

Assembly Bill No. 486

CHAPTER 866

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

[Approved by Governor September 25, 2002. Filed
with Secretary of State September 26, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 486, Calderon. Workers' compensation: administration and benefits.

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

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

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

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

This bill would also require the administrative director, in consultation with the court administrator and the Commission on Judicial Performance, to adopt regulations to enforce the applicable



ethics requirements for workers' compensation administrative law judges, and would authorize the court administrator to enforce these regulations.

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

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

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

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

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

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

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

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



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

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

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

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

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

This bill would revise these certification requirements.

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

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

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

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

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

This bill would make changes to that procedure and would require a court administrator, rather than the Workers' Compensation Appeals Board, to establish various forms and to perform various administrative functions relating to these proceedings. This bill would also require the



court administrator to establish a priority conferences calendar in specified cases, and require that the conferences shall be conducted by a workers' compensation administrative law judge, as prescribed. This bill would provide that if the dispute cannot be resolved at the conference, the case would be set for trial, as specified.

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

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

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

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

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

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

SECTION 1. Section 78 of the Labor Code is amended to read:

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



(b) Civil and administrative penalties assessed and collected pursuant to Sections 129.5 and 4628 shall be deposited in the Workers' Compensation Administration Revolving Fund. Moneys in the fund, when appropriated by the Legislature to fund the grants under subdivision (a) and other activities and expenses of the commission set forth in this code, shall be expended by the department, upon approval by the commission.

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

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

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

(b) All workers' compensation administrative law judges appointed on or after January 1, 2003, shall be attorneys licensed to practice law in California for five or more years prior to their appointment and shall have experience in workers' compensation law.

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

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

In consultation with both the court administrator and the Commission on Judicial Performance, the administrative director shall adopt regulations to enforce this section. Existing regulations shall remain in effect until new regulations based on the recommendations of the court administrator and the Commission on Judicial Performance have become effective. To the extent possible, the rules shall be consistent



with the procedures established by the Commission on Judicial Performance for regulating the activities of state judges, and, to the extent possible, with the gift, honoraria, and travel restrictions on legislators contained in the Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code). The court administrator shall have the authority to enforce the rules adopted by the administrative director.

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

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

3201.5. (a) Except as provided in subdivisions (b) and (c), the Department of Industrial Relations and the courts of this state shall recognize as valid and binding any provision in a collective bargaining agreement between a private employer or groups of employers engaged in construction, construction maintenance, or activities limited to rock, sand, gravel, cement and asphalt operations, heavy-duty mechanics, surveying, and construction inspection and a union that is the recognized or certified exclusive bargaining representative that establishes any of the following:

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



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

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

(4) Joint labor management safety committees.

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

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

(b) Nothing in this section shall allow a collective bargaining agreement that diminishes the entitlement of an employee to compensation payments for total or partial disability, temporary disability, vocational rehabilitation, or medical treatment fully paid by the employer as otherwise provided in this division. The portion of any agreement that violates this subdivision shall be declared null and void.

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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



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

- (1) Person hours and payroll covered by agreements filed.
- (2) The number of claims filed.
- (3) The average cost per claim shall be reported by cost components whenever practicable.
- (4) The number of litigated claims, including the number of claims submitted to mediation, the appeals board, or the court of appeal.
- (5) The number of contested claims resolved prior to arbitration.
- (6) The projected incurred costs and actual costs of claims.
- (7) Safety history.
- (8) The number of workers participating in vocational rehabilitation.
- (9) The number of workers participating in light-duty programs.

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

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

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

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

- (1) An alternative dispute resolution system governing disputes between employees and employers or their insurers that supplements or replaces all or part of those dispute resolution processes contained in this division, including, but not limited to, mediation and arbitration. Any system of arbitration shall provide that the decision of the arbiter or board of arbitration is subject to review by the appeals board in the same manner as provided for reconsideration of a final order, decision, or



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

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

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

(4) Joint labor management safety committees.

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

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

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

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

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

(2) Groups of employers engaged in a workers' compensation safety group complying with Sections 11656.6 and 11656.7 of the Insurance Code, and established pursuant to a joint labor management safety



committee or committees, which develops or projects annual workers' compensation insurance premiums of two million dollars (\$2,000,000) or more.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

(2) The number of claims filed.

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

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

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

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

(7) Safety history.

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

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

(10) Overall worker satisfaction.

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

(j) The data obtained by the administrative director pursuant to this section shall be confidential and not subject to public disclosure under any law of this state. However, the Division of Workers' Compensation shall create derivative works pursuant to subdivisions (h) and (i) based on the collective bargaining agreements and data. Those derivative works shall not be confidential, but shall be public. On a monthly basis,



the administrative director shall make available an updated list of employers and unions entering into collective bargaining agreements containing provisions authorized by this section.

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

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

(b) A spouse to whom a deceased employee is married at the time of death shall be conclusively presumed to be wholly dependent for support upon the deceased employee if the surviving spouse earned thirty thousand dollars (\$30,000) or less in the twelve months immediately preceding the death.

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

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

(b) In order to provide for the composite deposit approved by the director, the Self-Insurers' Security Fund shall assess, in a manner



approved by the director, each fully participating private self-insuring employer a deposit assessment payable within 30 days of assessment. The amount of the deposit assessment charged each fully participating self-insured employer shall be set by the Self-Insurers' Security Fund, based on its reasonable consideration of all the following factors:

- (1) The total amount needed to provide the composite deposit.
- (2) The self-insuring employer's paid or incurred liabilities as reflected in its annual report.
- (3) The financial strength and creditworthiness of the self-insured.
- (4) Any other reasonable factors as may be authorized by regulation.
- (5) In order to make a composite deposit proposal to the director and set the deposit assessment to be charged each fully participating self-insured, the Self-Insurers' Security Fund shall have access to the annual reports and other information submitted by all self-insuring employers to the director, under terms and conditions as may be set by the director, to preserve the confidentiality of the self-insured's financial information.

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

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



the certificate of consent to self-insure of any self-insuring employer who fails to pay the deposit assessment in the time provided.

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

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

(g) Notwithstanding any other provision of this section, the director shall, by regulation, set minimum credit, financial, or other conditions that a private self-insured must meet in order to be a fully participating self-insurer in the alternative security system. In the event any private self-insuring employer is unable to meet the conditions set by the director, or upon application of the Self-Insurers' Security Fund to exclude an employer for credit or financial reasons, the director shall exclude the self-insuring employer from full participation in the alternative security system. In the event a self-insuring employer is excluded from full participation, the nonfully participating private self-insuring employer shall post a separate security deposit in the manner provided by Section 3701 and pay a deposit assessment set by the director. Alternatively, the director may order that the nonfully participating private self-insuring employer post a separate security deposit to secure a portion of its incurred liabilities and pay a deposit assessment set by the director.



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

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

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

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

(b) The fund shall be governed by a seven member board of trustees. The director shall hold ex officio status, with full powers equal to those of a trustee, except that the director shall not have a vote. The director, or a delegate authorized in writing to act as the director's representative on the board of trustees, shall carry out exclusively the responsibilities set forth in Division 1 (commencing with Section 50) through Division 4 (commencing with Section 3200) and shall not have the obligations of a trustee under the Nonprofit Mutual Benefit Corporation Law. The fund shall adopt bylaws to segregate the director from all matters that may involve fund litigation against the department or fund participation in legal proceedings before the director. Although not voting, the director or a delegate authorized in writing to represent the director, shall be counted toward a quorum of trustees. The remaining six trustees shall be representatives of private self-insurers. The self-insurer trustees shall be elected by the members of the fund, each member having one vote. Three of the trustees initially elected by the members shall serve two-year terms, and three shall serve four-year terms. Thereafter, trustees shall be elected to four-year terms, and shall serve until their successors are elected and assume office pursuant to the bylaws of the fund.

(c) The fund shall establish bylaws as are necessary to effectuate the purposes of this article and to carry out the responsibilities of the fund, including, but not limited to, any obligations imposed by the director



pursuant to Section 3701.8. The fund may carry out its responsibilities directly or by contract, and may purchase services and insurance and borrow funds as it deems necessary for the protection of the members and their employees. The fund may receive confidential information concerning the financial condition of self-insured employers whose liabilities to pay compensation may devolve upon it and shall adopt bylaws to prevent dissemination of that information.

(d) The director may also require fund members to subscribe to financial instruments or guarantees to be posted with the director in order to satisfy the security requirements set by the director pursuant to Section 3701.8.

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

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

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

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

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

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

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

(6) Not less than one hundred sixty-eight dollars (\$168) for permanent total disability, and for temporary disability, not less than the lesser of one hundred eighty-nine dollars (\$189) or 1.5 times the

