procedures provided in subsection (k) of this section;

(iv) Following a final determination to preauthorize, the necessity of the hospitalization, surgery or specific medical care shall not be subject to further review and providers' bills shall be reviewed only for relatedness to the preauthorized care and reasonableness in accord with the division's fee schedules.

#### **27-14-602. Contested cases generally.**

(a) A hearing examiner designated by the office of administrative hearings created by W.S. 9-2-2201 shall conduct contested cases under this act in accordance with this section.

(b) Upon receipt of a request for hearing from the division as provided in W.S. 27-14-601(k)(v), the case shall be determined by a hearing examiner in accordance with the law in effect at the time of the injury as a small claims hearing or as a contested case hearing subject to the following:

(i) A request for hearing shall be conducted as a small claims hearing if the amount at issue is less than two thousand dollars (\$2,000.00), is not an issue of the compensability of the injury pursuant to W.S. 27-14-601(a) and the division requests the hearing be held as a small claims hearing. The division shall provide notice that it seeks a small claims hearing under this paragraph in the notice of request for hearing filed pursuant to W.S. 27-14-601(k)(v). If the division provides such notice, the hearing shall be a small claims hearing unless a party to the hearing objects within fifteen (15) days from the date of the notice of request, in which case the hearing officer shall review the file and determine if a small claims hearing is appropriate or if a contested case hearing is necessary or appropriate. Each party to the hearing may within thirty (30) days from the date of notice of request, submit to the hearing examiner any written evidence and argument on the issue. The hearing officer may require either party to provide such documents, filings and evidence as the hearing officer deems relevant to the issue. Copies of the material submitted to the hearing examiner shall be mailed or delivered to all opposing parties. In addition, each party may submit rebuttal evidence and argument to the hearing examiner within forty-five (45) days following the date of notice of request for hearing. Upon request of any party to the hearing and at the discretion of the hearing officer, any proceeding under this paragraph may be conducted in person or by telephone. The hearing examiner shall review the case and written submissions and render a written decision not more than seventy-five (75) days following referral of the request for hearing. No attorney fees or other costs shall be allowed by the hearing examiner on behalf of or for any party to a hearing under this paragraph. In addition, the attorney general's office shall not represent or directly assist the division in the preparation for a hearing under this paragraph;

(ii) All other requests for hearing not specified under paragraph (b)(i) of this section shall be conducted as a contested case in accordance with procedures of the Wyoming Administrative Procedure Act and the Wyoming Rules of Civil Procedure as applicable under rules of the office of administrative hearings. The hearing examiner designated by the office of administrative hearings shall render a decision in a contested case within thirty (30) days after the close of the record. If the contested case is heard by the hearing panel created pursuant to W.S. 27-14-616(b)(iv), the panel shall render a decision within forty-five (45) days after the close of the record;

(iii) Appeals may be taken from the decision rendered in any small claims hearing or contested case hearing by any affected party to the district court as provided by the Wyoming Administrative Procedure Act;

(iv) Hearings under this section shall be held at a location mutually convenient to the parties, as determined by the hearing officer. If the injury occurs at a location outside Wyoming, the hearing shall be held in the county in which the employer's principal place of business is located, unless the hearing officer determines a different location is more convenient to the parties;

(v) Any hearing conducted pursuant to this section involving multiple sites may be conducted through audio or video conferencing at the discretion of the hearing officer or hearing panel.

(c) All written reports, claims and other documents filed with the division shall be considered as pleadings in the case. The attorney general's office shall represent the division in all contested cases. The hearing examiner has exclusive jurisdiction to make the final administrative determination of the validity and amount of compensation payable under this act. Except as otherwise specified in this subsection, all court costs shall be paid from the worker's compensation account if the judgment is in favor of the employer or the division. If judgment is against the employer and the employer contested the claim without being joined in the contest by the division, the court costs shall be paid by the employer. When the employer or division prevails, the court costs shall not affect the employer's experience rating. If judgment is against a health care provider, the court costs shall be paid by the health care provider.

(d) Upon request, the hearing examiner may appoint an attorney to represent the employee or claimants and may allow the appointed attorney a reasonable fee for his services at the conclusion of the proceeding. An appointed attorney shall be paid according to the order of the hearing examiner either from the worker's compensation account, from amounts awarded to the employee or claimants or from the employer. In any contested case where the issue is the compensability of an injury, a prevailing employer's attorney fees shall also be paid according to the order of the hearing examiner from the worker's compensation account, not to affect the employer's experience

rating. An award of attorney's fees shall be for a reasonable number of hours and shall not exceed the benefits at issue in the contested case hearing. In all other cases if the employer or division prevails, the attorney's fees allowed an employee's attorney shall not affect the employer's experience rating. Attorney fees allowed shall be at an hourly rate established by the director of the office of administrative hearings and any application for attorney's fees shall be supported by a verified itemization of all services provided. No fee shall be awarded in any case in which the hearing examiner determines the claim or objection to be frivolous and without legal or factual justification. If the division or a hearing examiner determines that an injured worker's failure to meet any procedural deadline in this act is through the fault of the worker's attorney, the division shall reconsider its determination or a hearing examiner shall order the contested case returned to the division for redetermination of the contested issues as provided in W.S. 27-14-601(k).

(e) Except as otherwise provided within this subsection, all documents filed with the division under subsection (c) of this section may be maintained by the division on computer and the hearing examiner or court may admit into evidence any documents resident in the computer imaging file. If a genuine issue as to the authenticity of the document is raised by a party, by a hearing examiner or by the court, the hearing examiner or court may, before admitting the document into evidence, require the division to certify that the record is a true and correct copy or transcript of records on file in the division.

**27-14-603. Burden of proof; required proof of circumstances; coronary conditions; hernia.**

(a) The burden of proof in contested cases involving injuries which occur over a substantial period of time is on the employee to prove by competent medical authority that his claim arose out of and in the course of his employment and to prove by a preponderance of evidence that:

(i) There is a direct causal connection between the condition or circumstances under which the work is performed and the injury;

(ii) The injury can be seen to have followed as a natural incident of the work as a result of the employment;

(iii) The injury can fairly be traced to the employment as a proximate cause;

(iv) The injury does not come from a hazard to which employees would have been equally exposed outside of the employment; and

(v) The injury is incidental to the character of the business and not independent of the relation of employer and employee.

(b) Benefits for employment-related coronary conditions except those directly and solely caused by an injury, are not payable unless the employee establishes by competent medical authority that:

(i) There is a direct causal connection between the condition under which the work was performed and the cardiac condition; and

(ii) The causative exertion occurs during the actual period of employment stress clearly unusual to or abnormal for employees in that particular employment, irrespective of whether the employment stress is unusual to or abnormal for the individual employee; and

(iii) The acute symptoms of the cardiac condition are clearly manifested not later than four (4) hours after the alleged causative exertion.

(c) If an employee suffers a hernia, he is entitled to compensation if he clearly proves that:

(i) The hernia is of recent origin;

(ii) Its appearance was accompanied by pain;

(iii) It was immediately preceded by some accidental strain suffered in the course of the employment; and

(iv) It did not exist prior to the date of the alleged injury.

(d) If an employee establishes his right to compensation for a hernia as provided and elects not to be operated on, he shall not be compensated for the results of future strangulation of the hernia.

(e) In those proceedings in which the entitlement of an employee to benefits for successive compensable injuries is established but no single employer can be determined to be chargeable for the injuries, the division shall apportion the benefit charge in accordance with W.S. 27-14-201(d).

**27-14-604. Examination by impartial health care provider; costs; report by nonresident provider.**

(a) In any contested proceeding, the hearing examiner may appoint a duly qualified impartial health care provider to examine the employee and give testimony. The fee for the service shall be as ordered by the hearing examiner, with mileage allowance as is allowed to other witnesses to be assessed as costs and paid as other witness fees are paid. The employer or employee may, at his own expense, also designate a qualified health care provider who may be present at the examination of the employee and give testimony at later hearings.

(b) If the employer and employee stipulate to an examination of the employee by a nonresident, qualified health care provider designated by the hearing examiner, and that the report of the health care provider as to his examination shall be admitted in evidence, the hearing examiner may order payment of the reasonable cost and expense of the employee's attendance upon the health care provider, the provider's fee for examination of the employee and his report thereon. The fees and costs shall be charged in the same manner as other costs and witness fees. The nonresident health care provider shall report in writing to the hearing examiner and include answers to questions asked by the hearing examiner relative to the employee's condition.

**27-14-605. Application for modification of benefits; time limitation; grounds; termination of case; exceptions.**

(a) If a determination is made in favor of or on behalf of an employee for any benefits under this act, an application may be made to the division by any party within four (4) years from the date of the last payment for additional benefits or for a modification of the amount of benefits on the ground of increase or decrease of incapacity due solely to the injury, or upon grounds of mistake or fraud. The division may, upon the same grounds and within the same time period, apply for modification of medical and disability benefits to a hearing examiner or the medical commission, as appropriate.

(b) Any right to benefits shall be terminated and is no longer under the jurisdiction of this act if a claim for any benefit is not filed with the division within the four (4) year limitation prescribed under subsection (a) of this section.

(c) A claim for medical benefits which would otherwise be terminated under subsection (b) of this section and barred under W.S. 27-14-503(a) and (b) may be paid by the division if the claimant:

(i) Submits medical reports to the division substantiating his claim;

(ii) Proves by competent medical authority and to a reasonable degree of medical certainty that the condition is directly related to the original injury; and

(iii) Submits to an examination by a health care provider selected by the division and results of the examination validate his claim.

**27-14-606. Determination and awards are administrative determination as to all parties; notice and hearing requirements.**

Each determination or award within the meaning of this act is an administrative determination of the rights of the employer, the employee and the disposition of money within the worker's compensation account as to all matters involved. No determination shall be final without notice and opportunity for hearing as required by this act.

**27-14-607. Rights of director to defend against claim; no waiver.**

The director or his designee may for any reason appear before the hearing examiner or in the district court and defend against any claim and shall in all respects have the same rights of defense as the employer. Failure to contest a claim does not constitute waiver by the director of his right to participate in further proceedings concerning the award where he does not appear and defend at the original hearing or trial.

**27-14-608. Attorney fees; penalty for violation.**

(a) If the hearing examiner under W.S. 27-14-602(d) or the district court or supreme court under W.S. 27-14-615 set a fee for any person for representing a claimant under this act excluding a health care provider, the person shall not receive any additional fee from the claimant.

(b) Any person violating this section is guilty of a misdemeanor and upon conviction shall be fined not more than seven hundred fifty dollars (\$750.00), imprisonment in the county jail for a term not to exceed six (6) months, or both.

**27-14-609. Periodic review of temporary total award; physical examination after temporary total award; purpose; report to division.**

(a) The division shall review every award for temporary total disability under W.S. 27-14-404 at least once every six (6) months. Upon request by the employer or division, an employee awarded compensation for temporary total disability shall submit to medical examination by a health care provider at a place designated by the employer or division which is reasonably convenient for the employee. The employee may have a licensed health care provider present of his own selection at his own expense.

(b) The results of the examination shall be reported to the division. The division, without delay, shall forward copies to the employer and employee. If after consideration of all medical reports in the case the division determines that the employee has recovered to the extent that temporary total disability no longer applies and his earning ability is substantially restored, compensation shall be discontinued in accordance with W.S. 27-14-404 unless written objection is filed by the employer or employee with the division within ten (10) days from the date of notice.

(c) If an employee refuses to submit to or obstructs the examination, his right to monthly payments shall be suspended until the examination has taken place. No compensation shall be paid during the period of refusal.

**27-14-610. Health care providers required to testify; refusal; privilege inapplicable.**

If directed under this act, any health care provider providing professional attention to an employee may be required to testify before the hearing examiner or any court, provide written

reports and attend depositions in a professional capacity. Any health care provider refusing to comply with this section shall forfeit any remuneration or award under this act for services rendered or facilities provided the injured employee. The law of privileged communication between health care provider and patient shall not apply.

**27-14-611. Administrative determination for compensation; copies to employer and auditor; warrants for payment.**

Any administrative determination for compensation to an injured employee or his dependents shall be transmitted by the division to the employer. The division shall transmit a certified copy to the state auditor for filing. The certified copy is direction to the state auditor to issue warrants for payment in accordance with this act.

**27-14-612. Appeal by employee; costs.**

If an appeal to the district court is prosecuted on behalf of the employee, the employee or attorney representing the employee shall order a record of the proceedings at the hearing to be supplied by the hearing examiner without cost to the employee. An electronic recording of the proceedings may serve as the official transcript but upon appeal, the district court may request a written transcript of the proceedings or any portion of the proceedings. The employee or attorney shall also order the papers on file with the division to be prepared, transcribed, certified and forwarded to the district court without cost to the employee. Docket fees in the district court shall be paid for directly out of the worker's compensation account.

**27-14-613. Appeal by employer; stay of award.**

If an appeal is prosecuted on behalf of the employer, the record of the proceedings at the original hearing shall be supplied without cost to the employer. An electronic recording of the proceedings may serve as the official transcript but upon appeal, the district court may request a written transcript of the proceedings or any portion of the proceedings. The employer may employ counsel to conduct the appeal on his behalf. Upon request and on appeal by an employer or the division from an order of award, the hearing examiner may stay the payment of the award or that portion appealed from upon any terms as the hearing examiner deems proper.

**27-14-614. Direct appeal by director from any order; stay of execution; costs.**

The director may appeal to the district court from any order or judgment of the hearing examiner awarding compensation or declining to award compensation although he was not a party to the proceedings before the hearing examiner, without the necessity of presenting any petition for reopening of a case to the hearing examiner. After the appeal is perfected, the hearing examiner may stay the execution of the order or judgment appealed from without requiring any bond. The attorney general or his assistant shall represent the director in all cases. All the costs of the new hearings granted upon petition of the director and all costs of appeals conducted by the director shall be paid by the worker's compensation account except such costs as the court in its discretion shall assess against any of the other parties to the cause.

**27-14-615. Appointment of attorneys for court proceedings; fees.**

The district court may appoint an attorney to represent the employee during proceedings in the district court and appeal to the supreme court. The district court may allow the attorney a reasonable fee for his services at the conclusion of the proceedings in district court and the supreme court may allow for reasonable fees for services at the conclusion of the proceedings in the supreme court. In any appeal where the issue is the compensability of an injury, a prevailing employer's attorney fees shall also be paid according to the order of the district court or supreme court from the worker's compensation account, not to affect the employer's experience rating. An award of attorney's fees shall be for a reasonable number of hours and shall not exceed the benefits at issue in the appeal. In all other cases, if the employer or division prevails in the district court or supreme court, as the case may be, the fees allowed an employee's attorney shall not affect the employer's experience rating.

**27-14-616. Medical commission; hearing panels; creation; membership; duties; rulemaking.**

(a) The medical commission is created to consist of eleven (11) health care providers appointed by the governor as follows:

(i) Seven (7) licensed physicians appointed from a list of not less than fourteen (14) nominees submitted by the Wyoming Medical Society;

(ii) Four (4) health care providers appointed from a list of not less than eight (8) nominees developed and submitted by appropriate health care provider groups selected by the director.

(b) One (1) member shall be elected by commission members as chairman and one (1) as vice-chairman. The division shall designate an employee to serve as executive secretary of the commission or contract with an individual to provide executive secretary services to the commission. The governor may appoint no more than eleven (11) additional health care providers as associate members of the commission whose function is limited to serving as members of individual medical hearing panels. Except for initial members, the terms of commission members and associate members shall be three (3) years. Three (3) members of the initial commission and three (3) initial associate members shall be appointed to a one (1) year term and four (4) initial commission members and four (4) initial associate members shall be appointed to a two (2) year term. The duties of the commission shall be:

(i) To promulgate rules and regulations, with the approval of the director of the department, declaring particular medical, hospital or other health care procedures either acceptable or not necessary in the treatment of injuries or particular classes of injuries and therefore either compensable or not compensable under this act or expanding or limiting the compensability of such procedures under this act;

(ii) To promulgate rules and regulations, with the approval of the director of the department, establishing criteria for certification of temporary total disability by health care providers and setting forth the types of injuries for which particular health care providers may certify temporary total disability pursuant to W.S. 27-14-404(g);

(iii) To advise the division, upon request, on the usefulness of medical cost containment measures;

(iv) To furnish three (3) members of the commission to serve as a medical hearing panel to hear cases referred for hearing. The division shall refer medically contested cases to the commission for hearing by a medical hearing panel. The

decision to refer a contested case to the office of administrative hearings or a medical hearing panel established under this section shall not be subject to further administrative review. Following referral by the division, the hearing examiner or medical hearing panel shall have jurisdiction to hear and decide all issues related to the written notice of objection filed pursuant to W.S. 27-14-601(k). Different medical hearing panels with different membership may be selected to hear different cases, but a panel may hear more than one (1) case. Individual medical hearing panels shall be selected by the executive secretary under the supervision and guidance of the chairman of the medical commission. At least one (1) member of each panel shall be a physician. One (1) member shall be designated by the executive secretary to serve as chairman of the panel. When hearing a medically contested case, the panel shall serve as the hearing examiner and shall have exclusive jurisdiction to make the final administrative determination of the validity and amount of compensation payable under this act. For cases referred to the medical commission as small claims hearings under W.S. 27-14-602(b), the medical hearing panel may consist of one (1) physician who shall serve as the hearing examiner and shall have exclusive jurisdiction to make the final administrative determination of the validity and amount of compensation payable under this act; and

(v) To advise the division regarding any suspected substandard or inappropriate medical or health care provided to an injured worker by a health care provider or health care facility;

(vi) To establish by rule and regulation procedures for decisions pursuant to W.S. 27-15-102(h) and for rebuttals pursuant to W.S. 27-15-103 and to adopt other rules as necessary to implement W.S. 27-15-101 through 27-15-103.

(c) The members of the commission and of medical hearing panels and any health care provider providing peer reviews or independent medical evaluations, reviews or opinions, when serving shall be deemed public employees for purposes of the Wyoming Governmental Claims Act, and shall be immune from liability pursuant to W.S. 1-39-104.

(d) The division shall establish a fee schedule for the compensation of members of the medical commission and medical hearing panels for their professional services to be paid from the worker's compensation account.

(e) Upon agreement of all parties to a case, the hearing examiner in a contested case under this chapter may transfer a medically contested case to a medical hearing panel or may seek the advice of the medical commission on specified medical issues in the contested case. The advice shall be in writing and shall become part of the record of the case.

(f) Any member of the commission who knows or has reasonable cause to believe or suspect that a health care provider or health care facility has provided substandard or inappropriate medical or health care shall immediately report it to the appropriate professional or facility licensing authority and to the division.

## ARTICLE 7 - FISCAL PROVISIONS

**27-14-701. Worker's compensation account established; investments; administrative expenses; rehabilitation expenses; worker's compensation claims payment account established for worker's compensation revenue bond proceeds.**

(a) Except as provided under subsection (f) of this section, all money received, earned or collected pursuant to this act shall be credited to the worker's compensation account. In addition to other expenditures authorized under this act, amounts deposited within this account shall be used to pay debt service on revenue bonds issued in accordance with W.S. 27-14-704. As used in this act, "account" means the worker's compensation account established under this subsection.

(b) All awards and claim determinations shall be paid from the account provided by subsection (a) of this section.

(c) All money collected and accounted for pursuant to this act not immediately necessary for the purposes of this act shall be invested by the state treasurer in the manner provided by law for investment of permanent state funds. The state treasurer, in consultation with the director and consistent with the investment policy developed by the state loan and investment board, may establish a percent not to exceed forty-five percent (45%) of the total amount collected and accounted for under this subsection to be invested in common stock.

(d) Following a general fund appropriation by the legislature for administrative expenses of the division and for administrative expenses of the office of administrative hearings which are attributable to hearing services provided pursuant to

this act, amounts expended pursuant to the appropriations shall be transferred monthly from the account provided by subsection (a) of this section to the general fund as provided by the Wyoming Funds Consolidation Act.

(e) The division shall from the worker's compensation account, periodically advance or reimburse the division of vocational rehabilitation of the department of workforce services, for administrative and program costs associated with the rehabilitation of injured workers pursuant to W.S. 27-14-408. Administrative or program costs reasonably available or legally allowable under the federal Rehabilitation Act of 1973, as amended, shall not be advanced or reimbursed pursuant to this subsection.

(f) Proceeds from the sale of revenue bonds issued under W.S. 27-14-704, together with any earnings from the investment of bond proceeds, shall be deposited into the worker's compensation claims payment account until such bonds are paid or provision for their payment has otherwise been made. Account proceeds may be invested or reinvested by the state treasurer at the direction of the state loan and investment board and may in addition to payment of claims and awards, program and administrative expenses, program reserves and debt service, be used to pay any ongoing and issuance costs of revenue bonds under W.S. 27-14-704.

(g) The state treasurer, in consultation with the director, shall report to the joint appropriations interim committee not later than December 1, 2016 and every five (5) years thereafter, on the status of the worker's compensation account and the projected status of the account during the subsequent five (5) year period.

**27-14-702. No garnishment, attachment or execution on unpaid award.**

Except as provided under W.S. 27-14-703, no money paid or payable under this act prior to issuance and delivery of the warrant therefor shall be assigned, charged or taken in execution or by garnishment. Any such assignment, attachment, garnishment or charge is void.

**27-14-703. Disclosure of child support obligations required; notification; amount withheld; payment; applicability of provisions.**

(a) An injured employee filing a claim for benefits payable under this act shall disclose if he owes child support obligations enforced pursuant to a plan described in 42 U.S.C. § 654 and approved under 42 U.S.C. § 651 et seq. If the employee owes child support obligations and is awarded benefits, the division shall notify the state or local child support enforcement agency operating pursuant to a plan described in 42 U.S.C. § 654 and enforcing the obligation that the employee is eligible for benefits.

(b) The division shall withhold from benefits payable to an employee owing child support obligations:

(i) The amount specified by the employee to the division to be withheld under this subsection;

(ii) The amount determined pursuant to an agreement under 42 U.S.C. § 654(19)(B)(i) and submitted to the division by the state or local child support enforcement agency; or

(iii) Any amount otherwise required to be withheld from benefits payable under this act pursuant to legal process defined under 42 U.S.C. § 662(e) and properly served upon the division.

(c) Any amount withheld under subsection (b) of this section shall be paid by the division to the appropriate state or local child support enforcement agency, treated as if paid to the employee as benefits under this act and as if paid by the employee to the state or local child support enforcement agency in satisfaction of his child support obligations.

(d) This section applies only if arrangements are made for reimbursement by the state or local child support enforcement agency for administrative costs incurred by the division attributable to child support obligations enforced by the agency.

**27-14-704. Worker's compensation revenue bonds; department determination; issuance by state loan and investment board; bonding procedure, terms and conditions.**

(a) The department may upon determining that the issuance of revenue bonds would be financially beneficial to the worker's compensation account and that bond issuance would not negatively impact employer contribution rates to the account, request the state loan and investment board to issue worker's compensation

revenue bonds to fund awards and claims, program and administrative expenses and program reserves. Upon receipt of a request under this subsection, the state loan and investment board shall review the department's determination and if it concurs with the determination, the board may issue worker's compensation revenue bonds in one (1) or more series not to exceed an aggregate amount of two hundred million dollars (\$200,000,000.00). The net proceeds from the sale of the bonds shall after payment of issuance costs, be deposited into the worker's compensation claims payment account established under W.S. 27-14-701(f).

(b) Revenue bonds issued pursuant to this section are limited obligations payable solely from and secured by funds deposited within the worker's compensation account as created under W.S. 27-14-701(a) and the worker's compensation claims payment account. The bondholders may not look to any general or other fund for payment of the bonds except for revenues pledged therefor. The revenue bonds shall not constitute an indebtedness or a debt within the meaning of any constitutional or statutory provision or limitation. The bonds shall not be considered or held to be general obligations of the state but shall constitute limited obligations of the state and the board shall not pledge the state's full faith and credit for payment of the bonds. Each series of bonds may be issued by the board at public or private sale, in denominations and registered form, with such provision for conversion or exchange, for establishing interest rates or methods of determining rates on a variable or fixed rate basis, for establishing maturities and redemption provisions, as determined by the board. The bonds shall be payable at the office of a fiscal agent designated by the board. The state loan and investment board shall not issue any revenue bonds under this section unless the sale results in an economic benefit to the worker's compensation program as determined by the board. In all other respects, the board may prescribe the form and terms of the revenue bonds and shall do whatever is lawful and necessary for their issuance and payment. Action taken by the board under this section shall be approved by a majority of its members.

## ARTICLE 8 - ADMINISTRATIVE PROVISIONS

### **27-14-801. Duties of director.**

(a) Repealed by Laws 1990, ch. 63, § 3.

(b) Repealed by Laws 1990, ch. 63, § 3.

(c) Repealed by Laws 1990, ch. 63, § 3.

(d) The director may provide for the investigation of facts and circumstances regarding any claim filed under this act. To carry out investigations, he may acquire the services of one (1) or more physicians licensed to practice medicine in this state to serve as medical consultants in investigating any injury or death resulting from injury, the treatment of any injury or death or the recovery of any employee which is reported to the division. The physician shall be paid on a fee for service basis from the worker's compensation account. The director may also employ consultants to review medical and hospital bills submitted to the division.

(e) The director shall:

(i) Repealed by Laws 1996, ch. 82, § 2.

(ii) Periodically provide for educational programs for and consult with employee groups, employers, hospital administrators and health care providers;

(iii) Report to the appropriate professional or facility licensing authority any suspected substandard or inappropriate medical or health care provided to an injured worker by the provider or health care facility;

(iv) Provide information and guidance to employers and employees as provided by W.S. 9-2-2602(b)(viii).

(f) Any duties designated by statute upon the director may be performed by his designee.

**27-14-802. Rulemaking power; fees; state's average wages; vocational rehabilitation; contracts with clerks of district court.**

(a) The director may adopt rules and regulations for administration of this act. The director shall by rule and regulation establish criteria for qualification of resident and nonresident employers, provide for advance payments of employer premiums under W.S. 27-14-202(e), provide fee schedules for all medical and hospital care rendered injured employees and for the establishment of the state's average monthly wage. In addition, the division may by rule and regulation establish a separate fee schedule for surgical procedures and hospital admissions

preauthorized by the division. Changes in any rule or regulation adopted under this subsection shall be considered only at quarterly intervals.

(b) Before the last day of each quarter in each year, the department shall estimate the average monthly and weekly wage for the twelve (12) months preceding the quarter, based on unemployment insurance commission information and other available statistics.

(c) The division, together with the division of vocational rehabilitation within the department of workforce services, shall jointly establish consistent rules and regulations for the implementation of W.S. 27-14-408.

(d) The division may contract with the clerks of district court on a county by county basis, for compensation mutually agreed upon, to perform the following functions:

(i) Technical assistance to employers, employees, health care providers and other interested parties in complying with the requirements of this act and interacting with the worker's compensation system;

(ii) Providing necessary forms to employers, employees health care providers and other interested parties;

(iii) Responding to inquiries on the status of particular cases;

(iv) Obtaining documents including confidential documents, concerning individual cases and transmitting these documents to authorized persons;

(v) Retention and storage of records prior to January 1, 1997; and

(vi) Any other administrative function useful in the management of the worker's compensation program.

(e) Compensation negotiated pursuant to subsection (d) of this section shall be paid from the worker's compensation account and the agreement may be modified at any time by mutual consent of the parties or may be terminated by either party following notice specified in the agreement.

**27-14-803. Investigatory powers; examination of employer's records; subpoenas.**

(a) In addition to W.S. 27-14-801(d) and if the administrator has reason to believe that an employee, employer, health care provider or any representative thereof has engaged in any activity in violation of this act, he shall make an investigation to determine if this act has been violated and, to the extent necessary for this purpose, may conduct discovery pursuant to the Wyoming Rules of Civil Procedure.

(b) The administrator may examine the books, accounts, payrolls or business operation of any employer to secure any information necessary for any investigation conducted under this section and for the administration of this act at any reasonable time on twenty-four (24) hours notice but excluding Sundays and holidays unless waived by the employer, either in person or through any authorized inspector, agent or deputy.

(c) If records necessary for an investigation under this section are located outside this state, the person being investigated shall:

(i) Make them available to the administrator at a convenient location within this state;

(ii) Pay the reasonable and necessary expenses for the administrator or his representative to examine them at the location at which maintained; or

(iii) Provide access to comparable officials of the state in which the records are located for inspection as the administrator may require.

(d) If the employer, employee, health care provider or any representative thereof refuses to cooperate and assist discovery by the administrator pursuant to this section, the attorney general may, at the request of the administrator and upon reasonable notice to all parties, apply to the district court for a subpoena or for an order compelling compliance.

**27-14-804. Statistical compilation; annual report and projection; additional reporting requirements.**

(a) The director shall:

(i) Secure and compile statistical information concerning injuries occurring in employment, showing the number of injuries or fatalities occurring in the employment and any other information relevant to the proper operation or administration of this law;

(ii) Report to the governor as provided by W.S. 9-2-1014;

(iii) Annually prepare and present to the governor and the legislature projections of income, expenditures and account balances for the succeeding twelve (12) month period;

(iv) Annually report to the legislature on recommendations for improvement to the initial claims processing and determination process and the effectiveness of the process.

(v) Repealed by Laws 1990, ch. 63, § 3.

**27-14-805. Confidentiality of information; unlawful disclosure; exception.**

(a) Except as otherwise provided by this act, information obtained from any employer or covered employee pursuant to reporting requirements under this act or investigations conducted under W.S. 27-14-803 shall not be disclosed in a manner which reveals the identity of the employer or employee except to the employer, the employee, legal counsel for an employer, legal counsel for an employee or in situations necessary for the division to enforce any of the provisions of this act. The confidentiality limitations of this section do not apply to transfers of information between the divisions of the department of workforce services so long as the transfer of information is not restricted by federal law, rule or contract. In addition, nothing in this section shall prohibit the division from:

(i) Disclosing information obtained from employers and employees under this act and any determination of benefit rights to any state or federal agency as required under regulation of the United States department of health and human services and the state department of health, the United States internal revenue service in administering federal tax laws and to the office of the United States bankruptcy trustee;

(ii) Allowing access to information obtained pursuant to the administration of this act to a law enforcement authority

of the federal government or this state, upon a written request from that authority stating the information is necessary in connection with a criminal investigation;

(iii) Allowing access by the state auditor to certain information obtained under this act limited to name, address, social security identification number and other general information pertaining to benefit entitlements and employers;

(iv) Reporting to the appropriate professional or facility licensing authority any suspected substandard or inappropriate medical or health care provided to an injured worker by a health care provider or health care facility.

(b) Any employee who discloses information outside of the department in violation of federal or state law may be terminated without progressive discipline.

(c) Notwithstanding subsection (a) of this section and any other provision of law to the contrary, and for purposes of ensuring any medical or disability benefit payment under this act does not duplicate any benefit payment made by another state agency, insurer, group health plan, third party administrator, health maintenance organization or similar entity, the department may upon request of the state agency, insurer or similar entity, disclose information limited to a recipient's name, social security number, amount of benefit payment, charge for services, date of services and services rendered relating to the benefit payment made under this act. A state agency, insurer, group health plan, third party administrator, health maintenance organization or similar entity shall, upon request of the department, disclose the same limited information to the department. Information received under this subsection shall be used only for the purpose authorized by this subsection and shall otherwise be confidential and the recipient entity shall be subject to the confidentiality restrictions imposed by law upon information received to the extent required of the department. Any violation of this subsection is a misdemeanor punishable by imprisonment for not more than six (6) months, a fine of not more than seven hundred fifty dollars (\$750.00), or both.

(d) Prior to receipt of any benefit under this act, the department shall require an injured employee covered under this act to sign a waiver authorizing the release of information limited to benefit payment information to state agencies, insurers, group health plans, third party administrators, health

maintenance organizations or similar entities for purposes specified by subsection (c) of this section.

**27-14-806. Experience rating manipulation; penalties.**

(a) A person who knowingly, or with deliberate ignorance or reckless disregard of the true facts or the requirements of this act, violates or attempts to violate the requirements of W.S. 27-14-207 or any other provision of this act related to determining the assignment of a premium rate, or who advises another to violate the requirements of W.S. 27-14-207 or any other provision of this act related to determining the assignment of a premium rate, shall be subject to the following penalties:

(i) A person who is an employer shall be assigned, for the rate year during which the noncompliance or misrepresentation occurred and for the following three (3) rate years, the highest base rate within the industry classification assigned during that year under the division's rate filing. If the person's business is already at the highest rate for any year, or if the amount of increase in the person's rate would be less than two percent (2%) for that year, then a penalty rate of two percent (2%) shall be imposed for that year. This penalty may exceed the maximum assignable rate;

(ii) In addition to the penalty imposed pursuant to paragraph (i) of this subsection, any violation or attempted violation of W.S. 27-14-207 or any other provision of this act related to determining the assignment of a premium rate may be prosecuted as a felony punishable by a fine of not more than fifty thousand dollars (\$50,000.00), imprisonment for not more than five (5) years, or both.

**ARTICLE 9 - FIREFIGHTER CANCER DETECTION AND PREVENTION**

**27-14-901. Short title.**

This act shall be known and may be cited as the "Aaron Booker Firefighter Cancer Screening Act."

**27-14-902. Cancer screenings for firefighters; requirements.**

(a) As used in this section, "firefighter" means a person who has been employed or has volunteered as a firefighter for not less than ten (10) years and is classified as a firefighter

member as defined by W.S. 9-3-402(a)(xxv), a paid fireman as defined by W.S. 15-5-201(a)(xi), an employee under W.S. 15-5-402(a)(viii), the state fire marshal and their employees, a volunteer fireman as defined by W.S. 15-5-201(a)(xiv), a volunteer firefighter as defined by W.S. 35-9-616(a)(x) and any person employed by a municipal corporation or private organization who devotes the person's entire time of employment to the provision of fire protection service for a city, town, county or fire protection district.

(b) Firefighters shall be presumed to have been exposed to cancer causing agents during the course and scope of their employment. These exposures shall be considered work related injuries for which cancer screenings shall be provided as a workers' compensation award under the provisions of this act. No other injury or award shall be presumed or required to be provided pursuant to this subsection but this section shall not prohibit the application of any other presumption or prohibit qualification for any other award under the other provisions of this act.

(c) Firefighters who are currently employed in that profession shall be provided cancer screenings which shall consist of:

(i) Breast cancer screenings for firefighters, to include mammograms at medically indicated intervals;

(ii) Colon cancer screenings, to include stool based testing or colonoscopies at medically indicated intervals;

(iii) Prostate cancer screenings for male firefighters, to include prostate specific antigen tests at medically indicated intervals;

(iv) Routine screenings for any other cancers the risk or occurrence of which the director of the national institute for occupational safety and health has identified as higher among firefighters than among the general public.

(d) The compensable workplace injury and cancer screenings award provided by subsection (b) and (c) of this section shall continue for not more than ten (10) years after the cessation of employment of a firefighter.

(e) No workplace award of cancer screening benefits under this section shall be included in the calculation of any

employer's experience rating but may be included in any base rate setting procedures conducted by the division.

## CHAPTER 15 - PRESUMPTIVE DISABILITY FOR CERTAIN DISEASES

### **27-15-101. Definitions.**

(a) As used in this act:

(i) "Firefighter" means a paid fireman defined under W.S. 15-5-201(a)(xi), a firefighter member under W.S. 9-3-402(a)(xxv), an employee under W.S. 15-5-402(a)(viii), a volunteer fireman defined under W.S. 15-5-201(a)(xiv) and a volunteer firefighter or firefighter defined under W.S. 35-9-616(a)(x). "Firefighter" also means an individual employed by a municipal corporation or private organization who devotes the individual's entire time of employment to the provision of fire protection service for a city, town, county or fire protection district;

(ii) "Listed disease" means any of the following:

(A) Cancer, lymphoma or leukemia that may be caused by exposure to heat, smoke, radiation or a known or suspected carcinogen as determined by the International Agency for Research on Cancer;

(B) Cardiovascular disease;

(C) Acute myocardial infarction or stroke;

(D) A disease, illness, health impairment or disability determined on a case-by-case basis under W.S. 27-15-102(h).

(iii) "Minimum period of employment" means:

(A) Employment as a firefighter for at least ten (10) years; and

(B) For volunteer firefighters, an individual is considered to have been employed for the minimum period of employment if that individual while actively a volunteer participates or participated in a minimum of forty percent (40%) of the drills conducted by the individual's department and a minimum of twenty-five percent (25%) of the emergency calls received during the time the volunteer serves or served on call.

Volunteer firefighter departments shall keep individual records that document the criteria in this subparagraph.

(iv) "This act" means W.S. 27-15-101 through 27-15-103.

**27-15-102. Presumption of occupational disability; applicability; exceptions.**

(a) A firefighter who suffers from a listed disease is presumed to have developed that listed disease during the course and scope of employment. The listed disease is presumed to be an occupational disease, the dominant cause of which is the employment as a firefighter, unless the contrary is proven.

(b) A presumption established under this act applies to a determination of whether a firefighter's injury, disease, illness, health impairment, disability or death resulted from a listed disease contracted in the course and scope of employment for purposes of benefits or compensation provided under:

(i) Firefighter retirement and disability retirement plans administered by the Wyoming retirement board under W.S. 9-3-401 through 9-3-431, 15-5-201 through 15-5-209, 15-5-401 through 15-5-422 and 35-9-616 through 35-9-628;

(ii) Workers' compensation benefits paid by or on behalf of an employer to an employee under the provisions of W.S. 27-14-101 through 27-14-902;

(iii) University of Wyoming and Wyoming community college tuition and fees as provided under W.S. 21-16-1501(h) and (j).

(c) The presumption in subsection (a) of this section applies only to a firefighter who:

(i) Is employed for not less than the minimum period of employment and seeks the presumption within:

(A) Ten (10) years after cessation of employment for a listed disease as defined by W.S. 27-15-101(a)(ii)(A);

(B) One (1) year after cessation of employment for a listed disease as defined by W.S. 27-15-101(a)(ii)(B) or (C);

(C) A period to be determined by the Wyoming worker's compensation medical commission for a listed disease as defined by W.S. 27-15-101(a)(ii)(D).

(ii) Has been exposed to the hazards involved in firefighting during the minimum period of employment; and

(iii) On becoming employed or during employment as a firefighter received a physical examination that failed to reveal evidence of the listed disease for which the presumption is sought.

(d) The presumption in subsection (a) of this section does not apply:

(i) If the listed disease is known to be caused by tobacco use and the firefighter:

(A) Is a regular user of tobacco for five (5) or more years; or

(B) Was a regular user of tobacco for five (5) or more years and it has been fewer than ten (10) years since the firefighter gave up the use of tobacco products.

(ii) In a cause of action brought in a state or federal court except for judicial review of a proceeding in which there has been a grant or denial of employment-related benefits or compensation.

(e) This act does not create a cause of action.

(f) This act does not enlarge or establish a right to any benefit or compensation or eligibility for any benefit or compensation.

(g) A firefighter who qualifies for a presumption established under this act is entitled only to the benefits or compensation to which the firefighter would otherwise be entitled to receive at the time the claim for benefits or compensation is filed.

(h) A presumption under this act is not limited to the current listed diseases. A firefighter is not precluded from a case-by-case demonstration before the Wyoming workers' compensation medical commission that the dominant cause of the

firefighter's disease, illness, health impairment or disability is or was employment as a firefighter.

(j) Paragraph (d)(i) of this section only prevents the application of the presumption authorized by this chapter and does not affect the right of a firefighter to provide proof, without the use of the presumption, that an injury, disease, illness, health impairment or disability occurred during the course and scope of employment.

#### **27-15-103. Presumption rebuttal.**

A person opposed to the award of benefits or compensation listed under W.S. 27-15-102(b) may rebut the presumption under this act through a showing by a preponderance of the evidence that a risk factor, accident, hazard or other cause not associated with the firefighter's service was the dominant cause of the listed disease.